35725 Dec 28 1 [illegible] PM '76

This Deed

Made this 27th day of December in the year 19 76

by and between Michel Wagman, Single and Barlow Wagman, Single, as Devisees under the Will of Bessie Wagman, deceased, who died on May 2, 1967. Also known as Michel U. Wagman and Barlow U. Wagman,

part ies of the first part, and

Washington Metropolitan Area Transit Authority, a body corporate and politic, an agency and instrumentality of the District of Columbia and State of Maryland and Commonwealth of Virginia, created pursuant to Section 4 of Public Law 89-774, approved November 6th 1966

part y of the second part.

Witnesseth, that for and in consideration of the sum of Twenty-four Thousand Two Hundred and no/100 ($24,200.00) receipt whereof is hereby acknowledged, the said party of the first part does grant unto the said part y of the second part, in fee simple, the following described land and premises, situate in the District of Columbia, and known and distinguished as

Part of Lot "D" in Nathaniel Frye's subdivision of lots in Square numbered three hundred ninety-three (393), as per plat recorded in Liber Hist. folio 5 in the Office of the Surveyor for the District of Columbia, and described as follows: Beginning for the same at the Northwest corner of said Square and running thence South on the East line of 9th Street, N.W. 24.62 feet, thence East 45.69 feet, thence North 8.26 feet to Florida Avenue, N.W., thence West on said Avenue 48.53 feet to the place of beginning.

Said property being now known for assessment and taxation purposes as Lot numbered eight hundred eighteen (818) in Square numbered three hundred ninety-three (393).

Together with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said party of the first part, of, in, to, or out of the said land and premises.

And the said part ies of the first part covenant that they will warrant generally the property hereby conveyed, and that they will execute such further assurances of said land as may be requisite.

Witness their hand s and seal s the day and year first hereinbefore written.

Witness:

[signature] [signature] [SEAL]
Michel Wagman

[signature] [signature] [SEAL]
Barlow Wagman

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004019

District of Columbia to Wit:

I, June R. Watson a Notary Public in and for the District of Columbia DO HEREBY CERTIFY that Michael Wagman and Barlow Wagman parties to a certain Deed bearing date on the 27th day of December 19 76 and hereto annexed, personally appeared before me in said District the said Michael Wagman and Barlow Wagman being personally well known to me as the person who executed the said Deed, and acknowledged the same to be their act and deed.

Given under my hand and seal this 27th day of December 19 76

My Commission Expires October 31, 1979

June R. Watson Notary Public

35725

Dec 28 1 59 PM '76

Deed in Fee

FROM

Michael Wagman

Barlow Wagman

To

Washington Metropolitan Area Transit Authority

Received for Record on the ___ day of ___ A.D. 19__ at ___ o'clock ___ M. and recorded in Liber No. ___ at Folio ___ of the Land Records for ___ Recorder

COMMONWEALTH LAND TITLE INSURANCE COMPANY

Date 12/27/75

Wash. Metro Area Transit Authority

Case No. 12145 Code

CLT-90a

Corporate Seal

19203

AUG 26 2 52 PM '75

This Deed

Made this 20th *day of* August *in the year 19* 75 *, by and between*

Grace W. Klein and Company

a body corporate under and by virtue of the laws of the State of Maryland *acting herein pursuant to a resolution of its Board of Directors, party of the first part, and* Washington Metropolitan Area Transit Authority, a body corporate and politic, (an agency and instrumentality of the District of Columbia, State of Maryland, Commonwealth of Virginia, [redacted] created pursuant to Section 4 of Public Law 89-774, approved November 6, 1966), party of the second part. TWENTY-TWO THOUSAND THREE HUNDRED

Witnesseth: that for and in consideration of the sum of Dollars ($22,300), receipt DOLLARS *whereof is hereby acknowledged, the said party of the first part does grant unto the said party of the second part, in fee simple, the following described land and premises, situate in the* District *of* Columbia *and known and distinguished as*

Part of Lot lettered "D" in Nathaniel Frye's subdivision of Lots in Square numbered Three Hundred Ninety-three (393), as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber B at folio 5, and being more particularly described as follows: -

Beginning for the same on Florida Avenue at a point distant 51.51 feet easterly from the northwest corner of said Lot and Square, and running thence easterly along the said Avenue 48.68 feet to a 10.00 foot wide public alley, thence south on said alley 7.12 feet, thence west 47.91 feet and thence northerly 23.62 feet to the place of beginning.

Said property being now known for assessment and taxation purposes as lot numbered Eight Hundred Nineteen (819) in Square numbered Three Hundred Ninety-three (393).

393
"D"
(819)

together with all and singular the ways easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said party of the first part, of, in, to, or out of the said land and premises.

And the said party of the first part covenants that it will warrant specially generally the property hereby conveyed, and that it will execute such further assurances of said land as may be requisite.

In Testimony Whereof, the said party of the first part, on the day and year first hereinbefore written, has had its corporate seal hereto attached, and caused these presents to be signed with its corporate name by Grace Klein Bergman *its* ---------- *President, attested by* Mark Wills Bergman *its* ---------- *Secretary, and has appointed the said* Grace Klein Berman *to be its attorney, the same to acknowledge and deliver according to law.*

GRACE W. KLEIN AND COMPANY

By _____

Attest: _____

Signed, sealed and delivered in the presence of:-

_____

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004021

District of Columbia } to wit:

I, June R. Watson a Notary Public in and for the District of Columbia do hereby certify that Grace Klein Perman who is personally well known to me as the person named as attorney in fact in the foregoing Deed, bearing date on the 20th day of August, A. D. 19 75, and hereto annexed, personally appeared before me in said District and as attorney in fact as aforesaid, and by virtue of the authority vested in him by said Deed, acknowledged the same to be the act and deed of Grace W. Klein and Company the grantor therein

Given under my hand and seal this 20th day of August, A. D. 19 75

June R. Watson
Notary Public

My Commission Expires October 31, 1979

June R. Watson

I Hereby Certify That the foregoing and annexed Deed was executed, and delivered pursuant to and in strict conformity with the provisions of a resolution of the Board of Directors of Grace W. Klein and Company

a corporation passed at a regularly called meeting of said Board of Directors, and that a quorum was present at said meeting.

Mark Wills Bergman
Secretary

19203

Corporate Deed in Fee

FROM Grace W. Klein & Co.

To Washington Metro. Area Transit Authority

Received for Record on the ____ day of ____, A. D., 19 ____ at ____ o'clock ____ M., and recorded in Liber No. ____ at Folio ____ et seq. one of the Land Records for ____

Recorder

AUG 26 2 53 PM '75

COMMONWEALTH LAND TITLE INSURANCE COMPANY
METROPOLITAN WASHINGTON DIVISION
1828 L. STREET, N.W.
WASHINGTON, D. C. 20036

MAIL TO: [illegible]

AUG 26 75 705478 A 19203 CL 001

CII Title, LLC
d\b\a DC Title Company

CII Title, LLC

Date: September 8, 2009
Square: 0393 Lot: 0045
Street Address: Florida Ave NW
Washington, DC
Effective Date: August 17, 2009
Search Type: **60 Year**
CII Title File No.: **CT-09-482**
Abstract: CP Report: TR

Dear Ms. Rhyne:

As per your request, this firm has conducted a title search relative to the above property. The results are as follows:
Title is vested in Washington Metropolitan Area Transit Authority by Deed from Allie B. Jones, also known as Allie Bertha Jones, a widow and unremarried, and Sarah E. Peterson, a widow and unremarried, and A. M. Williamson, also known as Adam Marks Williamson, a widower and unremarried, as their respective interests may appear, dated July 2, 1975, and recorded July 3 1975, as Instrument No. 14283.

NOTE: The chain presented represents the period customarily searched in the District of Columbia for the type of property subject to this search. This report is further subject to the exceptions listed below and attached hereto. The liability of the Company under this Report of Title and to all continuations thereof shall not exceed $1000.00

1. Unpaid taxes, water rent, assessments, condominium assessments and Homeowner's Association Dues.

2. Any encroachments, easements, measurements, variations in area or content, party walls, or other facts which a correct survey of the premises would show.

3. Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

4. Building and zoning regulations in force in the District of Columbia.

5. Rights or claims of parties in possession not shown by the public records.

6. Rights of tenants under the Rental Housing Conversion and Sales Act of 1980, and regulations adopted there under.

7. Any claim arising out of the transaction insured by reason of the operation of the federal bankruptcy, state insolvency, or creditors' rights laws.

8. Covenants and Easements as appearing in instruments attached.

1050 17th Street, N.W. ■ Suite 700 ■ Washington, D.C. ■ 20036
(202) 331-3388 ■ FAX (202) 331-1184 ■ www.dctitleco.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004023

CII Title, LLC
Attachment No. 1

-Exceptions-

1. No active cases found in the Superior Court of the District of Columbia for the above property owners.

2. No active cases found in the United States Bankruptcy Court for the District of Columbia for the above property owners.

3. No active cases found in the US District Court for the District of Columbia for the above property owners.

4. No active cases found in the US Court of Appeals for the DC Circuit for the above property owners.

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(202) 331-3388 ■ FAX (202) 331-1184 ■ www.dctitleco.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004024

CII Title, LLC
d\b\a DC Title Company

CII Title, LLC
Attachment No. 2

-Chain of Title-

Lots: 34-40

1. Deed from Julia Kennedy Burke, formerly Julia E. Kennedy, sole heir at law of Margaret E. Kennedy, deceased (Admin. No. 48861), who died intestate on or about September 2, 1935, and Frank A. M. Burke, husband of said Julia Kennedy Burke, to Allie Bertha Jones dated September 16, 1969, and recorded September 23, 1969 as Instrument No. 19070.

2. Deed from Allie Bertha Jones, widow and not remarried, to Dorothy J. Huff and Betty Lou Robinson, as Joint Tenants, dated November 20, 1969 and recorded November 26, 1969 as Instrument No. 24031.

3. Deed from Dorothy J. Huff and Betty Lou Robinson, as Joint Tenants, to Allie Bertha Jones and Sarah E. Peterson, as Tenants in Common, dated November 20, 1969 and recorded November 26, 1969 as Instrument No. 24032.

4. Deed from Allie B. Jones, also known as Allie Bertha Jones, a widow and unremarried, and Sarah E. Peterson, a widow and unremarried, and A. M. Williamson, also known as Adam Marks Williamson, a widower and unremarried, as their respective interests may appear, to Washington Metropolitan Area Transit Authority dated July 2, 1975, and recorded July 3 1975, as Instrument No. 14283.

Lots: 31 and 32

1. Deed from Joseph A. Walker and Elizabeth M., his wife, as Tenants by the Entirety, to Loretta Simms dated January 18, 1939 and recorded January 23, 1939 as Instrument No. 1968.

2. Deed from Loretta Simms to Joseph A. Walker dated January 18, 1939 and recorded January 23, 1939 as Instrument No. 1969.

3. Deed from Joseph A. Walker to Georgetown Cabinet and Finishing Company, Inc. (DC corporation) dated May 28, 1963, and recorded May 31, 1963, as Instrument No. 16697.

5. Deed from Georgetown Cabinet and Finishing Company, Inc. (DC corporation) to District Alarm and Signal Company, Inc. (DC corporation) dated December 16, 1968, and recorded December 30, 1968 as Instrument No. 27136.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004025

6. Deed of Trust from District Alarm and Signal Company, Inc. (DC corporation) to Bernard E. Roache and Ellis L. Lyon, Trustees, securing Georgetown Cabinet and Finishing Company, Inc. in the amount of $10,883.08 dated December 16, 1968 and recorded December 30, 1968, as Instrument No. 27137.

7. Trustees' Deed from Bernard E. Roache and Ellis L. Lyon, Trustees, to Georgetown Cabinet and Finishing Company, Inc. (DC corporation) foreclosing Deed of Trust recorded December 30, 1968, as Instrument No. 27137, said Trustees' Deed dated May 1, 1970, and recorded July 10, 1970, as instrument No. 12176.

8. Deed from Georgetown Cabinet and Finishing Company, Inc. (DC corporation) to Allie B. Jones, single, dated March 14, 1974, and recorded March 19, 1974, as Instrument 5759.

9. Deed from Allie B. Jones, also known as Allie Bertha Jones, a widow and unremarried, and Sarah E. Peterson, a widow and unremarried, and A. M. Williamson, also known as Adam Marks Williamson, a widower and unremarried, as their respective interests may appear, to Washington Metropolitan Area Transit Authority dated July 2, 1975, and recorded July 3 1975, as Instrument No. 14283.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004026

CII Title, LLC
d\b\a DC Title Company

CII Title, LLC
Attachment No. 3

-Legal Description-

Lot 45 in Square 393 as per plat recorded in Liber 188 at folio 26 in the Office of the Surveyor for the District of Columbia.

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(202) 331-3388 ■ FAX (202) 331-1184 ■ www.dctitleco.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004027

L4283 Jul 3 3 02 PM '75

THIS DEED, Made this the 2nd day of July , 1975, by and between Allie B. Jones, (also known as Allie Bertha Jones), a widow and unremarried; and Sarah E. Peterson, a widow and unremarried; and A. M. Williamson, (also known as Adam Marks Williamson), a widower and unremarried, as their respective interests may appear; parties of the first part, and Washington Metropolitan Area Transit Authority, a body corporate and politic (an agency and instrumentality of the District of Columbia, State of Maryland, and Commonwealth of Virginia, created pursuant to Section 4 of Public Law 89-774, approved November 6, 1966), party of the second part.

WITNESSETH, that for and in consideration of the sum of one hundred and twenty two thousand and no/100--------$122,000.00)---------- Dollars, receipt whereof is hereby acknowledged, the said parties of the first part, do grant unto the said party of the second part, in fee simple, the following described land and premises, situate in the District of Columbia, and known and distinguished as follows: -

Lot numbered Twenty-three (23) in De Neale's subdivision of Lots in Square numbered Four Hundred Sixteen (416), as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 32 at folio 129.

Also,

Lot numbered Sixteen (16) in John Sherman's subdivision of Square numbered Four Hundred Sixteen (416), as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 10 at folio 26.

Also,

Lots numbered Thirty-one (31) and Thirty-two (32) in James E. Heffner's subdivision of part of Square numbered Three Hundred Ninety-three (393), as said subdivision is recorded in Liber 28 at folio 139 of the Records of the Surveyor for the District of Columbia.

Also,

Lots numbered Thirty-four (34) through Forty (40), both inclusive, in Square numbered Three Hundred Ninety-three (393), as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 70 at folio 168.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004028

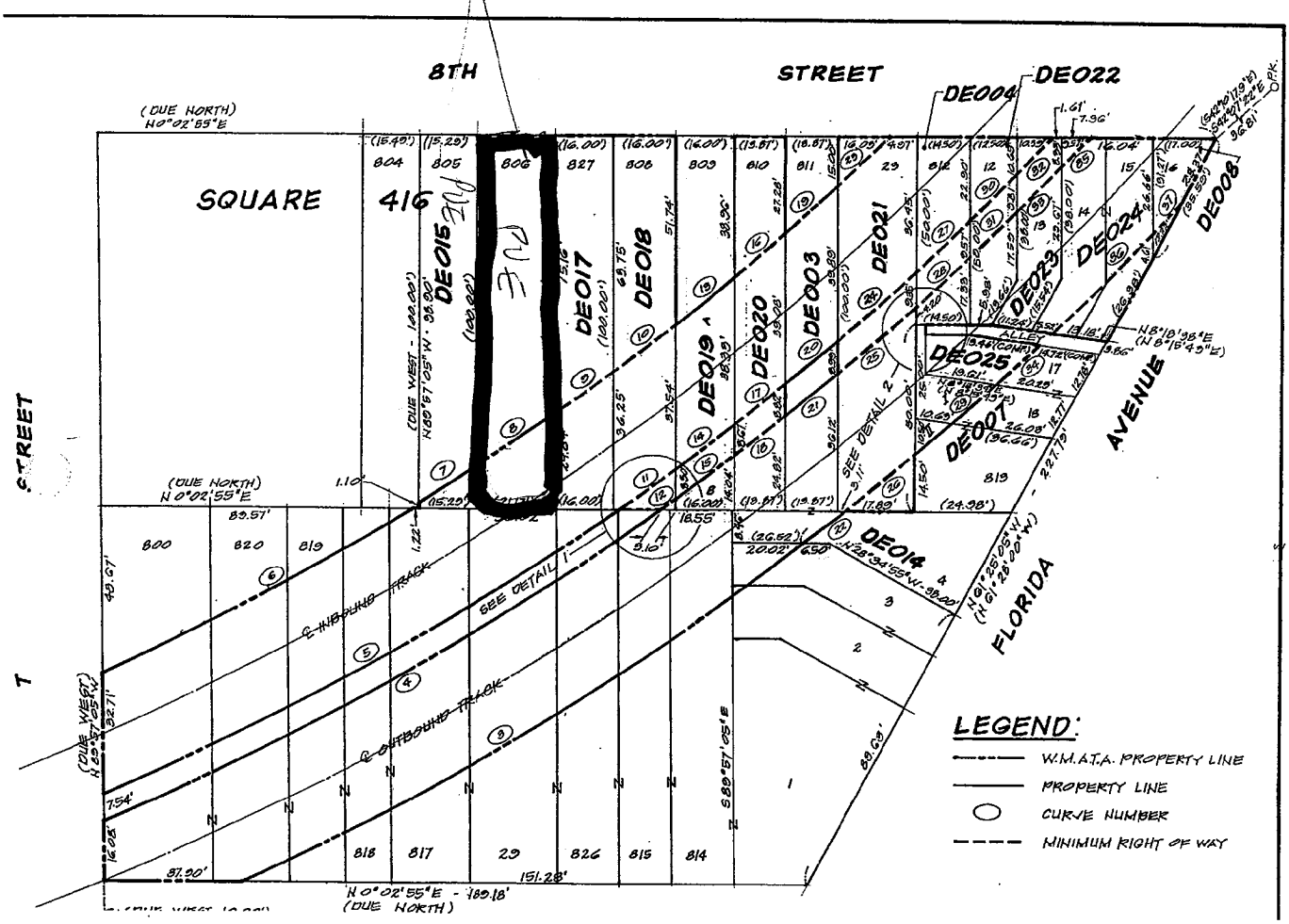
14283

Jul 3 12 PM

Mail to
Washington Metrop.
Transit Authority
600 - 5th St. N.W.
Washington, DC 20001
107 143

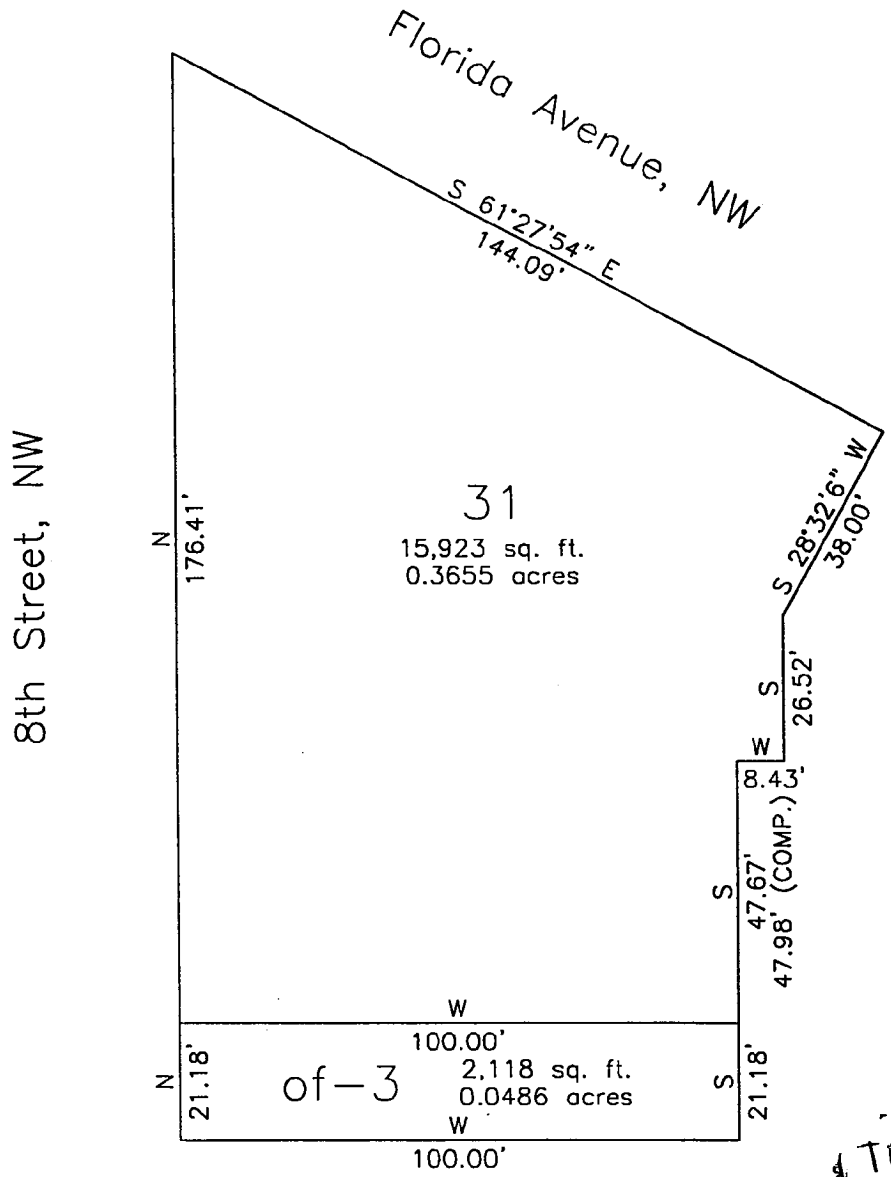
JUL-3-75 666452 H 14283 CL — 0.01

FOIA CONFIEDENTIAL TREATMENT REQUESTED


8TH STREET
SQUARE 416
DE004
DE022
DE008
DE015
DE017
DE018
DE019
DE020
DE003
DE021
DE023
DE024
DE025
DE007
DE014
SEE DETAIL 1
SEE DETAIL 2
FLORIDA AVENUE
T STREET
ALLEY
LEGEND:
W.M.A.T.A. PROPERTY LINE
PROPERTY LINE
CURVE NUMBER
MINIMUM RIGHT OF WAY

Subdivision Square 416

Total Area
18,041 sq. ft.
0.4142 acres



~~1st Floor~~ Maps & Titles
Need Lot History 941
Surveyor's Office

Lot history -
metes + bounds

then check the Deed in Land Files

SKETCH OF PLAT OF SUBDIVISION SQUARE 416

DETAIL "A"
SCALE: 1" = 20'

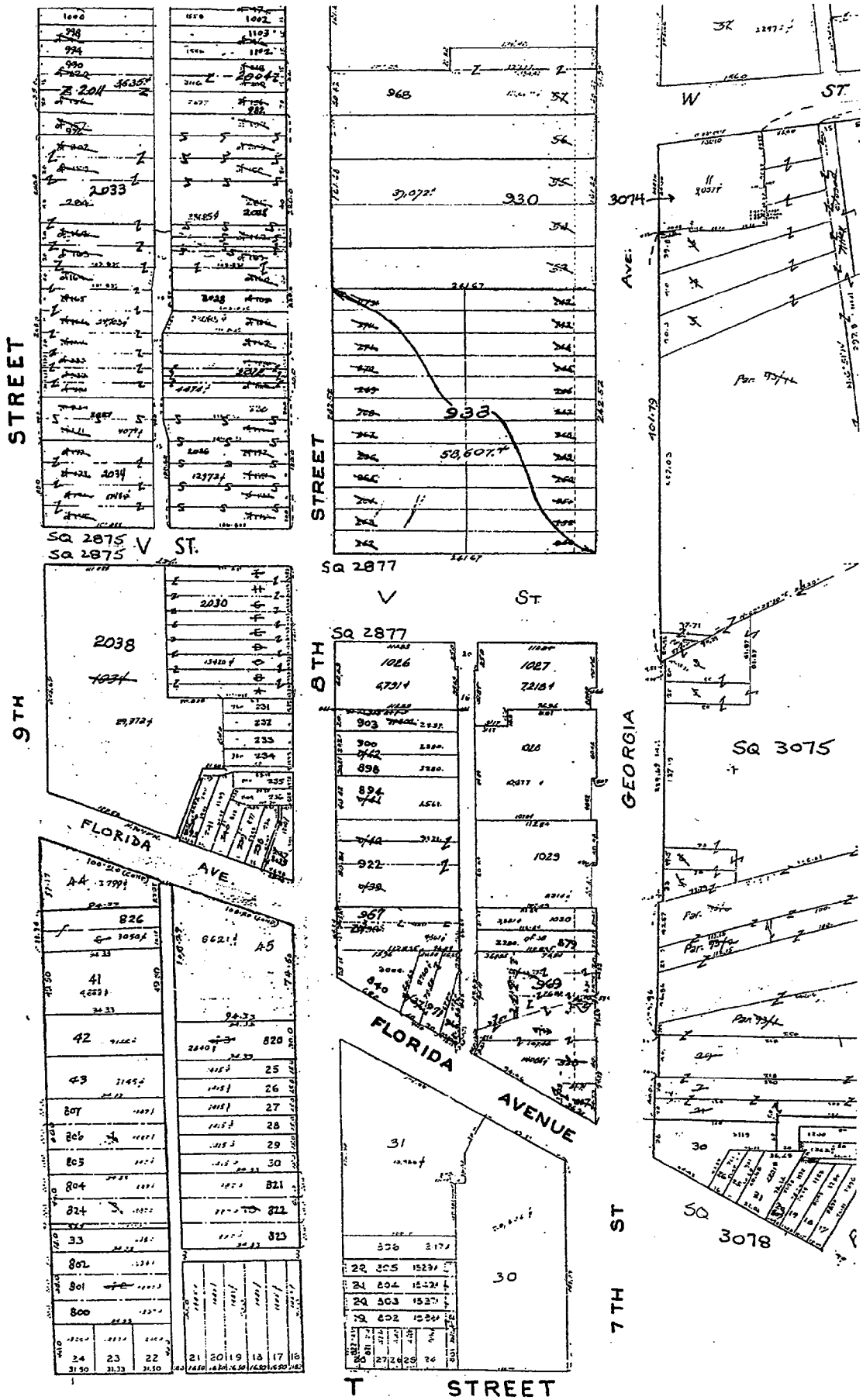
DETAIL 2
NOT TO SCALE

DESIGNED _____ DRAWN _____ CHECKED _____ DATE _____ APPROVED _____ DATE _____

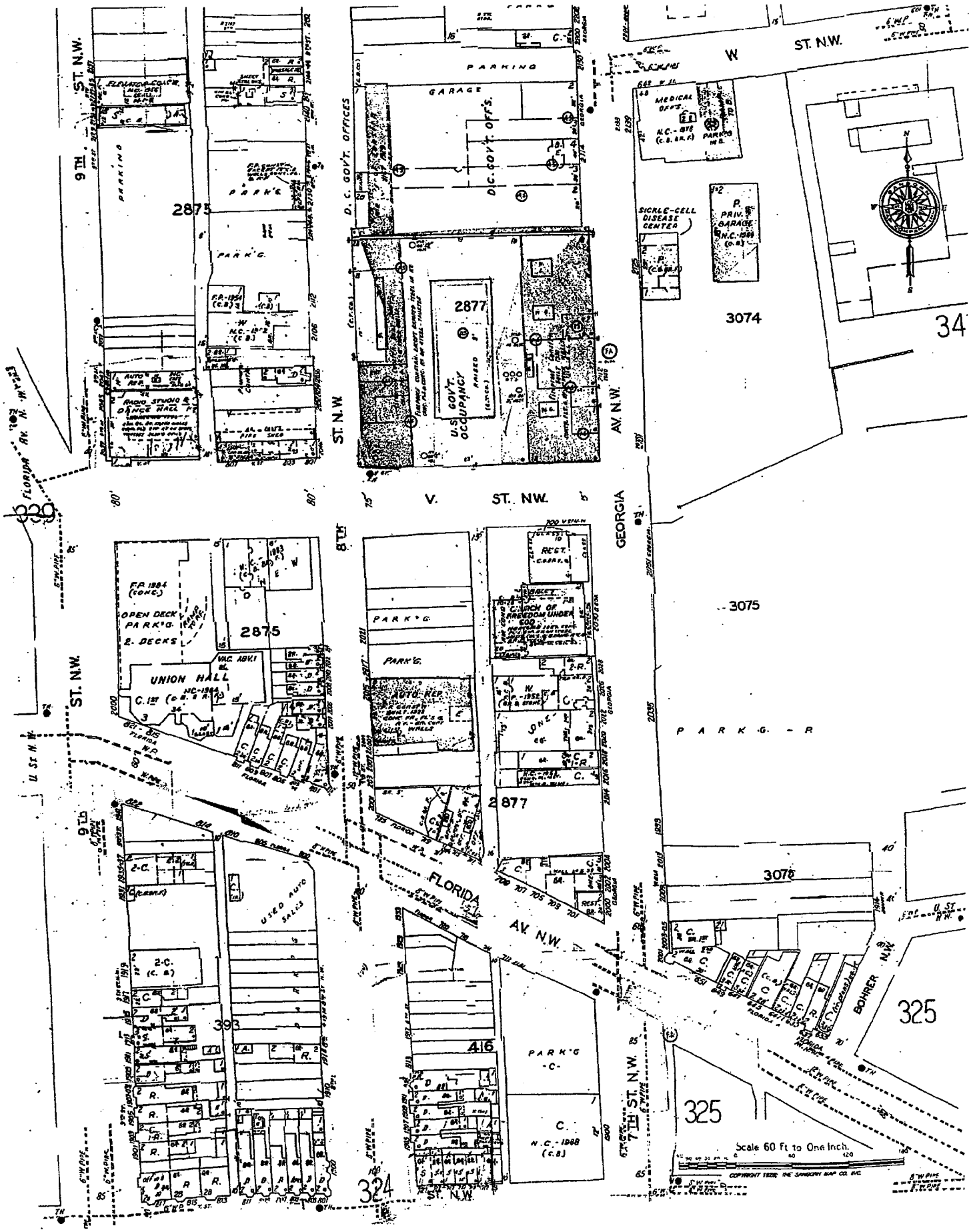
W.M.A.T.A. PROPERTY DESCRIPTION

W.M.A.T.A. PARCEL NO.	CERTIFICATION NUMBER	CONDEMNATION RECORD	PERMIT/LEASE NUMBER	AREA IN S.F.	INTEREST ACQUIRED	GRANTOR	LIBER	FOLIO	ELEVATION UPPER	ELEVATION LOWER	ESTATE CERT.	CHANGES
DE003		C.A. No 76-1697		1387		AARON RISKIN ET. AL.						
DE007		C.A. No 76-1697		516		AARON RISKIN ET. AL.						
				686								
DE014		C.A. No 76-1697				AARON RISKIN ET. AL.						
DE025		C.A. No 76-1697		504		AARON RISKIN ET. AL.						
DE004				725	FEE	ELLA HACKNEY	INST. No DATED	00884 1/19/76			P.U.E.	
DE008				266	FEE	[ALLIE JONES, SARAH PETERSON	INST. No	14283			P.U.E.	
DE021				1944	FEE	[AND A.M. WILLIAMSON	DATED	7/3/75			P.U.E.	
DE015				89	P.U.E.	ERNEST WILLIAMS AND OLIVIA WILLIAMS	INST. No DATED	11334 4/30/76				
DE017				1600	FEE	SAMUEL PARKS AND LILIAN PARKS	INST. No DATED	09756 9/20/71			P.U.E.	
DE016				508	FEE	SUE YUEN NG AND ELLEN PUI KUEN NG	INST. No DATED	11328 4/30/76			P.U.E.	
DE019		C.A. No 77-0871		A 607	P.U.E.	JEROME J. PARKS						
				B 129	P.U.E.							
DE020					FEE	HARTMORD BEALER AND ELIZABETH BEALER	INST. No DATED	16060 6/12/70			P.U.E.	
DE022					FEE	STANDLEY STEWART	INST. No DATED	14844 6/6/76			P.U.E.	
				9358	P.U.E.	DISTRICT OF COLUMBIA - REDEVELOPMENT LAND AGENCY						[illegible]
				367	P.U.E.	H. A. CARPENTER						
DE023				"	FEE	BERTHA JACKSON	INST. No DATED	23715 2/12/76	71.5		P.U.E.	
DE024				'	FEE	COZY CORNER, INC.			71.5		P.U.E.	(UNREADABLE INST. No.)
				1062	P.U.E.	MARY BARNES			67.0			(PART LOT 42-46 Sq. 417)
				41	P.U.E.	DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY			67.0			(PART LOT 42 & 43, Sq. 417)

FOIA CONFIEDENTIAL TREATMENT REQUESTED



FOIA CONFIEDENTIAL TREATMENT REQUESTED



FOIA CONFIEDENTIAL TREATMENT REQUESTED

Square 416, Lot 806

FOIA CONFIEDENTIAL TREATMENT REQUESTED

SUBDIVISION SQUARE 416

The undersigned certify that they are owners in fee simple of the property to be subdivided and are in peaceful occupation thereof; that there are no pending suits or actions that affect title to the property, that parties to any deeds of trust have hereon indicated their assent; and that there are no interests or claims affecting title to the property other than such deeds of trust. The undersigned hereby subdivide original Lot 3 in Square 416, Lot 4 in Square 416 (Bk.HDC, Pg.42), Lots 12 thru 18 in Square 416 (Bk.10, Pg.26), Lot 23 and the remainder of Lot 4 in Square 416 (Bk.32, Pg.129) and the remainder of Lot 11 (Bk.JHK, Pg.183) into one Lot and requests that this subdivision be recorded in the Office of the Surveyor of the District of Columbia.

WITNESSES	OWNERS
Millie Spencer	K P Heinemeyer
Jack A. Schaeffer	K.P Heinemeyer, Director Office of Real Estate
Fairfax S. McCandlish	James M. Miller
Jack A. Schaeffer	James M. Miller, Secretary

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Subscribed and sworn before me this 10th day of January 1995

Rose M. Remund — Notary Public

Feb. 28, 1995 — My Commission Expires

NUMBER OF TRUSTS None

ASSENT BY TRUSTEES

DEPARTMENT OF FINANCE AND REVENUE

12 — 2 — 1996

I certify that the following statements relating to this subdivision are correct

1. Ownership agrees with our records. 12-2-96 RC
2. Real estate taxes are paid to EXEMPT RC
3. There are no unpaid special assessments. 12-2-96 RC

Mary O. Short-Davis
for Associate Director, Office of Real Property Tax

I acknowledge for the owners that this is not a tax certificate as intended by D.C. Code Section 47-405

Jack A. Schaeffer

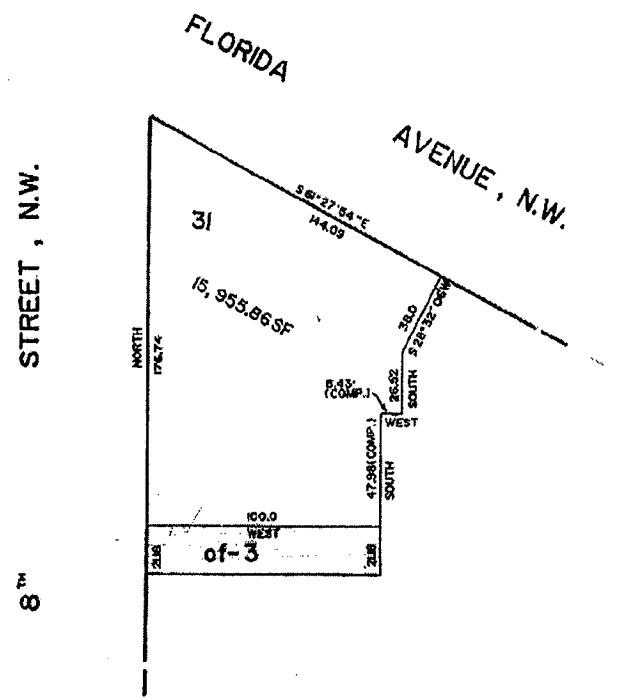
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

January 13, 1995

I certify that this subdivision complies with the zoning regulations of the District of Columbia

Zoning "C-3-B/ARTS"

Gladys Hicks
Acting Zoning Administrator



SURVEYOR'S OFFICE, D.C.

Made for WMATA

Drawn by BILL WASH. Checked by [illegible]

Record and computations by: [illegible]

Recorded at 3:25 P.M. December 26, 1996

Recorded in Book 189 Page 181 S.O. 7824/8728

Scale: 1 inch = 30 feet File No. 94-205

OFFICE OF THE SURVEYOR

December 26, 1996

I certify that this plat is correct and is hereby recorded.

James E. Fantz, III
Surveyor, D.C.

16,472
− 15,956
516

CFO HOME

TAXPAYER SERVICE CENTER

REAL PROPERTY SERVICES
Property Tax Bills
Property Tax Rates and Calculation
Property Assessment Process
Property Assessment Appeals
Tax Relief Credits
Search Real Property Sales Database
Search Real Property Assessment Database

CFO / OTR Search

Prev

Property Detail

Address: 0716 FLORIDA AV NW

SSL: 0416 0018

Record Details

Neighborhood:	OLD CITY II	**Sub-Neighborhood:**	G
Use Code:	191 - Vacant True	**Class 3 Exception:**	No
Tax Type:	E9 - WMATA	**Tax Class:**	003 - Vacant
Homestead Status:	** Not receiving the Homestead Deduction		
Assessor:	GREGORY GLOVER		
Gross Building Area:		**Ward:**	1
Land Area:	516	**Triennial Group:**	2

Owner and Sales Information

Owner Name:	WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (WMATA)
Mailing Address:	600 5TH ST NW; WASHINGTON DC20001-2610
Sale Price:	Not Available
Sale Date:	Not Available
Instrument No.:	

Tax Year 2010 Preliminary Assessment Roll

	Current Value	Proposed New Value (2010)
Land:	$142,970	$142,970
Improvements:	Not Available	Not Available
Total Value:	$142,970	$142,970
Taxable Assessment: *	$142,970	$142,970

* Taxable Assessment after Tax Assessment Credit and after $67,500 Homestead Credit, if applicable. (Click here for more information).

** If you believe you should be receiving tax relief through the Homestead deduction program and if you are domiciled in the District and this property is your principal place of residence, you can access the link below, complete the form, and return it per the instructions. For additional information regarding the Homestead program, call (202)727-4TAX. Click here to download the Homestead Deduction and Senior Citizen Tax Relief application *

View Tax Information | View Payments

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 004037

CFO HOME

TAXPAYER SERVICE CENTER

REAL PROPERTY SERVICES
Property Tax Bills
Property Tax Rates and Calculation
Property Assessment Process
Property Assessment Appeals
Tax Relief Credits
Search Real Property Sales Database
Search Real Property Assessment Database

CFO / OTR Search

Prev

Property Detail

Address: 0710 FLORIDA AV NW

SSL: 0416 0031

Record Details

Neighborhood:	OLD CITY II	**Sub-Neighborhood:**	G
Use Code:	191 - Vacant True	**Class 3 Exception:**	No
Tax Type:	E9 - WMATA	**Tax Class:**	003 - Vacant
Homestead Status:	** Not receiving the Homestead Deduction		
Assessor:	GREGORY GLOVER		
Gross Building Area:		**Ward:**	1
Land Area:	15,956	**Triennial Group:**	2

Owner and Sales Information

Owner Name:	WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (WMATA)
Mailing Address:	600 5TH ST NW; WASHINGTON DC20001-2610
Sale Price:	Not Available
Sale Date:	Not Available
Instrument No.:	

Tax Year 2010 Preliminary Assessment Roll

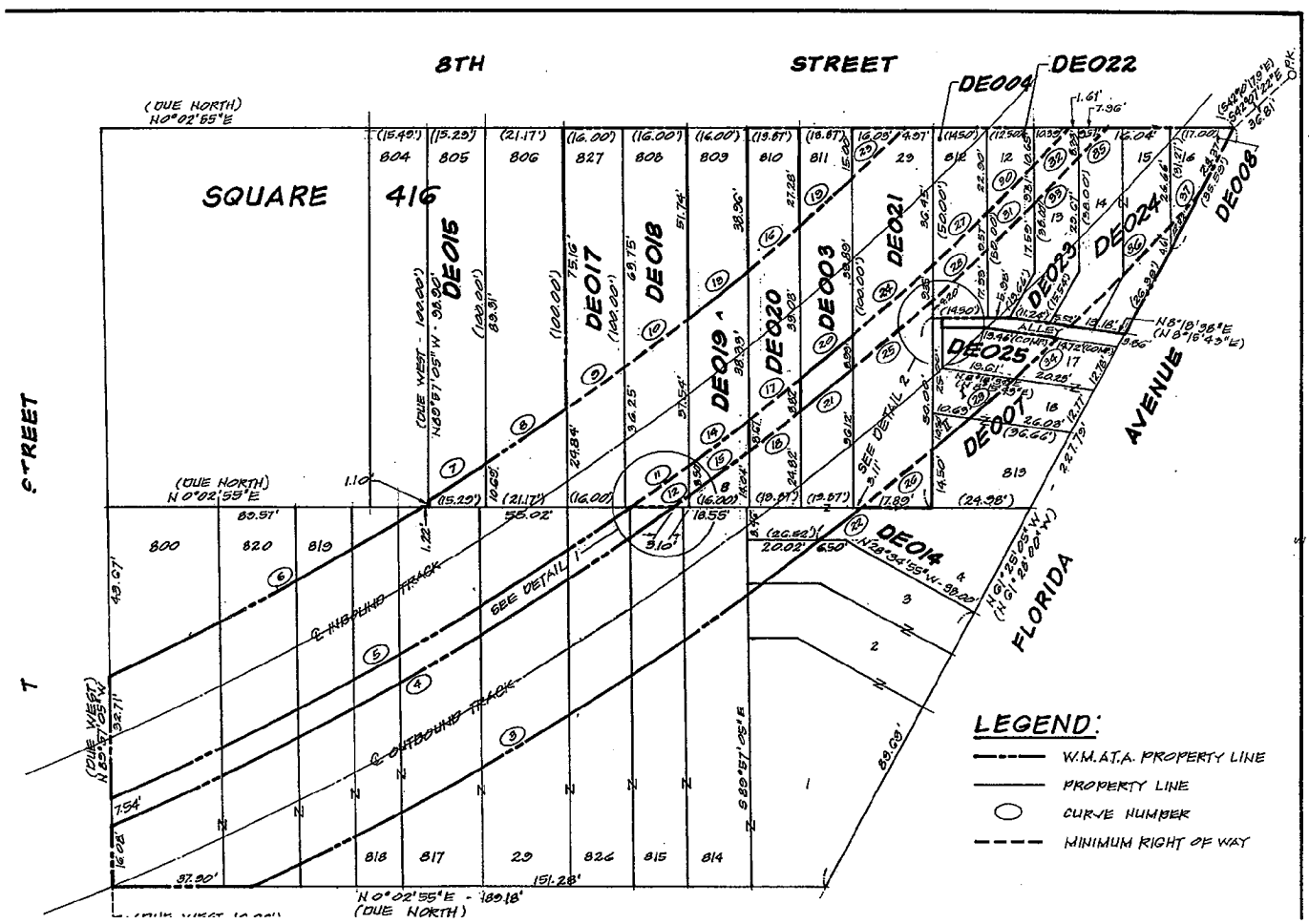
	Current Value	Proposed New Value (2010)
Land:	$4,420,930	$4,420,930
Improvements:	Not Available	Not Available
Total Value:	$4,420,930	$4,420,930
Taxable Assessment: *	$4,420,930	$4,420,930

* Taxable Assessment after Tax Assessment Credit and after $67,500 Homestead Credit, if applicable. (Click here for more information).

** If you believe you should be receiving tax relief through the Homestead deduction program and if you are domiciled in the District and this property is your principal place of residence, you can access the link below, complete the form, and return it per the instructions. For additional information regarding the Homestead program, call (202)727-4TAX. Click here to download the Homestead Deduction and Senior Citizen Tax Relief application *

View Tax Information | View Payments

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004038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FLORIDA AVENUE
T STREET
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LEGEND:
W.M.A.T.A. PROPERTY LINE
PROPERTY LINE
CURVE NUMBER
MINIMUM RIGHT OF WAY

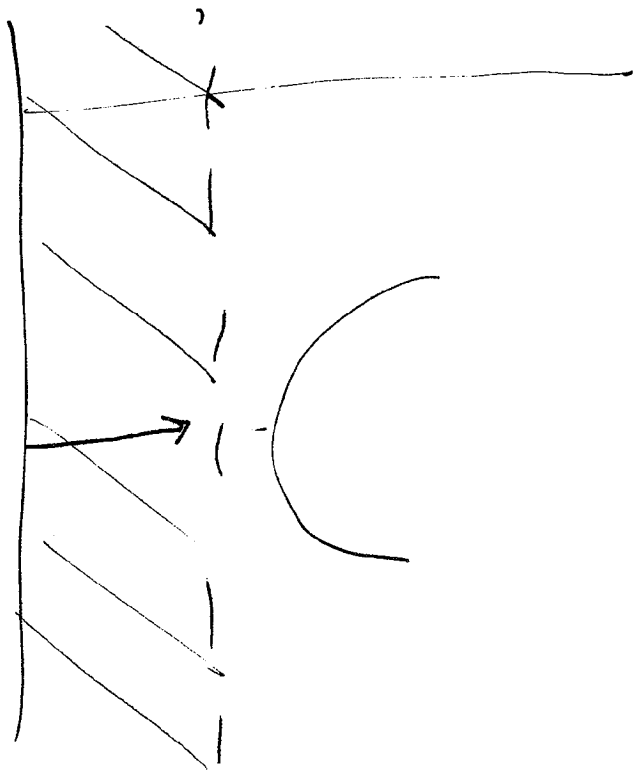
Typical Residential Floor Plan

BANNEKER VENTURES / BANC OF AMERICA CNC
FORTI CALLAS AND PARTNERS

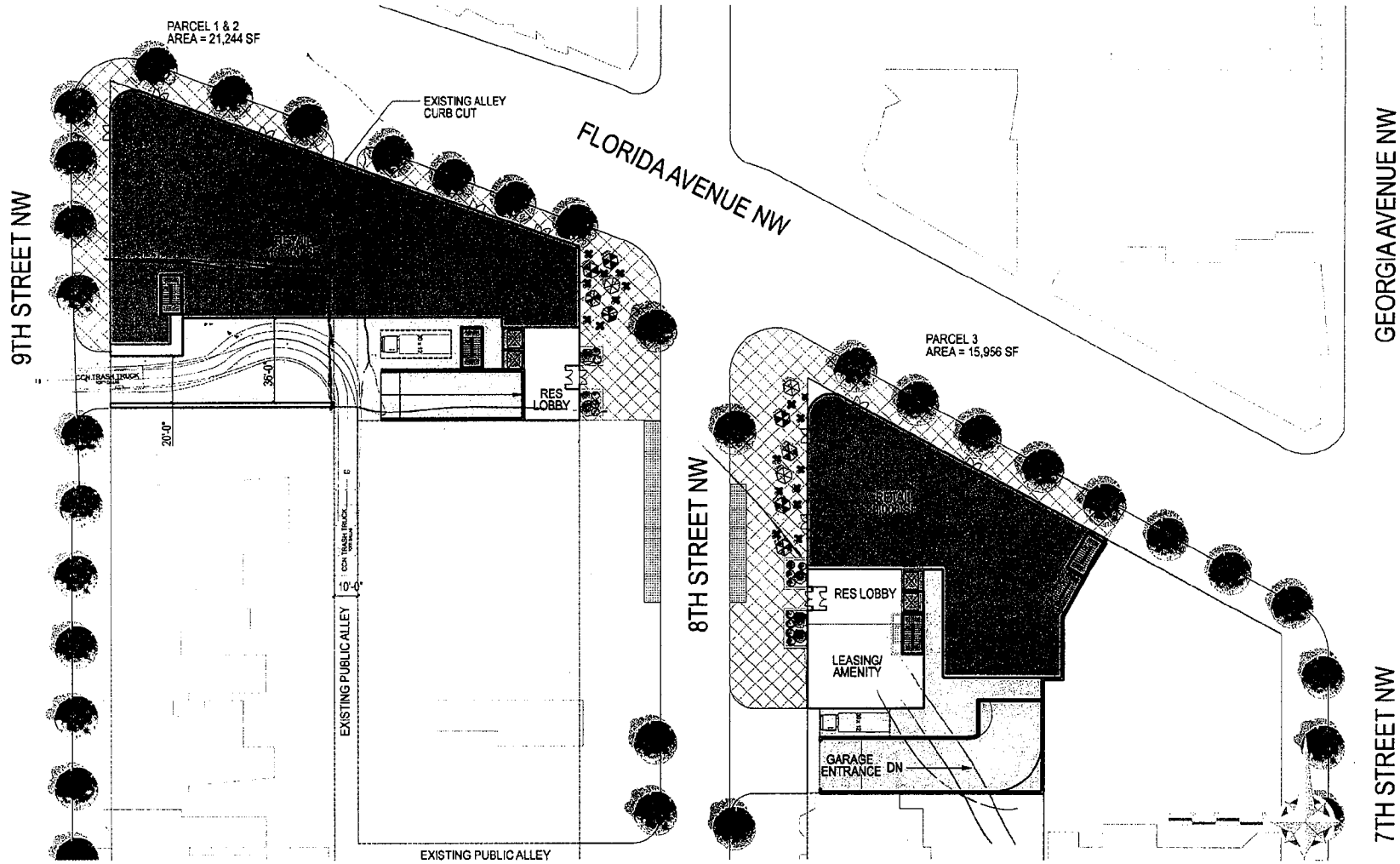
6

THE JAZZ @ FLORIDA AVENUE

FOIA CONFIDENTIAL TREATMENT REQUESTED



FOIA CONFIEDENTIAL TREATMENT REQUESTED



June 2009

First Floor Plan

WMATA-INV 004042

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REAL ESTATE PURCHASE AND SALE AGREEMENT

This Real Estate Purchase and Sale Agreement ("**Agreement**") is entered into as of the 11th day of December, 2008 (the "**Effective Date**") by and between TELES PROFESSIONAL SERVICES LLC, a District of Columbia limited liability company c/o Tchako Ngandjui, Managing Director, 1308 9th Street, NW, Washington, D.C. 200001 ("**Seller**") and BANNEKER VENTURES, LLC, a District of Columbia limited liability company ("**Purchaser**").

1. **Purchase and Sale**. Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, in accordance with the terms and conditions set forth in this Agreement and for the Purchase Price set forth in Section 3: (i) that certain parcel of land located at 1931 9th Street, NW, Washington, D.C., (Square 393, Lot 0041) (the "**Land**") and any and all improvements thereon (the "**Improvements;**" together, the Land and the Improvements, the "**Real Property**"); (ii) all rights, easements and appurtenances belonging to the Real Property (items (i) and (ii) collectively, the "**Property**").

2. **Purchaser's Negotiation of Development Documents with WMATA**. Seller hereby acknowledges that Purchaser is currently negotiating a right of entry agreement, ground lease and joint development agreement (collectively, the "**Development Documents**") with Washington Metropolitan Area Transit Authority ("**WMATA**") in connection with Purchaser's proposed development project on approximately 28,892 square feet of land owned by WMATA and located on the 700 and 800 blocks of Florida Avenue, NW in Washington, D.C., adjacent to the Property. Seller hereby acknowledges that certain terms and conditions this Agreement shall be subject to execution and approval by WMATA of the Development Documents and the receipt by Purchaser of certain governmental approvals required for Purchaser's proposed development project.

3. **Payment of Purchase Price**. The total purchase price (the "**Purchase Price**") for the Property is One Million Nine Hundred Thousand and 00/100 Dollars ($1,900,000.00). Provided that Seller is not in default for failure to comply with any one or more of the material terms or conditions of this Agreement, the Purchase Price shall be paid to Seller in cash or by federal wire funds transfer as follows:

(i) On the Effective Date, Purchaser shall pay to Seller a deposit in the amount of Ten Thousand and 00/100 Dollars ($10,000.00) (the "**Deposit**"). In the event that WMATA shall fail to execute any of the Development Documents, the Deposit shall be refunded to Purchaser. The Deposit shall be held by an Escrow Agent determined by Purchaser.

(ii) Within three (3) business days following execution of the joint development agreement between Purchaser and WMATA, Purchaser shall pay to Seller the amount of Forty Thousand and 00/100 Dollars ($40,000.00) (the "Second Deposit"). The Second and Third Deposits (as defined below) shall be held by Eagle Bank. Upon WMATA's approval of the joint development agreement and receipt by WMATA of approval from the Federal Transit Administration ("**FTA**") of the Development Documents, such payment to Seller shall be non-refundable. If Seller and WMATA have not executed the joint development agreement and received approval from the FTA by March 15, 2009, Seller shall have the right to cancel this Agreement.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004044

(iii) Within three (3) business days following approval by the Washington D.C. Zoning Commission of Purchaser's development plans ("**Zoning Approval**"), Purchaser shall pay to Seller Fifty Thousand and 00/100 Dollars ($50,000.00) (the "Third Deposit"). Such payment to Seller shall be non-refundable.

(iv) The remaining balance of the Purchase Price in the amount of One Million Eight Hundred Thousand and 00/100 Dollars ($1,800,000.00) shall be paid to Seller within sixteen (16) months following the date that WMATA approves the joint development agreement, provided, however, that WMATA has also executed the ground lease and the FTA has approved the Development Documents within such sixteen (16) month period (the "**Closing**" or **Closing Date**").

(v) If Purchaser does not close on the Property by the Closing Date, Seller shall extend the Closing Date for an additional one hundred and eighty (180) days. On the first of the month beginning after the Closing Date and each month until closing takes place, Purchaser shall pay to Seller Sixty-Five Hundred and 00/100 Dollars ($6,500.00) (the "**Extension Payment**") which Seller shall use to pay the current monthly mortgage on the Property held by Eagle Bank and the real estate property taxes; any delta between the mortgage payment and real estate taxes shall be retained by Seller. Such Extension Payments shall not count toward the Purchase Price. If the Closing does not take place within 180 days following the Closing Date, Seller and Purchaser agree to further extend the period of Closing. The Extension Payment paid by Purchaser for such additional period will be increased to include the monthly mortgage payment, real estate property taxes and Ten Thousand and 00/100 Dollars ($10,000.00) (the "**New Extension Payment**"). Fifty percent (50%) of all such New Extension Payments shall be credited towards the Purchase Price.

4. **Title**. At Closing, Seller shall convey to Purchaser good and marketable fee simple title to the Property by deed in a form acceptable to Purchaser. Title shall be subject to all matters shown on Purchaser's title commitment which have been approved by Purchaser (collectively, the "**Permitted Exceptions**"). At or before Closing, Seller shall be obligated to discharge or cause to be discharged any mortgage, mechanic's lien or other monetary lien encumbering the Property.

5. **Closing**. Closing shall take place during normal business hours at the offices of Purchaser's attorney, DLA Piper LLP (US), 500 Eighth Street, NW, Washington, DC 20004, or at such other place as the parties shall mutually agree. Seller agrees to conduct closing through a pre-closing, escrow or other arrangement reasonably requested by Purchaser to facilitate closing mechanics and to reduce or eliminate the need for Purchaser and its attorneys to be physically present at the Closing.

6. **Prorations, Apportionments and Adjustments at Closing**.

A. The following shall be apportioned with respect to the Property as of 12:01 a.m., on the Closing Date, as if Purchaser were vested with title to the Property during the entire day upon which the Closing occurs:

(i) rents, as and when collected;

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004045

(ii) ad valorem, real estate, personal property and similar taxes ("**Property Taxes**") assessed against the Property. Prorations shall be based upon current year's taxes and assessments, if available, or upon figures for the last preceding year, in which event Purchaser and Seller shall readjust the prorations when the current year's taxes and assessments become available. Any then due, but unpaid special assessments, special improvement district or taxing district levies, shall be prorated in the same manner as ad valorem taxes; and

(iii) any other operating expenses and items of expense pertaining to the Property which are customarily prorated between a purchaser and a seller in the area in which the Property is located.

B. The provisions and obligations of this Section 6 shall survive the Closing.

7. **Transaction Costs**. Seller shall be responsible for all transfer taxes and fees in connection with this transaction and for releasing all liens that are to be released and recording such releases. Purchaser shall pay all taxes and fees in connection with the recordation of this transaction and the cost of conducting its due diligence studies, any escrow charges to be imposed by the escrow agent or closing attorney, Purchaser's title policy, and the cost of the survey, if any. Each party shall pay its own attorneys' and consultants' fees.

8. **Seller's Representations, Warranties and Covenants**. In addition to any other representations and warranties made by Seller in this Agreement, Seller represents and warrants to Purchaser as of the Effective Date and Closing Date as follows:

(i) Seller is a limited liability company duly formed, validly existing and in good standing under the laws of the District of Columbia and has all necessary power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby.

(ii) This Agreement constitutes the legal, valid and binding obligations of Seller enforceable against Seller in accordance with its terms, subject to the effect of any applicable bankruptcy, reorganization, insolvency (including, without limitation, all laws relating to fraudulent transfers), moratorium or similar laws affecting creditors' rights and remedies generally and, subject as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(iii) The execution, delivery and performance of this Agreement by Seller does not and will not (a) violate or conflict with the organizational documents of Seller, (b) conflict with or violate any law, rule or regulation applicable to Seller or the Property, or (c) result in any breach of, or constitute a default (or event that, with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any encumbrance on the Property pursuant to any contract relating to the Property to which Seller is a party or by which the Property is bound.

(iv) The execution and delivery of this Agreement by Seller does not and will not require (a) any consent, approval, authorization or other action by, or filing with or

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004046

notification to, any governmental authority and (b) any third-party consents, approvals, authorizations or actions.

(v) Seller is not a "foreign person," as such term is defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "**Code**"), and the sale of the Property is not subject to the federal income tax withholding requirements of such section of the Code.

(vi) Seller has not received any written notice of any violation by Seller of any law, zoning ordinance or regulations affecting the Property, and there are no pending or, to Seller's knowledge threatened, legal proceedings or administrative actions of any kind or character adversely affecting the Property or Seller's interest therein.

(vii) There are no claims, actions, proceedings or investigations pending before any governmental authority or, to the knowledge of Seller, threatened against Seller relating to the Property, that if adversely determined, (a) would delay or prevent the consummation of the transactions contemplated by this Agreement or (b) would adversely affect the ability of Seller to consummate the transactions contemplated hereby or to perform or cause to be performed Seller's material obligations hereunder. Seller is not subject to any order, writ, judgment, injunction, decree, determination or award relating to the Property that would adversely affect the ability of Seller to consummate the transactions contemplated by this Agreement or to perform any of Seller's obligations hereunder.

(viii) Seller owns fee simple title to the Real Property, and to Seller's knowledge, such Real Property, including the soil, surface water, ground water and improvements, if any, is free of any hazardous or toxic substance or waste as those terms are defined by any applicable environmental law, together with (if not so defined by such environmental laws) petroleum, petroleum products, oil, PCB's, asbestos and radon.

(ix) There are no leases, service contracts, contracts of sale or other contracts covering or binding upon the Property or that shall become binding upon Purchaser, and there are no parties with any rights of possession with respect to the Property other than Seller.

(x) Seller has not received any notice of any proceedings in condemnation, nor any written offer to purchase all or any part of the Property in lieu of condemnation nor any notice of other action by any governmental body, authority or agency that will in any way materially affect the Property including the size of, use of, construction on or access to the Property.

(xi) Seller shall maintain the Property from the Effective Date of this Agreement until the Closing Date in its present condition, ordinary wear and tear excepted, and Seller shall not, without Purchaser's prior written consent, enter into any lease, rental agreement, contract or other agreement, directly or indirectly, that would affect the Property after the Closing Date.

(xii) Seller has no knowledge of any pending or threatened proceedings to change or redefine the zoning for all or any of the Property.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004047

(xiii) Seller has no knowledge of any pending or proposed special assessments affecting or which may affect the Property or any part thereof.

(xiv) Seller has not and will not, without Purchaser's prior written consent, make any commitment to any governmental or quasi-governmental authority having jurisdiction, to any private association, or to any third party, to dedicate or grant any portion of the Property for roads, easements, rights-of-way, or for any restrictions or to incur any other expense or obligation relating to the Property.

9. Purchaser's Representations, Warranties and Covenants.

Purchaser represents and warrants to Seller as of the Effective Date and as of the Closing Date that the execution, delivery and performance of this Agreement by Purchaser has been duly authorized by all necessary action on the part of Purchaser and does not require the consent of any third party and that the individual executing this Agreement on behalf of Purchaser has the authority to bind Purchaser to the terms of this Agreement.

10. Closing Documents and Deliveries.

A. At the Closing, Seller shall deliver the following:

(i) The executed and acknowledged deed in a form approved by Purchaser, subject to the Permitted Exceptions, sufficient for recording, conveying fee simple title to the Property which Purchaser shall cause to be recorded;

(ii) Any and all required transfer tax returns, duly executed by Seller, as transferor;

(iii) A FIRPTA affidavit in the form required by Purchaser's title company;

(iv) A closing statement, executed by Seller;

B. At the Closing, Purchaser shall deliver the following:

(i) The remaining balance of the Purchase Price in accordance with Section 3;

(ii) Any and all required transfer tax returns, duly executed by Purchaser, as transferee; and

(iii) A closing statement, executed by Purchaser.

11. Failure of Conditions; Default. If Seller is in default hereunder for failure to comply with any one or more of the material terms or conditions of this Agreement and such failure continues for more than ten (10) business days after Seller's receipt of written notice by Purchaser, Purchaser at its sole option may: (a) terminate this Agreement by written notice delivered to Seller on or before the Closing Date, in which event Seller shall return to Purchaser all portions of the Purchase Price paid by Purchaser to Seller, excluding the Deposit, within two

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004048

(2) business days following Seller's receipt of Purchaser's notice of termination, and Purchaser shall be entitled to all remedies available at law or in equity and (b) waive such defaults and proceed to Closing, or (c) enforce specific performance of this Agreement. If Purchaser defaults under this Agreement, which default shall exclude (i) the failure of WMATA to approve any of the Development Documents, (ii) the failure of WMATA to obtain FTA approval or (iii) the failure of Purchaser to obtain Zoning Approval, and such default is not cured or such cure has not commenced within ten (10) business days after written notice thereof from Seller, then Seller, as its sole and exclusive remedy, may terminate this Agreement, provided, however, that Seller shall refund to Purchaser such portions of the Purchase Price paid to Seller in accordance with Section 3 which have not yet become non-refundable. If WMATA fails to approve the ground lease or does not obtain FTA approval of the Development Documents, Seller shall promptly return the $40,000 payment of the Purchase Price to Purchaser and Purchaser and Seller shall have no further obligations under this Agreement. Nothing contained in this Section 11 shall in any way limit any indemnification (and any related hold harmless and defense) obligation of Purchaser or Seller pursuant to this Agreement. This Section 11 shall expressly survive the termination of this Agreement.

12. Assignment. Purchaser shall have the right to assign its interest in this Agreement without the prior written consent of Seller.

13. Notices. All notices and other communications hereunder shall be addressed to the parties as follows:

If to Seller:

Teles Professional Services LLC
c/o Tchako Ngandjui, Managing Director
1308 9th Street, NW
Washington, D.C. 20001

If to Purchaser:

Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
Attn: Omar A. Karim

And to:

DLA Piper LLP (US)
The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 21209
Attn: Devorah M. Lewin and Guy E. Flynn, Esq.
Fax: 410-580-3397, 410-580-3149

Any notice, demand or other communication (each, a "**notice**") that is given pursuant to this Agreement by either Seller or Purchaser to the other party, shall be (i) given in writing, (ii) addressed to the other party at its required address(es) for notices delivered to it as set forth above, and (iii) delivered via either (x) hand delivery, (y) nationally recognized courier service

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004049

(e.g., DHL, Federal Express, Express Mail) or (z) certified U.S. mail postage prepaid with return receipt requested. Any such notice shall be deemed given, and effective for purposes of this Agreement, as of the date actually delivered to the other party at such address(es) (whether or not the same is then received by other party due to a change of address of which no notice was given, or any rejection or refusal to accept delivery). Notices from either party (to the other) may be given by its attorneys. Each party may, from time to time, designate an additional or substitute required address(es) for notices delivered to it (provided, that such designation must be made by notice given in accordance with this Section 13.

14. **Parties Bound**. This Agreement shall be binding upon and inure to the benefit of Seller and Purchaser, their respective successors and permitted assigns.

15. **Governing Law**. The laws of the State in which the Property is located shall govern the validity, construction, enforcement and interpretation of this Agreement.

16. **Brokers**. Seller and Purchaser represent and warrant that no broker has been involved in this transaction. If any broker should make a claim for a commission based upon the actions of Seller, Seller shall indemnify, defend and hold Purchaser harmless from such claim. If any broker should make a claim for a commission based upon the actions of Purchaser, Purchaser shall indemnify, defend and hold Seller harmless from such claim.

17. **Reserved.**

18. **Miscellaneous**. This Agreement may be executed in a number of identical counterparts. This Agreement embodies the entire agreement of the parties with respect to the transaction herein contemplated, superseding all prior agreements and communications whether oral or written. If any provision of this Agreement or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to parties or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and be enforced to the fullest extent permitted by law.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004050

IN WITNESS WHEREOF, the parties hereto have, by their duly authorized representatives, executed this Agreement as of the Effective Date.

"SELLER"

TELES PROFESSIONAL SERVICES LLC

By: _____
Name: Tchaka Ngandjui
Title: Managing Director
Date: 12/11/08

"PURCHASER"

BANNEKER VENTURES, LLC

By: _____
Name: OMAR KARIM
Title: Principal
Date: 12-11-08

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004051

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Real Estate Purchase and Sale Agreement ("**Agreement**") is entered into as of the __th day of August, 2008 (the "**Effective Date**") by and between MENGSTAB GHEBRETINSAE AND T GHEBRETINSAE, whose address is 1933 9th Street, NW, Washington DC 2000 ("**Seller**") and BANNEKER VENTURES, LLC, a District of Columbia limited liability company ("**Purchaser**").

1. **Purchase and Sale**. Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, in accordance with the terms and conditions set forth in this Agreement and for the Purchase Price set forth in Section 2: (i) that certain parcel of land located at 1933 and 1935 9th Street, Washington, D.C., as more particularly described in Exhibit A attached hereto and made a part hereof (the "**Land**") and any and all improvements thereon (the "**Improvements;**" together, the Land and the Improvements, the "**Real Property**"); (ii) all rights, easements and appurtenances belonging to the Real Property (items (i) and (ii) collectively, the "**Property**").

2. **Payment of Purchase Price and Deposit**.

A. The total purchase price (the "**Purchase Price**") for the Property is One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00). The Purchase Price shall be due and payable in full at the time of closing of the purchase and sale of the Property (the "**Closing**").

B. Within two (2) business days after execution of this Agreement by all of the parties hereto (the "**Deposit Delivery Date**"), Purchaser shall deliver to DLA Piper US LLP or some other escrow agent as Purchaser designates ("**Escrow Agent**") a deposit of Ten Thousand Dollars ($10,000) (hereinafter referred to as the "**Deposit**"). The Deposit shall be held by the Escrow Agent and applied towards the purchase of the Property, or disbursed pursuant to the terms hereof. After expiration of the Feasibility Period (as this term is defined below), the Deposit shall be non-refundable to Purchaser except in the event of Seller's failure or refusal to close hereunder.

3. **Condition of Property**. Seller shall deliver the Property at Closing in materially the same condition as existed on the Effective Date.

4. **Title**. At Closing, Seller shall convey to Purchaser good and marketable fee simple title to the Property by deed in a form acceptable to Purchaser. Title shall be subject to all matters shown on Purchaser's title commitment which have been approved by Purchaser (collectively, the "**Permitted Exceptions**"). At or before Closing, Seller shall be obligated to discharge or cause to be discharged any mortgage, mechanic's lien or other monetary lien encumbering the Property.

5. **Closing**. The Closing shall occur during normal business hours on or before December 31, 2009 (the "**Closing Date**"). Closing shall take place at the offices of the Escrow Agent, or at such other place as the parties shall mutually agree. Seller agrees to conduct closing through a pre-closing, escrow or other arrangement reasonably requested by Purchaser to

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004052

facilitate closing mechanics and to reduce or eliminate the need for Purchaser and its attorneys to be physically present at the Closing.

6. **Feasibility Period and Additional Payments.** Purchaser shall have a right to cause studies to be made regarding the Property for a period commencing one day after the day this Agreement is fully executed and ending at 5:00 pm of the Ninetieth (90th) day following the day this Agreement is fully executed and delivered to Purchaser (the "**Feasibility Period**"). If at any time during the Feasibility Period Purchaser elects not to proceed with the purchase for any reason whatsoever, then upon written notice to Seller, Purchaser will have the right to terminate this transaction in which event the Escrow Agent shall returned the Deposit to the Purchaser and neither Purchaser nor Seller will have any liability toward one another except as hereinabove set forth. Promptly after the full execution and delivery hereof, in order to assist Purchaser with its inspection of the Property, Seller shall provide to the extent such materials are in seller's possession all available information with respect to any environmental reports, any surveys, title information, real estate tax information, site plans and building plans and all related materials in Seller's possession within five (5) calendar days of the Effective Date of this Agreement.

If Purchaser chooses with the Purchase of the Property following the Feasibility Period, Purchaser shall pay Seller Two Thousand Dollars ($2,000.00) a month until the Closing Date ("Additional Payments"). Any such Additional Payment shall not be credited toward the Purchase Price.

7. **Prorations, Apportionments and Adjustments at Closing.**

A. The following shall be apportioned with respect to the Property as of 12:01 a.m., on the Closing Date, as if Purchaser were vested with title to the Property during the entire day upon which the Closing occurs:

(i) rents, as and when collected;

(ii) ad valorem, real estate, personal property and similar taxes ("**Property Taxes**") assessed against the Property. Prorations shall be based upon current year's taxes and assessments, if available, or upon figures for the last preceding year, in which event Purchaser and Seller shall readjust the prorations when the current year's taxes and assessments become available. Any then due, but unpaid special assessments, special improvement district or taxing district levies, shall be prorated in the same manner as ad valorem taxes; and

(iii) any other operating expenses and items of expense pertaining to the Property which are customarily prorated between a purchaser and a seller in the area in which the Property is located.

B. The provisions and obligations of this Section 6 shall survive the Closing.

8. **Transaction Costs**. Purchaser and Seller shall split all recordation taxes and fees (50/50) in connection with this transaction and for releasing all liens that are to be released and recording such releases. Purchaser shall pay the cost of conducting its due diligence studies, any escrow charges to be imposed by the escrow agent or closing attorney, Purchaser's title policy, and the cost of the survey, if any. Each party shall pay its own attorneys' and consultants' fees.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004053

9. **Closing Documents and Deliveries.**

A. At the Closing, Seller shall deliver the following:

(i) The executed and acknowledged deed in a form approved by Purchaser, subject to the Permitted Exceptions, sufficient for recording, conveying fee simple title to the Property which Purchaser shall cause to be recorded;

(ii) Any and all required transfer tax returns, duly executed by Seller, as transferor;

(iii) A FIRPTA affidavit in the form required by Purchaser's title company;

(iv) A closing statement, executed by Seller;

B. At the Closing, Purchaser shall deliver the following:

(i) The Purchase Price, in cash or immediately available funds;

(ii) Any and all required transfer tax returns, duly executed by Purchaser, as transferee; and

(iii) A closing statement, executed by Purchaser.

10. **Representations and Warranties.**

A. Seller represents and warrants to Purchaser as of the Effective Date and Closing that (i) Seller is the fee simple owner of the Property and the execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary action on the part of Seller and does not require the consent of any third party and that the individual executing this Agreement on behalf of Seller has the authority to bind Seller to the terms of this Agreement, (ii) the Seller has no knowledge of any actions, suits or proceedings which have been instituted or threatened against or affecting the Property, at law or in equity, or before any federal, state or municipal governmental commission, board, bureau, agency or instrumentality which will materially adversely affect the value, occupancy, use or operation of the Property, and (iii) Seller is not a "foreign person" and will deliver to Purchaser at Closing an affidavit certifying that it is not a "foreign person" within the meaning of the Internal Revenue Code of 1954, as amended. **[THIS MEANS THAT THE SELLER IS A RESIDENT OF THE UNITED STATES AND THEREFORE WOULD NOT HAVE TO PAY NON-RESIDENT TAXES].**

B. Purchaser represents and warrants to Seller as of the Effective Date and as of the date of Closing that the execution, delivery and performance of this Agreement by Purchaser have been duly authorized by all necessary action on the part of Purchaser and do not require the consent of any third party and that the individual executing this Agreement on behalf of Purchaser has the authority to bind Purchaser to the terms of this Agreement.

MG
AG

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004054

11. **Failure of Conditions; Default**. If Seller is in default hereunder for failure to comply with any one or more of the material terms or conditions of this Agreement and such failure continues for more than ten (10) business days after Seller's receipt of written notice by Purchaser, Purchaser at its sole option may: (a) terminate this Agreement by written notice delivered to Seller on or before the Closing, in which event Purchaser shall be entitled to all remedies available at law or in equity, (b) waive such defaults and proceed to Closing, or (c) enforce specific performance of this Agreement. If Purchaser defaults under this Agreement, and such default is not cured or such cure has not commenced within ten (10) business days after written notice thereof from Seller, then Seller, as its sole and exclusive remedy, may terminate this Agreement and receive from the escrow agent the amount of $10,000.00 as full liquidated damages. Seller and Purchaser agree that upon a default by Purchaser the damages that would be sustained by Seller will be uncertain and not readily ascertainable, but agree that $10,000.00 is a reasonable estimate of such damage. Nothing contained in this Section 11 shall in any way limit any indemnification (and any related hold harmless and defense) obligation of Purchaser or Seller pursuant to this Agreement. This Section 11 shall expressly survive the termination of this Agreement.

12. **Assignment**. Purchaser shall have the right to assign its interest in this Agreement without the prior written consent of Seller.

13. **Notices**. All notices and other communications hereunder shall be addressed to the parties as follows:

If to Seller: _____

_____

If to Purchaser: Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
Attn: Omar A. Karim

And to: DLA Piper US LLP
500 Eighth Street, NW
Washington, DC 20004
Attn: Guy E. Flynn, Esq.

Any notice, demand or other communication (each, a "**notice**") that is given pursuant to this Agreement by either Seller or Purchaser to the other party, shall be (i) given in writing, (ii) addressed to the other party at its required address(es) for notices delivered to it as set forth above, and (iii) delivered via either (x) hand delivery, (y) nationally recognized courier service (e.g., DHL, Federal Express, Express Mail) or (z) certified U.S. mail postage prepaid with return receipt requested. Any such notice shall be deemed given, and effective for purposes of this Agreement, as of the date actually delivered to the other party at such address(es) (whether or not the same is then received by other party due to a change of address of which no notice was given, or any rejection or refusal to accept delivery). Notices from either party (to the other) may be given by its attorneys. Each party may, from time to time, designate an additional or substitute

MG
AG

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004055

required address(es) for notices delivered to it (provided, that such designation must be made by notice given in accordance with this Section 13).

14. **Parties Bound**. This Agreement shall be binding upon and inure to the benefit of Seller and Purchaser, their respective successors and permitted assigns.

15. **Governing Law**. The laws of the State in which the Property is located shall govern the validity, construction, enforcement and interpretation of this Agreement.

16. **Brokers**. Seller and Purchaser represent and warrant that no broker has been involved in this transaction. If any broker should make a claim for a commission based upon the actions of Seller, Seller shall indemnify, defend and hold Purchaser harmless from such claim. If any broker should make a claim for a commission based upon the actions of Purchaser, Purchaser shall indemnify, defend and hold Seller harmless from such claim.

17. **Reserved.**

18. **Miscellaneous**. This Agreement may be executed in a number of identical counterparts. This Agreement embodies the entire agreement of the parties with respect to the transaction herein contemplated, superseding all prior agreements and communications whether oral or written. If any provision of this Agreement or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to parties or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have, by their duly authorized representatives, executed this Agreement as of the Effective Date.

"SELLER"

By: _____
Name: M & T Ghebretinsae
Title: Landlord
Date: 10-27-08

"PURCHASER"

BANNEKER VENTURES, LLC

By: _____
Name: _____
Title: Principal
Date: _____

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004056

EXHIBIT A

DESCRIPTION OF THE PROPERTY

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004057

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
600 Fifth Street, N.W., Washington, D.C. 20001
(202) 637-1234

MAY 1 9 1977

Investors Inc
E001
DE026

MAY 1 0 1977

Board of Directors
FRANCIS W. WHITE
Maryland
Chairman
JOSEPH S. WHOLEY
Virginia
Vice Chairman
STERLING TUCKER
District of Columbia
Second Vice Chairman
CLEATUS F. BARNETT
Maryland
JOSEPH ALEXANDER
Virginia
WALTER E. WASHINGTON
District of Columbia

Alternate Directors
CARLTON R. SICKLES
ROSE C. KRAMER
Maryland
FRANK [illegible] MANN
JOHN P. SHACOCHIS
Virginia
JERRY A. MOORE JR
DOUGLAS N. SCHNEIDER JR
District of Columbia

Officers
THEODORE C. LUTZ
General Manager
WILLIAM A. BOLEYN
Executive Officer
and Committee
DEL [illegible]
Secretary-Treasurer
JOHN F. KENNEDY
General Counsel
ROY T. LODGE
Chief of Design
and Construction
RALPH L. WOOD
Chief of Operations
and Maintenance

metro

Honorable Griffin B. Bell
Attorney General of the United States
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

The Washington Metropolitan Area Transit Authority, a regional instrumentality created by interstate compact entered into by the State of Maryland, the Commonwealth of Virginia and the District of Columbia, pursuant to the Act of November 6, 1966 (80 Stat. 1324), hereby requests that you cause a proceeding in rem to be instituted in the name of the Authority, including the filing of a declaration of taking, in the United States District Court for the District of Columbia, in accordance with Title 16, Sections 1351-1368, D.C. Code, 1967 Edition, as authorized by Section 82 of the Act of November 6, 1966, supra, for the acquisition by condemnation of certain land, more specifically set out in the enclosed declaration of taking, styled Washington Metropolitan Area Transit Authority, a body corporate and politic, Plaintiff, v. One Parcel of Land in Square 393 in the District of Columbia; Investors, Incorporated, a District of Columbia corporation; et al.; and Unknown Owners, Defendants.

Funds were made available for this acquisition by the Joint Resolution of March 30, 1971, 85 Stat. 12; District of Columbia Appropriation Act, 1972, 85 Stat. 682; Supplemental Appropriation Act, 1972, 85 Stat. 641; Department of Transportation and Related Agencies Appropriation Act, 1972, 85 Stat. 212; Department of Transportation and Related Agencies Appropriation Act, 1973, 86 Stat. 589; District of Columbia Appropriation Act, 1973, 86 Stat. 451; Department of Transportation and Related Agencies Appropriation Act, 1974 (Public Law 93-98, approved August 16, 1973); District of Columbia Appropriation Act, 1974 (Public Law 93-91, approved August 14, 1973); and the Capital Contributions Agreement of January 9, 1970, by and between the Washington Metropolitan Area Transit Authority and the Washington Suburban Transit District, the District of Columbia, Arlington County and Fairfax County, Virginia, and the Cities of Alexandria, Falls Church and Fairfax, Virginia.

This land constitutes a portion of that required for the construction of the transit system, and its acquisition is for the

public purpose and use as stated in the pertinent statutes. In order to accomplish this purpose, the Authority must be the owner of record, and it is therefore necessary and advantageous to its interest that condemnation proceedings be instituted for its acquisition.

For your use in preparing the condemnation complaint and other necessary pleadings, there are enclosed an original and two signed copies of the declaration of taking referred to above.

It is requested that, upon the filing of the declaration of taking, a motion for an order for immediate delivery of possession of the subject land be submitted.

This request and submission constitute part of a series which will culminate in the acquisition of all privately owned land required for the transit system.

Sincerely,

ORIGINAL SIGNED BY
THEODORE C. LUTZ

Theodore C. Lutz

Enclosures as stated

CAlovino/eb/05/05/77
COUN-subj
COUN-Iovino
Signer
REAL w/encl
REAL-Brick w/encl
REAL-Smedley w/encl + Exh C
REAL-Gleeson w/2encl + 2Exh C
ACCT-Underwood w/encl

FOIA CONFIEDENTIAL TREATMENT REQUESTED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, a body corporate and politic,

Plaintiff,

v.

ONE PARCEL OF LAND IN SQUARE 393 IN THE DISTRICT OF COLUMBIA; INVESTORS, INCORPORATED, A DISTRICT OF COLUMBIA CORPORATION; ET AL.; AND UNKNOWN OWNERS,

Defendants.

DECLARATION OF TAKING

C.A. No. 77-1259
7/18/77

The Washington Metropolitan Area Transit Authority, a body corporate and politic, created effective February 20, 1967, by interstate compact by and between the State of Maryland, the Commonwealth of Virginia and the District of Columbia, pursuant to the Act of November 6, 1966, 80 Stat. 1324, hereby declares that:

1. (a) The land described in Schedule A, annexed hereto and made a part hereof, designated hereinafter as

Parcel DE026,

is hereby taken for the use of and in the name of the Washington Metropolitan Area Transit Authority, pursuant to the authorities cited in Schedule D, annexed hereto and made a part hereof.

(b) The public use for which the said land is taken is the construction, maintenance and operation of a rapid rail transit system and related facilities necessary or useful in rendering transit service or in activities incidental thereto, all as provided in the Act of November 6, 1966, 80 Stat. 1324, supra.

2. A description of the said land sufficient for the identification thereof is set forth in Schedule A, annexed hereto and made a part hereof.

3. The estates hereby taken for said public use as aforesaid in the said land are set forth in Schedule E, annexed hereto and made a part hereof.

4. A plat showing the said land is annexed hereto as Schedule B and made a part hereof.

5. The sum of money estimated to be just compensation for the said land, including all the interests therein set forth in Schedule E hereof, is set

FOIA CONFIEDENTIAL TREATMENT REQUESTED

forth in Schedule A, annexed hereto and made a part hereof, and the said sum is deposited herewith into the registry of the court, to the use of the persons entitled thereto.

IN WITNESS WHEREOF, the Washington Metropolitan Area Transit Authority, by Theodore C. Lutz, its General Manager, acting under the authority of and at the direction of the Board of Directors of the said Authority, has caused this declaration of taking to be signed in its name this 10th day of May, 1977, in the City of Washington, District of Columbia.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

ATTEST:

s/ Edna H. Clayton

By s/ Theodore C. Lutz
General Manager

(SEAL)

s/ Delmer Loom
Secretary-Treasurer

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004061

SCHEDULE A

One privately owned parcel of land in the District of Columbia, described as follows and shown on a plat based upon the land records of the District of Columbia and annexed hereto as Schedule B, and setting forth below the sum of money estimated to be just compensation therefor, including all the rights therein set forth in Schedule E hereof.

Parcel DE026:

Part I:

Commencing at the intersection of the south property line of Florida Avenue, N.W., with the east property line of 9th Street, N.W., said intersection marking the northwest corner of Square 393; thence along the property line S 70°17'20.0" E 100.19 feet to the northeast corner of Lot 819; thence along the east property line due south 7.12 feet to the northeast corner of Lot 816, said point being the point of beginning; thence along the property line due south 16.25 feet to the southeast corner of Lot 816; thence along the property line due west 94.33 feet to the southwest corner of Lot 816; thence along the property line due north 16.25 feet to the northwest corner of Lot 816; thence along the property line due east 94.33 feet, to the point of beginning, said tract containing an area of 1,533 square feet of land;

BEING THE SAME AS THAT PROPERTY DESCRIBED AS FOLLOWS:

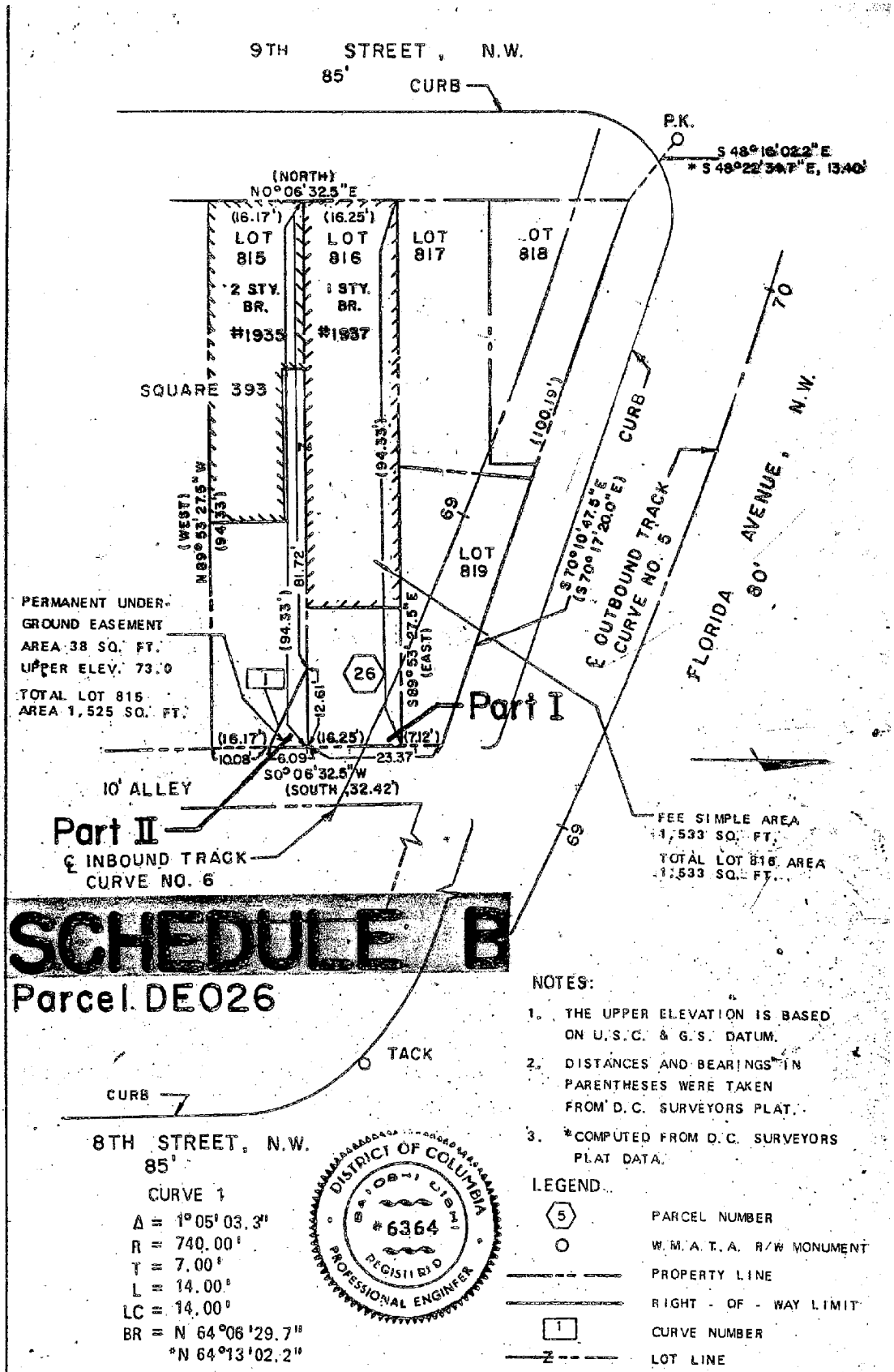
Part of Lots "C" and "D" in Nathaniel Frye's subdivision of lots in square numbered three hundred ninety-three (393), as per plat recorded in Liber B at folio 5 in the Office of the Surveyor for the District of Columbia, and described as follows: Beginning for the same on 9th street at a point distant 40 feet 11 inches South from the Northwest corner of said Square, and running thence South along the east line of said Street, 16 feet 3 inches; thence West 94 feet 4 inches to an alley, thence north along said alley 16 feet 3 inches, thence west 94 feet 4 inches to the place of beginning; said property being known for assessment and taxation purposes as Lot numbered eight hundred sixteen (816) in square numbered three hundred ninety-three (393).

Part II:

All of the below described premises situate in the District of Columbia and located at and beneath, without lower limit, a horizontal plane with an elevation of 73.0 feet above mean sea level, United States Coast and Geodetic Survey mean sea level datum, 1929 general adjustment, said horizontal plane being parallel, identical and in vertical alignment with a plane at the surface described by metes and bounds as follows:

Part of Lot 815 in Square 393 and more particularly described as follows: Commencing at the intersection of the south property line of Florida Avenue, N.W., with the east property line of 9th Street, N.W., said intersection marking the northwest corner of square 393; thence along said property line S 70°17'20.0" E 100.19 feet to the northeast corner of Lot 819; thence along the east property line due south 23.37 feet to the northeast corner of Lot 815, said point being the point of beginning; thence along the property line due south 6.09 feet to a point; thence along the arc of a curve to the left with a radius of [illegible] feet and W, [illegible] to a point on the north property line of Lot 815; thence along the property line due east 12.61 feet, to the point of beginning, containing 38 square feet of land.

ESTIMATED VALUE: SIXTEEN THOUSAND ONE HUNDRED DOLLARS. $16,100.00



SCHEDULE B

Parcel DE026

CURVE 1

$\Delta = 1°05'03.3"$
$R = 740.00'$
$T = 7.00'$
$L = 14.00'$
$LC = 14.00'$
$BR = N\ 64°06'29.7"$
$*N\ 64°13'02.2"$

DISTRICT OF COLUMBIA
#6364
REGISTERED PROFESSIONAL ENGINEER

NOTES:

1. THE UPPER ELEVATION IS BASED ON U.S.C. & G.S. DATUM.
2. DISTANCES AND BEARINGS IN PARENTHESES WERE TAKEN FROM D.C. SURVEYORS PLAT.
3. *COMPUTED FROM D.C. SURVEYORS PLAT DATA.

LEGEND

(5)	PARCEL NUMBER
O	W.M.A.T.A. R/W MONUMENT
———	PROPERTY LINE
———	RIGHT - OF - WAY LIMIT
[1]	CURVE NUMBER
—2—	LOT LINE

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SECTION DESIGNER EDWARDS AND KELCEY	SCALE: 1" = 20'	DATE: JULY 19, 1974
	REF. DWG. NO. E1b-R-3	PLAT NO. 26

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004063

SCHEDULE D

The authority for the taking of the property herein, designated as

Parcel DE026,

is as follows:

Section 82, Act of November 6, 1966, 80 Stat. 1324
Title 16, Sections 1351-1368, D.C. Code, 1967 Edition
Joint Resolution of March 30, 1971, 85 Stat. 12
Supplemental Appropriation Act, 1972, 85 Stat. 641
Department of Transportation and Related Agencies Appropriation Act, 1972, 85 Stat. 212
Department of Transportation and Related Agencies Appropriation Act, 1973, 86 Stat. 589
Department of Transportation and Related Agencies Appropriation Act, 1974, Public Law 93-98, approved August 16, 1973
District of Columbia Appropriation Act, 1972, 85 Stat. 682
District of Columbia Appropriation Act, 1973, 86 stat. 451
District of Columbia Appropriation Act, 1974, Public Law 93-91, approved August 14, 1973
Capital Contributions Agreement of January 9, 1970, by and between the Washington Metropolitan Area Transit Authority and the Washington Suburban Transit District, the District of Columbia, Arlington County and Fairfax County, Virginia, and the Cities of Alexandria, Falls Church and Fairfax, Virginia

FOIA CONFIEDENTIAL TREATMENT REQUESTED

SCHEDULE E

The estates taken herein as to Parcel DE026, Parts I and II, respectively, are as follows:

As to Parcel DE026, Part I:

An estate in fee simple absolute, subject, however, to the right of the owners of public utility facilities, if any, in, on, over or under the land to remove such facilities.

As to Parcel DE026, Part II:

A permanent and assignable underground easement and right of way to construct, maintain, repair, operate, replace and remove a rapid rail transit tunnel and related facilities therein, with the proviso that all plans and specifications for any future excavation or construction above or adjacent to the said parcel are to be submitted to the plaintiff for review, but not for approval, prior to the commencement of such excavation or construction, such review being limited to and being for the sole purpose of determining whether such proposed excavation or construction will endanger the structural integrity of the transit structures and facilities therein; subject, however, to the right of the owners of public utility facilities, if any, in, on, over or under the land to remove such facilities.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

E001
DE015

107126DC

THIS DEED OF EASEMENT AND RIGHT OF WAY, Made this the 29th day of April 1976, by and between Ernest L. Williams and wife, Olivia H. Williams, parties of the first part, and Washington Metropolitan Area Transit Authority, a body corporate and politic, an agency and instrumentality of the District of Columbia, State of Maryland, and Commonwealth of Virginia, created pursuant to Section 4 of Public Law 89-774, approved November 6, 1966, party of the second part.

WITNESS, that for and in consideration of the sum of TWENTY-TWO HUNDRED AND NO/100 Dollars, receipt whereof is hereby acknowledged, the said party or parties of the first part do grant unto the said party of the second part, in fee simple, a perpetual and assignable subsurface easement and right of way to construct, maintain, repair, operate, replace, relocate and remove a rapid rail transit tunnel and facilities within the easement area as hereinafter described, together with the right of Washington Metropolitan Area Transit Authority to review plans and specifications for excavation or construction above or adjacent to the herein described easement area prior to the start of any excavation or construction above or addjacent to the easement area, (said construction or excavation shall not extend into or penetrate the easement area), said review to be limited to and for the sole purpose of assuring timely determination that such proposed construction will not endanger the structural integrity of the transit structure and facilities; the aforesaid plans and specifications must be delivered at least ten (10) working days prior to start or excavation or construction; in, upon, across and under the following described parcel of land, to wit:

Commencing from a D. C. P. K. at the southeast corner of the intersection of Florida Avenue and 8th Street, Northwest, as shown on S. O. 42437 in Book 195 at page 121 on file at the District of Columbia Surveyor's Office; thence along a line South 42°10'17.9" East 36.81 feet to a point being the northwest corner of Lot numbered Sixteen (16) in Square numbered Four Hundred Sixteen (416); thence along the west property line south 197.91 feet to the northwest corner of Lot numbered Eight Hundred Five (805); thence along the north property line east 89.31 feet; said point being the point of beginning; thence along the property line east 10.69 feet to the northeast corner of Lot numbered Eight Hundred Five (805); thence along the property line south 15.29 feet to the southeast corner of Lot num ered Eight Hundred Five (805); thence along the property line west 1.10 feet to the inbound western right of way line; thence along the right of way line a curve to the left, the radius of which is 740.00 feet, an arc distance of 18.05 feet, the chord of which is 18.04 feet running North 32°04'37.8" west to the point of beginning. Said tract containing an area of 89.00 square feet. The upper elevation limit of the permanent undergound easement is 71.5 feet above mean sea level datum based on the U. S. Coast & Geodetic Survey mean sea level datum, 1929 adjustment.

AND the said party or parties of the first part covenant that they will warrant generally the easement and right of way hereby conveyed; and that they will execute such further assurances of said easement and right of way as may be requisite.

Vendor agrees that no additional vertical or lateral pressure may be imposed or placed on the Metro structure once installed than are presently existing, including load over-burden. Washington Metropolitan Area Transit Authority reserves the right to review and approve any proposed building plans involving subject property.

E. L. Williams
Wash. Metro Area Transit Auth

4-30-76
inst. 11224

46357 H 112 CL $ 0.01

OFFICE OF RECORDER OF DEEDS
Washington, D. C.

Recorder

107126

COMMON

BY F. L. Wells

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

Ernest L. Williams (Seal)

Olivia H. Williams (Seal)

DISTRICT OF COLUMBIA)
) TO WIT:

I, JUNE R. WATSON, a Notary Public in and for the said District of Columbia, do hereby certify that ERNEST L. WILLIAMS and OLIVIA H. WILLIAMS, who are personally well known to me as party or parties to and who executed the foregoing and annexed Instrument bearing date on the 29th day of April, 1976, personally appeared before me in the said District of Columbia, and acknowledged the same to be their, his or her act and deed.

WITNESS my hand and official seal this the 29th day of April 1976.

My commission expires: 10/31/79

June R. Watson
Notary Public

JUNE R. WATSON

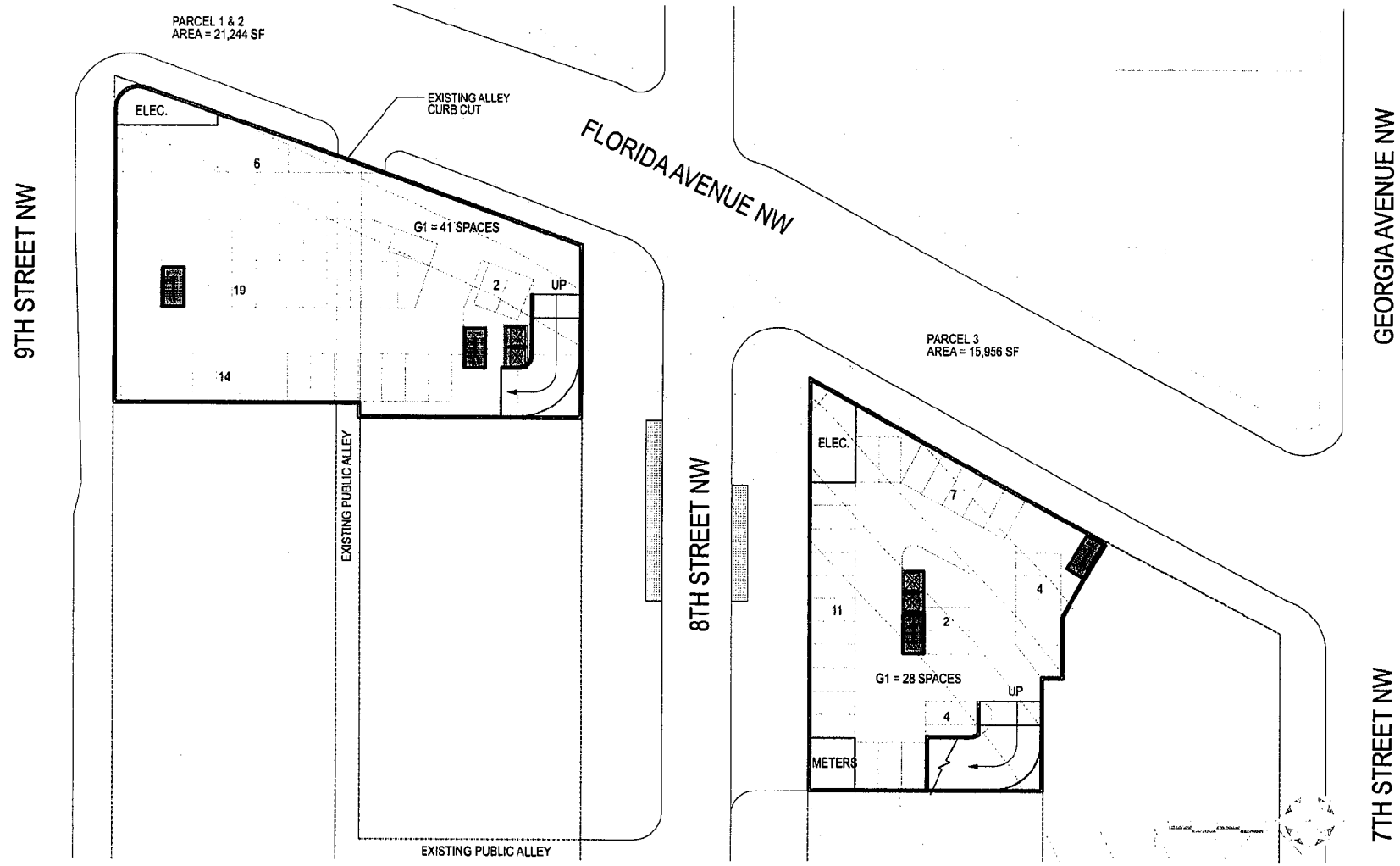
[redacted]

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004067

First Floor Plan

4

THE JAZZ @ FLORIDA AVENUE

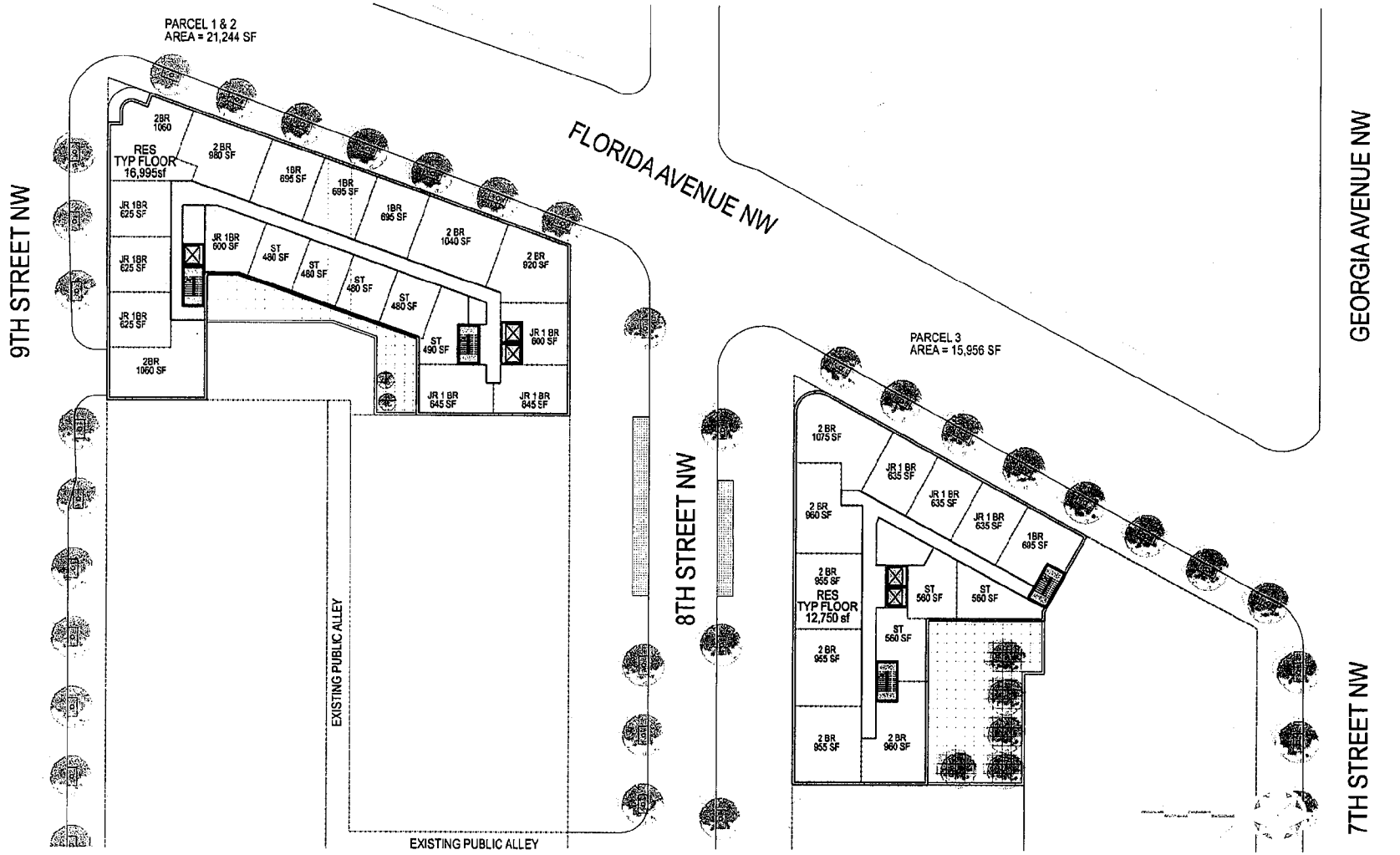


Garage Level Plan

BANNEKER VENTURES BANC OF AMERICA CDC
FORTE GALLAS AND PARTNERS

THE JAZZ @ FLORIDA AVENUE

FOIA CONFIEDENTIAL TREATMENT REQUESTED



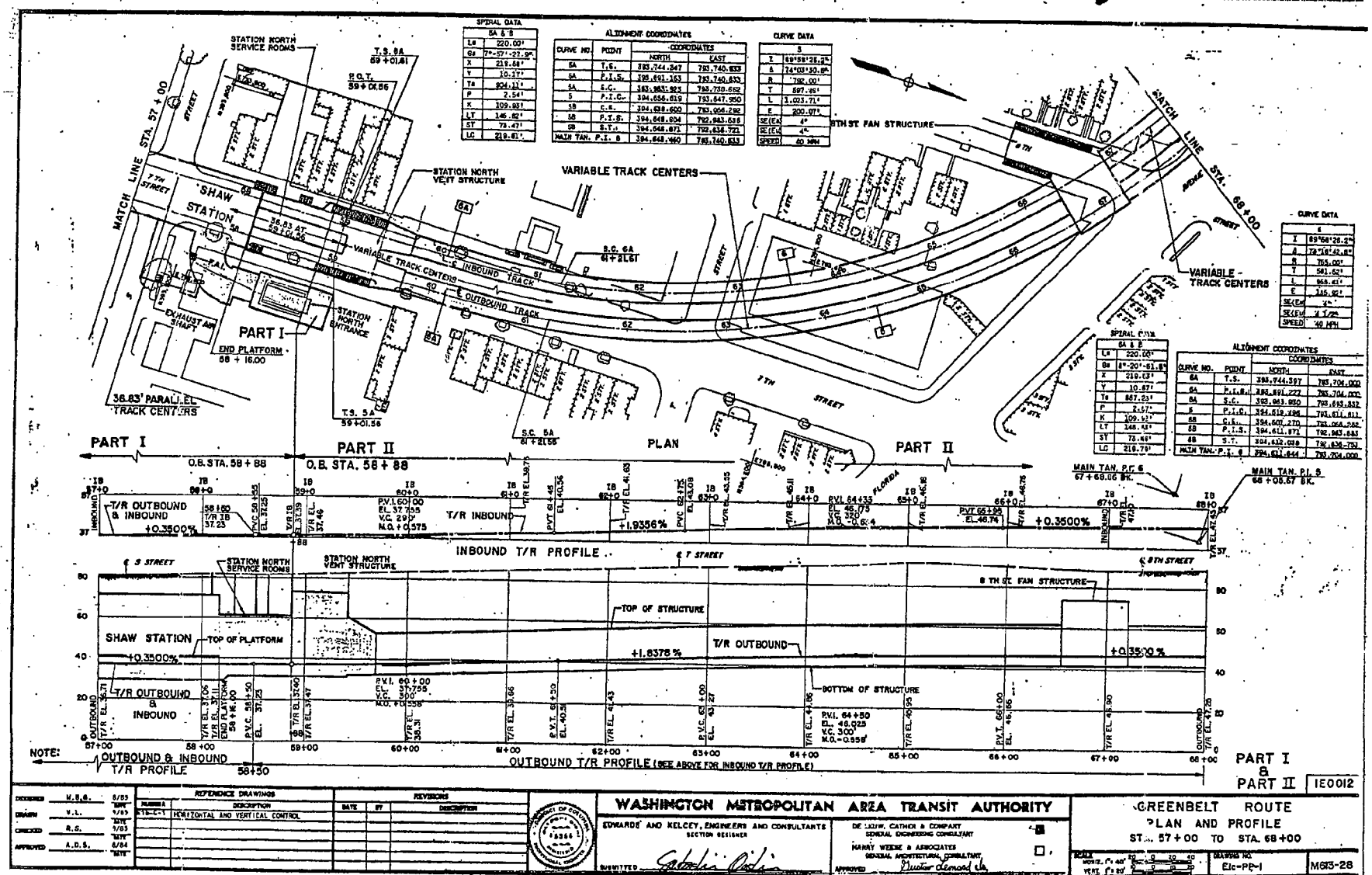
Typical Residential Floor Plan

BANNEKER VENTURES · BANC OF AMERICA CDC
FORTE GALLAS AND PARTNERS

THE JAZZ @ FLORIDA AVENUE

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED



REFERENCE DRAWINGS		
NUMBER	DESCRIPTION	
A15-C-1	HORIZONTAL AND VERTICAL CONTROL	

REVISIONS		
DATE	BY	DESCRIPTION

DESIGNED	M.S.S.	6/83
DRAWN	V.L.	9/83
CHECKED	R.S.	9/83
APPROVED	A.D.S.	6/84

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

EDWARDS AND KELCEY, ENGINEERS AND CONSULTANTS — SECTION DESIGNER

DE LEUW, CATHER & COMPANY — GENERAL ENGINEERING CONSULTANT

HARRY WEESE & ASSOCIATES — GENERAL ARCHITECTURAL CONSULTANT

SUBMITTED

APPROVED

GREENBELT ROUTE

PLAN AND PROFILE

STA. 57+00 TO STA. 68+00

HOR. SCALE 1" = 40'

VERT. SCALE 1" = 10'

DRAWING NO. E1c-PP-1

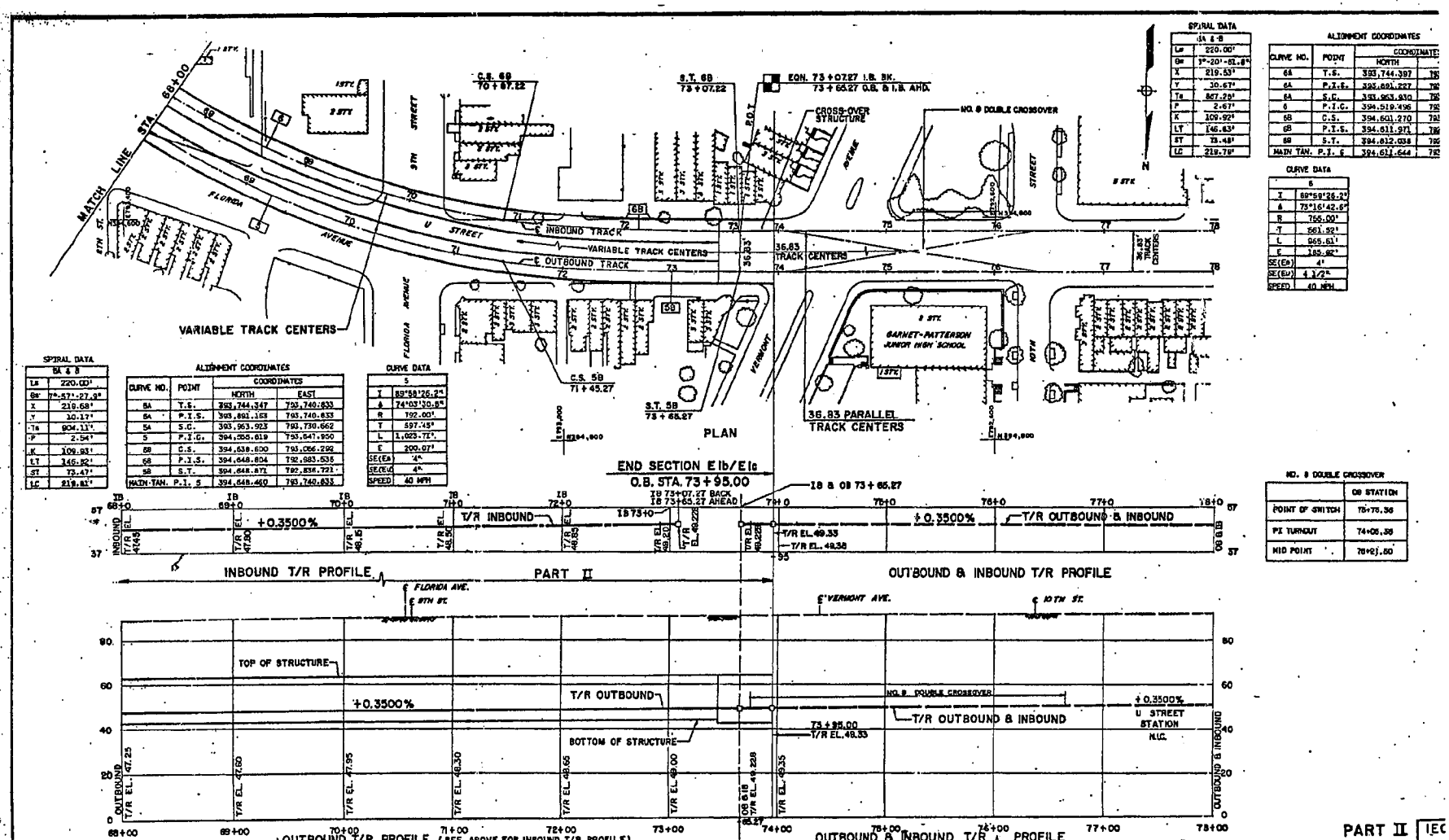
M613-28

PART I & PART II

IE0012

WMATA-INV 004071

FOIA CONFIEDENTIAL TREATMENT REQUESTED



SPIRAL DATA

6A & 6B	
Ls	220.00'
Gs	7°-20'-51.8"
X	219.53'
Y	30.67'
Ts	867.25'
P	2.67'
K	109.92'
LT	146.83'
ST	73.48'
LC	219.79'

ALIGNMENT COORDINATES

CURVE NO.	POINT	COORDINATES NORTH	
6A	T.S.	393,744.397	793
6A	P.I.S.	393,891.227	793
6A	S.C.	393,963.930	793
6	P.I.C.	394,519.496	793
6B	C.S.	394,601.270	793
6B	P.I.S.	394,611.971	793
6B	S.T.	394,612.038	793
MAIN TAN. P.I. 6		394,611.644	793

CURVE DATA

6	
I	89°59'26.2"
Δ	73°16'42.6"
R	755.00'
T	561.52'
L	965.61'
E	185.92'
SE(Ea)	4"
SE(Eu)	4 1/2"
SPEED	40 MPH

SPIRAL DATA

6A & 6B	
Ls	220.00'
Gs	7°-57'-27.9"
X	219.68'
Y	10.17'
Ts	904.11'
P	2.54'
K	109.93'
LT	146.82'
ST	73.47'
LC	219.81'

ALIGNMENT COORDINATES

CURVE NO.	POINT	COORDINATES NORTH	EAST
6A	T.S.	393,744.347	793,740.833
6A	P.I.S.	393,891.163	793,740.833
6A	S.C.	393,963.923	793,730.662
6	P.I.C.	394,555.619	793,647.950
6B	C.S.	394,638.600	793,066.292
6B	P.I.S.	394,648.804	792,983.536
6B	S.T.	394,648.871	792,836.721
MAIN-TAN. P.I. 5		394,648.460	793,740.833

CURVE DATA

5	
I	89°58'26.2"
Δ	74°03'30.8"
R	792.00'
T	597.45'
L	1,023.71'
E	200.07'
SE(Ea)	4"
SE(Eu)	4"
SPEED	40 MPH

NO. 8 DOUBLE CROSSOVER

	OB STATION
POINT OF SWITCH	75+75.36
PI TURNOUT	74+05.38
MID POINT	76+21.50

DESIGNED	W.B.G.	8/83 DATE
DRAWN	V.L.	9/83 DATE
CHECKED	R.S.	9/83 DATE
APPROVED	A.D.S.	8/84 DATE

REFERENCE DRAWINGS

NUMBER	DESCRIPTION
E1b-C-1	HORIZONTAL AND VERTICAL CONTROL

REVISIONS

DATE	BY	DESCRIPTION

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

EDWARDS AND KELCEY, ENGINEERS AND CONSULTANTS
SECTION DESIGNER

SUBMITTED

DE LEUW, CATHER & COMPANY
GENERAL ENGINEERING CONSULTANT

HARRY WEESE & ASSOCIATES
GENERAL ARCHITECTURAL CONSULTANT

APPROVED

GREENBELT ROUTE
PLAN AND PROFILE
STA. 68+00 TO STA. 73+95.00

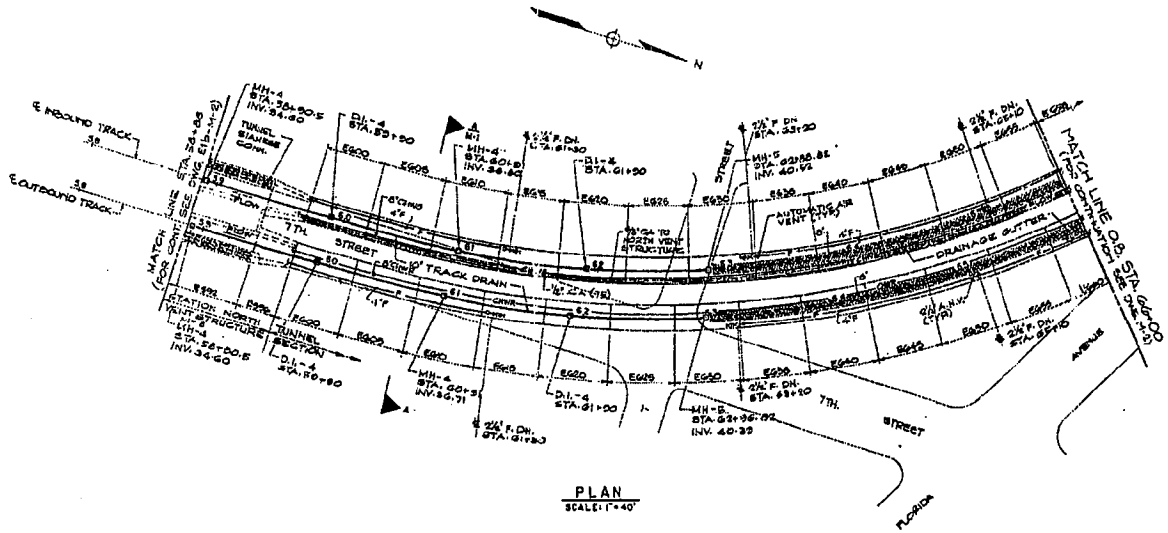
SCALE HORIZ. 1"=40' VERT. 1"=20'

DRAWING NO. E1c-PP-2

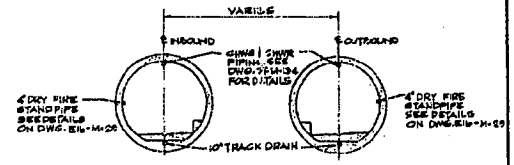
M61

WMATA-INV 004072

FOIA CONFIDENTIAL TREATMENT REQUESTED

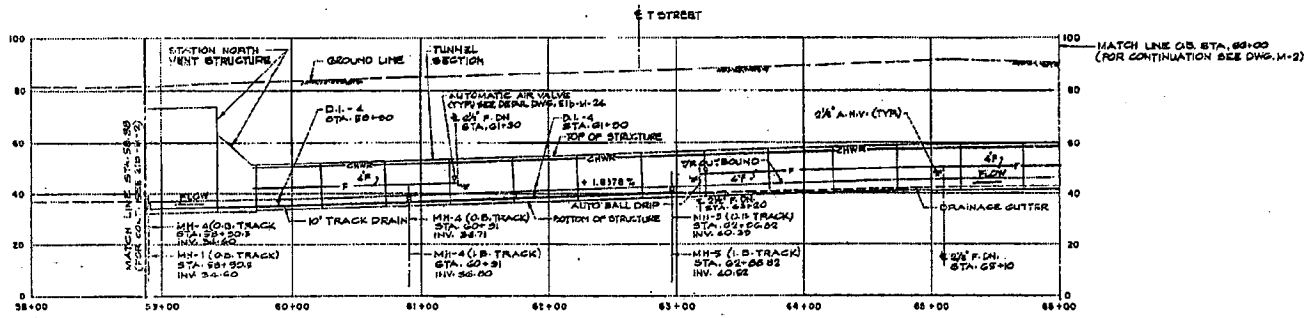


PLAN
SCALE: 1"=40'



SECTION A-A
NOT TO SCALE

NOTES:
1. FOR SYMBOLS AND ABBREVIATIONS SEE DWG. ST-M-05.
2. HATCHED AREAS INDICATE FLOATING SLAB.
3. CROSS REFERENCING ON DRAWINGS REFERS SPECIFICALLY TO THAT SAME SECTION UNLESS OTHERWISE NOTED.
EXAMPLES:
REFERENCE ON DWG. E1b-M-1 TO M-25 IS TO E1b-M-25.
REFERENCE ON DWG. E1c-M-2 TO M-6 IS TO E1c-M-6.



PROFILE - OUTBOUND TRACK
SCALES: HOR. 1"=40', VERT. 1"=20'
(INBOUND TRACK MANHOLE LOCATIONS & INVERTS AS NOTED)

ALL WORK SHOWN ON THIS DRAWING IS TO BE DONE IN PART 2. IE0012

DESIGNED	R. STAHN W. PARCHER	9/3/84 DATE
DRAWN	W. PARCHER D. REYNOLDS	9/10/84 DATE
CHECKED	J.R. JENAL	9/17/84 DATE
APPROVED	J.R. JENAL	9/28/84 DATE

REFERENCE DRAWINGS

NUMBER	DESCRIPTION
E1b-M-3	HIGH. PLAN & PROFILE STA. 52+00 TO STA. 58+88
M-2	HIGH. PLAN & PROFILE STA. 64+00 TO STA. 70+25
E1b-M-25	FIRE PROTECTION DETAILS SHEET NO. 3
ST-M-134	CHILLED WATER PIPE ANCHOR-GUIDE DETAIL
E1b-M-28	DRAINAGE-TYPICAL DETAILS SHEET NO. 5

REVISIONS

DATE	BY	DESCRIPTION

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

EDWARDS AND KELCEY, ENGINEERS AND CONSULTANTS
SECTION DESIGNER
BOGEN JENAL ENGINEERS P.C.
MECHANICAL AND ELECTRICAL ENGINEERS
SUBMITTED J.R. Jenal

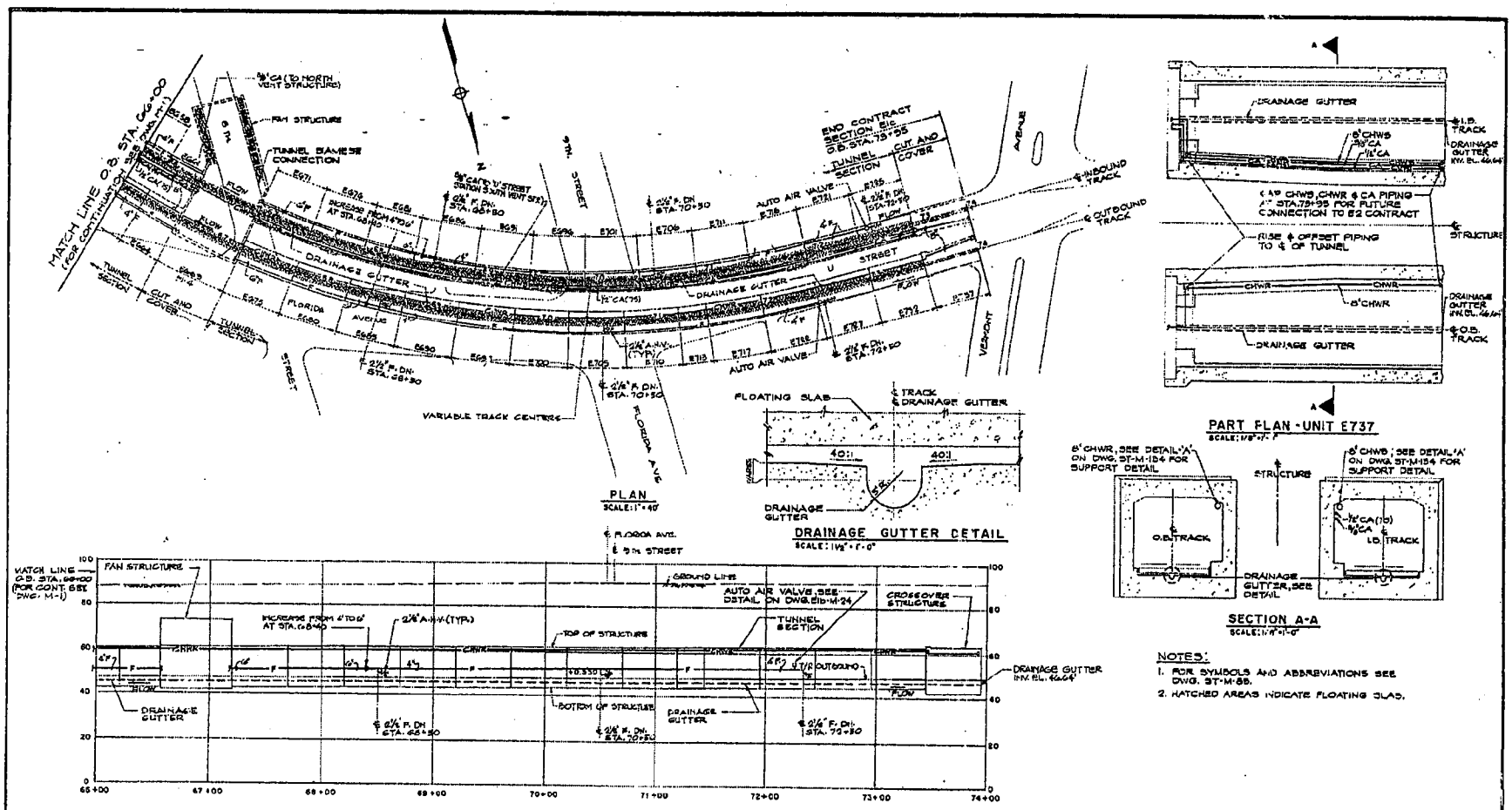
DE LEUW, CATHER & COMPANY
GENERAL ENGINEERING CONSULTANT ■
HARRY WEESE & ASSOCIATES
GENERAL ARCHITECTURAL CONSULTANT □
APPROVED Hunter Leonard Jr.

GREENBELT ROUTE
MECHANICAL PLAN & PROFILE
STA. 58+88 TO STA. 65+00

SCALE: HORZ 1"=40' VERT 1"=20'
DRAWING NO. E1c-M-1
M613-479

WMATA-INV 004073

FOIA CONFIEDENTIAL TREATMENT REQUESTED



ALL WORK SHOWN ON THIS DRAWING IS TO BE DONE IN PART 2.

1E0012

DESIGNED	R. STAMM / W. PAREDES	9/3/84 DATE
DRAWN	W. PAREDES / D. REYNOLDS	9/10/84 DATE
CHECKED	J. R. JENAL	9/17/84 DATE
APPROVED	J. R. JENAL	9/24/84 DATE

REFERENCE DRAWINGS	
NUMBER	DESCRIPTION
M-1	PRECI. PLAN & PROFILE STA. 58+88 TO STA. 66+00
E1b-M-24	FIRE PROTECTION DETAILS SHEET NO. 1
ST-M-134	CHILLED WATER PIPE HANGER DETAILS-CUT COVER

REVISIONS		
DATE	BY	DESCRIPTION

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

EDWARDS AND KELCEY, ENGINEERS AND CONSULTANTS
SECTION DESIGNER
BOGEN JENAL ENGINEERS P.C.
MECHANICAL AND ELECTRICAL ENGINEERS
SUBMITTED [signature]

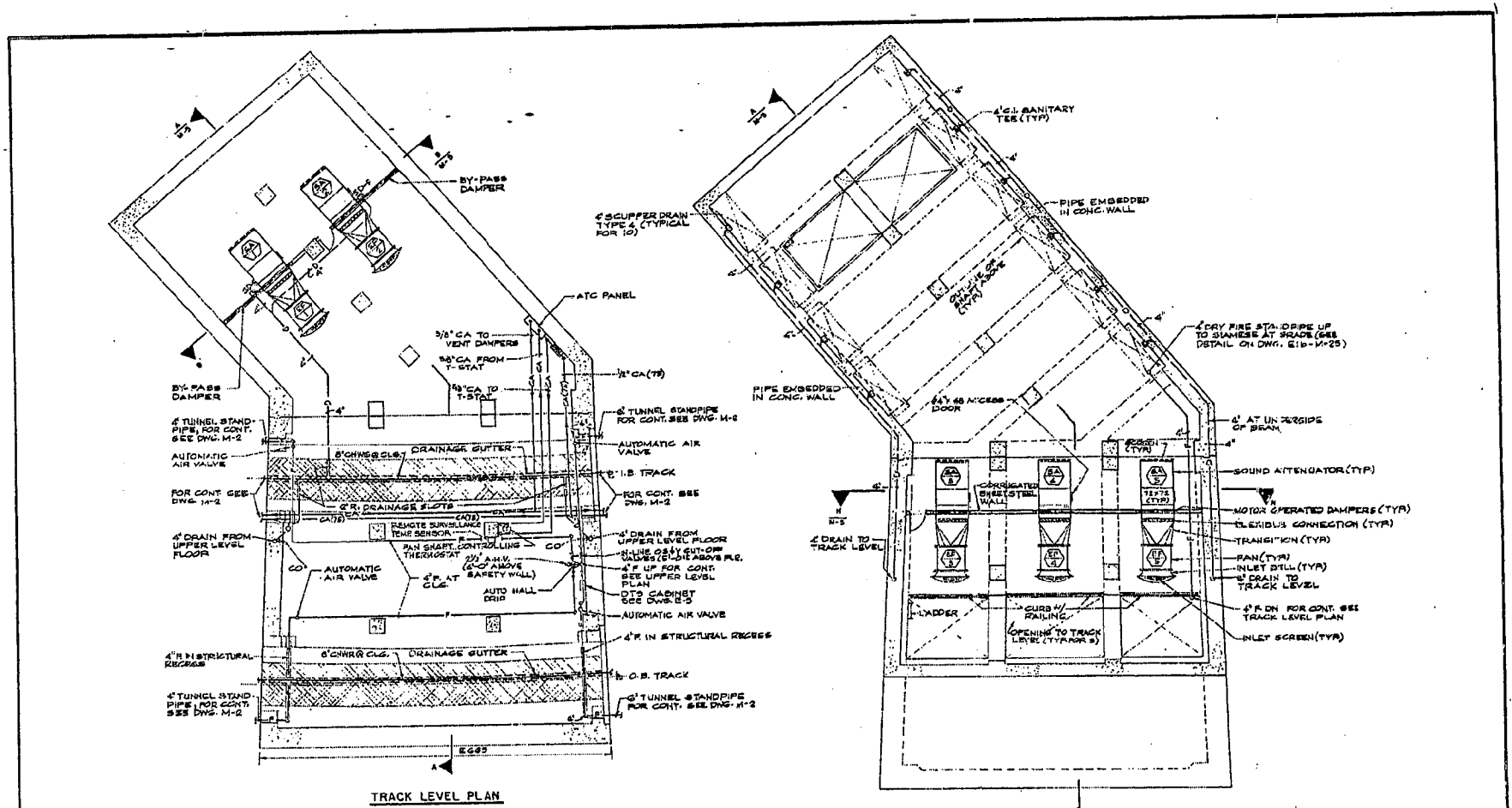
DE LEUW, CATHER & COMPANY
GENERAL ENGINEERING CONSULTANT
HARRY WEESE & ASSOCIATES
GENERAL ARCHITECTURAL CONSULTANT
APPROVED [signature]

GREENBELT ROUTE
MECHANICAL PLAN & PROFILE
STA. 66+00 TO STA. 73+95

SCALE: AS NOTED
DRAWING NO. E1c-M-2
M613-480

WMATA-INV 004074

FOIA CONFIEDENTIAL TREATMENT REQUESTED



ALL WORK SHOWN ON THIS DRAWING IS TO BE DONE IN PART 2.

1E0012

DESIGNED	W. PAREDES A. STAMM	9/3/84 DATE
DRAWN	W. PAREDES	9/10/84 DATE
CHECKED	J. R. JENAL	9/17/84 DATE
APPROVED	J. R. JENAL	9/24/84 DATE

REFERENCE DRAWINGS

NUMBER	DESCRIPTION
M-6	MECH PLAN PROFILE STA. 69+00 TO STA. 72+75
M-5	FAN STRUCTURE SECTIONS
E-5	NORTH FAN STRUCTURE

REVISIONS

DATE	BY	DESCRIPTION

OFFICE OF CONSTRUCTION — QUALITY ASSURANCE DIVISION — PRELIMINARY ENGINEER — 8650

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

EDWARDS AND KELCEY, ENGINEERS AND CONSULTANTS
SECTION DESIGNER
DOREN JENAL ENGINEERS P.C.
MECHANICAL AND ELECTRICAL ENGINEERS

SUBMITTED

DE LEUW, CATHER & COMPANY — GENERAL ENGINEERING CONSULTANT

HARRY J. EGGE & ASSOCIATES — GENERAL ARCHITECTURAL CONSULTANT

APPROVED

GREENBELT ROUTE
FAN STRUCTURE
PLAN & DETAILS

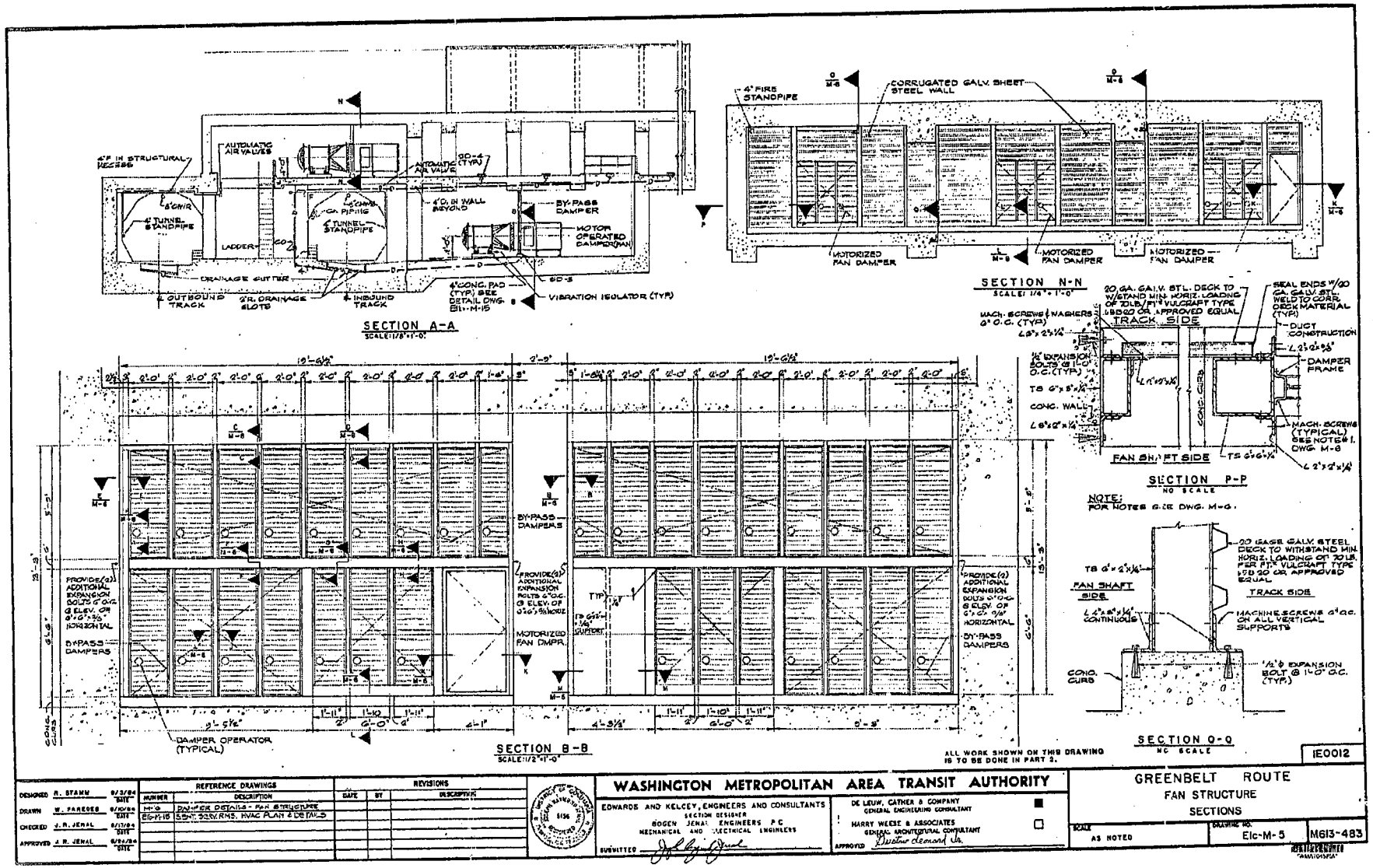
SCALE 1/8"=1'-0" (0 2 4 6 8 10)

DRAWING NO. E1c-M-4

M613-482

WMATA-INV 004075

FOIA CONFIDENTIAL TREATMENT REQUESTED



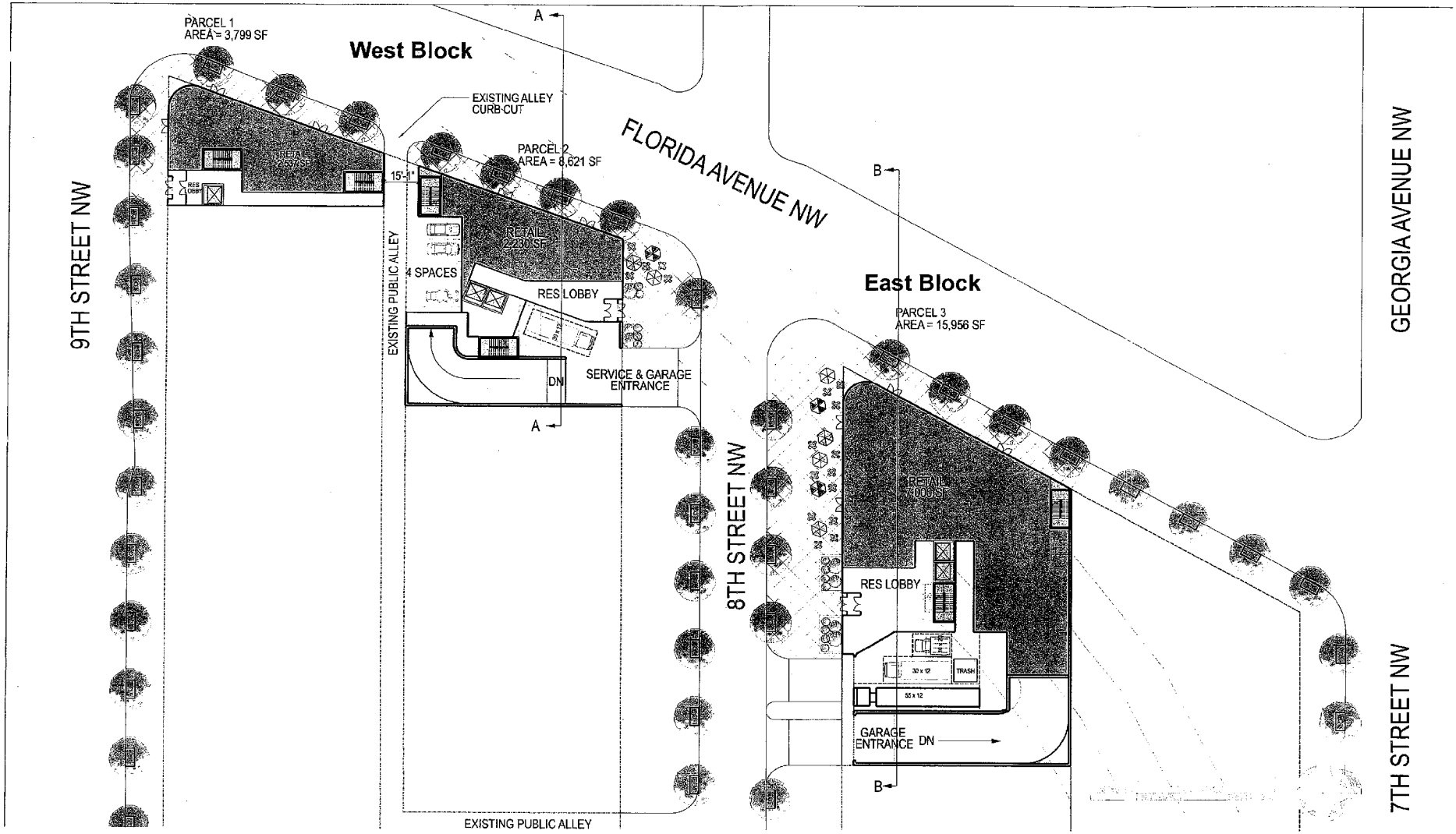
DESIGNED R. STAHM 9/3/86	REFERENCE DRAWINGS	REVISIONS	WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
DRAWN W. FARGOS 9/10/86	NUMBER / DESCRIPTION	DATE / BY / DESCRIPTION	EDWARDS AND KELCEY, ENGINEERS AND CONSULTANTS
CHECKED J.R. JENAL 9/17/86	M-6 PARTIAL DETAILS - FAN STRUCTURE		SECTION DESIGNER
APPROVED J.R. JENAL 9/24/86	E6-M-15 SUBWAY 230V.RMS. HVAC PLAN & DETAILS		BOGEN JENAL ENGINEERS P.C. MECHANICAL AND ELECTRICAL ENGINEERS
			SUBMITTED
			DE LEUW, CATHER & COMPANY GENERAL ENGINEERING CONSULTANT
			HARRY WEESE & ASSOCIATES GENERAL ARCHITECTURAL CONSULTANT
			APPROVED

GREENBELT ROUTE
FAN STRUCTURE
SECTIONS

SCALE: AS NOTED | DRAWING NO. E1c-M-5 | M613-483

WMATA-INV 004076

FOIA CONFIEDENTIAL TREATMENT REQUESTED



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MAY 31,2007

First Floor Plan

WMATA-INV 004077

From: Marc E. Biondi
To: Carmen Hernandez; Deborah Donning; Guy Flynn; Josh Kern; Merrick Malone; okarim@bannekerventures.com; Phinis Jones; Rosalyn Doggett; Warren Williams
Date: 3/17/2008 5:12:20 PM
Subject: Revised Term Sheet

All,

I think that the attached Term Sheet reflects the deal as it was left after this morning's call.

A couple of things to note:

Rent Payments have been updated to reflect Roz's email of Friday.

The concept of Non-Capital Events has been added and left for definition in the DA.

WMATA/Force Majeure and Project Changes have been separated into sections 7.8, 7.9 and 7.10.

9.6 and 9.8 remain as I have not yet been able to discuss this issue with higher level decision makers.

"COMMENTS" have been deleted.

I'll look forward to hearing from you in the morning.

Marc

Marc Biondi
Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Direct Dial: 202-962-1011
Fax: 202-962-2550
mebiondi@wmata.com

THIS E-MAIL MESSAGE IS PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE RECIPIENT NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE NAMED RECIPIENT, OR THE AGENT RESPONSIBLE TO DELIVER IT TO THE NAMED RECIPIENT, YOU ARE NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING OR OTHER USE OF THIS INFORMATION COMMUNICATION IS STRICTLY PROHIBITED AND NO PRIVILEGE IS WAIVED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY THE ABOVE-NAMED INDIVIDUAL IMMEDIATELY, COLLECT IF NECESSARY.

CC: Seth Bryant

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites

Deleted: March 3, 2008

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, and dated as of the date last executed below, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

Deleted: dated
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1. **Parties**
   1.1 Washington Metropolitan Area Transit Authority ("WMATA").

   1.2 Banneker Ventures, LLC ("Banneker"), together with District Development Group, LLC ("DDG") and Metropolis Development Company LLC ("Metropolis"), will form a limited liability company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or another name as determined by Banneker, DDG and Metropolis (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, except for any equity partners that the DEVELOPER needs to provide financing for the Project, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, such consent not to be unreasonably withheld, with the terms of such consent to be provided in the Definitive Agreement.

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2. **Definitive Agreement**
   The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within five months of Board Term Sheet approval, will be a Joint Development Agreement ("JDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement or the start of construction of the Project.

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3. **Property to Be Leased by Developer**
   WMATA will lease to DEVELOPER approximately 28, 892 sf of land area outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31. The Leased Premises shall not include those property interests necessary for protection of

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004079

WMATA's Transit Facilities.

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Inserted: *[[COMMENT: WE PRESUME THAT ALL NECESSARY SUBDIVISION HAS/WILL BE COMPLETED BY WMATA.]]*

4. Project

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47 below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide knowledge-qualified representations customarily made by WMATA in transactions of this type, including with respect to title to the Leased Premises and the environmental history or condition of the property. Subject to the continued accuracy of such representations, and subject further to DEVELOPER'S Study Period rights as provided herein and satisfaction or waiver by DEVELOPER of all conditions precedent herein provided, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

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5.2 Study Period: Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right-of-Entry Permit for entry into the Leased Premises, substantially in the form attached hereto as **Exhibit C**. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit (as defined below) and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

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6. Security Deposit

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004080

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00), (the "Security Deposit") to secure DEVELOPER's performance. The Security Deposit will replace the $100,000 Proposal Security.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if DEVELOPER shall be in default under the Definitive Agreement beyond applicable notice, cure and grace periods therein provided. In such event, the Security Deposit may be applied by WMATA in whole or in part to cure such default. No such application of the Security Deposit shall constitute a waiver of any such default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.4 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance (not to be unreasonably withheld, delayed or conditioned) by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

6.5 WMATA shall return the Security Deposit plus interest to DEVELOPER within twenty (20) business days of its receipt of a copy of the Certificate of Occupancy for the Project.

7. Consideration

7.1 Option Fee: DEVELOPER will pay WMATA $100,000 (the "Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet and written notification to the DEVELOPER by WMATA of such approval. The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be non-refundable.

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Deleted: . 6.4 . The Security Deposit may be applied by WMATA in whole or in part to cure or remedy any breach or default by DEVELOPER. No such application of the Security Deposit shall constitute a waiver of any breach or default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

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Deleted: fully refunded to DEVELOPER should the parties fail to obtain all necessary final signatures to the Definitive Agreement by all parties (including the WMATA Board) within five (5) months after the date of WMATA Board's approval of this Term Sheet

Inserted: fully refunded to DEVELOPER should the parties fail to obtain all necessary final signatures to the Definitive ... [1]

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Inserted: months after the date of WMATA Board's approval of this Term Sheet

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004081

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement (but anticipated to mean attainment of 90% occupancy by the Developer, or forty-five (45) months after WMATA Board approval and execution of the Definitive Agreement (the "Pre-stabilization Period"). Pre-stabilization Rent, for the first fifteen (15) months, will be $100,000 per year payable in advance in quarterly instalments of $25,000. Pre-stabilization Rent will increase to $115,000.00 per year for the next twelve (12) months. For the remaining Pre-stabilization Period, rent shall be $130,000.00 per year.

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a penalty payment, the amount of which to be determined in the Definitive Agreement. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly, payable in advance in quarterly instalments of one-quarter of the Initial Base Rent. In no event shall the Initial Base Rent (for a full year) be less than Five Hundred and Ninety-Seven Thousand and No/100 Dollars ($597,000.00). After the Initial Base Rent payment, Base Rent will be due annually, in quarterly instalments, beginning on the first business day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent multiplied by 1.5% for that year (the "Initial Escalation Factor").

7.3.2 For the second through tenth years of ~~the Lease~~, subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base ~~Rent payment~~ for the preceding calendar year.

7.3.3 For the eleventh year of the ~~Lease~~ and thereafter, except for Base Rent to be determined pursuant to ~~7.3.4 and 7.5~~ below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

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Inserted: Should DEVELOPER not be able to secure approvals from District agencies, quasi-agencies or other reviewing organizations, WMATA shall refund DEVELOPER's Pre-stabilization Rent in full.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004082

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.5 DEVELOPER shall lease the Leased Premises for a period of sixty (60) years (the "Lease Period"). The Definitive Agreement will provide a mechanism by which Developer may request an extension of the Lease Period, subject to completion of a written agreement between the parties and approval, if necessary, by WMATA's Board of Directors.

7.4 Capital Event Participation: Capital Events (defined hereinbelow) shall be permitted in accordance with this Section 7.4. Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital Event" include any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of DEVELOPER's Improvements, (iii) other dispositions, transfers, and conversions that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event. The Parties agree that Non-Capital Events, which will require WMATA approval, but not WMATA monetary participation, also exist and will be defined in the Definitive Agreement. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Capital Event.

7.5 Periodic Rent Revaluation: Upon a Capital Event or every ten years, whichever is earlier, the Base Rent will be adjusted to 7 % of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Periodic Rent Revaluation.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004083

7.6 WMATA Improvements: intentionally omitted

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within five months following Board Term Sheet Approval (as provided in Section 2 above), WMATA will refund DEVELOPER's full Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER within twenty (20) business days.

7.8 WMATA Delays: The maximum length of 45 months for the Pre-stabilization Period will be extended, on a day-for-day basis, for delays caused by WMATA actions or failure to act, including obtaining FTA Approval in accordance with Section 8.5 below and. In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, even though DEVELOPER's schedule may take longer than anticipated.

7.9 Force Majeure Delays: The maximum length of 45 months for the Pre-stabilization Period may be extended, subject to an increase in the rental payments due in order to maintain the net present value of the Definitive Agreement to WMATA, for any delays caused by acts of God, terrorism, casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement.

7.10 Changes to Project: Changes to Project, which increase Project density may be requested by the Developer, subject to the terms and conditions for such changes to the Project as may be required by WMATA in the Definitive Agreement. Such terms and conditions will require increases in rent or other compensation to WMATA.

7.11 Additional Density:

7.11.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf (subject to true-up of 3% per year from the execution of the Definitive Agreement) of additional density and multiplying the product derived (Project land value) by 7%.

7.11.2 During the term of the Lease, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those originally shown in the Approved Site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above, with such additional Base Rent including the incremental increase associated with any actually constructed DEVELOPER Improvements.

8. Conditions to Definitive Agreement Consummation

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If each of the following conditions is not satisfied within the timeframes provided above therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

9. Special Considerations

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area as specified by WMATA to apprise such groups of the Project and provide

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004085

WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable efforts to obtain such entitlements.

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9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the applicable District agency or agencies a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

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9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS—2007 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004086

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten (10) calendar days prior to commencement of construction of the DEVELOPER Improvements.

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9.7 Interim Improvements: intentionally omitted

9.8 Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin.

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9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law, which can be found at 72 FR 5788.

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9.10 Transit Operations: Neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

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9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

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10. Indemnification

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004087

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to WMATA Transit Facilities located under the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

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12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

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Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

By:
Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

Title:

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004088

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fully refunded to DEVELOPER should the parties fail to obtain all necessary final signatures to the Definitive Agreement by all parties (including the WMATA Board) within five

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. Upon timely final execution and approval of the Definitive Agreement, the Option Fee shall be merged with the Security Deposit and shall be applied towards DEVELOPER's Security Deposit obligation provided in Section 6.1 hereof, such that DEVELOPER shall be required to fund only an additional One Hundred Thousand and No/100 Dollars ($100,000.00) towards the Security Deposit. Upon application of the Option Fee as such, the Option Fee shall be considered and treated, for all purposes, as part of the Security Deposit.

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Upon timely final execution and approval of the Definitive Agreement, the Option Fee shall be merged with the Security Deposit and shall be applied towards DEVELOPER's Security Deposit obligation provided in Section 6.1 hereof, such that DEVELOPER shall be required to fund only an additional One Hundred Thousand and No/100 Dollars ($100,000.00) towards the Security Deposit. Upon application of the Option Fee as such, the Option Fee shall be considered and treated, for all purposes, as part of the Security Deposit.

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Should the Project not be stabilized by the end of the Pre-stabilization Period, the Pre-Stabilization Rent shall be increased by 10% per year each year until the Project is stabilized.

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]] *[[QUESTION: HOW MUCH WILL THIS "PENALTY PAYMENT" BE?]]*

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[[QUESTION: ANNUALIZED AMOUNT? OR PRO-RATED AMOUNT PER 7.3?]]

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[*TBD—this is an escalator that would be less than 3% and would be designed to bring Base Rent to the pro forma amount ($500,000 escalated by 3% per year) through year 10 of the lease]

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites
~~March 3, 2008~~ April

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, dated ~~March~~ April __, 2008, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

1. Parties

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC ("Banneker"), together with District Development Group, LLC ("DDG") and Metropolis Development Company LLC ("Metropolis"), will form a limited liability ~~corporation~~ company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or ~~some~~ an other name as determined by Banneker, DDG and Metropolis (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, except for any equity partners that the DEVELOPER needs to provide financing for the Project, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, such consent not to be unreasonably withheld, with the terms of ~~which~~ such consent ~~will~~ to be provided in the Definitive Agreement.

2. Definitive Agreement

The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within five ~~months~~ days of Board Term Sheet approval, will be a ~~Master~~ Development Agreement ("DA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement ~~Term Sheet~~ or the ~~issuance of the~~ start of construction of the Project~~initial building permit to the DEVELOPER for the DEVELOPER Improvements~~.

3. Property to Be Leased by Developer

WMATA will lease to DEVELOPER approximately 28, 892 sf of land area ~~as well as any and all easements, etc.~~ outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31. The Leased Premises shall not include those property

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interests necessary for protection of WMATA's on-site infrastructure. ~~[[COMMENT: WE PRESUME THAT ALL NECESSARY SUBDIVISION HAS/WILL BE COMPLETED BY WMATA.]]~~

4. Project

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47 below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide knowledge-qualified representations customarily ~~for~~ made by WMATA in transactions of this type, ~~customarily acceptable to WMATA,~~ including with respect to ~~but will not warrant~~ title to the Leased Premises and, ~~the~~ environmental history or condition of the property~~, or the fitness of the Leased Premises for any use~~. Subject to the continued accuracy of such representations, and subject further to DEVELOPER'S Study Period rights as provided herein and satisfaction or waiver by DEVELOPER of all conditions precedent herein provided, DEVELOPER ~~the representations customarily acceptable to WMATA, DEVELOPER~~ will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: ~~No later than full execution of the Definitive Agreement,~~ Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right-of-Entry Permit for entry into ~~on~~ the Leased Premises, substantially in the form attached hereto as Exhibit ~~E~~ C. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit (as defined below) and both DEVELOPER and WMATA shall be relieved of any further obligations

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004093

hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00), (the "Security Deposit") to secure DEVELOPER's performance. The Security Deposit will replace the $100,000 Proposal Security.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if DEVELOPER shall be in default under the Definitive Agreement beyond applicable notice, cure and grace periods therein provided. In such event, the Security Deposit may be applied by WMATA in whole or in part to cure such default. No such application of the Security Deposit shall constitute a waiver of any such default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

~~6.4 The Security Deposit may be applied by WMATA in whole or in part to cure or remedy any breach or default by DEVELOPER. No such application of the Security Deposit shall constitute a waiver of any breach or default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.~~

6.~~4~~5 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance (not to be unreasonably withheld, delayed or conditioned) by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

~~6.5 In the event of a "default" by WMATA (such term to be defined in the Definitive Agreement, WMATA shall pay DEVELOPER's actual and reasonable expenses incurred in connection with pursuing the Project and negotiating the Term Sheet and Definitive Agreement.~~

6.6 WMATA shall return the Security Deposit plus interest to DEVELOPER within ~~ten (10)~~twenty (20) business days of its receipt of a copy of the Certificate of

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004094

Occupancy for the Project.

7. Consideration

7.1 Option Fee: DEVELOPER will pay WMATA- $100,000 (the "Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet and written notification to the DEVELOPER by WMATA of such approval. The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation- (as defined in this Section 7) and shall be non-refundable. ~~fully refunded to DEVELOPER should the parties fail to obtain all necessary final signatures to the Definitive Agreement by all parties (including the WMATA Board) within five (5) months after the date of WMATA Board's approval of this Term Sheetnon-refundable. Upon timely final execution and approval of the Definitive Agreement, the Option Fee shall be merged with the Security Deposit and shall be applied towards DEVELOPER's Security Deposit obligation provided in Section 6.1 hereof, such that DEVELOPER shall be required to fund only an additional One Hundred Thousand and No/100 Dollars ($100,000.00) towards the Security Deposit. Upon application of the Option Fee as such, the Option Fee shall be considered and treated, for all purposes, as part of the Security Deposit.~~

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement (but anticipated to mean attainment of 90% occupancy by the Developer, or forty-five (45) ~~twenty-eight (28)~~ months after WMATA Board approval and execution of the Definitive Agreement (the "Ppre-stabilization Period"). Pre-stabilization Rent will be $100,000 per year payable in advance in quarterly instalments of $25,000. ~~Should DEVELOPER not be able to secure approvals from District agencies, quasi-agencies or other reviewing organizations, WMATA shall refund DEVELOPER's Pre-stabilization Rent in full. Should the Project not be stabilized by the end of the Pre-stabilization Period, the Pre-Stabilization Rent shall be increased by 10% per year each year until the Project is stabilized.~~

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a [[penalty payment, the amount of which to be determined in the Definitive Agreement]] ~~*[[QUESTION: HOW MUCH WILL THIS "PENALTY PAYMENT" BE?]]*~~. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly, payable in advance in quarterly instalments of one-quarter of the Initial Base Rent. [[In no event shall the Initial Base Rent (for a full year) be less than Five Hundred ~~and Eighty~~ Thousand and No/100 Dollars ($500,000.00~~580,000.00~~).]] ~~*[COMMENT: TO DISCUSS WITH WMATA*~~

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004095

~~*REGARDING HOW THIS NUMBER WAS DERIVED.]*~~ After the Initial Base Rent payment, Base Rent will be due annually, in quarterly instalments, beginning on the first business day of the calendar year for the remaining term of the Lease- ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent ~~*[[QUESTION: ANNUALIZED AMOUNT? OR PRO-RATED AMOUNT PER 7.3?]]*~~ multiplied by 1.--* for that year (the "Initial Escalation Factor").
[*TBD—this is an escalator that would be less than 3% and would be designed to bring Base Rent to the pro forma amount ($500,000 escalated by 3% per year) through year 10 of the lease]

7.3.2 For the second through tenth years of the Lease, subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of the Lease and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.5 DEVELOPER shall lease the Leased Premises for a period of sixty (60) years (the "Lease Period"). The Definitive Agreement will provide a mechanism by which Developer may request an extension of the Lease Period, subject to completion of a written agreement between the parties and approval, if necessary, by WMATA's Board of Directors. ~~with an option to purchase the Leased Premises beginning from no later than ten years from~~

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004096

~~the end of the Pre-Stabilization Period. This Option shall extend for the remaining term of the Lease Period and a right to exercise such option every five years. The price that DEVELOPER shall pay WMATA to purchase the Leased Premises shall be calculated based upon~~

7.4 Capital Event Participation: Capital Events (defined hereinbelow) shall be permitted in accordance with this Section 7.4. Whenever a ~~C~~capital ~~E~~event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital Event" shall mean ~~events include~~ any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of DEVELOPER's Improvements, ~~and~~ (iii) other dispositions, transfers, and conversions of direct interests in DEVELOPER to new members not originally included as direct members of DEVELOPER as of the date of execution of the Definitive Agreement, and ~~("Capital Event"). Any~~(iv) any transaction, at any level of organization, by which a change of control (meaning a transfer of at least 50.1% of the ownership interests and a transfer of the majority voting and management rights) occurs within a constituent member of DEVELOPER~~that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event~~. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER~~'s Project lender~~. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Capital Event.

The parties agree to define in the Option

7.5 Periodic Rent Revaluation: Upon a Capital Event or ~~no less frequently than~~ every ten years, whichever is— earlier, the Base Rent will be adjusted to 7 % of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Periodic Rent Revaluation.

7.6 WMATA Improvements: intentionally omitted

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within five months following Board Term Sheet Approval (as provided in

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004097

Section 2 above), WMATA will refund DEVELOPER's full ~~Option Fee~~Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER within ~~ten (10)~~ twenty (20) business days.

7.8 ~~7.8~~ WMATA Delays: The maximum length of 45~~38~~28 months for the Pre-stabilization Period will be extended, on a day-for-day basis, for delays ~~beyond the control of DEVELOPER, including delays in~~ caused by WMATA actions or failure to act, including obtaining FTA Approval in accordance with Section 8.5 below and ~~any delays caused by acts of God, terrorism, casualty, or other events of "force majeure" beyond DEVELOPER's ability to control~~caused by WMATA. In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, [[even though DEVELOPER's schedule may take longer than anticipated.]]

7.9 Force Majeure Delays: The maximum length of 45 months for the Pre-stabilization Period will be extended, subject to an increase in the rental payments due in order to maintain the net present value of the Definitive Agreement to WMATA, for any delays caused by acts of God, terrorism, casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement.

7.10 Changes to Project Scope: Changes to Project ~~Scope~~ to increase density may be requested by the Developer, subject to the terms and conditions for such changes in Project Scope as may be required by WMATA in the Definitive Agreement. Such terms and conditions will ~~may~~ require increases in rent or other compensation to WMATA.

~~7.9~~7.11 Additional Density:

7.~~9~~11.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf (subject to true-up of 3% per year from the execution of the Definitive Agreement) of additional density and multiplying the product derived (Project land value) by 7%.

7.~~9~~11.2 During the term of the Lease, any densities or unit totals actually constructed on the ~~approved for~~ DEVELOPER Improvements that are more than those originally shown in the Approved ~~s~~Site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above, with such additional Base Rent ~~only~~ including the incremental increase associated with any actually constructed DEVELOPER Improvements.

8. Conditions to Definitive Agreement Consummation

If each of the ~~foregoing~~ conditions is not satisfied within the timeframes provided above therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004098

Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

~~If each of the foregoing conditions is not satisfied within the timeframes provided above therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement~~

9. Special Considerations

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004099

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area ~~(Advisory Neighborhood Commission 1B, The LeDroit Park Civic Association and Columbia Heights Community Development Corporation),~~ as specified by WMATA, to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable ~~best~~ efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the applicable ~~[name of specific District agency]~~ District agency or agencies a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004100

2007

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS— ~~March 2006~~ Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten~~thirty~~ (~~3~~10) calendar days prior to commencement of construction of the DEVELOPER Improvements.

9.7 Interim Improvements: intentionally omitted

9.8 ~~DELETED.~~Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA ~~Circular 9300.1.A, Appendix B~~notice of Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law, which can be found at 72 FR 5788.

9.10 Transit Operations: ~~DEVELOPER and WMATA will cooperatively develop a construction and operational protocol to ensure, to the extent commercially~~

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004101

~~reasonable, that n~~Neither~~Neither~~ the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to WMATA infrastructure located under the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement, and ~~which requirements shall not be unreasonable. and shall be acceptable to DEVELOPER.~~

12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a ~~Term Sheet and~~ Definitive Agreement with WMATA for a period of five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004102

Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

By:
Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

Title:

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004103

WMATA
12/1/08

JOINT DEVELOPMENT AGREEMENT

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
WMATA

and

~~DEVELOPER~~THE JAZZ @ FLORIDA AVENUE, LLC,
Developer

The Jazz @ Florida Avenue

8th Street and Florida Ave, NW and 9th Street and Florida Ave, NW

Washington, DC

Dated as of ~~October~~ _____, 2008

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

JOINT DEVELOPMENT AGREEMENT

THIS JOINT DEVELOPMENT AGREEMENT ("**Agreement**"), dated this _____ day of ~~October~~_____, 2008 (the "**Effective Date**"), is made by and between the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324, Maryland Acts of General Assembly, Chapter 869-1965, Virginia Acts of Assembly, Chapter 2-1966, and Resolution of D.C. Board of Commissioners adopted November 15, 1966 (hereinafter called "**WMATA**"), and ~~**DEVELOPER**~~**THE JAZZ @ FLORIDA AVENUE, LLC**, a District of Columbia limited liability company (hereinafter collectively, along with permitted successors and assigns, called "**Developer**").

RECITALS

~~R-1.~~ WHEREAS, WMATA holds legal title to certain tracts of land comprising approximately 28,892 square feet of land area (the "**Property**"), located in the District of Columbia, as more particularly described in **Exhibit A** attached hereto and made a part hereof.

~~R-2.~~ WHEREAS, WMATA issued a Joint Development Solicitation on June 26, 2007, pursuant to which Developer was selected by WMATA as the developer for the joint development project at the Property, and on _____, 2008 a term sheet was executed by the Developer and WMATA.

WHEREAS, Developer desires and has agreed to lease from WMATA and WMATA desires and has agreed to lease portions of the Property, which portions are collectively defined below as the "**Lease Premises**" ~~on the terms and conditions set forth herein, (which terms and conditions shall control in the event of any conflict with these Recitals)~~, to the Developer;

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WHEREAS, Developer has agreed to construct the Project on the Lease Premises on the terms and conditions set forth herein (which terms and conditions shall control in the event of any conflict with these recitals).

~~R-3.~~ **NOW, THEREFORE**, in consideration of the agreements, terms, covenants, and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004111

ARTICLE 1
DEFINED TERMS

1.1 Capitalized Terms shall have the meanings set forth in this Article 1.

1.1.1 **"Affiliate"** means with respect to any Person, any other Person directly or indirectly controlling (including but not limited to, all trustees, partners, members, directors and officers of such Person), controlled by or under direct or indirect common control with such Person.

1.1.2 **"Agreement"** means this Joint Development Agreement by and between WMATA and Developer.

1.1.3 **"ALTA"** means the American Land Title Association.

1.1.4 **"Approval Period"** shall have the meaning set forth in Section 7.2.

1.1.5 "**Approvals**" means all variances, special exceptions, special use permits, preliminary plans, site plan approvals, platting or replatting approvals, rezoning approvals, subdivision approvals, Planned Unit Development approvals, building permits, engineering permits, or other similar approvals necessary for the construction and development of the Project on the Lease Premises ~~in conformity with the terms of the Approved Development Plan, but the term "Approvals" shall not include Construction Approvals~~.

1.1.6 **"Approvals Achievement Date"** means the date on which all Approvals ~~and Construction Approvals~~ required for the Project have been obtained. For purposes of this Agreement, the Approvals ~~and Construction Approvals~~ shall be deemed to have been obtained for the development of the Project, at such time as: (i) a site plan and record plat have been finally approved by all governmental or quasi-governmental authorities, whose approval is required for the development of the Project; (ii) a building permit has been issued for the Project; and (iii) all periods for appeal by Persons other than WMATA, Developer and their respective Affiliates have elapsed or such appeals have been waived or are capable of being settled in a manner that would be acceptable to an experienced real estate owner, developer and construction manager in the context of an acquisition, development and construction project comparable to the Project. In the event that the Approvals ~~or Construction Approvals~~ are subject to satisfaction of conditions, the Approvals ~~and Construction Approvals~~ shall be deemed to have been obtained, if such conditions and requirements are commercially reasonable and would be borne and accepted by an experienced real estate owner, developer and construction manager in the context of an acquisition, development and construction project comparable to the Project.

1.1.7 **"Approved Design and Construction Documents"** shall have the meaning set forth in Section 11.5.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004112

1.1.8 **"Approved Development Plan"** shall have the meaning set forth in Section 7.6.3~~7.6.5~~.

1.1.9 **"Business Day"** means any day other than a Saturday or Sunday or Federal holiday or legal holiday in the District of Columbia.

1.1.10 "**Change of Control**" means (a) the sale or transfer, in a single transaction or a series of related or unrelated transactions, of beneficial ownership of either (i) the membership interests in Developer, (ii) the membership interests of the members of the Developer, or (iii) the combined voting power of Developer's outstanding membership interests or securities, as the case may be, entitled to vote generally in the election of managers or directors, as the case may be, (b) the merger or consolidation of Developer with or into any other entity, or (c) any sale, or a series of related sales or conveyances, to any person or entity of all or substantially all of Developer's assets.

1.1.11 **"Closing"** means the consummation of the Lease, and any related transactions contemplated by this Agreement, in accordance with the terms and conditions of this Agreement.

1.1.12 **"Closing Date"** means the date on which date the Closing of the conveyance of the Lease Premises is required to be held under the terms and conditions of this Agreement.

1.1.13 **"Commercially Reasonable Best Efforts"** means the diligent and timely satisfaction of the following standards in the context of the Developer Responsibilities: (i) undertaking all actions (including, without limitation, payment and performance obligations) that would usually and customarily be undertaken or performed by a diligent and experienced real estate tenant, developer and construction manager in performance of the terms of this Agreement and (ii) undertaking such additional commercially reasonable actions as are appropriate in the context of unanticipated or unusual events, circumstances or obstacles to lawfully achieve the Developer Responsibilities.

1.1.14 RESERVED.~~**"Construction Approvals"** means all governmental approvals and permits other than the Approvals required in order to commence and complete the construction of the improvements comprising the Project, including, but not limited to, all required engineering permits and building permits.~~

1.1.15 **"Consultants"** means all agents, consultants, contractors, engineers, surveyors, attorneys and employees retained by Developer for or in connection with the transaction contemplated by this Agreement.

1.1.16 "**Continuing Transit Orientation**" shall have the meaning set forth in Section 13.1.

1.1.17 **"Control"** means the power of a Person, directly or indirectly, to direct or cause the direction of the disposition of property, management and policies of another Person, whether through ownership of voting securities, by contract or otherwise.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004113

1.1.18 **"Covenants, Conditions and Restrictions"** shall mean the covenants, conditions, and restrictions approved by WMATA and recorded in the public land records prior to commencement of any construction. Said covenants, conditions and restrictions shall require and limit construction on and use of the Lease Premises to the uses and improvements specified or to be determined in accordance with this Agreement and reflected in the Approved Development Plan, except only as approved by WMATA in its sole and absolute discretion. The foregoing shall be applicable for so long as WMATA is the owner of any interest in or conducts operations at or from the Property, WMATA's Residual Property or WMATA's Adjacent Property. Such covenants shall also (i) contain provisions for easements for the use and operation of the Metro Facilities; (ii) contain such terms, covenants, conditions and restrictions as shall be reasonably required or requested by WMATA, not inconsistent with the terms of this Agreement, to protect WMATA's interests in and operations at the Property and WMATA's Adjacent Property, including, without limitation, protections, easements, obligations and restrictions for the benefit of WMATA relating to the Metro Facilities (whether or not integrated into improvements to be constructed by Developer) and WMATA's Reserved Areas and Interests and any potential adverse impacts on WMATA's transit operations; (iii) shall reaffirm all covenants and restrictions contained in the Lease; and (iv) shall be consistent with requirements imposed by the District of Columbia and this Agreement. ~~shall have the meaning set forth in Section 11.17~~.

1.1.19 **"Default"** shall have the meaning set forth in Article 18.

1.1.20 **"Deposit"** shall have the meaning set forth in Section 3.1.

1.1.21 **"Design and Construction Documents"** means the complete set of design documents and working drawings and specifications for the work to be designed and constructed under the conditions of this Agreement and the Lease, including all documents to be submitted to the appropriate governmental authorities in order to construct the Project. The Design and Construction Documents shall also include the site plan as well as architectural, structural, electrical, mechanical, sheeting and shoring, excavation and utility drawings associated with the Project.

1.1.22 **"Designated Representative"** shall have the meanings set forth in Section 9.7 and 9.8.2.6.

1.1.23 "**Developer**" shall mean _____, LLC, a limited liability company formed by Banneker Ventures, LLC, a District of Columbia limited liability company, as managing member and _____% owner; the District Development Group, LLC, a District of Columbia limited liability company, as _____% owner; and Metropolis Development Company, LLC, a District of Columbia limited liability company, as _____% owner.

1.1.24 **"Developer Project Representative"** shall have the meaning set forth in Section 7.10.9.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004114

1.1.25 **"Developer's Actual Knowledge"** means the actual (and not the constructive) collective knowledge of Developer. Developer represents, however, that it has knowledge of facts relevant to the matters covered by the representations and warranties of Developer set forth in this Agreement and to whom facts and information relevant to the matters covered by such representations and warranties would be reported in the ordinary course of business.

1.1.26 **RESERVED.** ~~**"Development Covenants"** means the covenants to be recorded against the Lease Premises at or prior to the Effective Date of the Lease, applicable thereto, requiring and limiting construction on and use of such parcels to the uses and improvements specified or to be determined in accordance with this Agreement and reflected in the Approved Development Plan, except only as approved by WMATA in its sole and absolute discretion. The foregoing shall be applicable for so long as WMATA is the owner of any interest in or conducts operations at or from the Property, WMATA's Residual Property or WMATA's Adjacent Property. Such covenants shall contain provisions for easements for the use and operation of the Metro Facilities.~~

1.1.27 **"Development Plan Approval Date"** shall have the meaning set forth in Section 7.6.3~~7.6.5~~.

1.1.28 **"Development Plan Submission Deadline"** shall have the meaning set forth in Section 7.6.1~~7.6.3~~.

1.1.29 **"Developer Responsibilities"** means and includes any and all: requirements, endeavors, objectives, conditions that are required or reasonably contemplated under the terms of this Agreement (and steps relating to any and all of the foregoing, including, without limitation, filing applications; making appearances; providing information, documents, studies and other materials; satisfying all requirements of applicable governmental authorities and those exactions that would reasonably be satisfied by a diligent and experienced real estate tenant, developer and construction manager in the context of a lease, development and construction project similar to the Project; procuring and maintaining competent professional support, oversight and management, and timely making payments).

1.1.30 **"Environmental Laws"** means any and all environmental or health and safety-related laws, regulations, rules, ordinances, orders or determination of any governmental or judicial authority at the federal, state, or local level, to the extent applicable to WMATA, Developer or the Property, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act.

1.1.31 **"Existing Improvements"** means all improvements existing on the Property as of the Effective Date**, as depicted in Exhibit** _____.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004115

1.1.32 **"FAR"** means a ratio, the numerator of which is the Gross Floor Area of all buildings on a lot expressed in square footage and the denominator of which is the gross area of that lot expressed in square footage.

1.1.33 **"FAR Square Feet"** means the maximum Gross Floor Area permitted to be developed consistent with maximum FAR limits within an applicable zoning classification or pursuant to an applicable Approval, waiver, variance or the like.

1.1.34 **"Final Completion"** means the proper and full completion of the entire Project, including, but not limited to, satisfactory operation of all equipment and systems, completion or correction of all punch list items, issuance of all required approvals and certificates by any governmental or quasi-governmental authorities with jurisdiction over the Project (including final and unconditional certificates of occupancy), removal of all rubbish, tools, scaffolding and surplus materials from the Project site, and correction of all property damage that is the responsibility of the Developer to WMATA pursuant to the Approved Design and Construction Documents. If for any reason WMATA and the Developer cannot, in good faith, agree on whether the Project has achieved Final Completion, then the matter shall be handled pursuant to the dispute resolution method set forth in Article 21 below.

1.1.35 **"Final Completion Date"** means the date established in **Exhibit** _____ for Final Completion of the entire Project as the same may be extended pursuant to the express terms and provisions of this Agreement or the Lease.

1.1.36 **"Financing Contingency Cut Off Date"** shall have the meaning set forth in Section 6.2.2.

1.1.37 **"Force Majeure"** means any of the following occurrences that do not, in whole or in part, arise out of a Default of Developer and could not reasonably have been anticipated or mitigated and are not related to financial incapacity or related delays of Developer: a strike, civil riot, war, invasion, fire or other casualty, unavailability of labor or materials, adverse weather conditions, which occurrences delay or prevent performance by Developer of a post-Closing construction obligation hereunder. In the event of a Force Majeure, the Person affected thereby shall be entitled to an increase in the time for performance equal to the number of days, or portions thereof, that completion of the activity beyond the dates established in this Agreement is actually delayed by such Force Majeure. Force Majeure shall not include delays due to government activity, inactivity, failure to timely respond, or omission.

1.1.38 **"FTA"** means the Federal Transit Administration of the United States Department of Transportation.

1.1.39 **"FTA Project Approval"** shall have the meaning set forth in Section 13.2.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004116

1.1.40 **"Gross Floor Area"** means the sum expressed in square feet of the gross horizontal areas of the several floors of all buildings on a lot, measured from the exterior faces of exterior walls and from the center lines of walls separating two buildings, including, but only to the extent included in the calculation of FAR under applicable Laws, basements, elevator shafts and stairwells, penthouses, attic space, interior balconies and mezzanines, cellars and outside balconies.

1.1.41 **"Guarantor"** means _____, having a principal address at ___ _____. The value of Guarantor's net worth must be greater than three times the value of the Project.

1.1.42 **"Guaranty"** means those certain Guaranties, in the form attached as **Exhibit** ___, that shall be executed and delivered by Guarantors (in addition to the Payment and Performance Bond(s)) in accordance with Section 11.18.

1.1.43 **"Hazardous Materials"** means any and all substances, materials or wastes that are or become regulated by any local governmental authority, any state having jurisdiction over the Property or the United States Government or otherwise pose a material threat to human health, safety or the environment. Without limiting the generality of the foregoing, the term "Hazardous Materials" includes, without limitation, any and all materials, substances and wastes that are: (a) defined as a "hazardous waste", "hazardous material", "hazardous substance", "extremely hazardous waste" or "restricted hazardous waste" under any provision of local, state or federal law, or (b) petroleum, or (c) asbestos, or (d) polychlorinated biphenyls, or (e) radioactive materials, or (f) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), or (g) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, (42 U.S.C. § 6903), or (h) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601).

1.1.44 **"Institutional Lender"** means any of the following Persons, that is not an Affiliate of Developer or Guarantor, provided, that such entity has assets equal to at least U.S. $500,000,000: (i) any bank, savings institution, trust company or national banking association, or any wholly-owned subsidiary of any thereof, acting for its own account or in a fiduciary capacity, (ii) any charitable foundation, (iii) any insurance company, (iv) any pension, retirement or profit sharing trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisers Act of 1940, as amended, is acting as trustee or agent, (v) any investment company, as defined in the Investment Company Act of 1940, as amended, (vi) any college or university, (vii) any government, any public employees, pension or retirement system any other governmental agency supervising the investment of public funds or (viii) any Real Estate Investment Trust ("REIT").

1.1.45 **"Insurance ~~Obligors~~Obligor"** shall have the meaning set forth in Section 12.1.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004117

1.1.46 **"Interest Holders"** shall have the meaning set forth in Section 6.5.1.

1.1.47 **"Land"** means all of those certain tracts of land comprising approximately twenty eight thousand eight hundred ninety-two (28,892) square feet located in the District of Columbia, more particularly described in Exhibit A attached hereto and made a part hereof and all rights, privileges and appurtenances pertaining thereto.

1.1.48 **"Laws"** means any federal, state or local constitutions, statutes, codes, ordinances, regulations, judicial or administrative requirements, rules, orders, judgments, decrees, injunctions, decisions or other rules of law.

1.1.49 "**Lease**" shall mean the lease attached hereto as Exhibit _____.

1.1.50 **"Lease Premises"** means a portion of the Property, less and except WMATA's Reserved Areas and Interests, depicted and more fully described in **Exhibit** _____ as the "Lease Premises" (including all benefits and appurtenances thereto that are included with the meaning of the term "Property" as used herein), that shall be conveyed by WMATA to Developer subject to and in accordance with the terms of the Lease.

1.1.51 **"Lease Premises Financing"** shall have the meaning set forth in Section 6.1.

1.1.52 ~~**"Letter of Credit"** means a letter of credit in the form attached as an exhibit to the form of Guaranty, attached hereto, fully meeting all of the requirements of such Guaranty.~~

1.1.53 **"Loan Covenants"** shall have the meaning set forth in Section 6.5.

1.1.54 **"Metro Facilities"** means all improvements, structures, infrastructure components, tangible property and areas required in the reasonable judgment of WMATA, for the use, operation, access, maintenance, repair, servicing, replacement or removal of any and all of the following: structures and supports, any and all access, parking, operation and service facilities and areas relating to WMATA's operations or activities, including, without limitation, rail stations (including, without limitation, the Metro Station), tunnels, rails, tracks, bus stations, bus transfer areas, supervisor kiosks, employee bathrooms, electric substations, conduits and lines, pedestrian traffic, waiting and shelter areas, facilities serving persons with disabilities, cooling towers, chiller plants, vent and fan shafts, bicycle rack and locker areas, and all other associated facilities notwithstanding that the foregoing may have been constructed by or at the expense of Developer.

1.1.55 **"Metro Station"** means the Shaw-Howard U rail transit station of WMATA.

1.1.56 **"Minimum Project Completion Milestone Requirements"** means the requirements set forth in **Exhibit** _____.

1.1.57 **"Notice"** shall have the meaning set forth in Section 22.5.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004118

1.1.58 **"Partial Taking"** shall have the meaning set forth in Section 20.2.4.

1.1.59 **"Payment and Performance Bond"** means the completion, payment and performance bonds required to be provided for the benefit of WMATA in connection with development of and construction of the Project as contemplated by this Agreement, the Lease, and the Approved Development Plan. The applicable Payment and Performance Bond shall be released by WMATA upon Final Completion of the Project.

1.1.60 **"Permitted Exceptions"** means those exceptions or conditions permitted to encumber the title to the Property in accordance with the provisions of Article 5.

1.1.61 **"Person"** means any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association or any other legal entity, or any federal, state, county or municipal government, or any bureau, department or agency thereof, and any fiduciary acting in such capacity on behalf of any of the foregoing.

1.1.62 **"Project"** means a mixed use development project consisting of a minimum of 130,014 FAR gross square feet, including not less than 104 dwelling units, approximately 11,750 gross square feet of retail/arts use, plus associated residential and retail parking, estimated at 47 below-grade spaces to be built in a single phase on the Lease Premises.

1.1.63 ~~**"Project Concept Plan"** means a preliminary plan sheet consistent with the requirements set forth in Sections 7.6 and any additional development requirements set forth in **Exhibit** _____, if any, depicting the conceptual program for the improvements and infrastructure to be constructed in accordance with the Approved Development Plan and this Agreement including their locations, uses and densities.~~

1.1.64 **"Project Schedule"** shall have the meaning set forth in Section 11.8.

1.1.65 **"Property"** means the Land and all rights of WMATA relating to the Land, including without limitation, any right, title and interest of WMATA, if any, in and to (i) any strips and gores adjacent to the Land and any land lying in the bed of any street, road, or avenue opened or proposed, in front of or adjoining the Land, to the center line thereof; and (ii) all of the easements, rights, privileges, and appurtenances belonging or in any way appertaining to the Property.

1.1.66 **"Proposed Development Plan"** shall have the meaning set forth in Section 7.6.1~~7.6.3~~.

1.1.67 **"Proration Period"** shall have the meaning set forth in Section 8.1.6.

1.1.68 **"Qualified Team"** shall have the meaning set forth in Section 2.6.2.

1.1.69 **"ROE"** shall have the meaning set forth in Section 4.1.

1.1.70 **"Stabilization"** shall be achieved upon 90% occupancy of the Project.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004119

1.1.71 **"Study Period"** shall have the meaning set forth in Section 4.1.

1.1.72 **"Study Period Termination Notice"** shall have the meaning set forth in Section 4.2.

1.1.73 **"Submission"** shall have the meaning set forth in Section 7.10.1.

1.1.74 **"Submission Correction Deadline"** shall have the meaning set forth in Section 7.10.5.

1.1.75 **"Substantial Completion"** means for the Lease Premises, the last to occur of both (1) the date Developer procures all certificates, permits, approvals and consents with respect to the Project, required under applicable law for the occupancy and use of the Project and (2) the date when the Project is sufficiently complete in accordance with the Approved Design and Construction Documents to allow complete occupancy and utilization of such Project, for its indicated purpose. Developer shall deliver to WMATA copies of all certificates, permits, approvals and consents promptly after its receipt of the same.

1.1.76 **"Taking"** means the act of condemnation, exercise of power of eminent domain or sale in lieu thereof and includes a Partial Taking and a Total Taking, but shall not include any exactions, dedications, fees, use restrictions and the like associated with the Approvals or any grants, concessions, transfers or undertakings for public purposes that may be necessary for the development of the Property and required by the Approvals.

1.1.77 **"Title Commitment"** shall mean a commitment for leasehold title insurance for the Lease Premises ("Title Commitment"), procured by the Developer, issued by Title Insurer on the most recent standard American Land Title Association ("ALTA") Policy form, together with legible copies of all instruments identified as exceptions, and attached hereto as Exhibit _____.

1.1.78 **"Title Insurer"** means a national title insurance company licensed to do business in the jurisdiction in which the Property is located.

1.1.79 **"Total Taking"** shall have the meaning set forth in Section 20.1.

1.1.80 **"Transaction Documents"** means this Agreement, the Lease, any and all separate right of entry agreements, ~~the Development Covenants,~~ the Covenants, Conditions and Restrictions, the Guaranty and the Payment and Performance Bonds.

1.1.81 **"Transit-Oriented Development"** shall have the meaning set forth in Section 13.1.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004120

1.1.82 **"WMATA"** means the Washington Metropolitan Area Transit Authority, a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of D.C. Board of Commissioners adopted November 15, 1966, having a principal business address at 600 Fifth Street, NW, Washington, DC 20001. In connection with provisions requiring indemnification of WMATA or providing for the exculpation of WMATA, such term shall also include WMATA's officers, directors, employees, contractors, attorneys, consultants, representatives, agents, successors, assigns, predecessors-in-interest and successors-in-interest.

1.1.83 **"WMATA Adjacent Construction Manual"** means WMATA's Adjacent Construction Design Manual, Revision 2, dated April 2006, as amended or revised from time to time.

1.1.84 **"WMATA Adjacent Property"** means any real estate owned by WMATA that is adjacent to the Property, but not including WMATA's Reserved Areas and Interests, or WMATA's Residual Property.

1.1.85 **"WMATA Information"** shall have the meaning set forth in Section 9.3.

1.1.86 **"WMATA Project Representative"** shall have the meaning set forth in Section 7.10.9.

1.1.87 **"WMATA's Reserved Areas and Interests"** means and includes all Land areas and improvements of or within the Property required in the judgment of WMATA reasonably exercised for the exclusive use, operation, access, maintenance, repair, servicing, replacement or removal of any Metro Facilities that are reasonably capable of being segregated from other Land areas and improvements of or within the Property, including, without limitation, the Metro Station, all other Metro Facilities that are not integrated into improvements to be constructed by Developer, those additional areas designated as "WMATA's Reserved Areas and Interests" in **Exhibit** _____ and those additional areas that are or may be designated as "WMATA's Reserved Areas and Interests" in the Approved Development Plan.

1.1.88 **"WMATA's Residual Property"** means and includes both any portion of the Property owned by WMATA that has not been leased to Developer and any portion of the Property owned by WMATA that is not to be leased by Developer.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004121

1.1.89 **"WMATA's Unconditional Approval Matters"** means any and all matters that in the sole and unreviewable judgment of WMATA (such standard to apply in all circumstances without expressly so stating in an applicable context) would have an adverse impact on any or all of the following: (i) ~~the schedule for performance of Developer's obligations as set forth in this Agreement, (ii) the scope of Developer's obligations set forth in this Agreement (iii)~~ the functionality, efficiency, safety, operation, maintenance, legal compliance, cost or profitability of WMATA's business, operations or activities, (~~iv~~ii) WMATA's transit customers, (~~v~~iii) ~~any of the Existing Improvements, if any, contemplated to remain and not to be demolished, rebuilt or relocated by the terms of this Agreement, (vi)~~ the Metro Station, (~~viii~~iv) the Metro Facilities, (~~viii~~) WMATA's Reserved Areas and Interests, (~~ix~~vi) WMATA's Residual Property, (~~x~~vii) WMATA's Adjacent Property, (~~xi~~viii) ingress or egress relating to any of the foregoing.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004122

ARTICLE 2
LEASE AND DEVELOPMENT OF THE PROJECT

2.1 **Fundamental Agreement.** WMATA agrees to lease the Lease Premises to the Developer, and the Developer agrees to lease from WMATA and develop the Lease Premises, in accordance with the terms and conditions of this Agreement, by way of a ground lease ~~and construction agreement~~ (the "**Lease**"), incorporated herein and made a part hereof, a copy of which is attached hereto as Exhibit _____. Such ~~lease~~ Lease and any and all development and construction rights granted under this Agreement shall be subject to any and all easements and other reserved rights reasonably required by WMATA in connection with its use, operation, access, maintenance, repair, servicing, replacement or removal of any Metro Facilities or with WMATA's operations and business generally. The scope and locations of such easements and rights are to be established in accordance with the terms and conditions of this Agreement and the Lease and shall include, without limitation, easements and reserved rights (whether at, above or below ground level) for (i) the construction, operation, maintenance, repair, replacement, removal or relocation of any and all existing tunnels and related facilities, (ii) all Metro Facilities which have piling structural support within the Property, (iii) any and all service facilities serving such tunnels or any Metro Facilities, (iv) underground power lines, (v) horizontal and vertical support for all Metro Facilities in, on and about the Property, including, without limitation, structures, equipment or installations such as foundations, beams, columns, bracing and similar structural features which maintain vertical and horizontal support and are necessary for the maintenance, operation and protection of any and all Metro Facilities and (vi) protections and approval rights satisfactory to WMATA in its sole discretion with respect to limits on loads and pressures which may impact or affect Metro Facilities, whether vertical or lateral.

2.2 **Project**. Developer will construct improvements on the Lease Premises (the "**Project**") in the configuration shown in **Exhibit** _____. The Project will consist of:

2.2.1 The Developer improvements (the "**Developer Improvements**") shall be a minimum 130,014 FAR gross square feet, including not less than 104 dwelling units, approximately 11,750 gross square feet of retail/arts use, plus associated residential and retail parking, estimated at 47 below-grade spaces, per District of Columbia approvals. The Developer Improvements will be built in a single phase on the Lease Premises.

2.2.2 No improvements will be constructed on the Lease Premises other than the Developer Improvements, unless approved in advance in writing by WMATA.

2.3 **Pre-Development Period; Pre-Stabilization Period.**

2.3.1 The Pre-Development Period shall commence upon the effective date and continue up to Closing, as defined herein (the "**Pre-Development Period**"). The Pre-

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004123

Development Period shall entail the Project's design, government approval, Project financing; and the achievement of all requirements for Closing, as defined herein.

2.3.2 The Pre-Stabilization Period shall commence upon the Effective Date and shall terminate upon the earlier of Stabilization or 45 months from the Effective Date (the "**Pre-Stabilization Period**").

2.4 **Ratification and Confirmation of WMATA's Retained Rights.** WMATA's fee simple interest in the Lease Premises shall be and always remain unsubordinated. On the expiration or termination of the Lease (by lapse of time or otherwise), sole ownership of the Lease Premises subject to such Lease, and the right to possess and use the same, shall automatically pass to and be vested in WMATA. Likewise, Developer's, or any tenant's, ownership in improvements on the Lease Premises (including, but not limited to, Developer Improvements) that is the subject of the Lease shall also automatically terminate, and WMATA shall thereafter be the sole owner of such improvements.

2.5 **Conditions of Demise and of Leasehold Title.** This Agreement does not create a present leasehold estate in Developer in the Lease Premises. The Developer's leasehold estate in the Lease Premises shall be created upon execution of the Lease.

2.6 **Material Inducements.** The Agreement of WMATA to lease the Lease Premises to Developer is based on the following material agreements and inducements, each of which are acknowledged by Developer:

2.6.1 This Agreement shall be deemed to be in the nature of a personal services contract and Developer acknowledges that WMATA has entered into this Agreement on the basis of its trust and special confidence in Banneker Ventures, LLC, a District of Columbia limited liability company; the District Development Group, LLC, a District of Columbia limited liability company; and Metropolis Development Company, LLC, a District of Columbia limited liability company. Developer represents, warrants and covenants that Banneker Ventures, LLC, the District Development Group, LLC, and Metropolis Development Company, LLC have, and shall continue to maintain until satisfaction of all obligations under this Agreement, primary and substantial involvement in the Project and performance of the obligations under this Agreement, including, without limitation, selection and maintenance of a Qualified Team, as provided below. Further, Developer represents, warrants and covenants that until all obligations of Developer under this Agreement are fully satisfied, Developer shall be under the Control of Banneker Ventures, LLC, the District Development Group, LLC, and Metropolis Development Company, LLC.

2.6.2 Developer represents, warrants and covenants that it has or shall obtain when needed, required or contemplated by this Agreement and thereafter shall continue to maintain until satisfaction of all obligations under this Agreement a team of, as applicable, officers, directors, partners, members, employees and contractors who, specifically and in the aggregate, clearly have the skills, experience, knowledge, and reputation requisite to perform and accomplish the intended objectives of this Agreement (each

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004124

such team a "**Qualified Team**"). In order to achieve and maintain the status of a "Qualified Team," such Qualified Team shall have, without limitation, extensive skills, experience and knowledge and a generally recognized reputation specifically relating to development of the type, scope and complexity contemplated by this Agreement.

2.6.3 Developer represents, warrants and covenants that it has and shall have the capacity and experience to satisfy and shall satisfy the Minimum Project Completion Milestone Requirements.

2.6.4 The above inducements and agreements are confirmed herein as material obligations of Developer and made a part of this Agreement.

2.7 **WMATA's Operations Prior to Closing.** WMATA shall have at all times prior to the Closing the ~~unrestricted~~ right, but not the obligation to perform any work desired by WMATA on the Property determined by WMATA in its sole discretion to be necessary for the maintenance and operation of its transit system and related facilities.

2.7.1 WMATA shall have at all times the ~~unrestricted~~ right, but not the obligation, to perform any work desired by WMATA on the Property, including without limitation any environmental testing; studies, evaluations or remediation in, on or about the Property. Except in the case of an emergency, WMATA shall provide 24-hours prior notice to Developer and shall not unreasonably interfere with the Developer's timely construction of the Project or limit Developer's ability to fulfill its development obligations in accordance with this Agreement. Emergencies shall include, but not be limited to, all issues relating to WMATA transit operations.

2.7.2 WMATA shall have at all times the ~~unrestricted~~ right to enter into new agreements or maintain existing agreements affecting the Property, which such agreements shall be terminated by WMATA prior to Closing and shall not unreasonably interfere with Developer's timely construction of the Project or limit Developer's ability to fulfill its development obligations in accordance with this Agreement.

2.7.3 In no event shall WMATA be required (a) to pay or contribute to the cost of any work performed by or at the order of Developer, or (b) to consent to any work on or about the Property by any party (except to the extent necessary for compliance by Developer with the provisions of this Agreement), or (c) to reconfigure the Property or (d) alter its operations on the Property except in accordance with the express terms of this Agreement.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004125

ARTICLE 3
DEPOSIT AND PRE-STABILIZATION PERIOD PAYMENTS

3.1 **Deposit.** Within two (2) Business Days of the Effective Date, Developer shall deliver a cash security deposit to WMATA, in the amount of Two Hundred Fifty Thousand Dollars ($250,000), to secure the Developer's performance hereunder ("**Deposit**").

3.1.1 The Deposit may be applied by WMATA in whole or in part to cure or remedy any breach or Default by Developer under this Agreement which has not been cured by Developer after theexpiration of the applicable notice and cure period. No application of the Deposit to cure any breach or Default by Developer shall constitute a waiver of any breach or Default by Developer or an election of remedies. Within ten (10) Days of receiving written notice that WMATA has so applied the Deposit, in whole or in part as described herein, Developer shall deliver to WMATA, in immediately available funds, the amount necessary to return the Deposit to its original amount.

3.1.2 The Deposit, less any amounts previously applied pursuant to Section 3.1.1 and not replenished by Developer, shall be refunded to Developer upon WMATA's receipt of a copy of the certificate of occupancy for the Project.

3.1.3 The Deposit shall not be applied to any payments due hereunder nor to any amounts due at Closing. However, the entire Deposit shall be forfeited and may be retained by WMATA as liquidated damages pursuant to the terms and conditions of Article 18 below, if either Closing does not occur for any reason other than WMATA's default or non-satisfaction of a condition precedent to Developer's obligations set forth in Article 10.

3.1.4 WMATA may invest the Deposit in such short-term, high-grade securities, interest-bearing bank accounts, money market funds or accounts, bank certificates of deposit or bank repurchase agreements as WMATA, in its discretion, deems suitable, and all interest and income thereon shall become part of the Deposit and shall be remitted to the party entitled to the Deposit, as set forth herein. Notwithstanding anything to the contrary, WMATA shall not be liable for any failure to so invest or for any failure to realize any minimum amount of interest or income thereon.

3.1.5 Notwithstanding any provision in this Agreement requiring a refund of the Deposit to Developer, (i) WMATA shall be entitled to retain and apply all or any portion of the Deposit to satisfy any accrued liabilities under Section 17.3 of this Agreement, but such application shall not be deemed to satisfy or extinguish Developer's liability under this Agreement or any of the Transaction Documents and shall not be deemed a cure or waiver of any Default by Developer or an election of remedies and (ii) WMATA shall not be required to refund the Deposit or any portion thereof until and unless the Developer's obligations under this Agreement have been fully and finally satisfied ~~and~~ or terminated. In addition, notwithstanding anything to the contrary, for purposes of determining and applying the liquidated damages provisions of this

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004126

Agreement, if WMATA retains or applies all or any portion of the Deposit to satisfy any accrued liabilities under Section 17.3 of this Agreement, payment to WMATA of the remaining balance of the Deposit shall not be deemed to satisfy the liquidated damages provisions of this Agreement and Developer shall be required to satisfy and pay over the full amount of liquidated damages to WMATA.

3.1.6 Upon receipt of the Deposit, WMATA shall ~~return~~ notify Bank of America, NA that it is to return the proposal security deposit currently being held by Bank of America, NA, in the amount of $100,000.00, to the Developer ~~the proposal security deposit, in the amount of $100,000.00, currently being held by WMATA~~.

3.2 **Pre-Stabilization Period Payments.** Pre-Stabilization payments shall begin upon the Effective Date, as consideration for WMATA granting the Developer the exclusive right to develop the Lease Premises pursuant to this Agreement (the "**Pre-Stabilization Period Payments**"). All Pre-Stabilization Period Payments shall be paid in immediately available funds and shall be non-refundable.

3.2.1 **First Pre-Stabilization Payment Period.** Pre-Stabilization Period Payments from the Effective Date through the Fifteenth month after the Effective Date (the "**First Pre-Stabilization Payment Period**") shall be due in the annual amount of One Hundred Thousand Dollars ($100,000.00). The Developer shall pay the first Pre-Stabilization Period Payments to WMATA on or before the Effective Date. Payments shall be paid in equal quarterly installments.

3.2.2 **Second Pre-Stabilization Payment Period.** Beginning the Sixteenth month and continuing through the Twenty-seventh (27th) month after the Effective Date (the "**Second Pre-Stabilization Payment Period**"), Pre-Stabilization Period Payments shall be due in the annual amount of One Hundred Fifteen Thousand Dollars ($115,000.00). Payments shall be paid in equal quarterly installments.

3.2.3 **Third Pre-Stabilization Payment Period.** Beginning the Twenty-eighth (28th) month after the Effective Date and continuing through the end of the Pre-Stabilization Period (the "**Third Pre-Stabilization Payment Period**"), Pre-Stabilization Period Payments shall be due in the annual amount of One Hundred Thirty Thousand Dollars ($130,000.00). Payments shall be paid in equal quarterly installments.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004127

ARTICLE 4
RIGHT OF ENTRY; DUE DILIGENCE AND STUDY PERIOD

4.1 **Right of Entry; Duration and Scope.** Prior to the execution of the Lease, Developer shall only enter and conduct activities in, on or about the Property subject to the terms of an express written Right of Entry. WMATA and Developer entered into a Right of Entry agreement, dated _____ (the "**ROE**"), a copy of which is attached hereto as Exhibit ____. Pursuant to the terms of said ROE, Developer and certain of its agents and consultants (collectively, "**Consultants**") were granted a license, for a period prescribed in the ROE (the "**Study Period**"), to enter onto the Lease Premises to conduct certain studies, tests, examinations, analyses, inspections or investigations concerning the Lease Premises (collectively, "**Lease Premises Due Diligence**").

4.2 **Notice of Termination.** Should the results of the Lease Premises Due Diligence appear unsatisfactory to Developer for any reason as determined by Developer in its sole discretion, Developer shall have the right to terminate this Agreement by giving Notice to that effect to WMATA on or before 5:00 p.m. Eastern Time on the date of expiration of the Study Period (the "**Study Period Termination Notice**").

4.2.1 If Developer timely and in strict accordance with the Notice provisions of this Agreement exercises such right to terminate, this Agreement shall terminate and be of no further force and effect, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement.

4.2.2 Upon termination of this Agreement in accordance with the above provisions, WMATA shall promptly return the unapplied portion of the Deposit to Developer, subject to the terms of Article 3.

4.3 **Failure to Give Notice of Termination.** If Developer fails to provide WMATA with proper and timely Notice of termination prior to the expiration of the Study Period in strict accordance with the Notice provisions of this Agreement, Developer shall be deemed to have approved the results of the Lease Premises Due Diligence and this Agreement shall remain in full force and effect.

4.4 **Effect of Approval.** Developer's approval of the condition of the Lease Premises or portions thereof, as applicable, shall be final and binding on Developer.

4.5 **No Mechanic's or Materialman's Liens.** Developer shall not permit any mechanic's or materialman's liens or any other liens to attach to the Property by reason of the performance of any work or the purchase of any materials by Developer or any other Person related to or engaged by or on behalf of Developer, including, without limitation, connection with any studies, entries, surveys, tests, investigations, or any construction or non-construction activities actually or allegedly conducted by or for Developer. This Section 4.5 shall apply without limitation to matters arising and activities that are conducted during and after the expiration of any ROE and any such liens that may attach

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to the Property following Closing. Should any such lien attach, Developer shall cause the same to be removed of record or bonded off within ~~ten~~ twenty (~~10~~20) days following the date of such attachment. If Developer fails to cause the same to be removed of record or bonded off within ~~ten~~ twenty (~~10~~20) days following the date of such attachment, WMATA may, but shall not be obligated to, do so at Developer's cost and expense and Developer shall pay or reimburse WMATA for the full amount thereof plus interest on demand. Nothing in this Section 4.5 shall be construed as conferring on Developer or any other Person any right to conduct construction or non-construction activities on the Property.

4.6 **Confidentiality.** All information made available by WMATA to Developer in accordance with this Agreement or obtained by Developer in the course of its investigations (other than information that is already in the public domain) shall be treated as confidential information by Developer, and, prior to the lease of the Lease Premises by Developer, Developer shall use its best efforts to prevent its Consultants from divulging such information, except as may be required to comply with Laws, to any unrelated third parties, except as reasonably necessary, to third parties engaged by Developer for the limited purpose of analyzing and investigating such information for the purpose of consummating the transaction contemplated by this Agreement, including Developer's attorneys and representatives, prospective lenders and engineers.

4.7 **No Liability of WMATA.** WMATA shall not be required to incur any liability, cost or expense or, except as provided in Section 7.5 (As-Built Drawings) hereof, to provide any information, data, reports, studies or the like in connection with Developer's activities under this Article 4 or the ROE. Developer acknowledges and agrees that except as expressly set forth herein, WMATA shall have no duties, responsibilities or liabilities whatsoever in connection with the activities of the Developer to be conducted on or about the Lease Premises or the determinations to be made by Developer with respect thereto.

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ARTICLE 5
TITLE

5.1 **Title**. Developer hereby unconditionally approves the legal description of the Property and accepts the state of WMATA's title thereto as of the Effective Date, which such title shall be subject, however, in each case to: (i) the exceptions, reservations and conditions of this Agreement and the Lease; (ii) the Zoning Ordinance; (iii) all applicable Laws and governmental rules and regulations; (iv) those items listed as exceptions to title in the Title Commitment (the "**Permitted Exceptions**"); and (v) the Covenants, Conditions, and Restrictions; and (vi) encumbrances arising out of the actions or inactions of Developer or any person or entity acting on Developer's behalf.

ARTICLE 6
FINANCING

6.1 **Obligation to Diligently Pursue Financing.** Developer shall obtain the funds required for the consummation of the lease and development of the Lease Premises by the Closing Date in conformity with the terms hereof (the "**Lease Premises Financing**") including, without limitation, timely and expeditiously pursuing all steps necessary in respect thereto.

6.2 **Developer's Financing Contingency.** Developer's obligation to consummate Closing is conditioned on the availability of a commitment for financing, subject to the terms and conditions set forth below.

6.2.1 Developer shall have complied with the requirements of Section 6.1.

6.2.2 If despite compliance by Developer with the requirements of Section 6.1, Developer is not able to secure on or before the thirtieth (30th) day preceding the Closing Date for the Lease Premises (the "**Financing Contingency Cut Off Date**") a written commitment from an Institutional Lender for Lease Premises Financing, Developer shall give Notice to WMATA (the "**Financing Termination Notice**") on or before 5:00 p.m. Eastern Time on the applicable Financing Contingency Cut Off Date and shall state in such Financing Termination Notice whether Developer is terminating this Agreement on such basis.

6.2.3 Such Financing Termination Notice shall state with reasonable specificity the bases for Developer's inability to obtain a written commitment from an Institutional Lender for the Lease Premises Financing.

6.2.4 Any exercise of Developer's financing contingency shall be reasonably based on market conditions and not on failure or refusal on the part of Developer to accept or perform commercially reasonable terms or requirements which failure or refusal would frustrate or materially impair consummation of the Closing, which Developer otherwise is required to consummate under the terms of this Agreement.

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6.3 **WMATA's Termination Right.** WMATA shall have the right, but not the obligation, to terminate this Agreement, if:

6.3.1 Developer fails to satisfy the requirements of Section 6.1 on or before the Financing Contingency Cut Off Date; or

6.3.2 Developer is not able to secure on or before the Financing Contingency Cut Off Date a written commitment from an Institutional Lender for a loan or investment of funds necessary to obtain the funds required for consummation of the Closing by the applicable Closing Date.

6.3.3 Nothing in this Article 6.3 shall constitute a waiver by WMATA of any Default, an election of remedies of WMATA or shall impair any remedies otherwise available to WMATA under this Agreement or applicable law.

6.4 **Subordinate.** Each mortgage, deed of trust, lien and other security agreement, assignment of collateral and similar instrument encumbering the Lease Premises or the Project shall be subject and subordinate to the Covenants, Conditions and Restrictions. No mortgage, deed of trust, lien and other security agreement, assignment of collateral and similar instrument encumbering the Lease Premises or the Project shall encumber any portion of WMATA's Reserved Areas and Interests.

6.5 **Loan Requirements.** Developer and Guarantor shall use Commercially Reasonable Best Efforts to cause each lender of Developer and Guarantor for any of the Lease Premises Financing and the holders of and beneficiaries and Developer and Guarantor shall undertake Commercially Reasonable Best Efforts to cause to be satisfied each of the following requirements (the "**Loan Covenants**").

6.5.1 Each lender of Developer and Guarantor with respect to either or both of the Lease Premises or the Project and the holders of and beneficiaries and secured parties (collectively "**Interest Holders**") under each mortgage, deed of trust, security agreement or similar agreement or instrument encumbering the Lease Premises or the Project shall provide written covenants and agree to WMATA's requirements as set forth in this Article 6.

6.5.2 In the event of their exercise of remedies under any loan or security documents, including, without limitation, a foreclosure of any interest of the Developer in the Lease Premises or Project, or any deed, assignment or other transfer of title in lieu thereof, payment of the proceeds of each of the Payment Bonds and Performance Bonds securing any and all of such Interest Holders shall be applied solely to costs and expenses for Final Completion of the Project in accordance with the Approved Development Plan and not to any indebtedness or other obligations that may otherwise be secured by such Payment Bond and Performance Bond until such Final Completion is achieved; and

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6.5.3 The proceeds of insurance under each mortgage, deed of trust, lien and other security agreement, assignment of collateral and similar instrument encumbering the Project for the benefit of any such Interest Holders shall be applied solely to costs and expenses for Final Completion of the Project in accordance with the Approved Development Plan and not to any indebtedness or other obligations that may otherwise be secured thereby until such Final Completion is achieved; and

6.5.4 The proceeds of each guarantee from a Guarantor securing the borrower's obligations to such Interest Holder (and the collateral securing each such guaranty) shall be applied solely to costs and expenses for Final Completion of the Project in accordance with the Approved Development Plan and not to any indebtedness or other obligations that may otherwise be secured by such guaranty (or collateral) until such Final Completion is achieved.

6.5.5 Each mortgage, deed of trust, lien and other security agreement, assignment of collateral and similar instrument encumbering the Project for the benefit of any such Interest Holders shall be subject and subordinate to ~~the Development Covenants and to~~ the Covenants, Conditions and Restrictions. No mortgage, deed of trust, lien or other security agreement, assignment of collateral or similar instrument encumbering the Project for the benefit of any such Interest Holders shall encumber any portion of the WMATA's Reserved Areas and Interests or WMATA's Residual Property.

ARTICLE 7
APPROVAL PERIOD

7.1 **Developer's Rights and Obligations to Pursue Approvals.** Subject to the terms and conditions of this Agreement, and contingent on the continuing timely and diligent performance by Developer and Guarantor of their obligations under this Agreement and the Transaction Documents, WMATA hereby authorizes Developer to seek and secure the Approvals ~~and Construction Approvals~~ in accordance with the terms of this Agreement and the Approved Development Plan. Developer agrees to diligently seek and secure the Approvals using its Commercially Reasonable Best Efforts, all in accordance with the terms of this Agreement and the Approved Development Plan.

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7.2 **Approval Period.** Developer shall be afforded a period within which to pursue the Approvals ~~and Construction Approvals~~, which period (the "**Approval Period**") shall begin on the Effective Date and shall expire on the earlier of the Approvals Achievement Date or twenty (20) months from the Effective Date. Within ten (10) days from the Effective Date, Developer shall submit to WMATA a written report containing a listing of anticipated required Approvals ~~and Construction Approvals~~, a schedule for obtaining such Approvals ~~and Construction Approvals~~, including, without limitation, any necessary rezoning under applicable District of Columbia zoning ordinances, a statement in Developer's reasonable business judgment of the anticipated period required to obtain such Approvals ~~and Construction Approvals~~ under the standards of diligence, timing and efforts required by this Agreement and the bases for the Developer's judgment that the Approvals ~~and Construction Approvals~~ can be secured within such periods, and the steps taken to such date and required in the future during the Approval Period to obtain such Approvals ~~and Construction Approvals~~.

7.3 **Approvals Termination Right.** If despite Developer's Commercially Reasonable Best Efforts to obtain the Approvals ~~and Construction Approvals~~ in accordance with the terms of this Agreement and the Approved Development Plan, Developer has not obtained the Approvals ~~and Construction Approvals~~ prior to the end of the Approval Period, Developer and WMATA shall each have the independent right to terminate this Agreement by giving Notice of such termination (the "**Approvals Termination Notice**") to the other party prior to the expiration of the Approval Period, subject only to survival of Developer liability under Section 17.3 and any other term which expressly survives the termination of this Agreement. If Developer or WMATA terminates pursuant to this Section 7.3, the Deposit shall promptly be delivered by WMATA to Developer, subject to the terms of Article 3.

7.4 **Inquiries and Applications.** WMATA authorizes Developer to make all inquiries of and applications to the appropriate governmental authorities for or in connection with the Approved Development Plan, as Developer, in its good faith and reasonable judgment, deems necessary to obtain the Approvals ~~and Construction Approvals~~. WMATA agrees to execute such applications for the Approvals ~~and Construction Approvals~~ as are reasonably requested by Developer, provided that WMATA shall not be required to incur any liability, cost or expense in connection therewith.

7.5 **As Built Drawings**. WMATA shall deliver to Developer applicable drawings (hard copy and, if existing and available, in digital format (auto cad)) for the WMATA tunnel and ventilation system on the Property within thirty (30) days following the Effective Date. Developer agrees that such drawings shall be provided for informational purposes only and without any representation or warranty whatsoever, including without limitation, regarding accuracy, completeness, compliance with laws or suitability for Developer's use and shall be subject to the disclaimers regarding WMATA Information.

7.6 **Preparation, Submission and Approval of Development Plan.**

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7.6.1 **Project Concept Plan.** Not later than ten (10) days after the Effective Date, Developer shall prepare and submit to WMATA for WMATA's review and comments a Project Concept Plan for the Lease Premises. The Project Concept Plan will be deemed to be modified from time to time to reflect changes to the locations and configurations of the improvements which comprise the Project to the extent such changes are initiated by the Developer or are accepted by the Developer in connection with the review and comments of WMATA and preparation of an Approved Development Plan for the Project. The Project Concept Plan (and each Proposed Development Plan) shall not be devised or designed in a manner that would disproportionately or inappropriately shift to WMATA's Adjacent Property or on any portion of the Property contemplated to be leased by Developer under this Agreement any development costs, exactions or the requirements of any Laws affecting development or otherwise place any disproportionate burden on any such portion of the Property. All aspects of the Project Concept Plan, and any changes thereto, shall be subject to the review and approval of WMATA in its reasonable discretion, except those aspects affecting WMATA's Unconditional Approval Matters shall be subject to the review and approval of WMATA, in its sole and absolute discretion. If WMATA and Developer fail to mutually approve the Project Concept Plan and any changes thereto, within sixty (60) days after the Effective Date, either WMATA or Developer shall have the right to terminate this Agreement by Notice to the other, in which event, the full amount of the Deposit, subject to the terms of Article 3, shall be promptly refunded to Developer, and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement.

WMATA Compact Public Hearing. The Project Concept Plan shall provide the basis for WMATA's evaluation and determination in its sole discretion whether it will proceed with a WMATA Compact Public Hearing. If a WMATA compact Public Hearing is necessary, Developer shall cooperate with WMATA in the preparation for and the conduct of such hearing, including providing general plans and other documentation and providing testimony (collectively, the **"Public Hearing Information"**). At least ninety (90) days before the date set for the WMATA Compact Public Hearing, Developer shall also provide to WMATA an advance in the amount of Fifty Thousand and no/100 Dollars ($50,000.00) for the purpose of conducting the WMATA Compact Public Hearing. WMATA shall account for its staff and out of pocket costs incurred in connection with the WMATA Compact Public Hearing, and WMATA shall refund any remainder from such advance to Developer at Closing or at the earlier termination of this Agreement. Developer shall revise the Project Concept Plan as required by WMATA based upon the findings, conclusions and recommendations arising from such hearing. If WMATA and the Developer fail to mutually approve the revised Project Concept Plan and any changes to such revised plan, within sixty (60) days after the date of the WMATA Compact Public Hearing, either WMATA or the Developer shall have the right to terminate this Agreement. If the revised Project Concept Plan or any subsequent development plans include changes to the proposed Project as reflected in the Public Hearing

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~~Information, and WMATA determines that an additional WMATA Compact Public Hearing or other proceeding is required as a result of such changes, then Developer shall cooperate with WMATA in the preparation for and the conduct of such additional hearing or other proceeding, including providing additional or supplemental Public Hearing Information, and the costs of such additional hearing or other proceeding shall be paid by Developer.~~

~~7.6.3~~7.6.1 ~~———~~**Proposed Development Plan**. Not later than thirty (30) days after ~~WMATA approves the Project Concept Plan~~the Effective Date (the "**Development Plan Submission Deadline**"), Developer shall prepare in consultation with WMATA and submit to WMATA for WMATA's review and approval, in conformity with the provisions of this Section 7.6.~~3~~1, a detailed plan for the development of and construction of the Project, to be constructed on the Lease Premises, the proposed locations and configurations of the improvements that will comprise the Project, the applicable uses for such improvements and the number of square feet for each such improvement (the "**Proposed Development Plan**"). Developer shall undertake Commercially Reasonable Best Efforts to develop on the Lease Premises not less than the stated aggregate uses and densities for the Project that are listed in Exhibit ____. Developer represents to WMATA that, to Developer's Actual Knowledge, obtaining the Approvals ~~and Construction Approvals~~ with such uses and densities is reasonably feasible under current and reasonably foreseeable future market, legal, regulatory and political conditions and that, to Developer's Actual Knowledge, there are not currently any substantial impediments to achievement of the objectives of this Agreement. ~~Developer shall cause the Proposed Development Plan to be consistent with and conform to the Project Concept Plan, subject only to changes that WMATA may direct or approve subject to and in conformity with the terms of this Agreement.~~ WMATA's review, approval, and requested changes shall not extend to purely aesthetic considerations. WMATA shall reasonably approve the Proposed Development Plan ~~to the extent it is consistent, in all material respects with the Project Concept Plan that has been approved by WMATA (following any WMATA Compact Public Hearing, if required, and revision of the Project Concept Plan occasioned thereby)~~, provided, however, that as to WMATA's Unconditional Approval Matters, WMATA may grant or withhold its approval Proposed Development Plan in its sole and absolute discretion. Developer shall expeditiously amend, correct and resubmit the Proposed Development Plan to WMATA for WMATA's approval with such frequency as is reasonably necessary to respond to WMATA's comments and requested changes. However, if WMATA does not approve the Proposed Development Plan within sixty (60) days following the Development Plan Submission Deadline, either Developer or WMATA shall have the right to terminate this Agreement by Notice to the other, in which event, the full amount of the Deposit, subject to the terms of Section 3.1.5, shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement.

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~~7.6.3.1~~7.6.1.1 The Proposed Development Plan shall be (a) substantially in accordance with applicable existing zoning ordinances (and applicable waivers thereto or variances therefrom) or shall provide details concerning proposed rezoning, (b) consistent with the requirements and objectives of any applicable master plan, (c) consistent with the requirements of the Transaction Documents, as same may be adjusted in accordance with the applicable provisions of this Section 7.6.~~3~~1, and (d) accompanied by reasonably detailed and, to the extent then practicable, objective information concerning their feasibility, including the feasibility of obtaining the proposed development objectives with the exercise of Commercially Reasonable Best Efforts to obtain same.

~~7.6.3.2~~7.6.1.2 As part of the Proposed Development Plan, Developer shall provide reasonable details of the proposed infrastructure construction, as the same pertain to (a) the Property as a whole; and (b) the scope, design and timing of the foregoing. Developer shall be obligated to construct and shall construct on the Lease Premises such improvements, facilities and other infrastructure components as are required by the Approved Development Plan or by the District of Columbia with respect to its approval of the site plan and record plat and issuance of the building permits for the Project, as applicable. Developer acknowledges that Developer, and not WMATA, shall have a continuing obligation to maintain, operate, repair and replace any and all infrastructure constructed on the Property by Developer.

~~7.6.3.3~~7.6.1.3 Developer shall cause the Proposed Development Plan to be prepared consistent with the requirements of this Agreement~~,~~ and the Transaction Documents~~, and Project Concept Plan~~.

~~7.6.4~~7.6.2 **WMATA Approval**. By Notice to Developer within thirty (30) days after Developer's submission of~~, as applicable, a Project Concept Plan or~~ a Proposed Development Plan to WMATA satisfying the requirements of this Agreement, WMATA shall review and approve or disapprove~~, as applicable, the Project Concept Plan or~~ the Proposed Development Plan, such approval not to be unreasonably conditioned, delayed, or withheld. In the event that WMATA disapproves the ~~Project Concept Plan or the~~ Proposed Development Plan or approves the ~~Project Concept Plan or the~~ Proposed Development Plan subject to reasonable qualifications, WMATA shall deliver Notice to Developer of such disapproval or qualified approval, stating in reasonable detail taking into account the state of completion of the ~~Project Concept Plan or the~~ Proposed Development Plan, as applicable, the nature of WMATA's objections or qualifications, as the case may be. Developer shall have a period not to exceed thirty (30) days following

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delivery of such Notice within which to revise and resubmit to WMATA the ~~Project Concept Plan or the~~ Proposed Development Plan, subject, however, to each party's rights of termination of this Agreement in accordance with the terms of this Article 7.

~~7.6.4.1~~7.6.2.1 WMATA may obtain an extension of its above periods for review (a) if the ~~Project Concept Plan or the~~ Proposed Development Plan~~, as applicable,~~ does not satisfy the requirements of this Agreement or contain sufficient information or details to enable completion of such review within such period; or (b) provided that Developer is provided an extension for an equal number of days for obtaining the Approvals ~~and Construction Approvals~~, for the convenience of WMATA.

~~7.6.4.2~~7.6.2.2 In the event WMATA fails to respond within any of the thirty (30) day deadlines set forth above, Developer shall provide WMATA with Notice of such failure within two (2) business days. In no event will WMATA's delay or failure to respond be deemed an approval of the Developer's submissions.

~~7.6.4.3~~7.6.2.3 If WMATA's approval is denied on the basis of ~~any~~ a material inconsistency with the requirements of this Agreement, Developer shall have the absolute obligation to correct such matters, otherwise Developer shall undertake Commercially Reasonable Best Efforts to make revisions and submit to WMATA a revised ~~Project Concept Plan or the~~ Proposed Development Plan~~, as applicable,~~ to WMATA for approval that satisfies and cures each of the issues, objections or qualifications raised by WMATA within thirty (30) days following the date Developer receives the written denial from WMATA. These actions shall be repeated, with the above deadlines respectively for each party, until WMATA's approval is obtained or until termination of this Agreement.

7.6.2.4 If the Zoning Commission requires any changes to the Proposed Development Plan, the Developer shall submit said Proposed Development Plan, as approved by the Zoning Commission, to WMATA for approval pursuant to the approval procedures of this Section 7.6.2.

~~7.6.5~~7.6.3 **Approved Development Plan**. The Proposed Development Plan for the Property, as finally approved by WMATA in conformity with the terms of this Agreement, shall be deemed to have been attached hereto as **Exhibit** _____ and are referred to herein as the "**Approved Development Plan**". The date, if any, on which WMATA gives Developer Notice that it has approved the Proposed Development

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Plan in conformity with the terms of this Agreement shall constitute, the "**Development Plan Approval Date**".

~~7.6.6~~7.6.4 **No Assumption of Liability or Waiver of Rights.** WMATA does not accept any liability and shall have no liability and waives none of its rights under this Agreement by reason of its approval of the Proposed Development Plan, nor shall such approval be construed to be a warranty thereof.

~~7.6.7~~7.6.5 **Changes to Approved Development Plan.** After the Development Plan Approval Date, Developer may make no changes to the Approved Development Plan without WMATA's prior written approval, which approval shall not be unreasonably withheld, except such approvals that would impact WMATA's Unconditional Approval Matters in which case such approval may be granted or withheld in WMATA's sole and absolute discretion. After the Approvals Achievement Date, WMATA shall have no right to make or require changes to the Approved Development Plan.

~~7.6.8~~7.6.6 **Limitations on WMATA's Right to Alter Lease Premises.** After the Development Plan Approval Date and for so long as Developer's rights under this Agreement and the Lease remain in full force and effect, WMATA shall not make any material alterations to the Lease Premises that would materially and adversely impact the feasibility, cost or completion date of the Project as reflected in the Approved Development Plan, without Developer's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. The foregoing shall not prevent WMATA from implementing interim covenants, conditions and restrictions consistent with Section 11.17. In the event that Developer believes that WMATA has made any such material alterations to the Lease Premises, Developer shall give written Notice of such objection to WMATA within Ten (10) business days following Developer's discovery or notice of such alteration.

~~7.6.9~~7.6.7 **Limitation on Termination Rights.** Developer's right to terminate under this Article 7 shall not apply to any failure by WMATA to approve a ~~Project Concept Plan or a~~ Proposed Development Plan or any changes thereto on the basis of any inconsistency with the requirements of this Agreement of a ~~Project Concept Plan,~~ Proposed Development Plan or any changes thereto, or on the basis of Developer's failure to undertake Commercially Reasonable Best Efforts to submit to WMATA for approval a ~~Project Concept Plan or a~~ Proposed Development Plan or make changes or corrections thereto that satisfy and cure the issues, objections or qualifications raised by WMATA.

7.7 **Rezoning and Approvals.** During and throughout the Approval Period, Developer shall use Commercially Reasonable Best Efforts to timely, expeditiously and diligently pursue all final and non-appealable Approvals ~~and Construction Approvals~~ that may be required to allow development of the Lease Premises and construction of improvements thereon consistent in all respects with the Approved Development Plan, including, but not limited

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to, Approvals for any necessary rezoning under applicable District of Columbia zoning ordinances and of the site plan, plats, subdivision of the Lease Premises and the like. Developer shall have sole responsibility for seeking and obtaining all such Approvals ~~and Construction Approvals~~ and for paying all costs and expenses relating thereto. Developer may commence, at its option, but subject to all the terms and conditions in this Agreement, the effort to obtain the Approvals at any time prior to the expiration of the Study Period and the Development Plan Approval Date, provided, however, that Developer, without the prior written consent of WMATA in its sole and absolute discretion, shall not make any Submission for any Approvals until the later to occur of the Development Plan Approval Date or the expiration of the Study Period and, then, only following approval by WMATA of the Proposed Development Plan in accordance with the terms of this Agreement. In connection with Developer's efforts to obtain the Approvals ~~and Construction Approvals~~, WMATA shall lend reasonable cooperation and assistance to Developer, but without any obligation of WMATA to incur out-of-pocket costs or expenses and without any obligation of WMATA to undertake any significant burden or usage of its personnel.

7.8 **Zoning Due Diligence.** Developer represents that prior to the Effective Date it has investigated the current zoning status of the Property and its eligibility to be rezoned under applicable District of Columbia zoning ordinances to a mixed use zoning classification consistent with the contemplated requirements, uses and densities set forth in Exhibit _____ and that, to Developer's Actual Knowledge and based on such investigation, such rezoning is feasible. WMATA has made no representations to Developer regarding zoning matters relating to the Property and Developer waives any and all claims to the effect that such representations have been made.

7.9 ~~**Developer's Obligations Applicable to Entire Property.** Developer shall seek and secure the Approvals, including, at WMATA's option, any necessary rezoning of the entire Property. Developer acknowledges that the Approvals may include, be based on or require one or more variances, predications or other governmental requirements and Developer agrees to accept all such variances, predications and governmental requirements to the extent the same are consistent with the Approved Development Plan and do not have materially adverse detrimental impacts on any of the uses contemplated by this Agreement and the contemplated requirements, uses, and densities set forth in Exhibit _____ as same may be adjusted in accordance with the applicable provisions of this Agreement; or the value, feasibility or marketability of the Project, ability of Developer to finance or lease the Project, or the cost of developing, constructing, managing or operating the Project. Notwithstanding anything to the contrary, Developer shall not be authorized and WMATA shall not be required to approve or agree to variances, predications or other governmental requirements to the extent the same adversely impact WMATA's Unconditional Approval Matters.~~ **RESERVED.**

7.10 Submission of Proposed Applications for Approvals and Infrastructure Development

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7.10.1 **Submissions**. Prior to submission, Developer shall provide to WMATA all proposed applications to be submitted for approval, to the District of Columbia or quasi-governmental authority, for WMATA's review and approval in conformity with Section 7.10.5 (each, a "**Submission**"). Submissions shall include, but not be limited to, 1) any applications for the Approvals ~~and Construction Approvals~~; and 2) any submissions that concern any infrastructure or other improvement proposed to be constructed by the Developer on any portion of the Lease Premises.

7.10.2 **Timing of Application for Approvals**. Within fifteen (15) days after WMATA has approved such proposed applications in accordance with Section 7.10.5, Developer shall make formal application under applicable District of Columbia ordinances for all Approvals that reasonably are susceptible to submission at such time. Thereafter, and not less than fifteen (15) days following WMATA's approval of the proposed submissions in conformity with Section 7.10.5, Developer shall make such additional applications for Approvals ~~and Construction Approvals~~ using Commercially Reasonable Best Efforts, to achieve the Approvals ~~and Construction Approvals~~ at the earliest possible time before the expiration of the Approval Period.

7.10.3 **Compliance of Developer's Submissions with Approved Development Plan.** Unless expressly approved by WMATA in its discretion in writing, each Submission by Developer for the Approvals ~~and Construction Approvals~~:

7.10.3.1 Shall be in compliance with the terms of this Agreement and shall be consistent with the Approved Development Plan in all respects; and

7.10.3.2 Shall not contain, propose or constitute an acceptance of features that relate to or could impact on WMATA's Unconditional Approval Matters, except only as expressly set forth in the Approved Development Plan; and

7.10.3.3 Shall not contain, propose or constitute an acceptance of any restrictions or imposition of requirements that would or could require a change in the Approved Development Plan that has not been approved by WMATA, in accordance with the terms of this Agreement.

7.10.4 **No Detriment to Lease Premises.** Unless Developer obtains the prior express written approval of WMATA to allow any infrastructure or improvement installed on the Lease Premises by Developer that is not required by the Approved Development Plan to remain in place, in the event of a default by Developer under this Agreement, termination of this Agreement or failure to consummate Closing, Developer may be required, at the sole option of WMATA, to remove such infrastructure and improvements that has been installed on the Lease Premises by Developer at Developer's expense, within ten (10) days of Notice of any such default, termination or failure, at the request of WMATA.

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7.10.5 **Submission Procedures.** Within thirty (30) days after receipt of a proposed Submission, together with all related and supporting materials, WMATA shall review the Submission and, if WMATA's approval is required by this Section 7.10, provide denial with comments, or approval, in writing to Developer. If approval is denied on the basis of any inconsistency with the requirements of this Agreement, Developer shall have the absolute obligation to correct such matters, otherwise Developer shall undertake Commercially Reasonable Best Efforts to submit to WMATA a revised Submission to WMATA for approval that satisfies and cures each of the issues, objections or qualifications raised by WMATA within thirty (30) days following the date Developer receives the written denial from WMATA. These actions shall be repeated, with thirty (30) day deadlines for each party, until WMATA's approval is obtained or a period of one hundred twenty (120) Days in total from the Development Plan Approval Date shall have passed without WMATA's approval having been obtained (the "**Submission Correction Deadline**"). If WMATA's approval of the Submissions, as revised has not been obtained by the Submission Correction Deadline, either Developer or WMATA shall have the right to terminate this Agreement by written Notice to the other, in which event, the full amount of the Deposit, subject to the terms of Article 3, shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement.

7.10.6 **Arbitrary and Capricious Denials.** WMATA's failure or refusal to approve any Submission meeting the requirements of Section 7.10 shall not be deemed a breach of this Agreement. However, if such failure or refusal by WMATA to approve a material Submission is arbitrary and capricious and, absent such approval, Developer is not reasonably able to proceed with the Project as reasonably contemplated by this Agreement, Developer may give Notice of its intention to terminate this Agreement on the sixtieth (60) day following the giving of such Notice to WMATA. Such Notice shall enable Developer to terminate this Agreement on the sixtieth (60) day following the date of such Notice to WMATA, only if WMATA does not either grant its approval within such period or qualify its refusal or denial in a manner which would not be arbitrary and capricious and would enable Developer to proceed with the Project using Commercially Reasonable Best Efforts. In the event that this Agreement is terminated in conformity with the provisions of this Section, the full amount of the Deposit, subject to the terms of Article 3 shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except pursuant to the terms hereof that expressly survive any termination of this Agreement. This Section 7.10.6 shall not be applicable to items reviewed under WMATA's sole discretion standard or Unconditional Approval Matters.

7.10.7 **Limitation on Termination Rights.** Developer's rights to terminate under this Section 7.10 shall not apply to any failure by WMATA approve a Submission or any changes thereto on the basis of any inconsistency with the requirements of this Agreement of a Submission or any changes thereto or on the basis of Developer's

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failure to undertake Commercially Reasonable Best Efforts to submit to WMATA for approval a Submission or make changes or corrections thereto that satisfy and cure the issues, objections or qualifications raised by WMATA.

7.10.8 **No Withdrawal of Rezoning Application; Substitution of Applicant, Use of Materials and Perfection of Right to Appeal.** Developer acknowledges and agrees that WMATA has and shall retain a property interest in any and all Approvals ~~and Construction Approvals~~, any and all rights relating thereto and any applications and Submissions therefor. Developer shall not withdraw any application for any Approvals~~, Construction Approvals,~~ or other Submissions without the prior written consent of WMATA in its sole and absolute discretion, provided, however, that to the extent that Developer would have continuing liability under any such Approvals~~, Construction Approvals,~~ or other Submissions, Developer shall have the unqualified right to withdraw the same upon the termination of this Agreement, unless following approval by the WMATA Board of Directors, WMATA executes and delivers to Developer an indemnity agreement in form and substance reasonably acceptable to WMATA and Developer pursuant to which WMATA shall indemnify and agree to defend and hold harmless Developer from and against all such continuing liabilities. Following any Default, termination of this Agreement or failure to consummate Closing all for reasons other than a WMATA Default hereunder, at the option of WMATA, exercisable by delivery of Notice to Developer, WMATA shall succeed to all right, title and interest of the Developer in all Approvals ~~and Construction Approvals~~, applications and Submissions and shall have the unrestricted right, directly or through its designee, to intervene in and continue pursuit of any and all such Approvals, applications and Submissions without payment of any sums to Developer and without cost to WMATA. In furtherance of the foregoing, Developer shall execute and deliver to WMATA on demand by WMATA all such assignments and other documents as shall be reasonably requested by WMATA to effectuate the same; provided that, in circumstances other than those occasioned by a Developer Default, such assignments and other documents shall be on terms that are acceptable to Developer and WMATA and Developer's obligations to deliver the same shall be subject to WMATA's indemnification obligations, to the extent applicable, as set forth in this Section 7.10.8. All materials submitted in connection with any such Approvals~~, Construction Approvals~~, applications and Submissions upon delivery of such Notice shall become the property of WMATA and may be used by WMATA and any designee of WMATA in connection with any and all Approvals ~~or Construction Approvals~~ that may be sought by WMATA. Developer shall use Commercially Reasonable Best Efforts to take all such steps as may be required by applicable laws to perfect the right of Developer (and, by operation of this Section 7.10.8, WMATA or its designee) to appeal any adverse determination relating to the Approvals~~, Construction Approvals~~, applications and Submissions.

7.10.9 **Coordination for Obtaining Rezoning, Subdivision, and Other Approvals.** Each party hereby designates its Project representative (respectively, the "WMATA Project Representative" and the "Developer Project Representative"), for purposes of

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coordinating the exchange of information and the processing of requests relevant to this Agreement. As of the Effective Date, (a) WMATA Project Representative shall be _____, and (b) the Developer Project Representative shall be _____. Thereafter, each party shall deliver to the other Notice of any change in the identity of its Project Representative. Each of WMATA Project Representative and the Developer Project Representative shall keep the other representative fully informed of all pending meetings, hearings and conferences with governmental agencies occurring in connection with all applications, Submissions, and Approvals~~, and Construction Approvals~~ and each of WMATA Project Representative designee and the Developer Project Representative shall have the right to attend any and all of the meetings pertaining to the same. Copies of all material communications delivered to or received by Developer or WMATA in connection with applications, Submissions, and Approvals~~, and Construction Approvals~~ shall be promptly delivered to WMATA Project Representative or the Developer Project Representative, respectively. Nothing contained in this Section 7.10.9 shall be deemed to modify any obligation of the parties with respect to the delivery of Notices.

7.10.10 **Extensions of Time for Developer's Performance.**

7.10.10.1 Subject to Subsection 7.10.10.2, if WMATA fails to approve or disapprove the ~~Project Concept Plan,~~ Proposed Development Plan or Submissions by the deadlines expressly established under Section 7.6 and 7.10, or WMATA shall arbitrarily or capriciously withhold its approval of the ~~Project Concept Plan,~~ Proposed Development Plan or Submissions under Sections 7.6 and 7.10 and this Agreement is not terminated on that basis as permitted by the terms of this Agreement, the corresponding dates by which Developer has an obligation under Sections 7.6 and 7.10 of this Agreement (but only to the extent that completion of an activity required to be performed by Developer is actual delayed beyond the dates established in this Agreement is actually delayed by such Delays by WMATA) shall automatically be extended, on a day for day basis, for the number of days of such Delay by WMATA.

7.10.10.2 Except as provided in Section 7.10.6, Developer's rights to extend under this Section 7.10.10.2 shall not apply to any failure by WMATA approve on the basis of any inconsistency with the requirements of this Agreement or on the basis of Developer's failure to undertake Commercially Reasonable Best Efforts to submit to WMATA for approval a plan submission, document or the like or to make changes or corrections thereto that satisfy and cure the issues, objections or qualifications raised by WMATA.

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ARTICLE 8
LEASE CLOSING

8.1 **Closing Date, Places Of Closing and Prorations**

8.1.1 Subject to Section 8.1.3 below, the Closing Date shall occur on or before twenty (20) months following the Effective Date (the "Closing Date").

8.1.2 **RESERVED.**~~Intentionally Omitted~~

8.1.3 Notwithstanding Sections 8.1.1 above:

8.1.3.1 WMATA may elect to designate an earlier Closing Date, if the Approvals Achievement Date falls at least thirty (30) days prior to the date otherwise applicable under Sections 8.1.1 above. In such event WMATA may give Notice to Developer that Lease Closing shall take place within thirty (30) days following the Approvals Achievement Date on a Closing Date falling on a Business Day within such period fixed by WMATA in a Notice from WMATA to Developer given not less than thirty (30) days prior to the Closing Date set forth in such Notice.

8.1.3.2 WMATA may elect to postpone the Closing Date, if the Approvals Achievement Date falls within thirty (30) days prior to the date otherwise applicable under Sections 8.1.1 above. In such event WMATA may give Notice to Developer that Closing shall take place within thirty (30) days following the Approvals Achievement Date on a Closing Date falling on a Business Day within such period fixed by WMATA in a Notice from WMATA to Developer given not less than ten (10) days prior to the Closing Date set forth in such Notice.

8.1.4 Closing shall take place in the offices of Developer's ~~_____~~, legal counsel, DLA Piper LLP (US), 500 8th Street, NW, Washington, DC 20004~~if in the Washington, D.C. metropolitan area~~, or at such other place as the parties shall mutually agree. Developer agrees to conduct closing through a pre-closing escrow or other arrangement reasonably requested by WMATA to facilitate closing mechanics and to reduce or eliminate the need for WMATA and its attorneys to be physically present at the Closing.

8.1.5 Except as otherwise expressly provided in this Agreement and subject to Section 13.9:

8.1.5.1 Closing costs shall be allocated between WMATA and Developer, as follows: Developer shall be responsible for all applicable recordation, transfer and mortgage taxes and title

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insurance and escrow costs. Developer shall pay for all costs associated with Developer's due diligence including any appraisals, environmental assessments, architectural/engineering assessments, insurance and any and all consultants, inspections, or reports of any kind, deemed necessary by Developer or Developer's lender and WMATA shall in no way be liable for such cost and costs, fees or expenses. Developer and WMATA shall each be responsible for their own legal expenses. Developer shall pay for any and all other closing costs not covered above

8.1.5.2 All normal and customarily pro-ratable items, including, without limitation, personal property taxes, utilities, other operating expenses and fees, shall be prorated as of the Closing Date, WMATA being charged or credited, as applicable, for all of same attributable to the period up to the Closing Date (and credited for any amounts paid by WMATA attributable to the period on or after the Closing Date) and Developer being responsible for, and credited or charged, as the case may be, for all of same attributable to the period on and after the Closing Date.

8.1.5.3 As further provided in Section 13.9, based on WMATA's status as a tax exempt entity, this Agreement does not contemplate that WMATA shall be responsible for the payment of any real estate ad valorem or similar taxes for the Property, or any assessments or any installments or prorated portions thereof.

8.1.5.4 To the extent that despite Section 13.9, WMATA becomes responsible for payment in the year of Closing of any real estate ad valorem or similar taxes for the Property, or any installment of assessments payable in installments, payable in the year of Closing, such amounts shall be prorated to the date of Closing, based upon actual days involved. The proration of real property taxes or installments of assessments shall be based upon the assessed valuation and tax rate figures for the year in which the Closing occurs to the extent the same are available; provided that, in the event that actual figures, whether for the assessed value of the Property or for the tax rate, for the year of Closing are not available at the Closing Date, the proration shall be made using figures from the preceding year, and shall be later reconciled within the Proration Period pursuant to Section 8.1.6. The proration shall be final and unadjustable except as provided in the following paragraph. The provisions of this Section 8.1.5.4 shall apply during the Proration Period.

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8.1.6 If any item subject to proration hereunder cannot be prorated at the Closing because the information necessary to compute such proration is unavailable, or if any errors or omissions in computing prorations at the Closing are discovered subsequent to the Closing, then such item shall be reapportioned and such errors and omissions corrected as soon as practicable after the Closing Date and the proper party reimbursed, which obligation shall survive the Closing for a period (the "**Proration Period**") of one (1) year following the Closing Date. Neither party hereto shall have the right to require a recomputation of a Closing proration or a correction of an error or omission in a Closing proration unless within the Proration Period one of the parties hereto (i) has obtained the previously unavailable information or has discovered an error or omission and (ii) has given Notice thereof to the other party together with a copy of its good faith recomputation of the proration and copies of all substantiating information used in such recomputation. The failure of a party to obtain any previously unavailable information or discover an error or omission with respect to an item subject to proration hereunder and to give Notice thereof as provided above within the Proration Period shall be deemed a waiver of its right to cause a recomputation or a correction of an error or omission with respect to such item after the Closing Date.

8.2 **Items to Be Delivered Prior to or at Closing**

8.2.1 **WMATA.** At or before Closing, WMATA shall deliver to Developer each of the following items, as applicable:

8.2.1.1 The Lease in the form attached as **Exhibit** _____ to Developer. The acceptance of the Lease on the Closing Date shall be deemed to be full performance of, and discharge of, every agreement and obligation to be performed by WMATA under this Agreement prior to the applicable Closing Date, and expressly excluding all obligations of WMATA that under the express terms of this Agreement shall survive Closing.

8.2.1.2 The Covenants, Conditions and Restrictions ~~Development Covenants~~ in the form of Exhibit _____ attached hereto.

8.2.1.3 A closing statement executed by WMATA.

8.2.1.4 The certificate required by Section 10.1.3.

8.2.1.5 A vendor's affidavit or at WMATA's option an indemnity, as applicable, in the customary form, but reasonably acceptable to WMATA and modified to provide accurate responses to WMATA's knowledge, and containing such exceptions as are appropriate, to enable Title Insurer to issue a leasehold title insurance policy, to be issued pursuant to the Title Commitment; provided that such affidavit does not subject WMATA to any

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greater liability, or impose any additional obligations on WMATA, other than as set forth in this Agreement.

8.2.1.6 Such other documents and instruments as may be reasonably required from WMATA to consummate the transaction contemplated by this Agreement subject to and in conformity with the terms and provisions hereof.

8.2.2 **Developer.** At or before Closing, Developer shall deliver to WMATA each of the following items:

8.2.2.1 Deposit, Pre-Stabilization Period Payments, and any other payments due, plus the adjustments or prorations required by this Agreement and the Lease.

8.2.2.2 A closing statement executed by Developer.

8.2.2.3 The fully executed Covenants, Conditions and Restrictions~~Development Covenants~~, in recordable form, in the form of Exhibit _____ attached hereto.

8.2.2.4 The certificate required by Section 10.2.3.

8.2.2.5 Executed copies of any bonds, insurance policies, and Guaranties required under the Lease.

8.2.2.6 Final governmental, or quasi-governmental authority, approval of the site plan, record plat, building permit, and all other Approvals ~~and Construction Approvals~~ required to begin construction;

8.2.2.7 The Lease tenant's articles of organization, operating agreement, and certificate of good standing.

8.2.2.8 Evidence of adequate Project financing, including but not limited to lender commitments and loan documents ready to be executed.

8.2.2.9 Executed construction contract for the Project.

~~8.2.2.8~~8.2.2.10 Such other instruments, documents or certificates as are required to be delivered by Developer to WMATA in accordance with any of the provisions of this Agreement.

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ARTICLE 9
REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 **Representations And Warranties of WMATA.**

9.1.1 For the purpose of inducing Developer to enter into this Agreement and to consummate the lease of the Lease Premises in accordance herewith, WMATA represents and warrants to Developer the following as of the Effective Date:

9.1.1.1 WMATA is a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of D.C. Board of Commissioners adopted November 15, 1966.

9.1.1.2 WMATA has the full corporate power and authority to lease the Lease Premises and to execute the documents to be executed by WMATA and has taken, as applicable, all corporate, or equivalent entity actions required for the execution and delivery of this Agreement and prior to Closing will have taken, as applicable, all corporate, or equivalent entity actions required for the consummation of the transactions contemplated by this Agreement. The parties executing this Agreement on behalf of WMATA have full power and authority to bind WMATA to the obligations of WMATA set forth herein. The terms and conditions of this Agreement do not conflict with, cause a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement to which WMATA is a party or by which WMATA or the Property is otherwise bound. WMATA has not made any other agreement for the sale of, or given any other person the right to purchase, all or any part of any of the Lease Premises;

9.1.1.3 WMATA owns fee title to the Property, subject to encumbrances and other matters of record and existing site conditions;

9.1.1.4 Following Closing, there will be no adverse or other parties in possession of the Lease Premises;

9.1.1.5 The joinder of no person or entity other than WMATA is necessary to lease the Lease Premises to Developer at Closing in accordance with the terms and conditions of this Agreement or for WMATA to fulfill WMATA's other obligations subject to and in conformity with the terms and conditions of this Agreement;

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9.1.1.6 To WMATA's knowledge, WMATA has not received any written notice from any governmental authority having jurisdiction over WMATA and the Lease Premises of any violation of the Lease Premises of any applicable Laws that remains pending and uncured or from any insurance company of any violation of the Lease Premises of applicable insurance requirements that would require corrective work to be performed with respect to the Lease Premises that remains pending and uncured;

9.1.1.7 To WMATA's knowledge, there are no actions, proceedings, litigation, governmental investigations or condemnation actions either pending or threatened against the Lease Premises;

9.1.1.8 To WMATA's knowledge, there are no past or pending proceedings against WMATA from any governmental agency, regarding any matter relating to environmental laws, since WMATA has owned the Property. on t'

9.2 **As Is, Where Is Terms.** Except for the representations and warranties expressly set forth above in Subsection 9.1, this Agreement is being executed and the Lease Premises is expressly to be leased **"AS IS," "WHERE IS,"** and **"WITH ALL FAULTS."** The terms and conditions set forth herein are the result of arm's-length bargaining between entities familiar with transactions of this kind, and the terms and conditions reflect the fact that, other than the representations and warranties expressly set forth above in Subsection 9.1, Developer shall have the benefit of, and is relying on no statements, representations or warranties, express or implied, made by or enforceable directly or indirectly against WMATA. Developer further acknowledges and agrees that upon the Closing of the Lease Premises, it assumes all risks associated therewith, except only for those matters that are within the express scope of WMATA's representations and warranties and then only for such period as to which claims in respect thereto may be asserted by Developer under the terms of this Agreement.

9.3 **WMATA Information.** Developer agrees that it will be leasing and developing the Lease Premises based solely on its inspection and investigation of the Lease Premises. In order to induce WMATA to enter into this Agreement, Developer represents and warrants that it has undertaken all due diligence and has reviewed and conducted such independent analyses, studies, reports, investigations and inspections as it deems appropriate in connection with the Lease Premises and the Project that Developer in its judgment has determined to its satisfaction to be required or desirable, (including, without limitation, relating to the value of the Lease Premises, the suitability, physical or environmental condition of the Lease Premises, compliance or lack of compliance of the Lease Premises with any state, federal, county or local law, ordinance, order, permit or regulation, the feasibility of the Project, market conditions, projected development cost requirements, profits, taxes, rents, demand for rental space or any other attribute of or matter relating to the Lease Premises or the Project). To the extent that WMATA has

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provided or provides any information, data, reports, studies or the like (**"WMATA Information"**), WMATA has made and makes no representations or warranties whatsoever regarding the accuracy, completeness or reliability of all or any part thereof. Developer acknowledges that it has been and under the terms of this Agreement is being provided with ample opportunity to confirm the suitability, feasibility and all other characteristics of the Lease Premises and Project and the WMATA Information to its satisfaction, and that it shall rely only on its own due diligence and not on any WMATA Information in making a determination as to whether it should continue with the Project. If Developer relies on any such WMATA Information, such reliance shall be at Developer's sole risk and peril and all claims against WMATA, WMATA's Affiliates and any and all of their respective partners, officers, directors, participants, employees, contractors, attorneys, consultants, representatives, agents, successors, assigns or predecessors-in-interest in respect thereto are hereby waived and released and they shall have no liability whatsoever to Developer as a result of Developer's use thereof or reliance thereon.

9.4 **Title Information.** Developer shall rely only on any title insurance obtained by Developer with respect to title to the Lease Premises and to any matter as to which a title policy endorsement is available in the jurisdiction where the Lease Premises is located.

9.5 **Information Concerning Zoning and Code Requirements.** Developer acknowledges and agrees that no representation has been made and no responsibility is assumed by WMATA with respect to current and future applicable zoning or building code requirements; the Lease Premises's compliance with any other laws, rules, ordinances or regulations; or the Lease Premises's financial earning capacity or expense history.

9.6 **Survival Period.** WMATA and Developer agree that those representations contained in Section 9.1.1 shall survive Closing for a period of one (1) year (that is, any proceeding based on the breach of a representation contained in Section 9.1.1 that survives Closing must be commenced within one (1) year subsequent to the date of such representation. In the event that WMATA breaches any representation contained in Section 9.1.1 and Developer had knowledge of such breach prior to the applicable Closing Date, Developer shall be deemed to have waived any right of recovery and WMATA shall not have any liability in connection therewith.

9.7 **Representations to the Knowledge of WMATA.** Representations and warranties above made to the knowledge of WMATA shall not be deemed to imply any duty of inquiry. For purposes of this Agreement, the term "knowledge" as it relates to WMATA shall mean and refer to only the actual knowledge of the Designated Representative of WMATA (as hereinafter defined) and shall not be construed to refer to the knowledge of any other officer, director, agent, employee or representative of WMATA, or any Affiliate of WMATA, or to impose upon such Designated Representative any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such Designated Representative any individual personal liability, which

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Developer hereby waives. As used herein, the term "Designated Representative" as it relates to WMATA shall refer to _____.

9.8 **Representations And Warranties Of Developer**

9.8.1 For the purpose of inducing WMATA to enter into this Agreement and to consummate the lease of the Lease Premises in accordance herewith, Developer represents and warrants to WMATA the following as of the Effective Date and as of Closing:

9.8.2 With respect to Developer and its business, Developer represents and warrants, in particular, that:

9.8.2.1 ~~*(Name of Developer to be formed)*~~The Jazz @ Florida Avenue is a District of Columbia Limited Liability Company duly formed, validly existing and in good standing under the laws of the District of Columbia.

9.8.2.2 Developer, acting through any of its or their duly empowered and authorized officers, partners or members, has all necessary power and authority to own and use its properties and to transact the business in which it is engaged, and has full power and authority to enter into this Agreement, to execute and deliver the documents and instruments required of Developer herein, and to perform its obligations hereunder; and no consent of any of Developer's officers, partners or members is required to so empower or authorize Developer.

9.8.2.3 No pending or, to the knowledge of Developer, threatened litigation exists that, if determined adversely, would restrain the consummation of the transactions contemplated by this Agreement or would declare illegal, invalid or non-binding any of Developer's obligations or covenants to WMATA.

9.8.2.4 Developer, acting through its duly empowered and authorized **[Entity Principal Type]** is duly authorized to execute, deliver and perform this Agreement and all documents and instruments and transactions contemplated hereby or incidental hereto, and such execution, delivery and performance by Developer does not (i) violate any of the provisions of its organizational documents, operating agreements or similar organic documents, (ii) violate any provision of any Laws currently in effect, (iii) violate any judgment, decree, writ, injunction, award, determination or order currently in effect that names or is specifically directed at Developer or its property, or (iv) require the consent, approval,

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order or authorization of, or any filing with or notice to, any court or other governmental authority.

9.8.2.5 The joinder of no person or entity other than Developer is necessary for Developer to lease the Lease Premises at Closing in accordance with the terms and conditions of this Agreement and the Lease or for Developer to fulfill Developer's other obligations subject to and in conformity with the terms and conditions of this Agreement.

9.8.2.6 For purposes of this Agreement, the term "knowledge" as it relates to Developer shall mean and refer to only the actual knowledge of the Designated Representative (as hereinafter defined) of Developer and shall not be construed to refer to the knowledge of any other officer, director, agent, employee or representative of Developer, or any Affiliate of Developer, or to impose upon such Designated Representative any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such Designated Representative any individual personal liability, which WMATA hereby waives. As used herein, the term "Designated Representative" as it relates to Developer shall refer to _____. Developer represents that each of Developer's Designated Representative under Section 9.8.2.6 is an individual to whom material facts relevant to the matters covered by the representations and warranties of Developer that are set forth in this Agreement would be reported in the ordinary course of business.

ARTICLE 10
CONDITIONS PRECEDENT TO CLOSING

10.1 Developer's Conditions. Developer's obligation to close under this Agreement shall be subject to and conditioned upon the fulfillment (or written waiver by Developer) of each and all of the following conditions precedent:

10.1.1 All the documents required to be delivered by WMATA to Developer at or before Closing shall have been delivered;

10.1.2 Each of the representations and warranties of WMATA made as of the Effective Date herein shall be true in all material respects with the same effect as if made at and as of Closing;

10.1.3 Developer shall have received a certificate executed by an executive officer of WMATA, dated as of Closing, certifying that the condition specified in Section 10.1.2 has been satisfied or that such representations are unsatisfied or modified to

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reflect changes in facts and circumstances between the Effective Date and Closing, provided that such certificate shall not be required to subject WMATA to any greater liability or impose any additional obligations other than as expressly set forth in this Agreement;

10.1.4 Developer's shall not have exercised any right to terminate this Agreement;

10.1.5 There shall not exist any Default under this Agreement by WMATA or circumstances, which with notice or the lapse of time would constitute a Default by WMATA under this Agreement;

10.1.6 No Taking has occurred and WMATA shall not have received written notice of any contemplated Taking that would entitle Developer to terminate its obligations under this Agreement pursuant to the terms and conditions of Article 20;

10.1.7 There shall not be pending any litigation preventing the consummation of any of the transactions contemplated by this Agreement or threatened litigation that, if determined adversely, would declare illegal, invalid or non-binding any of the material covenants or obligations of WMATA;

10.1.8 All written notices that have been received by WMATA of any governmental authority having jurisdiction over WMATA and the Lease Premises of any violation of the Lease Premises of any applicable Laws that do not constitute Permitted Exceptions and that remain pending and uncured, shall have been complied with by WMATA in all material respects or WMATA shall have caused Title Insurer to remove or insure over them;

10.1.9 There exists no condition, that constitutes a material and adverse change to the environmental condition existing on the expiration date of the Study Period of the Lease Premises that is the subject of the Closing which condition could not have been discovered during the Study Period with the exercise of commercially reasonable diligence and thorough investigation, review and testing, including, without limitation, pursuant to Phase I environmental assessments of the Lease Premises and any further testing as would be properly recommended by any Phase I Assessment. A "material and adverse change" shall not include any event, condition, change, conflict, litigation or proceeding, which was caused directly or indirectly by Developer, its Consultants or any of its or their affiliates or any of its or their agents, contractors, representatives or others associated with them, including, without limitation, in connection with activities on or about the Property.

10.1.10 Notwithstanding anything to the contrary, there are no other conditions on Developer's obligation to Close except as expressly set forth above.

10.2 **WMATA's Conditions**. Without limiting any of WMATA's rights elsewhere provided for in this Agreement, WMATA's obligation to consummate a Closing under this

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Agreement shall be subject to and conditioned upon the fulfillment of each and all of the following conditions precedent:

10.2.1 All the documents required to be delivered by Developer to WMATA at or before Closing shall have been delivered;

10.2.2 Each of the representations and warranties of Developer made as of the Effective Date herein shall be true in all material respects with the same effect as if made at and as of such Closing;

10.2.3 WMATA shall have received a certificate executed by an executive officer of Developer, dated as of such Closing, certifying that the condition specified in Section 10.2.2 has been satisfied or that such representations are unsatisfied or modified to reflect changes in facts and circumstances between the Effective Date and such Closing, provided that such certificate shall not be required to subject Developer to any greater liability, or impose any additional obligations, other than as expressly set forth in this Agreement on the Effective Date;

10.2.4 Developer shall have made payment of the Deposit, Pre-Stabilization Period Payments, and all other payments required to be made by Developer prior to the Closing in accordance with the terms and conditions of this Agreement and, as applicable, shall have made delivery or payment and satisfaction in full of any and all then accrued and outstanding Guaranty obligations;

10.2.5 There shall not be pending any litigation preventing the consummation of any of the transactions contemplated by this Agreement or threatened litigation that, if determined adversely, would declare illegal, invalid or non-binding any of the material covenants or obligations of Developer;

10.2.6 Developer shall have obtained adequate financing for the Project, subject to all of the requirements set forth in Article 6;

10.2.7 Developer has at the time of Closing a Qualified Team bound in writing to perform the obligations under this Agreement;

10.2.8 All Interest Holders shall be bound to WMATA under the Loan Covenants;

10.2.9 Full copies of all insurance policies required by Article 12, each such policy evidencing satisfactory coverage beginning on the Closing Date, shall have been delivered to WMATA and approved by WMATA;

10.2.10 Developer shall have obtained all of the Approvals for the Project;

10.2.11 There shall have occurred no Change of Control of Developer, other than following and in accordance with the prior written approval of WMATA;

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10.2.12 Developer shall have delivered the Guaranty to WMATA and such Guaranty shall be in full force and effect and not subject to any breach or default or circumstances, which with notice or the lapse of time could constitute a breach or default thereunder; and

10.2.13 There shall not exist any Default under this Agreement by Developer~~—or circumstances, which with notice or the lapse of time could constitute a Default by Developer under this Agreement~~.

10.3 **Failed Conditions.** In the event of any failure of the above conditions precedent set forth in this Agreement that are not the result of a Default by the party asserting such failure, then Developer, with respect to the conditions precedent set forth in Section 10.1, or WMATA with respect to the conditions precedent set forth in Section 10.2, shall have the option, in its sole discretion, exercised by written notice to the other party hereto, to either (i) waive such conditions and proceed to Closing in accordance with the terms of this Agreement on the applicable Closing, or (ii) terminate this Agreement, whereupon, the full amount of the Deposit shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement.

10.4 Notwithstanding anything to the contrary, WMATA's failure to assert a claim for indemnity or other liabilities under this Agreement prior to the termination of this Agreement shall not preclude or otherwise limit WMATA's right to make such a claim or otherwise limit WMATA's right to amend, alter or supplement any claim that has been made by or on behalf of WMATA or constitute a waiver or an admission of any kind.

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ARTICLE 11
DEVELOPMENT RIGHTS AND OBLIGATIONS

11.1 Obligation to Commence Development. Promptly following the Effective Date of this Agreement, Developer shall begin seeking to obtain the Approvals for the Project. It is the intention of the parties that Developer shall at its sole cost and expense provide all items necessary for the proper execution and completion of the Project, including, without limitation, securing and paying for all Approvals~~, Construction Approvals,~~ and all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Project. Developer shall deliver to WMATA copies of all certificates, permits, approvals and consents promptly after its receipt of the same.

11.2 Construction. Promptly following Closing, Developer shall begin Construction of the Project. Developer shall expeditiously as possible, but in no event later than thirty (30) days after the issuance of the applicable ~~Construction~~ Approvals, commence and timely complete the construction of the Project and all improvements relating thereto in a first class and workmanlike manner in accordance with all applicable health, safety and insurance requirements, free of defects and liens for labor or materials, in accordance with the WMATA Adjacent Construction Manual, this Agreement, the Lease, the Approved Development Plan, the Design and Construction Documents as approved by WMATA, the ~~Construction~~ Approvals and all other applicable legal requirements.

11.3 **Design and Construction Documents Preparation.** Prior to beginning construction, Developer, at its sole cost and expense, shall prepare all Design and Construction Documents required to enable Developer to construct the Project and Developer shall continue such preparation and make all submissions and corrections required herein using Commercially Reasonable Best Efforts. The Design and Construction Documents shall meet all requirements of the Approvals and shall be consistent in all material respects with the Approved Development Plan. The Design and Construction Documents shall be subject to review and approval by WMATA as provided in this Article 11. In addition to all other requirements, the Design and Construction Documents shall include (1) a written description of the physical impact that such construction is reasonably anticipated to have on the Metro Facilities (during construction or after Final Completion); and (2) the submittal must list all penetrations and planned modifications to or in the vicinity of any portion of the Metro Facilities.

11.4 **Compliance with WMATA's Standards and all Legal Requirements.** The Design and Construction Documents shall comply in all circumstances to the WMATA Adjacent Construction Manual. Developer hereby acknowledges that a true, correct and complete copy of which has been delivered by WMATA to Developer. Developer shall comply with and give all notices required by all laws, ordinances, rules, regulations or building codes and statutes bearing on performance of the work relating to the Project. If Developer knows that portions of the Design and Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, Developer shall promptly notify WMATA in writing thereof and effect corrections to

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rectify such circumstances in a manner reasonably satisfactory to WMATA (at the sole cost and expense of Developer) before commencing any work at variance with such laws, statutes, ordinances, building codes, rules and regulations.

11.5 **Submission to and Approval by WMATA of Design and Construction Documents.** Prior to the formal submission of any Design and Construction Documents to any governmental authority for ~~Construction~~ Approvals, Developer shall submit the same to WMATA for WMATA's review and approval pursuant to the provisions of this Article 11. Design and Construction Documents for the Project shall be reviewed and acted upon by WMATA within thirty business (30) days after submission to WMATA.

11.6 **WMATA Approval of Design and Construction Documents.** WMATA shall have the right to approve (which approval shall not be unreasonably conditioned, delayed, or withheld) or disapprove (and if disapproved, WMATA shall state its objections with reasonable specificity), and to require changes to the Design and Construction Documents, as determined by WMATA in its ~~sole~~ reasonable discretion that relate to WMATA's Unconditional Approval Matters, provided, however, that WMATA's review, approval and changes shall not extend to purely aesthetic considerations and WMATA shall reasonably consent to components of the Design and Construction Documents that are consistent, in all respects with the Approved Development Plan. WMATA's Unconditional Approval Matters and all design modifications required to comply with WMATA's requirements in conformity with the terms of this Section shall be promptly incorporated by Developer into the Design and Construction Documents. The Design and Construction Documents as finally approved by WMATA shall constitute the "**Approved Design and Construction Documents**".

11.7 **Easements for the WMATA Reserved Areas and Interests.** Upon WMATA's approval of the Design and Construction Documents in accordance with the terms and provisions of this Agreement, Developer and WMATA shall create and reserve, perpetual exclusive easements in favor of WMATA for the maintenance, operation, repair, use, replacement and general protection of the WMATA Reserved Areas and Interests, together with any other related or appurtenant rights reasonably required by WMATA (including, without limitation, for ingress and egress). Such perpetual exclusive easements in favor of WMATA (the "**Reserved Areas and Interests Easements**") shall be part of the Covenants, Conditions and Restrictions to be recorded against the Property and shall be independently enforceable by WMATA. The Reserved Areas and Interests Easements shall be amended upon Substantial Completion to reflect any change orders approved by WMATA during the performance of construction of the Project. To the extent any of the WMATA Reserved Areas and Interests are not structurally independent of any of Developer's improvements, including, without limitation, foundations, beams, columns, bracing or similar features maintaining vertical and horizontal support, as detailed in the Approved Development Plan, the Reserved Areas and Interests Easements shall also (i) include perpetual easements in favor of WMATA for the vertical and horizontal support of such WMATA Reserved Areas and Interests and for the use of the shared portions of the WMATA Reserved Areas and Interests and (ii) set forth provisions

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concerning Developer's operation and maintenance of any shared components of the WMATA Reserved Areas and Interests, at Developer's sole cost and expense. Developer shall covenant to not allow any interference with the use and enjoyment of the WMATA Reserved Areas and Interests by WMATA, its agents, employees, contractors, subcontractors, invitees and passengers. In addition, the Reserved Areas and Interests Easements shall impose upon Developer certain insurance requirements (including a waiver of subrogation and insured claims), indemnities, restoration obligations in the event of a casualty, and limitations on Developer's ability to modify or alter any WMATA Reserved Areas and Interests without the prior, written consent of WMATA, in its sole and absolute discretion. The Reserved Areas and Interests Easements shall be in form and substance acceptable to WMATA, in WMATA's reasonable discretion, and shall be reasonably acceptable to Developer.

11.8 **Project Schedule, Progress Reports and Meetings.** Developer, within thirty (30) days following the applicable Approvals Achievement Date, shall prepare and submit to WMATA a project schedule for the applicable component of the Project in compliance with the following requirements ("Project Schedule"). The Project Schedule shall be subject to WMATA's approval, not to be unreasonably withheld, but WMATA's approval shall not give rise to any liability of or waiver by WMATA or otherwise prejudice WMATA's rights under this Agreement.

11.8.1 The Project Schedule shall provide for the expeditious preparation, completion and submission by Developer of the Design and Construction Documents and the expeditious and practical execution of all work required for the applicable component of the Project and shall include and conform to the Minimum Project Completion Milestone Requirements. The Project Schedule shall set forth the time for performance and the dates for commencement and completion of each significant aspect of the construction work on the Project consistent with the Minimum Project Completion Milestone Requirements. Subject only to Force Majeure and delays caused solely by WMATA, (but only to the extent that completion of an activity required to be performed by Developer is actually delayed beyond the dates established in this Agreement is actually delayed by such Delays by WMATA), Developer shall achieve Substantial Completion of the Project not later than the dates shown or prescribed in the Minimum Project Completion Milestone Requirements. The timely completion of the Project subject to and in conformity with the terms and provisions of this Agreement is of the essence in this Agreement and by execution of this Agreement, Developer confirms that the date established in the Minimum Project Completion Milestone Requirements for Substantial Completion provides a reasonable period for completion of the Project.

11.8.2 The Project Schedule shall be coordinated with WMATA and Developer's architect so that all activities connected with the construction of the Project shall be performed in an orderly and timely fashion. The Project Schedule shall include reasonable allowances for periods of time required for WMATA's review and approval and for inspections and approvals by the various governmental authorities having jurisdiction

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over the Project. If requested by WMATA, the general contractor and construction manager, if any, shall supplement the Project Schedule with a portrayal thereof in the form of a bar graph.

11.8.3 Developer shall prepare a monthly schedule summary report in such form, detail and character as reasonably approved by WMATA. The report shall identify the significant schedule milestones achieved during the month, identify those milestones that were not achieved and explain why they were not achieved, and shall include a detailed schedule of the following month's activities. Accompanying the report shall be an updated, current Project Schedule consistent with the Minimum Project Completion Milestone Requirements.

11.8.4 After the commencement of construction of the Project, Developer shall hold progress meetings at the job site with such frequency as is reasonably requested by WMATA (but not more often than one time per month), at such time and place as is mutually acceptable to WMATA and Developer. At such meetings, the progress of the Project shall be reported in reasonable detail with reference to the then applicable Project Schedule and all other construction schedules. Developer shall use Commercially Reasonable Best Efforts to cause each major subcontractor then performing work on the Project to have a competent representative present at each such meeting to report on the condition of his work and to receive information regarding the performance of future work by such subcontractor. Meeting minutes shall be prepared by the Developer and distributed within three (3) days following the meeting.

11.9 **Progress Submissions.** Updated Design and Construction Documents shall ~~also~~ be submitted to WMATA at approximately 35%, 65% and 100% completion of the Project.

11.9.1.1 WMATA shall review and provide the Developer with written notification of its approval or disapproval of these submissions within thirty (30) Business Days following receipt thereof.

11.9.1.2 If WMATA requires changes in any item submitted for review pursuant to Section 11.8 or 11.9, then Developer shall resubmit the necessary changes for WMATA's further review. A WMATA notice under this Section 11.19 requiring changes and/or disapproving a prior resubmission shall specify with reasonable detail the nature of the changes required and all of the reasons therefor. Developer's resubmission shall be made in accordance with this Section 11.9. If WMATA gives notice disapproving such a resubmission and requires one or more further re-submissions after a prior resubmission, the procedures specified in this Section 11.9 shall continue to be applied until WMATA has approved the latest resubmission.

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11.10 **Failure to Submit**. Developer's failure to make the requisite submissions shall constitute an Event of Default.

11.11 **Disclaimer of Liability**. WMATA accepts no liability and waives none of its rights under this Agreement or the Lease solely by reason of its approval of any drawings or specifications, nor shall its approval be construed to be a warranty thereof.

11.12 **Use of Property**. Developer shall confine its construction and related activities to the Lease Premises and to areas permitted by law, ordinances, permits and the Design and Construction Documents and shall not unreasonably burden the Lease Premises with materials or equipment so as to adversely affect WMATA's operations or other portions of the Property.

11.12.1 Developer shall be solely responsible for all material or equipment stored by Developer or by any subcontractors on the Lease Premises. Developer shall use Commercially Reasonable Best Efforts to secure the Project construction site. Developer shall properly safeguard and store any combustible materials necessary to the work so as to protect against the possibility of fire or other damage.

11.12.2 In the event that Developer, a contractor or a construction manager encounters any materials on, under or at the Property that is or any of them believes to be hazardous (including but not limited to Hazardous Materials or substances) requires special handling, disposal or treatment, they shall immediately stop work in the affected area and shall immediately report the condition to WMATA. All work involving or affected by the condition shall not thereafter be resumed until such time as the material has been disposed of, abated or otherwise removed at the sole cost, expense, responsibility and control of Developer.

11.12.3 Developer shall be responsible for coordination of any design and construction activities of WMATA and those of Developer and shall bear any increased costs and expenses arising out of any failure relating thereto.

11.12.4 All Existing Improvements that constitute Metro Facilities, utility and capacity shall remain in operation during the construction of the Project and Developer shall be responsible for ensuring that its construction activities do not interfere with such operations.

11.13 **Failure to Commence or Proceed with Diligence**. In addition to any and all other remedies of WMATA and without constituting an election of remedies, if Developer fails to commence and thereafter materially fails to diligently and timely carry out design and construction of the Project in accordance with the Project Schedule and the Approved Design and Construction Documents or, if Developer fails to ~~continuously and using~~ use Commercially Reasonable Best Efforts to perform, carry out and prosecute the Project, so that it is in reasonable accordance with the approved Project Schedule for its performance and completion, and fails within sixty (60) days after receipt of written Notice from WMATA to commence and correct such failure, WMATA, without prejudice to any

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other remedy WMATA may have, may perform and oversee or cause to be performed and managed, in WMATA's discretion, the Project or the work that Developer is failing to prosecute diligently and Developer and Guarantor shall be jointly and severally liable for payment to WMATA of the cost of performing such work on demand. Notwithstanding the foregoing, WMATA shall forbear from exercising the right set forth in this subsection, if within such sixty (60) day period an Institutional Lender that has provided financing for the undertakes in writing to WMATA to perform and oversee or cause to be performed and managed the Project or the work that Developer is failing to prosecute diligently and within Thirty (30) days thereafter corrects or causes to be corrected such lack of diligence and prosecution and thereafter causes construction of the Project to be timely performed in accordance with this Agreement.

11.14 **Final Completion**. Final Completion of the Project shall occur on or before the date specified in the Project Schedule. The foregoing Project Schedule shall be subject to extension on account and to the extent of any Force Majeure occurrences and delays caused solely by WMATA (but only to the extent that completion of an activity required to be performed by Developer is actually delayed and such delay is properly and timely claimed by Developer). Upon Final Completion, Developer shall deliver to WMATA one set of mylar as-built drawings and, if available, the same in digital, Auto Cad ver. 12 minimum, and, if feasible, Auto Cad 2000.

11.15 **Inspection**. WMATA shall have the right from time to time to enter the Lease Premises to inspect the progress of work being performed by Developer to verify compliance with all applicable obligations of Developer under this Agreement, and to operate or perform any work desired by WMATA in respect of the Metro Facilities and WMATA's Reserved Areas and Interests, provided, however, that WMATA shall use reasonably diligent efforts to minimize any disruption to the work being performed by Developer or the conduct of any business being conducted on the Project. All such entries onto the Lease Premises (other than for purposes relating to the Metro Facilities, Metro Station, or WMATA's Reserved Areas and Interests) shall occur during construction working hours, except in the event of an emergency, during which WMATA's right of access to the Project may occur at any time.

11.16 **Certificates of Final Completion and Occupancy; Warranties.** The obligations of Developer under Section 11.2 hereof with respect to the Project shall not be deemed satisfied unless and until Developer shall have for such component of the Project (a) obtained an unconditional certificate of occupancy for the Developer Improvements (including all base building, core and shell improvements and operating systems, but excluding any pending tenant finish work), (b) delivered to WMATA a certificate of final completion certified to WMATA's reasonable satisfaction stating that all applicable Project improvements have been constructed in accordance with the Design and Construction Documents, and in compliance with all applicable legal requirements, and (c) corrected all material defects shown on the material defect list approved by WMATA and prepared by the Project architect selected by Developer, which list shall be prepared within ten (10) Business Days after receipt of the certificate of occupancy referenced

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above in this Section 11.16 for the Project and caused substantial compliance with all continuing warranties issued for the benefit of the Project during the applicable warranty period.

11.17 **Covenants, Conditions, and Restrictions.** A condition precedent to Developer's rights to develop and construct improvements on the Lease Premises shall be the creation and recordation of covenants, conditions, and restrictions. After WMATA's approval of the Design and Construction Documents and prior to commencement of any construction, Developer shall prepare and deliver to WMATA for its approval, which approval shall not be unreasonably conditioned, withheld or delayed, proposed covenants, conditions and restrictions to be recorded against the Property. In the event that Developer shall fail to prepare and deliver such proposed covenants, conditions and restrictions to WMATA or shall fail to record approved covenants, conditions, and restrictions against the Property by the dates for such preparation, delivery or approval set forth in this Agreement or the Minimum Project Completion Milestone Requirements, WMATA shall have the right to prepare and record interim covenants, conditions and restrictions that may be reasonably required by WMATA, not inconsistent with the terms of this Agreement. The proposed covenants, conditions and restrictions prepared by Developer (and any interim covenants, conditions and restrictions) shall (i) contain such terms, covenants, conditions and restrictions as shall be reasonably required or requested by WMATA, not inconsistent with the terms of this Agreement, to protect WMATA's interests in and operations at the Property and WMATA's Adjacent Property, including, without limitation, protections, easements, obligations and restrictions for the benefit of WMATA relating to the Metro Facilities (whether or not integrated into improvements to be constructed by Developer) and WMATA's Reserved Areas and Interests and any potential adverse impacts on WMATA's transit operations and (ii) shall reaffirm all covenants and restrictions contained in the Lease ~~and the Development Covenants~~ and (iii) shall be consistent with requirements imposed by the District of Columbia and this Agreement. Subject to satisfaction of the requirements of the immediately preceding sentence, the covenants, conditions and restrictions as may be further amended or supplemented by WMATA shall be subject to the approval of Developer, such approval not to be unreasonably withheld, conditioned or delayed. The Covenants, Conditions and Restrictions as finally mutually approved by WMATA and Developer (the "**Covenants, Conditions and Restrictions**"), shall~~, together with the Development Covenants,~~ thereafter be deemed to comprise a part of the Approved Development Plan, shall be recorded against the Property at the expense of Developer and shall be senior to all other matters of record other than the Permitted Exceptions. Subject to such applicable requirements of the District of Columbia, WMATA shall have the right from time to time to reasonably amend the ~~Development Covenants and the~~ Covenants, Conditions and Restrictions (and to record the amended ~~Development Covenants, and~~ the Covenants, Conditions and Restrictions against the Property), without limitation, to reflect the scope, characteristics and actual locations of as-built improvements and WMATA's Reserved Areas and Interests provided that, Developer shall have the right to review and pre-approve each such proposed amendment to the ~~Development Covenants or~~ Covenants, Conditions and Restrictions so required by WMATA, such approval not to be

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unreasonably withheld, conditioned or delayed. Subject to the terms of this Section, Developer and each of the Interest Holders shall reasonably cooperate with WMATA in connection with such amendments and recordation and provide all such other reasonable further assurances relating thereto as shall be reasonably requested by WMATA.

11.18 **Guaranty**. Guarantor shall guarantee: (1) the Final Completion of the construction of the Developer Improvements by the Final Completion Date in accordance with the Approvals and the Approved Development Plan, (2) the Final Completion of construction as and when required under the terms of this Agreement of all improvements and infrastructure that are required to be constructed by Developer under the terms of any and all of the Lease, this Agreement, the Approvals and the Approved Development Plan (including, without limitation, site plan and building permit requirements) and which are commenced, are required to be commenced prior to termination of this Agreement, or will be commenced promptly following Closing, (3) the removal, as and when required under the terms of this Agreement, of all improvements and infrastructure as required by this Agreement, (4) the remediation of all Hazardous Materials to the extent required by any and all of this Agreement, by applicable environmental Law or by any court or other governmental authority having jurisdiction, (5) the full and timely payment and performance of all obligations relating to the construction and development of the improvements in connection with the construction of the Project to be constructed, paid for or provided by or at the expense of Developer under the terms of this Agreement and (6) the full and timely payment and performance of all other obligations of Developer under this Agreement. All such obligations shall be evidenced and governed by the Guaranty, which shall be delivered to WMATA on the Effective Date concurrently with the execution and delivery of this Agreement. Nothing contained in this Section 11.18 shall be deemed to constitute a release or diminution of liability of Developer or any other surety in respect of any obligation or liability under this Agreement or any of the Transaction Documents. The Letter of Credit shall secure all obligations under the Guaranty.

11.19 **Completion Bond, Performance Bond and Payment Bond**

11.19.1 Developer shall furnish separate performance and payment bonds covering faithful performance of all contracts for construction of the Project and payment of obligations arising thereunder, respectively, which bonds shall be issued by a surety authorized to transact business in the District of Columbia and acceptable to WMATA in its discretion, as follows.

11.19.1.1 A payment bond in a penal sum equal to one hundred percent (100%) of the "Contract Price" of the Developer Improvements as reflected in the Approved Design and Construction Documents. The proceeds of such bond shall be applied to Final Completion of the Project.

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11.19.1.2 A performance bond in a penal sum equal to one hundred percent **(100%)** of the "Contract Price" of the Developer Improvements as reflected in the Approved Design and Construction Documents. The proceeds of such bond shall be applied to Final Completion of the Project.

11.19.1.3 A completion bond, if necessary, in a penal sum equal to one hundred ~~twenty~~ percent **(~~120~~100%)** of the replacement costs of Metro Facilities, as reflected in the Approved Design and Construction Documents. The completion bond, if necessary, shall be in a form approved by WMATA.

11.19.2 Developer shall deliver the required bonds to WMATA at least ten (10) calendar days prior to Closing.

11.19.3 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

11.19.4 Such bonds shall comply with the other terms and conditions of this Agreement for the benefit of WMATA, including, without limitation, regarding the application and disposition of payments thereunder.

11.19.5 Each of such bonds shall include among their provisions for payment or performance that the obligations of the surety shall be unconditionally activated upon any determination by WMATA of a Default under this Agreement or any of the Transaction Documents and that WMATA shall be given notice of any default by Developer under the construction contract(s) or construction loan documents.

11.20 **Deposit**. To the extent not forfeited under other provisions of this Agreement, the Deposit shall serve as security (and not as liquidated damages) for the faithful and timely performance of Developer's obligation to complete construction of the Project in conformity with the terms of this Agreement; provided that, the Deposit shall be refunded to Developer in conformity with the provisions of Article 3.

11.21 **Maintenance of Infrastructure**. Developer acknowledges that Developer, and not WMATA, shall have a continuing obligation with respect to the maintenance, operation, repair and replacement of any and all infrastructure constructed on the Lease Premises.

11.22 **Safety of Persons and Property.**

11.22.1 Developer shall take commercially reasonable precautions for safety of, and shall provide commercially reasonable protection to prevent damage, injury or loss to: (1) employees and other persons who may be affected by activities relating to the Project; (2) the work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Developer, or its

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contractors or subcontractors; and (3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

11.22.2 Developer shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

11.22.3 Developer shall erect and maintain, as required by existing conditions and performance of this Agreement, commercially reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

11.22.4 When use or storage of explosives or other Hazardous Materials or equipment or unusual methods are necessary for execution of the Project, Developer shall exercise utmost care and carry on such activities under supervision of properly qualified personnel with all due regard for WMATA's operations and activities so as not to adversely affect the same.

11.22.5 Developer shall promptly remedy, at no additional cost to WMATA, all damage and loss to all property caused in whole or in part by Developer, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

11.22.6 Developer shall designate a responsible individual at the Project site whose duty shall be to use Best Commercially Reasonable Efforts to prevent accidents.

11.22.7 Developer shall provide commercially reasonable fire protection equipment and safeguards to protect WMATA's interests in accordance with WMATA's insurance carrier's requirements.

11.23 **Signage**. The existence, content and location of all signs proposed to be placed on the Property by Developer, or its contractors, and any and all signage that in any way relates or refers to WMATA or Metro Facilities shall be subject to prior written approval by WMATA in its discretion. The existence, content and location of all signs proposed to be placed and placed on the Property by WMATA or its agents, and any and all signage that in any way relate or refer to or provide directions to Developer shall be subject to prior written approval by Developer in its discretion.

11.24 **Offsite Improvements**. Developer shall pay to WMATA on demand, amounts equal to the proportionate construction and maintenance costs of any offsite improvements constructed by WMATA, (by way of example, but not limitation, storm water management ponds), which benefit the Project, if any. Any perpetual maintenance costs associated with the Project shall constitute an obligation which runs with the land and shall survive Closing and shall be included among the ~~Development Covenants and the~~ Covenants, Conditions and Restrictions to be recorded against the Property.

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11.25 **Davis Bacon Requirements.** Developer shall comply with the "Davis-Bacon Act," 40 U.S.C. §276a, et seq. and with Section 64 of WMATA Compact and the "Fair Labor Standards Act," 29 U.S.C.A. §201, et seq. (1978) as amended in connection with all construction activities relating in whole or in part to the WMATA's Reserved Areas and Interests on the Property.

ARTICLE 12
INSURANCE REQUIREMENTS

12.1 **Scope and Limits of Required Insurance Coverage.** Beginning on the Effective Date and through the ~~ninetieth (90th)~~tenth (10th) day following Final Completion of the Project, Developer and each of its contractors and subcontractors~~, and each of its contractors and subcontractors and every Person directly or indirectly employed by any of them and every Person for whose acts any of them may be liable~~ (collectively, the "Insurance Obligors"), shall procure and at all times maintain without interruption, at its ~~and their~~ sole cost and expense, insurance coverage and policies to protect each of WMATA and the Insurance Obligors and all of ~~their~~ its respective officers, directors, agents, and employees, from claims set forth below which may arise out of or result from activities contemplated by this Agreement and the other Transaction Documents by any and all of the Insurance Obligors such coverage and policies having the scope and limits not less than as set forth below:

12.1.1 **General Liability Insurance.** One or more commercial general liability insurance policies issued to and covering the liability of the Insurance Obligor for all activities and obligations under or in connection with this Agreement and the other Transaction Documents. Such coverage shall include, without limitation, completed operations and contractual liability insurance, explosion, collapse and underground liability coverage of not less than the following limits:

12.1.1.1 **Non-Construction Activities and Obligations.** Personal Injury and Property Damage Liability: $5,000,000 Combined Single Limit Each Occurrence.

12.1.1.2 **Construction Activities and Obligations.** Personal Injury and Property Damage Liability: $10,000,000 Combined Single Limit Each Occurrence, except as provided below:

12.1.2 **Commercial Property Insurance.** One or more special form insurance policies, which in the aggregate cover one hundred ~~twenty~~ percent (~~120~~100%) of the full replacement cost of all improvements on the Property.

12.1.3 **Builder's Risk Coverage.** To the extent not fully covered by the policies required under subsection 12.1.1, one or more policies of builder's risk insurance on the improvements, buildings and materials, equipment and supplies on or about the Property that have been or are to be incorporated into the Project. Such insurance

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shall also include those Project materials, equipment, and supplies owned by WMATA and stored off-site. This insurance shall include the interests of WMATA and the Insurance Obligors~~, subcontractors and sub-subcontractors~~. Such insurance shall be written on a replacement cost basis and shall afford coverage at least equivalent to an "all-risk" builder's risk policy form as customarily defined within the insurance industry. One or more insurance policies in such amounts as shall be reasonably required by WMATA in respect of all construction, installation, alteration and other similar construction activities of the Insurance Obligor, but in no event less than the estimated completed value of the Project.

12.1.4 **Insurance Fully Complying with All Applicable Worker's Compensation, U.S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Law and the Federal Employers' Liability Act Requirements.** One or more insurance policies, which in the aggregate fully comply with all applicable worker's compensation, disability benefit and other similar employee benefit statutes, regulations and requirements, including, without limitation, those of the District of Columbia, and with all requirements of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, Admiralty Laws, or the Federal Employers' Liability Act. Such policies, without limitation, shall conform to all applicable statutory limits and, to the extent not specified to the following minimum coverage limits:

Employers' Liability:	Statutory
Each Accident:	$1,000,000
Disease Policy Limits:	$1,000,000
Disease-Each Employee:	$1,000,000

12.1.5 **Automobile Liability Insurance.** One or more insurance policies covering the use of all owned, non-owned, hired, rented or leased vehicles having coverage scopes and limits not less than as required by all applicable motor vehicle laws, including, without limitation, of the District of Columbia, to the extent not fully covered by the policies required under subsection 12.1.1. In no event shall the coverage under such policies shall have a combined single limit for bodily injury liability and property damage liability of less than $5,000,000 per occurrence.

12.1.6 **Contractors' Pollution Legal Liability Insurance.** One or more insurance policies covering contractors' pollution legal liability, including, without limitation, the liability of the Insurance Obligor occasioned by environmental testing and release, removal, storage, transport and disposal of Hazardous Materials. The policy shall include coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, solid, liquid or gas, waste materials or other irritants, contaminants or pollutants from, into or upon the Property, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The coverage under such an insurance policies shall have limits not less than $3,000,000 per occurrence of claims made.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004167

12.1.7 **Railroad Protective Liability Insurance.** One or more insurance policies covering the liability of any and all of the Insurance Obligors for any and all personal injuries, deaths and any and all damage to property, equipment and facilities caused by work performed by the Insurance Obligor on, above, below, adjacent or within fifty (50) feet of an of the Metro Facilities. The coverage under such policies shall have limits not less than $5,000,000 combined single limit for bodily injury and property damage with a $10,000,000 aggregate.

12.1.8 **Indemnification and other Liabilities under this Agreement and the Transaction Documents.** One or more insurance policies covering the liability of the Insurance Obligor for any and all indemnification obligations and indemnification liabilities under this Agreement and the Transaction Documents.

12.1.9 At the request of WMATA, such other insurance in such amounts as may from time to time be reasonably required by WMATA against such other insurable hazards as at the time are commonly insured against in the case of premises similarly situated, due regard being given to the type of the improvements, its construction and its use and occupancy.

12.1.10 If, by reason of changed circumstances or economic conditions, the insurance amounts referred to in this Agreement become in WMATA's reasonable judgment inadequate, Developer shall increase the amounts of such insurance promptly upon WMATA's reasonable request, which increased amounts shall be consistent with that customarily carried with respect to premises similarly situated to the Property, giving due regard to the type of improvements and its construction, use and occupancy.

12.1.11 **WMATA's Interests.** ~~Each of the~~ Insurance Obligors shall cause its insurance carrier(s) to name WMATA as an additional insured under its policies and to provide not less than sixty (60) days' written Notice of modification, termination, or cancellation of the policy to WMATA and to issue an endorsement to WMATA to that effect with a copy of such Notice and endorsement to WMATA's Office of Risk Management. Such endorsement shall be delivered to WMATA on or before the earlier of the Effective Date and before the expiration of any term thereof from an insurance company licensed to do business in the jurisdiction in which the Property is located. All policies required to be procured or provided by Insurance Obligors (i) shall be written on an occurrence basis unless otherwise indicated and WMATA's coverage shall be specified as primary policy coverage and not contributing with or in excess of any coverage which WMATA may carry; (ii) shall be on a basis which in each appropriate instance shall not make any Insurance Obligor a coinsurer; (iii) shall provide that coverage shall not be voided or reduced on account of the performance of any construction or other work on the Property; (iv) shall provide that coverage shall not be affected, limited, voided or reduced as to WMATA on account of any actions or omissions by any or all of the Insurance Obligors, nor shall any such actions or omissions affect or limit the obligation of the insurance company to pay the amount of any loss sustained; (v) shall provide that coverage shall not be voided or

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004168

reduced as to WMATA on account of WMATA's status as governmental instrumentality or public or quasi-public body; (vi) shall contain an express waiver of any right of subrogation by the insurance company against WMATA and WMATA's agents, contractors and employees, to the maximum extent possible; and (vii) shall provide for a deductible or self insured retention not to exceed $10,000. Neither the issuance of any insurance policies required hereunder, nor the minimum limits specified herein with respect to the Insurance Obligors' insurance coverages, shall be deemed to release, limit or restrict in any way the Insurance Obligors' liability arising under or out of this Agreement or otherwise.

12.1.12 **Verification of Coverage.** With respect to each and every one of the insurance policies herein required to be procured by the Insurance Obligors, on or before the Effective Date (or in the case of insurance relating solely to construction of the Project on or before the fifteenth (15th) day preceding the commencement of any construction or construction related activities) and not less than sixty (60) days before any such insurance policy shall expire, ~~each of~~ the Insurance Obligors shall deliver to WMATA's Office of Risk Management (at 600 Fifth Street, N.W., Washington, DC 20001 or such other address as may be specified by WMATA) at WMATA's option either an original or copy of the insurance policy for each such required policy or renewal thereof, as the case may be. Each and every insurance policy required to be carried hereunder by or on behalf of Insurance Obligors shall provide (and any certificate evidencing the existence of each such insurance policy shall certify) that, unless WMATA shall first have been given sixty (60) days' prior written notice thereof: (i) such insurance policy shall not be canceled or allowed to lapse, and shall continue in full force and effect, (ii) the insurance carrier shall not, for any reason whatsoever, fail to renew such insurance policy, and no material changes may be made in such insurance policy, except in the event of the Insurance Obligors' nonpayment, for which WMATA shall have been given not less than twenty (20) days' prior written notice. From time to time within ten (10) Business Days following request by WMATA, the Insurance Obligors shall deliver to WMATA evidence reasonably satisfactory to WMATA that such insurance policies and coverages remain in full force and effect, and that all premiums which are due and payable have been paid. The terms "insurance policy" and "insurance policies" as used in this Agreement shall be deemed to include any extension or renewals of such insurance policies. Evidence of each renewal or replacement of the policies required by this Agreement and the other Transaction Documents shall be delivered by the Insurance Obligors to WMATA at least twenty (20) days prior to the respective expiration of the applicable policies.

12.2 **Failure to Procure or Maintain Insurance.** In the event that Insurance Obligors shall fail to furnish and maintain any insurance coverage required to be procured by Insurance Obligors or fails to maintain acceptable policies of insurance, WMATA shall have the option, but not the obligation, to obtain the same and pay the premium therefor at the sole cost and expense of the Insurance Obligors, without the need of any notice to Insurance Obligors, and the premium so paid by WMATA together with a service charge equal to

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~~ten~~ two percent (~~10~~2%) shall be immediately due and payable by Insurance Obligors to WMATA.

12.3 **Compliance with Insurance Requirements.** The Insurance Obligors shall not do or permit to be done or omit to do any act or thing upon the Property that will invalidate or be in conflict with any insurance policies covering the Property or any part thereof, including all common areas or fixtures and property therein, or any other insurance policies or coverage referred to above; ~~and each of~~ the Insurance Obligors shall promptly comply with all rules, orders, regulations or requirements relating to such insurance policies, including all rules, orders, regulations, requirements and insurance regulations, and shall not do, or permit anything to be done, in, on or about the Property, or bring or keep anything therein, which shall increase the rate of fire insurance on the Property or on any property, including all common areas, located therein, or increase the rate or rates of any other insurance referred to in this Agreement. If any act or omission of any of the Insurance Obligors, its or their agents, employees or contractors shall result directly in any increase in the premium rates applicable to any such insurance policies carried by WMATA, or other increased costs to WMATA in order to comply with insurance regulations, in excess of the premium rates or such costs in effect, then the Insurance Obligors shall reimburse WMATA for the amounts of any such increased rates or costs on account of such act or omission (with joint and several liability therefor) within fifteen (15) days after receipt of a statement therefor from WMATA.

12.4 **Minimum Qualifications of Insurance Companies.** Insurance companies providing the coverages required by this Article 12 shall be rated by A.M. Best or a comparable rating company and carry at least an "A" rating and a "Financial Size Category" of at least "X" or better or, if such ratings are not then in effect, the equivalent thereof or such other financial and size rating as WMATA may at any time consider appropriate. All insurance shall be procured from insurance companies authorized to do business in the jurisdiction in which the Property is located. WMATA's approval or failure to disapprove the insurance furnished by the Insurance Obligors shall not release, limit or restrict in any way Insurance Obligors' liability arising under or out of this Agreement or otherwise.

12.5 **Survival of Insurance and Indemnification Covenants.** The requirements of this Article12 shall survive Closing, shall be embodied in ~~the Development Covenants and~~ the Covenants, Conditions and Restrictions.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004170

ARTICLE 13
TRANSIT ORIENTED DEVELOPMENT; FTA APPROVAL; MISCELLANEOUS REQUIREMENTS

13.1 **Transit-Oriented Development.** In accordance with FTA requirements (including, without limitation, FTA Circular 9300.1B, Appendix B), Developer warrants and covenants that the Project to be designed and to be constructed on the Lease Premises shall constitute a "Transit-Oriented Development". In addition, Developer warrants and covenants that it shall maintain a "Continuing Transit Orientation" each as defined below. The requirements of this Section shall be among the ~~Development Covenants and~~ Covenants, Conditions and Restrictions. Developer and its heirs, successors and assigns shall cause the Lease Premises at all times to maintain a "Continuing Transit Orientation" for so long as a Metrorail station is open and in operation on or about the Property or any WMATA's Adjacent Property, (or to the extent required by FTA regulations or other applicable Laws) within reasonable proximity thereof. The terms "Transit-Oriented Development" and "Continuing Transit Orientation" mean respectively, as applicable to design and construction of the Project and as to its subsequent maintenance and operation, satisfaction of each of the following, each as reasonably determined by WMATA: (a) provision of convenient pedestrian and vehicular access to a transit station; (b) incorporation of private investment and office, commercial or residential development; (c) design which enhances the effectiveness of a mass transit project and is physically or functionally related to the mass transit project; and (d) creation of non-vehicular capital improvements that are designed to result in increased transit usage.

13.2 **FTA Project Approval.** WMATA and Developer acknowledge that the Project is subject to approval by the FTA ("**FTA Project Approval**"). WMATA will apply for FTA Project Approval within thirty (30) days following the Effective Date. WMATA will provide evidence of receipt of FTA Project Approval to Developer. In the event FTA Project Approval is denied, and all possible appeals exhausted, this Agreement will be terminate and expire as of the date of such denial, the full amount of the Deposit, subject to the terms of Article 3 shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement.

13.3 **Disclaimer.** WMATA shall have no obligation to make any change, demolition or improvement of or to the Lease Premises, WMATA's Residual Property, WMATA's Adjacent Property or any other portion of the Property, including without limitation, to comply with Applicable Laws, except as expressly set forth in this Agreement, and Developer shall have no right to make any such changes, demolitions or improvements without the prior written consent of WMATA in each instance first obtained, Applicable Laws, except as expressly set forth in this Agreement.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004171

13.4 **Americans with Disabilities Act.** All improvements constructed by Developer on the Lease Premises shall comply with Title II and III of the Americans With Disabilities Act, 42 U.S.C., 12101, et seq., as amended, and any regulations promulgated thereunder ("ADA"), to the extent applicable. If as a result of such improvements, or any subsequent alteration, addition or modification thereto, ADA-related improvements to the Metro Station or any Metro Facilities are required, Developer shall be solely responsible for the cost of all such improvements and shall pay or reimburse WMATA for all such costs on demand.

13.5 **Use of WMATA Compact.** Developer understands and agrees that in no event shall Developer assert for its own benefit, or attempt to claim or assert, an exemption or immunity available to WMATA under the Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as same may be amended (the "WMATA Compact").

13.6 **Hazardous Materials.** Developer shall not cause or permit any Hazardous Materials to be used, generated, stored or disposed of, on or about, from or adjacent to the Property.

13.7 **Noise and Vibrations.** No claims shall be made by Developer against WMATA arising from usual noise or vibration caused from WMATA's normal transportation related operation of the Metro Station or any Metro Facilities. A provision to this effect shall be included in all subleases delivered pursuant to this Agreement.

13.8 **No Interference.** Developer shall not interfere or permit any interference with any of WMATA's operations or the free flow of pedestrian traffic to and from the Metro Station, Metro Facilities, or WMATA's Reserved Areas and Interests. Developer shall not conduct or permit any activities to be conducted that would interfere with or diminish WMATA's ability to realize transit revenues in, on or about the Property.

13.9 Acknowledgment of Tax Exempt Status. Developer acknowledges that WMATA is a tax exempt entity and agrees that WMATA shall not be responsible for the payment of any taxes or impositions relating to this Agreement or the transactions contemplated by this Agreement or the other Transaction Documents. Any and all taxes and other impositions resulting solely from any and all activities of Developer shall be their sole responsibility and obligation and not that of WMATA. From and after the Closing, other than such impositions as WMATA has routinely paid and is legally required to pay with respect to the Property on and before the Effective Date, Developer (and not WMATA) shall be responsible for the payment of any and all taxes and impositions, including, without limitation, real estate taxes, relating to the Lease Premises.

13.10 **Officials Not To Benefit.**

13.10.1 No member (i.e., Representative or Senator) of, or delegate to, Congress, or any similar official, or any member of such person's family, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom; but this provision shall not apply if this Agreement is made with a corporation or other entity

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with which such official or family member has only a de minimis (in WMATA's sole opinion) contractual or ownership interest. Developer or any Consultant warrants, represents, and agrees that as of the date of this Agreement, no person described in this Subparagraph, nor any entity with which such person is affiliated, has any such interest in Developer or any Consultant. Developer or any Consultant shall forthwith deliver written notice to WMATA of any breach of the foregoing warranty, representation, and agreement, and shall make reasonable inquiries from time to time to determine whether any such breach has occurred.

13.10.2 No member, officer, or employee of WMATA or of a local public body during his/her tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement.

13.11 **Gratuities**. In connection with this Agreement, or any amendments or modifications thereto, the giving of, or offering to give, gratuities (in the form of entertainment, gifts or otherwise) by the Developer or any Consultant, or any agent, representative, or other person deemed to be acting on behalf of the Developer or any Consultant, or any contractor, subcontractor or supplier furnishing material to or performing work under this Agreement, or any agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any director, officer or employee of WMATA, or to any director, officer, employee or agent of any of WMATA's agents, consultants or representatives, with a view toward securing an agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to performance under this Agreement or any agreement that will be negotiated, is expressly forbidden. The terms of this Paragraph shall be strictly construed and enforced in the event of violation hereto.

ARTICLE 14
ASSIGNMENT OF AGREEMENT

14.1 **Assignment**

14.1.1 Prior to Final Completion, this Agreement shall not be assignable by the Developer or the Guarantor.

14.1.2 After Final Completion, neither this Agreement nor any rights or interests conferred hereunder shall be assigned or assignable, delegated or transferred in any manner by Developer or Guarantor, without WMATA's prior written approval in WMATA's sole discretion and any purported assignment delegation or transfer in violation of this provision shall be null and void. No assignment shall relieve or release Developer or Guarantor from any of their respective obligations under this Agreement or the Guaranty, as applicable, and without limitation, WMATA shall not be required to consent to any assignment that would adversely affect WMATA's rights, expectations and requirements under Article 2.

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14.1.3 All assignments (whether or not requiring the consent of WMATA) shall be made expressly subject to the terms, guarantees, covenants and conditions of this Agreement and shall require among other things:

14.1.3.1 That the assignment shall not be binding on WMATA until a duly executed copy of the assignment is delivered to WMATA. The assignment shall designate the name of the assignee and the address to which all Notices required by this Agreement shall be sent; and

14.1.3.2 That the assignee shall assume all rights and obligations of Developer or Guarantor, as applicable, under this Agreement and the other Transaction Documents.

14.1.3.3 Such assignment shall not (a) relieve Developer or Guarantor of any liabilities and obligations under this Agreement or any of the other Transaction Documents; or (b) relieve Guarantor of any liabilities and obligations under the Guaranty or (c) impair or adverse affect the rights of WMATA under this Agreement or any agreement, undertaking or security related to or contemplated by this Agreement.

14.2 **Change of Control.**

14.2.1 There shall be no Change of Control in either the Developer or the Guarantor prior to the Final Completion of the Project.

14.2.2 ~~After Final Completion, there shall be no Change of Control in the Developer, without WMATA's prior written approval, in WMATA's sole discretion. WMATA shall not be required to consent to any Change in Control that would adversely affect WMATA's rights, expectations and requirements under Article 2~~**RESERVED**.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004174

ARTICLE 15
FORFEITURE OF DEVELOPMENT RIGHTS

In addition to all other rights and remedies of WMATA, if Developer fails to secure the Approvals on or before expiration of the Approval Period or if WMATA's right to terminate arises under Article 6 at WMATA's election in its sole and absolute judgment, Developer shall forfeit the right to lease or develop the Lease Premises. Nothing in this Article shall impair or diminish the scope or exercise of WMATA's remedies for any Default.

ARTICLE 16
BROKERAGE

WMATA and Developer each represents and warrants to the other that it has not dealt with or utilized the services of any real estate broker, sales person or finder in connection with this Agreement.

ARTICLE 17
POSSESSION AND DUTY OF CARE

17.1 **Possession**. Possession of the Lease Premises shall be delivered to Developer at Closing, pursuant to the terms of the Lease. Except only for Developer's license during the Study Period as set forth in and limited by the terms of Article 4, nothing in this Agreement and no action or failure to act by WMATA, shall constitute a grant by WMATA to Developer or any Consultant or any other Person of (or acquiescence regarding) any legal or equitable estate in or to the Property or any part thereof or of any license right, power, or permit, interest, lien, charge, or other encumbrance on the Property or WMATA's right, title or interest therein. Developer and each Consultant shall not suffer or permit any portion of the Property to be used by any Person, so as to threaten, burden, diminish, adversely affect or impair WMATA's rights, title or interest in the Property and each Developer and Consultant shall indemnify, defend (with attorneys approved by WMATA) and hold WMATA harmless against any and all damage, losses, costs and expenses (including, without limitation, attorneys' fees and costs) arising out of any breach of this subsection. To the extent that possession of the Lease Premises shall not be delivered to Developer at Closing, vacant (except as contemplated by the Permitted Exceptions or otherwise expressly set forth in this Agreement), all lessees, tenants and occupants, and all holdover tenants shall be and become tenants by sufferance of Developer, provided, however, that nothing in this Section 17.1 shall diminish or impair the rights of WMATA set forth in this Agreement or the other Transaction Documents.

17.2 **Duty of Care and Reporting.**

17.2.1 Developer and each Consultant by exercising any right or license, pursuant to Article 4 under this Agreement, to enter onto the Lease Premises and to conduct activities relating thereto for any purpose, acknowledges that WMATA's Metro Facilities occupy portions of the Property and are located on, under, or about the Property, such that Developer and each Consultant shall be held to a duty of special and utmost care

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not to damage, interfere with or adversely affect in any way such tunnels, any other Metro Facilities or any ancillary equipment or facilities. Without limiting the foregoing, Developer and each Consultant shall protect the Metro Facilities, including, without limitation, any and all adjacent right-of-way areas from any and all falling objects. It shall be the responsibility of Developer to inform each Consultant of the requirements of this subsection. However, at the request of WMATA, Developer and each Consultant shall be required to deliver to WMATA a written acknowledgment of the foregoing, but failure of WMATA to request the same shall not excuse noncompliance with the terms of this subsection.

17.2.2 Developer and each Consultant shall, prior to conducting any work or other activity within the confines of any tunnel or any adjacent right-of-way which is above or adjacent to the third rail or any other significant electrical facilities (e.g., traction stations), first attend and complete, to WMATA's satisfaction, a safety class conducted by WMATA's Safety and Fire Protection Branch.

17.2.3 Developer and each Consultant shall only enter and conduct activities in, on or about the Property subject to the terms of an express written Right of Entry, as described in Article 4, and in such manner and at such times so as not to interfere with WMATA's use, construction, maintenance, repair or operations thereof. If access to any track areas is required, such access shall be limited to only one (1) track at a time.

17.3 **Indemnification.** Developer shall indemnify, defend (with attorneys selected by Developer, subject to WMATA's approval, not to be unreasonably withheld, and retained at Developer's expense) and hold WMATA harmless from any and all claims, damages, actions, losses, costs, expenses (including, without limitation legal fees and expenses) and liabilities of whatsoever nature or kind that may arise in connection with any and all actions taken by Developer, its Consultants and its and their employees, agents and invitees in, on, about or in connection with the Property or their performance of this Agreement and the related Transaction Documents, including, without limitation, any and all surveys, tests, investigations, construction and other activities.

17.4 **Survival.** Except as otherwise expressly provided in this Article 17, the requirements of this Article 17 shall not be limited to the Study Period, shall survive Closing and shall run with the land and shall be deemed a part of and shall be incorporated within the ~~Development Covenants and the~~ Covenants, Conditions and Restrictions.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004176

ARTICLE 18
DEFAULTS AND REMEDIES

18.1 **WMATA's Default**. The following shall constitute a "Default" by WMATA under this Agreement:

18.1.1 If WMATA refuses to consummate a Closing as required under the terms of this Agreement; or

18.1.2 If WMATA makes any material misrepresentation under Section 9.1 of this Agreement; or

18.1.3 If following the Study Period and the Approval Period, WMATA fails to pay when due and payable any impositions it is legally required to pay in respect of the Lease Premises and any such failure is not cured within thirty (30) business days after receipt of Notice (or such additional period as may be otherwise provided under this Agreement or agreed by the parties to effect such cure, so long as WMATA timely commences such cure and thereafter diligently prosecutes such cure to completion), and such non-payment prevents the consummation of the Closing or completion of construction of the Project; or

18.1.4 If WMATA fails to perform any material agreement or covenant required to be performed by WMATA under the terms of this Agreement and any such failure is not cured within thirty (30) business days after receipt of Notice (or such additional period as may be otherwise provided under this Agreement or agreed by the parties to effect such cure, so long as WMATA timely commences such cure and thereafter diligently prosecutes such cure to completion), and such refusal prevents the consummation of the Closing or completion of construction of the Project.

18.1.5 Notwithstanding anything to the contrary, (i) WMATA shall not be in default for any failure or non-satisfaction of a condition precedent to Developer's obligation to consummate Closing and (ii) the foregoing shall not diminish WMATA's right to adjourn or postpone a Closing as provided in this Agreement.

18.2 **Developer's Remedies**. If WMATA shall be in Default under this Agreement, and, if Developer is not otherwise in Default hereunder, Developer, in addition to any other rights and remedies available to it at law or in equity (including, without limitation, the right to require specific performance) shall be entitled to terminate this Agreement and to receive a refund of the then remaining Deposit, which shall be promptly refunded to Developer by WMATA (except to the extent of WMATA's entitlement to retain same under Section 17.3 or other terms of this Agreement), or, with the prior written consent of WMATA, proceed to cure WMATA's default.

18.3 **Developer's Default.**

18.3.1 The following shall constitute a "Default" by Developer under this Agreement:

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004177

18.3.1.1 If any Closing is not consummated for any reason other than WMATA's Default, a failed condition precedent to Developer's obligations to proceed to any Closing under this Agreement or the existence of circumstances that under the express terms of this Agreement excuse Developer's obligation to consummate the Closing; or

18.3.1.2 If Developer fails to comply with or adhere to any obligations under Article 3 and such failure is not cured within five (5) Business Days after receipt of Notice from WMATA or if Developer fails to comply with Section 4.5; or

18.3.1.3 If Developer fails to comply with or adhere to any obligations under Article 12 (Insurance Requirements), and such failure is not cured within five (5) Business Days after receipt of Notice from WMATA; or

18.3.1.4 If Developer fails to comply with or adhere to any obligations under any Article 14(Assignment of Agreement) and such failure is not cured within five (5) Business Days after receipt of Notice from WMATA; or

18.3.1.5 If Developer fails to comply with or adhere to any obligations under Section 2.6.2 (maintaining Qualified Team) and such failure is not cured within fifteen (15) Business Days after receipt of Notice from WMATA; or

18.3.1.6 If Developer fails to undertake Commercially Reasonable Best Efforts as and when required by the terms of this Agreement and such failure is not cured within ten (10) Business Days after receipt of Notice from WMATA; or

18.3.1.7 If Developer fails to comply with or adhere to any obligations under ARTICLE 11 in accordance with any deadlines set forth therein, or, as to any obligation for which no deadline has been set in such ARTICLE 11 within twenty (20) Business Days after receipt of Notice from WMATA; or

18.3.1.8 If Guarantor shall breach any covenant of Guarantor contained in the Guaranty, or any other Transaction Document to which Guarantor is a party or by which Guarantor is bound, if any, and such breach continues beyond the expiration of any applicable notice and cure period specified in the Guaranty or such other Transaction Document; or

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004178

18.3.1.9 If Developer makes any material misrepresentation in this Agreement or any of the other Transaction Documents, or if Guarantor makes any material misrepresentation in the Guaranty, or if any of them make any material misrepresentation in any other material submission to WMATA; or

18.3.1.10 If Developer or Guarantor make any material misrepresentation to any governmental authority for or in connection with the transactions contemplated by this Agreement; or

18.3.1.11 If Developer or Guarantor files a voluntary petition in bankruptcy, or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future applicable federal or state law, or Developer or Guarantor seeks or consents to, or acquiesces, in the appointment of any trustee, receiver or liquidator of such Developer or Guarantor, or of all or any substantial part of its or their assets, or of the ownership interests of Developer or Guarantor under this Agreement.

18.3.1.12 If there occurs the filing of a petition by or against Developer or Guarantor (i) in any bankruptcy or other insolvency proceeding with respect to Developer or Guarantor; (ii) seeking any relief under any state or federal debtor relief law with respect to Developer or Guarantor; (iii) for the appointment of a liquidator or receiver for all or substantially all of Developer or Guarantor's property or for Developer's interest in this Agreement; or (iv) for the reorganization of Developer or Guarantor or for modification of Developer's or Guarantor's capital structure and Developer or Guarantor, as the case may be, fails to have the proceedings initiated by such petition stayed or dismissed within sixty (60) days after the filing thereof; or

18.3.1.13 If Developer shall breach any other material covenant of Developer contained in this Agreement or in any right of entry agreement between Developer and WMATA or fail to perform any other material obligation and such failure is not cured within twenty-one (21) Business Days after receipt of Notice.

18.3.2 Notwithstanding anything to the contrary, Developer shall not be in default for any failure or non-satisfaction of a condition precedent to WMATA's obligation to consummate Closing, unless the failure or non-satisfaction of such condition precedent is the result of Developer's Default hereunder.

18.4 **WMATA's Remedies.**

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004179

18.4.1 WMATA shall be entitled to exercise the following remedies in connection with a Default by Developer under this Agreement:

18.4.1.1 If Developer shall be in Default under this Agreement prior to the consummation of the Closing contemplated by this Agreement, WMATA shall have the right to terminate this Agreement by Notice to Developer and the full amount of the Deposit then held by WMATA pursuant to the terms of this Agreement shall be retained by WMATA as liquidated damages for such Default as WMATA's sole and exclusive remedy hereunder, other than pursuant to Section 17.3 and pursuant to the terms of this Agreement that expressly survive any termination of this Agreement.

18.4.1.2 If Developer shall be in Default under this Agreement after consummation of Closing, then WMATA shall have all rights and remedies available to it at law or in equity (including, without limitation, the full amount of the Deposit then held by WMATA pursuant to the terms of this Agreement, the right to require specific performance and to terminate this Agreement) as to such Default.

18.4.2 The parties agree that it would be impracticable and extremely difficult to ascertain the actual damages suffered by WMATA as a result of Developer's Default hereunder, and that, under the circumstances existing as of the Effective Date, the liquidated damages to the extent provided for in Section 18.4.1 represent a reasonable estimate of the damages that WMATA would incur as a result of such Default by Developer. The parties acknowledge and stipulate that payment of such liquidated damages is not intended as a forfeiture or penalty. The parties hereby waive any and all rights to contest the validity of these liquidated damages provisions, including, but not limited to the defense that there is or may be an adequate remedy at law.

18.4.3 The payment of liquidated damages as provided in Section 18.4.1 shall not extinguish or otherwise affect any other of Developer's post-closing liabilities or WMATA's remedies in respect thereof specified in this Agreement, or WMATA's right to payments under the Guaranty.

18.4.4 All remedies of WMATA under this Agreement and under applicable laws shall be cumulative, unless otherwise expressly provided to the contrary in this Agreement.

18.5 **RESERVED.~~Intentionally Omitted.~~**

18.6 **Refund of Deposit.**

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004180

18.6.1 Developer shall be entitled to a refund of the Deposit, subject to the terms of Article 3 and then only in accordance with the terms and provisions of this Agreement, and to the extent provided in subsection 18.6.2;

18.6.2 Notwithstanding anything to the contrary, WMATA's obligation to refund the Deposit to Developer shall be subject to offset by WMATA to the extent of WMATA's entitlement to retain all or any portion of the Deposit under the terms of this Agreement for obligations of Developer that have accrued prior to the date on which WMATA's obligation to make such refund arises.

ARTICLE 19
RISK OF LOSS OR CASUALTY

The risk of loss or damage to the Property by fire or other casualty until Closing is assumed by WMATA, provided that WMATA's responsibility shall be only to the extent of any recovery from insurance carried on the Property. Upon assignment to Developer of any insurance proceeds in respect of fire or other casualty occurring between the Effective Date and the time of settlement, Developer shall have no right to terminate this Agreement on account thereof, but WMATA shall assign to Developer its interest in and to any insurance policies and proceeds thereof payable as a result of such damage or destruction. WMATA shall not, in any event, be obligated to effect any repair, replacement or restoration, but may do so at its option, in which case WMATA may apply the insurance proceeds to the costs of restoration.

ARTICLE 20
EMINENT DOMAIN

20.1 **Total Taking.** If prior to the Closing, there should be a Taking of the entire Lease Premises, such Taking shall be deemed to have caused this Agreement to terminate and expire as of the date of such Taking, the full amount of the Deposit, subject to the terms of Article 3 shall be promptly refunded to Developer by WMATA and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under Section 17.3 and under the terms of this Agreement that expressly survive any termination of this Agreement. Each Taking contemplated by this subsection 20.1 shall be deemed to be and shall be referred to in this Agreement as a "Total Taking".

20.2 **Partial Taking.**

20.2.1 If, prior to the Closing, there should be a Taking of less than the entirety of the Lease Premises, and the remaining portions of the Lease Premises cannot reasonably be adequately developed in the context of the exercise by Developer of Commercially Reasonable Best Efforts to do so as a project of commercially reasonable usefulness, design, construction, and economic feasibility, then Developer or WMATA shall have the right to terminate this Agreement as to the Lease Premises that is the subject of such partial Taking, as applicable, upon Notice to the other within ninety (90) days after the date of the Taking of the Lease Premises Such Notice shall state the date of termination, which shall not be later than the date of the Taking.

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20.2.2 **RESERVED.**~~Intentionally Omitted~~.

20.2.3 If a Partial Taking occurs and neither WMATA or the Developer exercises its right to terminate this Agreement in conformity with the terms of this Section 20.2, WMATA shall be entitled to continue to hold the Deposit and to otherwise deal with the same in conformity with the provisions of this Agreement. Developer shall pay the Rent for the applicable portion of the Lease Premises that is not affected by such Partial Taking without reduction.

20.2.4 Each Taking contemplated by this subsection 20.2 shall be deemed to be and shall be referred to in this Agreement as a "Partial Taking".

20.2.5 Date of Taking. For the purposes of this Article, the date of the Taking shall be the date on which title vests in the condemnor.

20.3 **Condemnation Proceeds.** Except as expressly set forth in Section 20.2, all condemnation proceeds and any and all awards and payments in respect of a Total Taking or Partial Taking (all such proceeds, awards and payments collectively the "Condemnation Proceeds") shall vest in WMATA and Developer hereby irrevocably assigns to WMATA any and all of their rights in all Condemnation Proceeds.

ARTICLE 21
DISPUTE RESOLUTION

21.1 **Alternative Dispute Resolution Mechanisms.** In the event of a dispute between the parties (including, without limitation, any claim by one party against the other party) with respect to any matter arising under this Agreement or any of the Transaction Documents, the party raising a dispute or claim (the "Aggrieved Party") shall give the other party written notice specifying the nature of the dispute and the monetary amount involved, if any (the "Dispute Notice"). For a period of fifteen (15) days after receipt of the Dispute Notice, the parties' Designated Representatives shall proceed diligently and in good faith in an effort to resolve the dispute to their mutual satisfaction. If the parties fail to resolve the dispute prior to the expiration of the fifteen (15)-day period, then upon the written request of the Aggrieved Party to the other party (the "Alternative Dispute Notice"), the following provisions with respect to non-binding, alternative resolution of the dispute shall govern:

21.1.1 If the Dispute Notice specifies a monetary amount less than $500,000, then (a) within three (3) days after receipt of the Alternative Dispute Notice, each party shall appoint a representative (meeting the qualifications of Section 21.1.3); provided that, if a party shall fail to timely appoint its representative, the other party may appoint such representative; (b) within three (3) days after their collective selection, the two (2) representatives selected shall select a third (3rd) representative (meeting such standards); and, (c) the three representatives (the "Dispute Review Panel") shall meet

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004182

within three (3) days after their collective appointment (or at such reasonable time thereafter as a majority of the Dispute Review Panel may agree upon) to decide the disputed issue. The disputed issue shall be resolved, by not less than a majority vote of the Dispute Review Panel, within thirty (30) days after the date of the selection of the third representative. Fees of, and expenses incurred by, the representative of a party in connection with the dispute resolution shall be borne by such party, and of the third (3rd) representative, equally by both parties.

21.1.2 If the Dispute Notice (a) does not specify a monetary amount, or (b) specifies that the matter in dispute cannot be reduced to monetary terms, or (c) specifies a monetary amount equal to or greater than $500,000, or if the parties do not elect to be bound by the decision and award of the Dispute Review Panel, any party the Aggrieved Party shall file a demand with the American Arbitration Association in Washington, D.C. simultaneously with delivering the Alternative Dispute Notice to the other party. Such arbitration shall be conducted in Washington, D.C. in accordance with the applicable rules of the American Arbitration Association (the "AAA Rules") by a panel of not less than three (3) arbitrators. The arbitrators shall be selected in accordance with the AAA Rules from the roll maintained by the American Arbitration Association in Washington, D.C., and shall be sworn faithfully and fairly to determine the dispute in question. Fees of, and expenses incurred by, the arbitrators in connection with the dispute resolution shall be borne equally by both parties.

21.1.3 The representatives or arbitrators selected in accordance with this Section shall not be related by blood, marriage or professional affiliation to the parties or the principals of the parties, and must be professionals or persons with at least ten (10) years' experience in the substantive area in which the dispute has arisen.

21.2 **Discovery**. Notwithstanding any provision in the AAA Rules to the contrary, in any arbitration proceeding, the parties each, prior to the arbitration hearing, shall be entitled to take limited discovery in the form of the right to request documents, the right to serve not more than thirty (30) interrogatories and the right to take not more than four (4) depositions, with respect to each other party and may, in addition, for good cause shown, be permitted additional discovery in the discretion of the arbitrators; and (c) at the arbitration hearing, shall be entitled to present evidence and to cross-examine witnesses.

21.3 **Binding Effect.** The decision and award of the Dispute Review Panel or the arbitration panel, as the case may be, shall be non-binding and shall only be enforceable against either party in any court of competent jurisdiction pursuant to a separate agreement to make such decision binding, which agreement shall be in each party's sole and absolute discretion.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004183

ARTICLE 22
MISCELLANEOUS

22.1 **Recitals, Exhibits And Schedules.** All Recitals, Exhibits and Schedules annexed hereto are incorporated herein and made a part of this Agreement for all purposes.

22.2 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of WMATA and Developer, and their respective successors, heirs and permitted assigns.

22.3 **Captions.** The captions, headings and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

22.4 Number And Gender Of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

22.5 **Notices**

22.5.1 All notices, demands, requests and other communications required pursuant to or in connection with the provisions of this Agreement ("Notice") shall be in writing and shall be deemed to have been properly given or served for all purposes (i) if sent by Federal Express or the nationally recognized overnight carrier for next business day delivery, on the actual date of delivery by such carrier, or (ii) if personally delivered, on the actual date of delivery or (iii) if sent by certified mail, return receipt requested postage prepaid, on the Fifth (5th) Business Day following the date of mailing addressed as follows:

If to Developer:	Banneker Ventures, LLC
	700 12th Street, NW, Suite 700
	Washington, DC 20005
	Attn: Omar A. Karim
	Phone: 202-667-4110
	Fax: 202-558-5157
And with a copy to:	DLA Piper LLP (US)
	The Marbury Building
	6225 Smith Avenue
	Baltimore, MD 21209
	Attn: Guy E. Flynn & Devorah M. Lewin, Esq.
	Phone: 410-580-4149; 410-590-4397
	Fax: 410-580-3149; 410-580-3397
If to WMATA:	~~Washington Metropolitan Avenue~~

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004184

	~~Transit Authority~~Washington Metropolitan Area Transit Authority 600 Fifth Street, NW Washington, D.C. 20001 Attn: Director of Station Area Planning and Asset Management Phone:202-962-2616 Fax:
And with a copy to:	~~Washington Metropolitan Avenue Transit Authority~~Washington Metropolitan Area Transit Authority 600 Fifth Street, NW Washington, D.C. 20001 Attn: Rosalyn Doggett Phone:202-962-2208 Fax:
And with a copy to:	~~Washington Metropolitan Avenue Transit Authority~~Washington Metropolitan Area Transit Authority 600 Fifth Street, NW Washington, D.C. 20001 Attn: Carol O'Keeffe Phone: _____ Fax:_____

22.5.2 Any of the parties may designate a change of address by Notice in writing to the other parties in conformity with this Section. Whenever in this Agreement the giving of Notice by mail or otherwise is required, the giving of such Notice may be waived in writing by the person or persons entitled to receive such Notice.

22.6 **Governing Law And Venue**. The laws of the District of Columbia shall exclusively govern the validity, construction, enforcement and interpretation of this Agreement, unless otherwise specified herein, except for the conflict of laws provisions thereof. All claims, disputes and other matters in question arising out of or relating to this Agreement, or the breach thereof, shall be decided by proceedings instituted and litigated in the United States District Court for the district in which the Property is situated, and the parties hereto expressly consent to the venue and jurisdiction of such court.

22.7 **Entirety And Amendments.** This Agreement embodies the entire Agreement between the parties and supersedes all prior Agreements and understandings, if any, relating to the Property and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004185

22.8 **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable. The Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

22.9 **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is deemed an original for all purposes and all such counterparts shall, collectively, constitute one Agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

22.10 **Further Acts.** In addition to the acts and deeds recited herein and contemplated to be performed, executed or delivered by WMATA and Developer, WMATA and Developer agree to perform, execute or deliver or cause to be performed, executed or delivered any and all such further acts, deeds and assurances as may be reasonably necessary or appropriate to consummate the transactions contemplated in this Agreement.

22.11 **Disadvantaged Business Enterprises; Non-Discrimination Obligation.** In accordance with WMATA's voluntary minority business enterprise program, Developer acknowledges WMATA's fifteen percent (15%) aspirational goal for hiring minority contractors, with such aspirational goal to be sought using race neutral methods only. This is an aspirational goal only, and failure to achieve minority hiring goals shall not be a default hereunder. In addition, Developer agrees that it will not discriminate on the basis of race, color, national origin, sex, or any other unlawful basis in the award and performance of contracts or subcontracts.

22.12 **Sovereign Immunity; Anti Deficiency Clause.** Subject to the provisions of this Section 22.12, WMATA shall be liable for its contractual obligations to Developer under this Agreement in accordance with the law of the District of Columbia (including rules on conflict of laws) and the WMATA Compact. Except to the limited and specific extent set forth in the preceding sentence, nothing in this Agreement, any other related document or circumstance shall in any way waive or be deemed or construed to waive any immunity of WMATA with respect to this Agreement, whether such immunity arises under the WMATA Compact, the Constitution of the United States or any Amendment thereto, any statute or regulation of the District of Columbia, the State of Maryland, the Commonwealth or Virginia, common or decisional law, or otherwise. Developer agrees that all obligations of WMATA under this Agreement that directly or indirectly require, or may require, WMATA's expenditure of any of its funds are, and shall be, subject to the appropriation and availability of funding through WMATA's normal and customary budgetary procedures.

22.13 **Construction.** No provision of this Agreement shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004186

Agreement; both parties, being represented by counsel, having fully participated in the negotiation of the terms of this Agreement.

22.14 ~~**Confidentiality.** Developer shall not disclose the terms and conditions contained in this Agreement and shall keep the same confidential, provided that Developer may disclose the terms and conditions of this Agreement (i) as required by law; (ii) to consummate the terms of this Agreement, or any financing relating thereto; or (iii) to Developer's or WMATA's lenders, attorneys, accountants and the like. Any information provided by WMATA to Developer under the terms of this Agreement is for informational purposes only. In providing such information to Developer, WMATA makes no representation or warranty, express, written, oral, statutory or implied, and all such representations and warranties are hereby expressly excluded. Developer shall not in any way be entitled to rely upon the accuracy of such information. Such information is also confidential and Developer shall be prohibited from making it public to any other person or entity, other than Developer's agents and legal representatives, without WMATA's prior written authorization, which may be granted or denied in WMATA's sole discretion.~~ **RESERVED.**

22.15 **Time Of The Essence.** The parties agree that time is of the essence under this Agreement.

22.16 **Cumulative Remedies And Waiver.** Except as otherwise provided in this Agreement, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any right or power or be construed as a waiver thereof, but any such right and power may be exercised from time to time and as often as deemed expedient. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

22.17 **Litigation Expenses.** In the event either party hereto commences litigation against the other to enforce its rights hereunder, the prevailing party in such litigation shall be entitled to recover from the other party its reasonable attorneys' fees and expenses incidental to such litigation.

22.18 **Time Periods.** Should the last day of a time period fall on a Saturday, Sunday, Federal holiday or legal holiday in the District of Columbia, Virginia or Maryland, the next Business Day thereafter shall be considered the end of the time period.

22.19 **Third Parties.** There shall be no third party beneficiaries of this Agreement, and no third party may rely on or assert that any provision or statement herein contained is an admission of any party hereto.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004187

22.20 **Memorandum of Termination.** Upon any termination of this Agreement, WMATA shall have the right to record a Memorandum of Termination of this Agreement. Developer shall execute and deliver to WMATA on the Effective Date in recordable form a memorandum of termination, which WMATA is authorized to record following the occurrence of any termination. Developer shall pay any and all recording fees and charges to record the memorandum and in respect of said items and shall indemnify WMATA for its costs of enforcing this provision. The provisions of this Section 22.20 shall survive any termination of this Agreement.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004188

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement under seal as their free act and deed for the uses and purposes herein contained as of the date first set forth above.

WMATA:

Washington Metropolitan Area Transit Authority

By:_____ **[SEAL]**

Printed: _____

Title: _____

Developer:

[Developer]

By:_____ **[SEAL]**

Printed: _____

Title: _____

[_____**]**

By:_____ **[SEAL]**

Printed: _____

Title: _____

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004189

WMATA
12/1/08

GROUND LEASE AGREEMENT

BETWEEN

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

AS WMATA

AND

~~DEVELOPER~~THE JAZZ @ FLORIDA AVENUE, LLC

AS DEVELOPER

FOIA CONFIEDENTIAL TREATMENT REQUESTED

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004192

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease**") is entered into as of October, _____, 2008 (the "Effective Date") by and between **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324, Maryland Acts of General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of D.C. Board of Commissioners adopted November 15, 1966, having a principal business address at 600 Fifth Street, NW, Washington, DC 20001 ("**WMATA**") and ~~Developer~~The Jazz @ Florida Avenue, LLC, a District of Columbia Limited Liability Company having a principal address at ~~_____~~700 12th Street, NW, Washington, DC 20005 ("**Developer**").

RECITALS

WHEREAS, WMATA holds legal title to one or more certain tracts of land comprising approximately 28,892 square feet located at the intersection of 8th Street and Florida Ave, NW and 9th Street and Florida Ave, NW in the District of Columbia, each as more particularly described in Exhibit A attached hereto and made a part hereof, collectively defined below as the "**Property**."

WHEREAS, WMATA issued a Joint Development Solicitation on June 26, 2007 pursuant to which Developer was selected by WMATA as the developer for a joint development project at the Property, and on _____, 2008, a non-binding term sheet was executed by Developer and WMATA.

WHEREAS, WMATA and Developer have entered into a certain Joint Development Agreement dated as of ~~October~~ _____, ~~2008~~ 2009 (the "JDA") with respect to the Property, a copy of which is attached hereto, and incorporated herein, as Exhibit _____.

WHEREAS, Pursuant to and in accordance with the JDA, WMATA desires and has agreed to lease to Developer, and Developer desires and has agreed to lease from WMATA, portions of the Property, which portions are collectively defined below as the "Lease Premises", on the terms and conditions set forth below (which terms and conditions shall control in the event of any conflict with these Recitals).

NOW, THEREFORE, in consideration of the agreements, terms, covenants, and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows.

ARTICLE 1
DEFINED TERMS

1.1 Capitalized terms in this Lease shall have the meanings set forth in this ARTICLE 1 below.

1.1.1 "**AAA Rules**" shall have the meaning set forth in Section 24.1.2.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004193

1.1.2 "**ADA**" shall have the meaning set forth in Section 8.6.

1.1.3 "**Adjusted Gross Capital Event Proceeds**" shall have the meaning set forth in Section 5.7.2.

1.1.4 "**Affiliate**" means with respect to any Person, any other Person directly or indirectly Controlling (including but not limited to, all trustees, partners, members, directors and officers of such Person), Controlled by or under direct or indirect common Control with such Person.

1.1.5 "**Aggrieved Party**" shall have the meaning set forth in Section 24.1.

1.1.6 "**Agreement**" means this Lease by and between WMATA and Developer.

1.1.7 "**ALTA**" means the American Land Title Association.

1.1.8 "**Alternative Dispute Notice**" shall have the meaning set forth in Section 24.1.

1.1.9 "**Approvals**" means all variances, special exceptions, special use permits, preliminary plans, site plan approvals, platting or replatting approvals, rezoning approvals, subdivision approvals, or other similar approvals necessary for the development of the Project on the Lease Premises in conformity with the terms of the Approved Development Plan.

1.1.10 "**Approved Design and Construction Documents**" shall have the meaning set forth in Section 11.6 of the JDA.

1.1.11 "**Approved Development Plan**" shall mean the Approved Development Plan for the Lease Premises, as described in Section 7.6.5 of the JDA, and attached hereto as Exhibit _____.

1.1.12 "**Base CPI**" shall have the meaning set forth in Section 1.1.29.

1.1.13 "**Base Rent**" shall have the meaning set forth in Article 5.

1.1.14 "**Base Developer Improvements**" means that portion of the Developer Improvements consisting of the structural elements, building systems (electrical, mechanical, plumbing, HVAC, etc.) and the exterior facade (including the roof and all related systems and installations and all exterior windows) of the building or buildings shown in the Approved Development Plan as being located within the Lease Premises, together with any and all offsite improvements as are associated therewith or otherwise required to make such improvements to be constructed on the Lease Premises fully functional. Without limitation of the foregoing, the term Base Developer Improvements excludes all interior Developer finish work to be performed within the interior of the building or buildings, and all related building system connections, interior equipment and fixture installations.

Remove and just Rely on Dev. Improvements?

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004194

1.1.15 "**Business Day**" means any day other than a Saturday or Sunday or Federal holiday or legal holiday in the District of Columbia or the jurisdiction in which the Lease Premises is located.

1.1.16 "**Calendar Year**" means each period from and including January 1 through December 31 during the Term of this Agreement.

1.1.17 "**Capital Event**" means any and all of the following, whether effected in a single transaction or a series of related transactions: (a) any sale, assignment, refinancing, transfer, conveyance, syndication, exchange, hypothecation, or other transaction having an effect similar to any of the foregoing including, without limitation any Taking (a "Transfer") of all or any part of or interest in the Lease Premises, this Agreement, or any Developer Improvements; (b) the Transfer of all or any portion of the interest in this Agreement by Developer or; (c) any Transfer any ownership interests of Developer; and (d) any other transaction by Developer with respect to its interest in or to the Lease Premises or any Developer Improvements that would be characterized as a capital event under generally accepted accounting principles.

1.1.18 "**Capital Event Participation Rent**" shall have the meaning set forth in Section 5.7.

1.1.19 "**Change of Control**" means (a) the sale or transfer, in a single transaction or a series of related or unrelated transactions, of beneficial ownership of either (i) the membership interests in Developer, (ii) the membership interests of the members of the Developer, or (iii) the combined voting power of Developer's outstanding membership interests or securities, as the case may be, entitled to vote generally in the election of managers or directors, as the case may be, (b) the merger or consolidation of Developer with or into any other entity, or (c) any one or series of related sales or conveyances to any person or entity of all or substantially all of Developer's assets.

1.1.20 "**Commercially Reasonable Best Efforts**" means the diligent and timely satisfaction of the following standards in the context of the Developer Responsibilities: (i) undertaking all actions (including, without limitation, payment and performance obligations) that would usually and customarily be undertaken or performed by a diligent and experienced real estate owner, developer and construction manager in performance of the terms of this Agreement and (ii) undertaking such additional commercially reasonable actions as are appropriate in the context of unanticipated or unusual events, circumstances or obstacles to lawfully achieve the Developer Responsibilities.

1.1.21 "**Condemnation Costs**" shall have the meaning set forth in Section 23.4.

1.1.22 "**Construction Approvals**" means all governmental approvals and permits other than the Approvals required in order to commence and complete the construction of the improvements comprising the Development Project,

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004195

including, but not limited to, all required engineering permits and building permits.

1.1.23 "**Construction Related Obligatio ns**" shall have the meaning set forth in Section 6.2.

1.1.24 "**Consultants**" means all the agents, consultants, contractors, engineers, surveyors, attorneys and employees retained by Developer for or in connection with the transaction contemplated by this Agreement.

1.1.25 "**Consumer Price Index**" shall have the meaning set forth in Section 1.1.29.

1.1.26 "**Continuing Transit Orientation**" shall have the meaning set forth in Section 8.3.

1.1.27 "**Control**", "**Controlled**" or "**Controlling**" means the power of a Person, directly or indirectly, to direct or cause the direction of the disposition of property, management and policies of another Person, whether through ownership of voting securities, by contract or otherwise.

1.1.28 **"Covenants, Conditions and Restrictions"** shall mean the covenants, conditions, and restrictions approved by WMATA and recorded in the public land records prior to commencement of any construction. Said covenants, conditions and restrictions shall require and limit construction on and use of the Lease Premises to the uses and improvements specified or to be determined in accordance with this Agreement and reflected in the Approved Development Plan, except only as approved by WMATA in its sole and absolute discretion. The foregoing shall be applicable for so long as WMATA is the owner of any interest in or conducts operations at or from the Property, WMATA's Residual Property or WMATA's Adjacent Property. Such covenants shall also (i) contain provisions for easements for the use and operation of the Metro Facilities; (ii) contain such terms, covenants, conditions and restrictions as shall be reasonably required or requested by WMATA, not inconsistent with the terms of this Agreement, to protect WMATA's interests in and operations at the Property and WMATA's Adjacent Property, including, without limitation, protections, easements, obligations and restrictions for the benefit of WMATA relating to the Metro Facilities (whether or not integrated into improvements to be constructed by Developer) and WMATA's Reserved Areas and Interests and any potential adverse impacts on WMATA's transit operations; (iii) shall reaffirm all covenants and restrictions contained in the Lease; and (iv) shall be consistent with requirements imposed by the District of Columbia and this Agreement. ~~"Covenants, Conditions and Restrictions" shall mean the covenants, conditions, and restrictions created pursuant to Section 11.17 of the JDA, a~~ A copy of ~~which is~~ the Covenants, Conditions, and Restrictions is attached hereto as Exhibit _____.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004196

1.1.29 "**CPI Adjustment**" means a change in the particular dollar amount referred to, measured by the cumulative change in the Consumer Price Index from January 1, 2008 ("Base CPI") to January 1 of the Calendar Year for which such dollar amount is to be determined ("Current CPI"). If the Current CPI has increased from the Base CPI, such dollar amount shall be increased, but not decreased, in the same proportion as such increase in the Consumer Price Index. "Consumer Price Index" shall mean the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index - (CPI-U) Wash.-Balt., DC-MD-VA-WV All Items Nov. 1996=100. If the manner in which the Consumer Price Index is determined by the Bureau of Labor Statistics shall be substantially revised, including, without limitation, a change in the base index year, such adjustment shall be made by the parties in such revised index as would produce results equivalent, as nearly as possible, to those which would have been obtained if such manner of determining the Consumer Price Index had not been so revised. If the Consumer Price Index shall become unavailable to the public because publication is discontinued, or otherwise, or if equivalent data is not readily available to enable the parties to make the calculations referred to herein, then the parties shall substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar in the combined Washington, D.C. greater metropolitan area, published by another governmental agency, or if no such index shall be available, then a comparable index published by a major bank or other financial institution, or a university, or a recognized financial publication.

1.1.30 "**Cure Actions**" shall have the meaning set forth in Section 18.2.

1.1.31 "**Current CPI**" shall have the meaning set forth in Section 1.1.29.

1.1.32 "**Day or day**" means a calendar day except when stated to be "Business Day".

1.1.33 "**Default**" shall have the meaning set forth in ARTICLE 19.

1.1.34 "**Default Rate of Interest**" shall mean the greater of (a) fifteen percent (15%) per annum or (b) ten percent (10%) per annum above the prime rate of interest as published in the *Wall Street Journal.* If the prime rate of interest is no longer available, WMATA will choose a new index which is based upon comparable information. In no event will the Default Rate of Interest be at a rate greater than the highest rate which is at the time lawful in the District of Columbia.

1.1.35 "**Density or Densities**" shall have the meaning set forth in Section 3.1.1.

1.1.36 "**Density Adjustment Rent**" shall have the meaning set forth in Section 5.8.

1.1.37 **"Design and Construction Documents"** means the complete set of design documents and working drawings and specifications for the work to be designed and constructed under the conditions of this Agreement and the

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Lease, including all documents to be submitted to the appropriate governmental authorities in order to construct the Project. The Design and Construction Documents shall also include the site plan as well as architectural, structural, electrical, mechanical, sheeting and shoring, excavation and utility drawings associated with the Project.

1.1.38 "**Designated Representative**" shall have the meanings set forth in Section 28.2.5 and Section 28.3.7.

1.1.39 "**Developer**" shall mean _____, LLC, a limited liability company formed by Banneker Ventures, LLC, a District of Columbia limited liability company, as managing member and _____% owner; the District Development Group, LLC, a District of Columbia limited liability company, as _____% owner; and Metropolis Development Company, LLC, a District of Columbia limited liability company, as _____% owner.

1.1.40 "**Developer's Actual Knowledge**" means the actual (and not the constructive) collective knowledge of _____. Developer represents, however, that _____ is an individual having knowledge of facts relevant to the matters covered by the representations and warranties of Developer set forth in this Agreement and to whom facts and information relevant to the matters covered by such representations and warranties would be reported in the ordinary course of business.

1.1.41 "**Developer Improvements**" means all buildings, portions of buildings, site amenities, decks, parking, and other structures of whatever kind on the Lease Premises, and all equipment and fixtures therein and any replacements, additions, and substitutes of, to, and for the same. ~~those Improvements that at any time may exist or be constructed on the Lease Premises.~~

1.1.42 ~~"**Developer Responsibilities**" means and includes any and all: requirements, endeavors, objectives, conditions that are required or reasonably contemplated under the terms of this Agreement (and steps relating to any and all of the foregoing, including, without limitation, filing applications; making appearances; providing information, documents, studies and other materials; satisfying all requirements of applicable governmental authorities and those exactions that would reasonably be satisfied by a diligent and experienced real estate owner, developer and construction manager in the context of an acquisition, development and construction project similar to the Project; procuring and maintaining competent professional support, oversight and management, and timely making payments).~~

1.1.43 ~~"Development Covenants" means the covenants to be recorded against the Lease Premises, pursuant to the JDA, at or prior to the Effective Date, requiring and limiting construction on and use of such parcel[s] to the uses and improvements specified or to be determined in accordance with the JDA and this Lease and reflected in the Approved Development Plan, except only~~

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~~as approved by WMATA in its sole and absolute discretion. The foregoing shall be applicable for so long as WMATA is the owner of any interest in or conducts operations at or from WMATA's Residual Property or WMATA's Adjacent Property. Such covenants shall contain provisions for easements for the use and operation of the Metro Facilities~~**RESERVED**.

1.1.44 "**Dispute Notice**" shall have the meaning set forth in Section 24.1.

1.1.45 "**Dispute Review Panel**" shall have the meaning set forth in Section 24.1.1.

1.1.46 "**Effective Date**" shall have the meaning set forth in the Preamble.

1.1.47 "**Environmental Laws**" means any and all environmental or health and safety-related laws, regulations, rules, ordinances, orders or determination of any governmental or judicial authority at the federal, state, or local level, to the extent applicable to WMATA, Developer or the Lease Premises, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act.

1.1.48 "**Existing Improvements**" means all improvements existing on the Property as of the Effective Date.

1.1.49 "**Fair Market Value**" shall mean fair market value determined pursuant to the provisions of Article 27.

1.1.50 "**FAR**" means a ratio, the numerator of which is the Gross Floor Area of all buildings on a lot expressed in square footage and the denominator of which is the gross area of that lot expressed in square footage.

1.1.51 "**FAR Square Feet**" means the maximum Gross Floor Area permitted to be developed consistent with maximum FAR limits within an applicable zoning classification or pursuant to an applicable Approval, waiver, variance or the like.

1.1.52 "**Final Completion**" means the proper and full completion of the entire Project, including, but not limited to, satisfactory operation of all equipment and systems, completion or correction of all punch list items, issuance of all required approvals and certificates by any governmental or quasi-governmental authorities with jurisdiction over the entire Project (including final and unconditional certificates of occupancy), delivery of as-built plans and specifications, removal of all rubbish, tools, scaffolding and surplus materials from the Project site, correction of all property damage that is the responsibility of the Developer to WMATA pursuant to the Approved Design and Construction Documents. If for any reason, WMATA and the Developer cannot, in good faith, agree on whether the Project has achieved Final Completion, then the matter shall be handled pursuant to the dispute resolution method set forth in Article 24 below.

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1.1.53 "**Final Completion Date**" means the date established in Exhibit _____ for Final Completion of the entire Project as the same may be extended pursuant to the express terms and provisions of this Lease or the JDA.

1.1.54 "**Financial Statement**" shall have the meaning set forth in Section 5.12.

1.1.55 "**First Leasehold Mortgage**" shall have the meaning set forth in Section 18.1.

1.1.56 "**First Leasehold Mortgagee**" shall have the meaning set forth in Section 18.1.

1.1.57 **"Force Majeure"** means any of the following occurrences that do not, in whole or in part, arise out of a Default of Developer and could not reasonably have been anticipated or mitigated and are not related to financial incapacity or related delays of Developer: a strike, civil riot, war, invasion, fire or other casualty, unavailability of labor or materials, adverse weather conditions, which occurrences delay or prevent performance by Developer of a post-Closing construction obligation hereunder. In the event of a Force Majeure, the Person affected thereby shall be entitled to an increase in the time for performance equal to the number of days, or portions thereof, that completion of the activity beyond the dates established in this Agreement is actually delayed by such Force Majeure. Force Majeure shall not include delays due to government activity, inactivity, failure to timely respond, or omission.

1.1.58 "**FTA**" means the Federal Transit Administration of the United States Department of Transportation.

1.1.59 "**FTA Project Approval**" shall have the meaning set forth in Section 8.4.

1.1.60 **"Gross Floor Area"** means the sum expressed in square feet of the gross horizontal areas of the several floors of all buildings on a lot, measured from the exterior faces of exterior walls and from the center lines of walls separating two buildings, including, but only to the extent included in the calculation of FAR under applicable Laws, basements, elevator shafts and stairwells, penthouses, attic space, interior balconies and mezzanines, cellars and outside balconies.

1.1.61 **"Guarantor"** means _____, having a principal address at _____. The value of Guarantor's net worth must be greater than three times the value of the Project.

1.1.62 "**Guaranty**" means those certain Guaranties, in the form attached as Exhibit _____, to be executed and delivered by Guarantors (in addition to the Payment and Performance Bond(s)) in accordance with Section 11.18 of the JDA.

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1.1.63 "**Guaranty Letter of Credit**" means a letter of credit in the form attached as an exhibit to the form of Guaranty, fully meeting all of the requirements of each such Guaranty.

1.1.64 "**Hazardous Materials**" means any and all substances, materials or wastes that are or become regulated by any local governmental authority, any state having jurisdiction over the Lease Premises or the United States Government or otherwise pose a material threat to human health, safety or the environment. Without limiting the generality of the foregoing, the term "Hazardous Materials" includes, without limitation, any and all materials, substances and wastes that are: (a) defined as a "hazardous waste", "hazardous material", "hazardous substance", "extremely hazardous waste" or "restricted hazardous waste" under any provision of local, state or federal law, or (b) petroleum, or (c) asbestos, or (d) polychlorinated biphenyls, or (e) radioactive materials, or (f) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), or (g) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, (42 U.S.C. § 6903), or (h) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601).

1.1.65 "**Impositions**" means all taxes, assessments, sewer rents, water meter and water charges, vault charges, excise taxes, levies, license and permit fees, charges for public utilities and all other charges and governmental impositions, general and special, ordinary and extraordinary, unforeseen and foreseen, of any and every kind and nature, including, without limitation, all real estate taxes and leasehold taxes, that with respect to any time during the Term of this Agreement may be assessed, levied, confirmed, imposed upon, or become due and payable or become a lien on any or all of the Developer Improvements, the Leasehold Interest, the Lease Premises, the Metro Facilities (to the extent of any interest therein established in favor of Developer under this Agreement), or any part of any or all of the foregoing, or any appurtenance to any or all of the foregoing.

1.1.66 "**Improvements**" means all buildings, portions of buildings, site amenities, decks, parking, and other structures of whatever kind on the Lease Premises, and all equipment and fixtures therein and any replacements, additions and substitutes of, to and for the same.

1.1.67 "**Institutional Lender**" means any of the following Persons, that is not an Affiliate of Developer or Guarantor, provided, that such entity has assets equal to at least U.S. $500,000,000: (i) any bank, savings institution, trust company or national banking association, or any wholly-owned subsidiary of any thereof, acting for its own account or in a fiduciary capacity, (ii) any charitable foundation, (iii) any insurance company, (iv) any pension, retirement or profit sharing trust or fund for which any bank, trust company,

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national banking association or investment adviser registered under the Investment Advisers Act of 1940, as amended, is acting as trustee or agent, (v) any investment company, as defined in the Investment Company Act of 1940, as amended, (vi) any college or university, (vii) any government, any public employees, pension or retirement system any other governmental agency supervising the investment of public funds or (viii) any Real Estate Investment Trust ("REIT").

1.1.68 "**Insurance ~~Obligors~~Obligor**" shall have the meaning set forth in Section 10.1.

1.1.69 "**Interim Replacement Facilities**" means all temporary facilities, structures, physical improvements and components, design features and requirements complying with WMATA's then existing standards, to fully and adequately replace all Existing Improvements, or any portion thereof located on the Lease Premises (including, without limitation, all facilities of WMATA relating to any and all of the ownership, use and operation of the Metro Facilities, Metro Station, driveways and turnarounds accommodating the circulation of buses, vans and passenger vehicles, parking lots and kiss-and-ride facilities, bus bays, bus loading and circulation facilities, short term parking, and kiss-and-ride facilities) on a temporary basis, until Replacement Facilities have been fully and finally completed and delivered to WMATA.

1.1.70 "**JDA**" shall have the meaning set forth in the Recitals, and an executed copy of which is attached hereto as Exhibit _____ and incorporated herein.

1.1.71 "**Land**" means all of those certain tracts of land comprising approximately 28,292 square feet located in the District of Columbia, more particularly described in Exhibit A attached hereto and made a part hereof and all rights, privileges and appurtenances pertaining thereto.

1.1.72 "**Laws**" means any federal, state or local constitutions, statutes, codes, ordinances, regulations, judicial or administrative requirements, rules, orders, judgments, decrees, injunctions, decisions or other rules of law.

1.1.73 "**Lease Obligations**" shall have the meaning set forth in Section 6.1.

1.1.74 "**Lease Premises**" means a portion of the Property, less and except WMATA's Reserved Areas and Interests, depicted and more fully described in Exhibit _____ as the "Lease Premises" (including all benefits and appurtenances thereto that are included with the meaning of the term "Property" as used herein, that shall be leased to Developer by WMATA subject to and in accordance with the terms of this Agreement.

1.1.75 "**Lease Year**" shall mean each period of twelve (12) calendar months during the Term commencing on January 1 and expiring on December 31 of the same calendar year, except that the first lease year shall commence on the Effective

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Date and shall end on December 31 of the same calendar year and the last lease year shall expire on the date of the expiration of the Term.

1.1.76 "**Leasehold Interest**" shall mean Developer's leasehold interest in the Lease Premises pursuant and subject to the provisions of this Agreement.

1.1.77 "**Leasehold Mortgage**" shall mean a mortgage or deed of trust or similar security interest on Developer's rights and interests under this Agreement and the Leasehold Interest of Developer hereunder, including Developer's interest in the Developer Improvements, securing Developer's obligations to a Leasehold Mortgagee, including, without limitation, a trust indenture under which this Agreement shall have been mortgaged or similarly pledged, any ancillary instruments required by the Leasehold Mortgagee, any instruments required in connection with a sale-leaseback transaction, and any mortgage of less than all of the leasehold.

1.1.78 "**Leasehold Mortgagee**" shall mean an Institutional Lender ~~or other lender approved by WMATA~~ that is the mortgagee, grantee, party secured, or beneficiary under any Leasehold Mortgage and the successors and assigns of such mortgagee, grantee, party secured, or beneficiary, and shall be deemed to include the trustee under any such Leasehold Mortgage and the successors and assigns of such trustee.

1.1.79 ~~"**Major Subleasehold Mortgagee**" shall mean the mortgagee, grantee, party secured, or beneficiary under any Subleasehold Mortgage and the successors and assigns of such mortgagee, grantee, party secured, or beneficiary, and shall be deemed to include the trustee under any such Leasehold Mortgage and the successors and assigns of such trustee, but only to the extent pertaining to a subleasehold of the Lease Premises consisting of Twenty Percent (20%) or more of the total leaseable square footage of office, retail and other commercial space or of the total number of residential units within the Lease Premises.~~RESERVED.

1.1.80 ~~"**Major Subtenant**" shall mean any subtenant of a subleasehold of the Lease Premises consisting of Twenty Percent (20%) or more of the total leaseable square footage of office, retail and other commercial space or of the total number of residential units within the Lease Premises.~~RESERVED.

1.1.81 "**Metro Facilities**" means all improvements, structures, infrastructure components, tangible property and areas required in the judgment of WMATA, for the use, operation, access, maintenance, repair, servicing, replacement or removal of any and all of the following: structures and supports, any and all access, parking, operation and service facilities and areas relating to WMATA's operations or activities, including, without limitation, all rail stations (including, without limitation, the Metro Station), tunnels, rails, tracks, bus stations, bus transfer areas, supervisor kiosks, employee bathrooms, electric substations, conduits and lines, pedestrian traffic, waiting and shelter

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areas, facilities serving persons with disabilities, cooling towers, chiller plants, vent and fan shafts, bicycle rack and locker areas, and all other associated facilities notwithstanding that the foregoing may have been constructed by or at the expense of Developer.

1.1.82 "**Metro Station**" means the Shaw Howard U rail transit station of WMATA.

1.1.83 "**Minimum Project Completion Milestone Requirements**" means the requirements set forth in Exhibit _____.

1.1.84 "**Notice**" shall have the meaning set forth in Section 29.5.

1.1.85 "**Nullification Notice**" shall have the meaning set forth in Section 18.2.

1.1.86 "**Occupant**" means any Person occupying or proposing to occupy any portion of the Lease Premises under any lease, Sublease, license, sublicense, occupancy agreement or otherwise.

1.1.87 "**Operating Year**" shall have the meaning set forth in Section 5.12.

1.1.88 "**Partial Taking**" shall have the meaning set forth in Section 23.2.

1.1.89 "**Payment and Performance Bond**" means the completion, payment and performance bond required to be provided for the benefit of WMATA in connection with development of and construction of the Project and as contemplated by the JDA, this Lease, and the Approved Development Plan. The applicable Payment and Performance Bond shall be released by WMATA upon Final Completion of the Project.

1.1.90 "**Permitted Exceptions**" means those exceptions or conditions permitted to encumber the title to the Lease Premises in accordance with the provisions of Section 22.1.

1.1.91 "**Person**" means any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association or any other legal entity, or any federal, state, county or municipal government, or any bureau, department or agency thereof, and any fiduciary acting in such capacity on behalf of any of the foregoing.

1.1.92 "**Pre-Stabilization Period Payments**" shall mean the Developer's payments due to WMATA during the Pre-Stabilization Period, as described in Section 3.2 of the JDA.

1.1.93 "**Project**" means a mixed use development project consisting of a minimum of 130,014 FAR gross square feet, including not less than 104 dwelling units, approximately 11,750 gross square feet of retail/arts use, plus associated residential and retail parking, estimated at 47 below-grade spaces to be built in a single phase on the Lease Premises.

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1.1.94 "**Project Concept Plan**" means a preliminary plan sheet consistent with the requirements set forth in Sections 7.6 of the JDA and any additional requirements set forth in Exhibit _____, depicting the conceptual program for the improvements and infrastructure to be constructed in accordance with the Approved Development Plan, the JDA, and this Agreement including their locations, uses and densities.

1.1.95 "**Project Schedule**" shall have the meaning set forth in Section 11.8 of the JDA.

1.1.96 "**Property**" means the Land and all rights of WMATA relating to the Land, including without limitation, any right, title and interest of WMATA, if any, in and to (i) any strips and gores adjacent to the Land and any land lying in the bed of any street, road, or avenue opened or proposed, in front of or adjoining the Land, to the center line thereof; and (ii) all of the easements, rights, privileges, and appurtenances belonging or in any way appertaining to the Property.

1.1.97 "**Qualified Team**" shall have the meaning set forth in Section 2.2.1 and 2.2.2.

1.1.98 "**Reconstruction Activity(ies)**" shall have the meaning set forth in Section 16.1.

1.1.99 "**Rent**" shall have the meaning set forth in Section 5.2.

1.1.100 "**Repair**" shall have the meaning set forth in Section 20.1.1.

1.1.101 "**Replacement Facilities**" means new facilities, structures, physical improvements and components, design features and requirements to fully and adequately replace, in compliance with WMATA's then existing standards, all Existing Improvements (including, without limitation, all facilities of WMATA relating to any and all of the ownership, use and operation of the Metro Facilities, Metro Station, driveways and turnarounds accommodating the circulation of buses, vans and passenger vehicles, parking lots and kiss-and-ride facilities, bus bays, bus loading and circulation facilities, short term parking, and kiss-and-ride facilities) or any portion thereof located on the Property.

1.1.102 "**Scope of Work**" shall have the meaning set forth in Section 27.1.1.

1.1.103 "**Secure**" shall have the meaning set forth in Section 20.1.1.

1.1.104 "**Security Deposit**" shall have the meaning set forth in Section 4.1.

1.1.105 "**Senior Leasehold Mortgagee**" means the Leasehold Mortgagee holding the most senior lien against Developer's interest in the Lease Premises under this Agreement, or in connection with construction of Base Developer

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Improvements, if there is no such lien, then the entity providing equity or debt financing for such construction.

1.1.106 "**Stabilization**" means the Project achieving 90% occupancy.

1.1.107 "**Sublease**" means any lease of any or all of the Lease Premises and/or Developer Improvements, including a lease, license or other similar agreement, entered into by Developer with another party for the use or occupancy by such other party of space on or within the Lease Premises and/or Developer Improvements.

1.1.108 "**Subleasehold Mortgage**" means a mortgage or deed of trust or other similar security agreement given or made on a Sublease and the interest of a Subtenant thereunder, including Subtenant's interest in the Developer Improvements, and shall be deemed to include a trust indenture under which the Sublease shall have been mortgaged or similarly pledged. The term "Subleasehold Mortgage" shall also include any ancillary instruments required by the Subleasehold Mortgagee, any instruments required in connection with a sale-lease back transaction, and any mortgage of less than all of the subleasehold.

1.1.109 "**Subleasehold Mortgagee**" means the mortgagee, grantee, party secured, or beneficiary under any Subleasehold Mortgage and the successors and assigns of such mortgagee, grantee, party secured, or beneficiary, and shall be deemed to include the trustee under any such Subleasehold Mortgage and the successors and assigns of such trustee.

1.1.110 **"Substantial Completion"** means for the Lease Premises, the last to occur of both (1) the date Developer procures all certificates, permits, approvals and consents with respect to the Project, required under applicable law for the occupancy and use of the Project and (2) the date when the Project is sufficiently complete in accordance with the Approved Design and Construction Documents to allow complete occupancy and utilization of such Project, for its indicated purpose. If for any reason, WMATA and the Developer cannot, in good faith, agree on whether the Project has achieved Substantial Completion, then the matter shall be handled pursuant to the dispute resolution method set forth in Article 24 below. Within sixty (60) days following Substantial Completion, Developer shall deliver to WMATA copies of all certificates, permits, approvals and consents ~~promptly after its receipt of the same~~.

1.1.111 "**Subtenant**" means the tenant or licensee under any Sublease.

1.1.112 "**Taking**" means the act of condemnation, exercise of power of eminent domain or sale in lieu thereof and includes a Partial Taking and a Total Taking, but shall not include any exactions, dedications, fees, use restrictions and the like associated with the Approvals or any grants, concessions, transfers or

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undertakings for public purposes that may be necessary for the development of the Property and required by the Approvals.

1.1.113 "**Temporary Taking**" shall have the meaning set forth in Section 23.6.1.

1.1.114 "**Term**" means the Term as set forth in Section 2.4.

1.1.115 "**Title Commitment**" shall have the meaning set forth in Section 22.2.

1.1.116 "**Title Commitment Issuer**" shall have the meaning set forth in Section 22.2.

1.1.117 "**Title Policy**" shall have the meaning set forth in Section 22.2.

1.1.118 "**Total Taking**" shall have the meaning set forth in Section 23.1.

1.1.119 "**Transaction Documents**" means this Agreement, the JDA, any and all separate right of entry agreements ~~relating to either, the Development Covenants~~, the Covenants, Conditions and Restrictions, the Guaranty and the Payment and Performance Bonds.

1.1.120 "**Transit-Oriented Development**" shall have the meaning set forth in Section 8.3.

1.1.121 "**Use Type**" shall have the meaning set forth in Section 3.1.1.

1.1.122 "**WMATA**" **or** "**WMATA**" means the Washington Metropolitan Area Transit Authority, a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of D.C. Board of Commissioners adopted November 15, 1966, having a principal business address at 600 Fifth Street, NW, Washington, DC 20001.

1.1.123 **"WMATA Adjacent Construction Design Manual"** means WMATA's Adjacent Construction Design Manual, Revision 2, dated April 2006, as amended from time to time.

1.1.124 "**WMATA's Adjacent Property**" means any real estate owned by WMATA that is adjacent to the Lease Premises, but not including the WMATA's Reserved Areas and Interests, or WMATA's Residual Property.

1.1.125 "**WMATA Compact**" means the Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as same may be amended.

1.1.126 "**WMATA's Reserved Areas and Interests**" means and includes all land areas and improvements of or within the Lease Premises required in the judgment of WMATA reasonably exercised for the exclusive use, operation, access, maintenance, repair, servicing, replacement or removal of any Metro

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Facilities that are reasonably capable of being segregated from other land areas and improvements of or within the Lease Premises, including, without limitation, the Metro Station, all other Metro Facilities that are not integrated into improvements to be constructed by Developer, those additional areas designated as "WMATA's Reserved Areas and Interests" as of the Effective Date in Exhibit _____ and those additional areas that are or may be designated as "WMATA's Reserved Areas and Interests" in the Approved Development Plan.

1.1.127 "**WMATA's Residual Property**" means and includes both any portion of the Property owned by WMATA that has not been leased by Developer and any portion of the Property owned by WMATA that is not to be leased by Developer.

1.1.128 "**WMATA's Unconditional Approval Matters**" means any and all matters that in the judgment of WMATA reasonably exercised would have an adverse impact on any or all of the following: (i) ~~the schedule for performance of Developer's obligations as set forth in this Agreement, (ii) the scope of Developer's obligations set forth in this Agreement, (iii)~~ the functionality, efficiency, safety, operation, maintenance, legal compliance, cost or profitability of WMATA's business, operations or activities, (~~iv~~ii) the WMATA's transit customers, (~~viii~~) ~~any of the Existing Improvements, contemplated to remain and not to be demolished, rebuilt or relocated by the terms of this Agreement, (vi)~~ the Metro Station, (~~viii~~iv) the ~~other~~ Metro Facilities, (~~viii~~) the WMATA's Reserved Areas and Interests, (vi) WMATA's Residual Property, ~~the Interim Replacement Facilities or the Replacement Facilities, (ix~~vii) the WMATA's Adjacent Property, or (~~x~~viii) ingress or egress relating to any of the foregoing.

1.1.129 "**Zoning Ordinance**" shall ~~have the meaning set forth in Section 3.2~~mean the District of Columbia Zoning Regulations.

ARTICLE 2
LEASE PREMISES AND TERM

2.1 **Lease Premises** WMATA hereby leases the Lease Premises to Developer, and Developer hereby leases the Lease Premises from WMATA, in accordance with the terms and conditions of this Lease and the Covenants, Conditions, and Restrictions, for the Rent herein reserved to be paid in the amounts and at the times determined as set forth in this Lease. Such lease and any and all development and construction rights granted under this Lease shall be subject to any and all easements and other reserved rights reasonably required by WMATA in connection with its use, operation, access, maintenance, repair, servicing, replacement or removal of any Metro Facilities or with WMATA's operations and business generally, whether expressly provided for or reasonably contemplated by this Lease, which easements and other reserved rights shall include, without limitation, easements and reserved rights (whether at, above or below ground level) for (i) the construction, operation, maintenance, repair, replacement, removal or relocation of any

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and all existing tunnels and related facilities, (ii) all Metro Facilities which have piling structural support within the Lease Premises, (iii) any and all service facilities serving such tunnels or any Metro Facilities, (iv) ventilation facilities, (v) underground power lines, (vi) horizontal and vertical support for all Metro Facilities in, on and about the Lease Premises, including, without limitation, structures, equipment or installations such as foundations, beams, columns, bracing and similar structural features which maintain vertical and horizontal support and are necessary for the maintenance, operation and protection of any and all Metro Facilities and (vii) protections and approval rights satisfactory to WMATA in its sole discretion with respect to limits on loads and pressures which may impact or affect Metro Facilities, whether vertical or lateral.

2.2 **Material Inducements.** The agreement of WMATA to lease the Lease Premises to Developer is based on the following material agreements and inducements, each of which are acknowledged by Developer:

2.2.1 This Lease shall be deemed to be in the nature of a personal services contract and Developer acknowledges that WMATA has entered into this Lease on the basis of its trust and special confidence in Banneker Ventures, LLC, a District of Columbia limited liability company; the District Development Group, LLC, a District of Columbia limited liability company; and Metropolis Development Company, LLC, a District of Columbia limited liability company. Developer represents, warrants and covenants that Banneker Ventures, LLC, District Development Group, LLC, and Metropolis Development Company, LLC has, and shall continue to maintain until satisfaction of all Lease Obligations, primary and substantial involvement in the Project and performance of the obligations under this Lease, including, without limitation, selection and maintence of a Qualified Team, as provided below. Further, Developer represents, warrants and covenants that until all obligations of Developer under this Lease are fully satisfied, Developer shall be under the Control of Banneker Ventures, LLC, District Development Group, LLC, and Metropolis Development Company, LLC.

2.2.2 Developer represents, warrants and covenants that it has or shall obtain when needed, required or contemplated by this Lease and thereafter shall continue to maintain until satisfaction of all obligations under this Lease a team of, as applicable, officers, directors, partners, members, employees and contractors who, specifically and in the aggregate, clearly have the skills, experience, knowledge, and reputation requisite to perform and accomplish the intended objectives of this Lease (each such team a "Qualified Team"). In order to achieve and maintain the status of a "Qualified Team," such Qualified Team shall have, without limitation, extensive skills, experience and knowledge and a generally recognized reputation specifically relating to development of the type, scope and complexity contemplated by this Lease.

2.2.3 Developer represents, warrants and covenants that it has and shall have the capacity and experience to satisfy and shall satisfy the Minimum Project Completion Milestone Requirements.

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The above inducements and agreements are confirmed herein as material obligations of Developer.

2.3 **Confirmation of WMATA's Unsubordinated Fee Simple Rights.** WMATA's fee simple right, title, and interest in the Lease Premises shall be and remain in WMATA for and during the term of this Lease, without any subordination whatsoever. On the expiration or other termination of this Lease (by lapse of time or otherwise), sole ownership of the Lease Premises, including, without limitation, ownership and rights relating to use of any and all Improvements thereon, shall automatically pass to and be vested in WMATA, whereupon the entirety of Developer's ownership and rights in and relating to any and all Improvements (including, but not limited to, Developer Improvements) shall automatically terminate.

2.4 **Term.**

2.4.1 **Term.** Unless sooner terminated earlier in accordance with the provisions of this Lease, the term (the "**Term**") of this Lease shall be for a period of sixty (60) years, commencing on the Effective Date.

2.4.2 This Lease shall terminate on the first to occur of the following: (a) the end of the Term of this Lease or (b) as otherwise provided under this Lease, including, but not limited to, as a result of a Developer's Default or WMATA's Default, provided that WMATA's remedies for any such Default, and any and all obligations and liabilities of Developer accrued as of or relating to actions or inactions of Developer prior to the date of termination, or which this Lease states shall survive the termination hereof (including interest on any and all of such obligations and liabilities), shall survive any termination of this Lease. Nothing contained in this Lease shall be deemed to constitute a release of Developer in respect of any liability or indemnity obligations under this Lease.

2.4.3 Developer, at WMATA's request and expense (except as otherwise provided in this Lease), shall perform such acts and shall execute, acknowledge, and deliver such documents and instruments as WMATA may reasonably request to evidence any termination of this Lease and of the rights and interests of Developer under this Lease and with respect to the Lease Premises.

2.5 **Pre-Stabilization Period**. The Pre-Stabilization Period commenced upon _____ (the effective date of the JDA) and shall terminate upon the earlier of Stabilization of the Project or 45 months after the Effective Date (the "**Pre-Stabilization Period**").

ARTICLE 3
USE OF LEASE PREMISES

3.1 **Developer Improvements.**

3.1.1 As provided in the Approved Development Plan, Developer shall be obligated to construct all of the Developer Improvements to be constructed on the Lease

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Premises, which Developer Improvements shall be not less than the following stated minimum number of units or square feet, as applicable (such number, the "Density" or "Densities") for each of the following types of uses (each, a "Use Type") to be developed within the Lease Premises:

Use Types	Densities
Residential:	104 units
Retail/Arts:	11,750 square feet
Below-grade parking spaces	47

3.2 **Developer's Use.** Developer, and all Occupants of the Lease Premises, shall use the Lease Premises, and any Improvements as may exist thereon at any time, solely for those uses which are permitted under this Lease, the JDA, the Approved Development Plan, the Covenants, Conditions and Restrictions, the then governing master plan and the District of Columbia Zoning Regulations (the "**Zoning Ordinance**"), provided that the aggregate of all such uses shall constitute a Transit-Oriented Development.

3.3 **WMATA's Reserved Areas and Interests.** Developer shall have no rights in respect of the WMATA's Reserved Areas and Interests or any portion thereof except as expressly provided in this Lease or in the executed reciprocal cross-easement agreement attached hereto as Exhibit _____.

3.4 **Compliance with Lease and Certificate of Occupancy.** Developer shall not use or occupy the Lease Premises, Developer Improvements, or any part thereof, for any unlawful purpose, or in violation of any certificate of occupancy or any of the Covenants, Conditions and Restrictions. Additionally, Developer shall cause each Occupant to abide by and to enforce all covenants, conditions and restrictions contained in its Sublease which are applicable to: (1) activities and conditions that are unsafe, harmful to the Lease Premises, dangerous or constitute a nuisance, (2) activities that would make void or voidable any insurance required to be maintained by Developer, (3) compliance with and violations of any of the Covenants, Conditions or Restrictions and (4) use or occupancy for any unlawful purpose or in violation of any applicable certificate of occupancy.

ARTICLE 4
SECURITY DEPOSIT

4.1 **Security Deposit.** Pursuant to the terms of the JDA, WMATA is holding a security deposit, in the amount of Two Hundred Fifty Thousand Dollars (the "Security Deposit") ($250,000.00), in cash, as security for the faithful performance of the terms and conditions of the JDA and this Lease.

4.2 **Release of the Security Deposit.** WMATA shall return the Security Deposit, pursuant to the terms of the JDA, to Developer within twenty (20) Business Days of WMATA's receipt of a copy of the Certificate of Occupancy for the Project.

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ARTICLE 5
RENT, FINANCIAL STATEMENTS, AND AUDITS

5.1 **Payments.** All rent and all other sums owed to WMATA pursuant to this Lease (collectively, "Rent") shall be paid by Developer without notice or demand, condition (including, without limitation, Force Majeure), deduction, offset, or counterclaim. Payments shall be sent to:

Office of Treasury
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

5.2 **Rent.** Rent shall include all amounts payable by Developer (whether to WMATA or to third parties) pursuant to this Lease, whether or not expressly designated in this Lease as Rent or Additional Rent, including but not limited to Base Rent, Escalation Rent, Density Adjustment Rent, Pre-Stabilization Period Payments, Periodic Base Rent Adjustment, and Capital Event Participation Rent, as such terms are used or defined in this Lease.

5.3 **Base Rent.**

5.3.1 Base Rent payments shall begin upon the end of the Pre-Stabilization Period.

5.3.2 Base Rent shall be payable in equal quarterly installments, in advance, on January 1, April 1, July 1 and October 1 of each lease year.

5.4 **Initial Base Rent.**

5.4.1 Within fourteen (14) calendar days of the end of the Pre-Stabilization Period, Developer shall pay to WMATA the first quarterly installment of the Base Rent, in the amount of $149,250.00. The date payment is received will be the "**Base Rent Effective Date**".

5.4.2 The Base Rent for the first year following the Base Rent Effective Date shall be an annual amount equal to Five Hundred Ninety Seven Thousand Dollars ($597,000.00).

5.5 **Escalation Rent.**

5.5.1 **Escalation Factor**. Commencing on the first (1st) anniversary of the Base Rent Effective Date, and continuing on each anniversary of the Base Rent Effective Date thereafter, Base Rent shall be increased annually (but never decreased), in accordance with the terms in this Section 5.5. In no event will any Base Rent payment be less than the Base Rent payment for the preceding year.

5.5.2 **Initial Escalation Factor**. Commencing on the first (1st) anniversary of the Base Rent Effective Date, and continuing through the tenth (10th) anniversary

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of the Base Rent Effective Date, Base Rent shall be increased annually (but never decreased) by one and one-half percent (1.5%) over the previous year's Base Rent.

5.5.3 **Subsequent Escalation Factor**. Commencing on the eleventh (11th) anniversary of the Base Rent Effective Date, and continuing thereafter, except as determined under this Lease, Base Rent shall be increased annually (but never decreased) by three percent (3%) over the previous year's Base Rent.

5.6 **Periodic Base Rent Adjustment.**

5.6.1 Base Rent will also be periodically adjusted pursuant to the terms of this Section 5.7 (the "Periodic Base Rent Adjustment"). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

5.6.2 **The Appraised Land Value**. For purposes of changes to the Base Rent due to Periodic Base Rent Adjustment under this Section 5.7, the Property value shall be derived through a three-appraiser process that establishes unit values for each type of Project land use multiplied by the total gross Project FAR square footage of each land use (the "**Appraised Land Value Process**").

5.6.3 **Capital Event Base Rent Adjustment**. At the time of any Capital Event as defined herein, Base Rent will be reset at seven percent (7%) of the Property value, as determined through the Appraised Land Value Process. Base Rent will never decrease from the then payable Base Rent as a result of any Capital Event Base Rent Adjustment.

5.6.4 **Periodic Base Rent Adjustment**. Every tenth anniversary of either 1) the Base Rent Effective Date or 2) a Capital Event Base Rent Adjustment, the Base Rent will be adjusted to seven percent (7%) of Project land value established through the Appraised Land Value Process. Base Rent will never decrease from the then payable Base Rent as a result of any Periodic Rent Revaluation.

5.7 **Capital Event Participation Rent.** Upon the occurrence of a Capital Event, WMATA shall receive ten percent (10%) of the Adjusted Gross Capital Event Proceeds of such event, which shall be known as "Capital Event Participation Rent".

5.7.1 Capital Event Participation Rent shall be payable within five (5) Business Days after Developer realizes such Net Proceeds.

5.7.2 **Adjusted Gross Capital Event Proceeds**. The Adjusted Gross Capital Event Proceeds are the total gross transaction revenues received by the Developer, and any affiliated entities receiving income from such event, from a Capital Event, less (i) the payoff of remaining original Project debt secured by the Developer Improvements and (ii) repayment of the original equity to Developer not yet repaid.

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5.7.3 **Confirmation of Developer's Debt and Equity**. Within thirty (30) calendar days of the Base Rent Effective Date, the Developer shall provide documentation to WMATA confirming the Developer's Project debt and equity. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs.

5.8 **Density Adjustment Rent.**

5.8.1 **Increase in Density**: If, at any time after the Effective Date of the JDA, Developer applies for and receives final approval for an increase in the density approved for the Lease Premises (a "**Density Increase**"), from that density described in Section 3.1.1, or from that for which Developer has previously paid additional Base Rent pursuant to this section, then upon commencement of construction of Developer Improvements implementing such increase in density, Developer shall pay to WMATA additional Base Rent for the remainder of the Term.

5.8.2 **Additional Density Approved Prior to the Effective Date of the Lease**. If, prior to the Effective Date of this Lease, the Developer receives approval for a Density Increase, the Base Rent shall be increased by an amount equal to seven percent (7%) of the product of the additional FAR square footage multiplied by sixty dollars ($60.00) (the "**Additional Density Rate**"). The Additional Density Rate shall be increased by three percent (3%) per year from _____ (the effective date of the JDA).

5.8.3 **Additional Density Approved After the Effective Date of the Lease**. Upon a Density Increase approved subsequent to the Effective Date, Base Rent will be reset at seven percent (7%) of the Property value, as determined through the Appraised Land Value Process. Base Rent will still be subject to all other terms herein, including, but not limited to, adjustments due to Escalation Factor(s), Capital Event(s), and Periodic Base Rent Adjustments. Notwithstanding anything to the contrary, additional Base Rent that has been paid shall not be subject to any rollback, refund, rebate, apportionment, or reduction. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

5.9 **Conversion to Calendar Year Computations.** If the Base Rent Effective Date is not on the first (1st) day of January, as of the beginning of the Lease Year following the execution of this Lease, all periodic payments of rent and similar amounts to WMATA (and any investigations or audits by WMATA related thereto) shall be on a calendar year basis, with any quarterly payments due being payable in advance on January 1, April 1, July 1, and October 1. Any amounts due WMATA for the period prior to the first quarterly due date shall be prorated and paid in advance to the next quarterly payment date. For the last year of the term of this Lease which does not end on December 31, whether by expiration of the term of this Lease or otherwise, all rent or similar amounts owed by Developer to WMATA shall be pro rated to the actual date of termination.

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5.10 **Late Charge.** In the event that any payment of Rent due under this Lease shall not be received by WMATA for a period of five (5) Business Days from the specified due date, Developer shall pay to WMATA as Additional Rent a late charge equal to twenty percent (20%) of the delinquent amount. In addition, any amount of Rent due hereunder which is not paid within thirty (30) days of the date due shall bear interest at the Default Rate of Interest, compounded annually, from the original due date to the date of payment, on the sum overdue. The above late charge and interest shall be payable by Developer without demand, offset or counterclaim concurrently with payment of the overdue payment. If WMATA undertakes collection efforts or brings suit for collection of any Rent overdue hereunder, Developer agrees to pay attorney's fees and all other collection costs WMATA may incur.

5.11 **Re-characterizing Income or Expenses.** Developer shall not re-characterize rents, fees, receipts, revenues, or costs of managing, leasing, licensing, servicing, or operating the Lease Premises or Developer Improvements so as to result in a diminution of the Rent payable to WMATA.

5.12 **Financial Statements.** Developer hereby represents and warrants to WMATA that Developer's fiscal year for accounting purposes with respect to the operation of the Lease Premises is the twelve (12)-month period beginning [redacted]. Within one hundred twenty (120) calendar days after the end of each fiscal year during the Term of this Lease, Developer shall submit to WMATA a reviewed annual financial statement prepared in accordance with generally accepted accounting principles by an independent certified public accountant; provided, that if Developer is required to submit an audited annual financial statement to any person or entity, the annual financial statement delivered to WMATA pursuant to this Section 5.12 shall be an audited financial statement rather than a reviewed financial statement. Each financial statement shall report, without being limited to: (a) Net Operating Income for such fiscal year; (b) Net Proceeds, if any, for such fiscal year; (c) Developer's Project debt and equity changes for such fiscal year; and (d) all interests that any of Developer's Affiliates had in Developer, the Project, or the Improvements at any time during such fiscal year.

5.13 **Inspection of Developer's Books and Independent Audits.**

5.13.1 WMATA may, during normal business hours and upon at least five (5) Business Days advance written notice to Developer, inspect, take extracts from, and make copies of the books and records of Developer (and any management company managing the Lease Premises and the Developer Improvements) for the purpose of verifying any financial statement submitted to WMATA pursuant to Article 5 of this Lease. Any inspection undertaken by WMATA must be initiated within a period of three (3) years after Developer submits such financial statement. WMATA shall be limited to four (4) inspections per calendar year at its sole cost and expense, provided that such limitation shall not prevent WMATA from conducting an audit pursuant to Article 5 in the same calendar year that WMATA undertakes an inspection. Developer shall also make copies of all leases between Developer and any Subtenants available for inspection by WMATA or its agents. Developer's

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failure to provide financial information to WMATA pursuant this Article 5, or to allow WMATA and its agents access to its books, records, and leases pursuant to Section 5.7.4 and this Section 5.13.1, shall constitute a Default by Developer. WMATA shall conduct any such inspection in a manner that does not materially disturb or interfere with the operations of the Developer, its management company or the Developer Improvements. WMATA shall not be required to compensate Developer or the management company for Developer for any expenses incurred in assisting WMATA's inspection.

5.13.2 WMATA may, by written notice to Developer, conduct or cause to be conducted an independent audit of the operation of the Lease Premises and Developer Improvements and/or any payment of Capital Event Participation Rent, or any other amount due to WMATA under this Lease, provided, no single audit by WMATA pursuant to this Section 5.13.2 may cover an examination of more than three (3) complete years (fiscal or calendar, whichever pertains to the Developer's method of tax reporting) of operation of the Lease Premises and Developer Improvements next preceding the date of WMATA's notice that an audit will be conducted. If WMATA's audit shall disclose that the actual amount of Capital Event Participation Rent or any other amount due WMATA under this Lease for any period is in excess of the amount previously paid by Developer to WMATA for such period or event, then Developer, upon receipt of a notice from WMATA setting forth in reasonable detail the amount due and the calculations used in making the determination, shall forthwith pay to WMATA the amount of such excess; and in addition, if the aggregate of such amounts due from Developer to WMATA exceeds the aggregate of such amount actually received by WMATA from Developer by five percent (5%) or more, then Developer also shall pay to WMATA interest on such excess at the rate of twenty percent (20%) per annum from the date payment was originally due WMATA until payment (in good funds) is received by WMATA. If Developer disputes the calculations provided by WMATA, Developer shall so advise WMATA in writing, and the parties shall meet and attempt to resolve the dispute before instituting any action under Article 24 of this Lease. If WMATA's audit shall disclose that the actual amount of Capital Event Participation Rent, or any other amount due WMATA under this Lease for any period is less than the amount previously paid by Developer to WMATA for such period or event, then Developer shall be entitled to a credit against Rent in the amount of such difference. Any dispute between WMATA and Developer with respect to the results of any such audit shall be resolved pursuant to the provisions of Article 24. WMATA shall not be required to compensate Developer or the management company for Developer for any expenses incurred in assisting WMATA's audit.

5.13.3 All information and materials provided by Developer or WMATA pursuant to Sections 5.7, 5.12, 5.13.1 and 5.13.2 hereof (including, but not limited to, all financial statements provided by Developer to WMATA) shall be confidential and shall not be disclosed by WMATA or Developer, whether through any of

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its employees, independent contractors, agents or otherwise, to any third party, other than (i) pursuant to a subpoena or court order or (ii) in litigation, insolvency proceedings of any type, mediation, or arbitration with or involving Developer concerning a dispute to which such information or materials is or are materially germane or (iii) to the extent disclosure is required pursuant to WMATA's public access to records policies or applicable Laws. However, nothing in this Section 5.13.3 shall be deemed to limit any employees, officers, or directors of WMATA, or any auditors, attorneys, or other consultants hired by WMATA or by any such auditors or attorneys, or their respective employees, from reviewing and analyzing the information and/or materials obtained, and discussing and sharing such information and materials among themselves and with Developer or any representatives of Developer.

ARTICLE 6
TRIPLE NET LEASE; ADDITIONAL RENT

6.1 **Triple Net Lease.** Developer acknowledges and agrees that this Lease is intended by the parties to yield to WMATA irrevocably and unconditionally the Rent as and when due hereunder absolutely free or net of all expenses, costs, charges, liabilities, obligations, claims, demands, fees, fines, penalties, taxes, premiums, interest and other sums, which are in any manner associated with this Lease and the development, subleasing, construction, operation, use, management, insuring, protecting, repairing, maintaining or replacing of the Lease Premises, of whatever kind or nature, however characterized, foreseeable or unforeseeable, ordinary or extraordinary, and whether or not expressly identified in this Lease as an obligation or liability of Developer (unless expressly identified as an obligation of WMATA), all of which such payment and performance obligations and liabilities (collectively, the "Lease Obligations") shall be paid and performed by Developer, as and when due, without notice, demand, condition, offset, deduction or counterclaim.

6.2 **Construction Related Obligations.** The Lease Obligations include, without limitation, payment and performance of all obligations incurred by or for the benefit of Developer or any Occupant for or in connection with the design, permitting, contracting, construction, development, installation, and placing into service of the Developer Improvements in accordance with the requirements of the Approved Development Plan and otherwise as set forth in this Lease (collectively, the "Construction Related Obligations").

ARTICLE 7
PAYMENT OF TAXES, ASSESSMENTS, ETC.

7.1 **Developer's Obligation to Pay Impositions.**

7.1.1 Developer shall pay or cause to be paid all Impositions before any fine, penalty, interest or cost may be added thereto or become due or be imposed by operation of law for the nonpayment.

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7.1.2 ~~If, at any time during the Term, due to changes after the date hereof in Laws, Developer becomes entitled to the benefit of WMATA's tax exemption, so that Developer is relieved of liability for payment of any Imposition on the Lease Premises, Leasehold Interest or Developer Improvements, without a substitute Imposition or increase in another Imposition being implemented in place thereof, Developer shall pay to WMATA the savings resulting therefrom (after payment or reimbursement of all costs of effecting such savings), from time to time as such savings are realized, on the date or dates on which the Imposition from which Developer has been so relieved of liability would have been due and payable~~**RESERVED**.

7.2 **Payment of Impositions in Installments.**

7.2.1 If by law, any Imposition may be paid in installments (regardless whether interest shall accrue on the unpaid balance of such Imposition), Developer may exercise the option to pay timely the Imposition and any accrued interest on the unpaid balance in installments. Those installments which are to become due and payable after the expiration or sooner termination of the Term, but which relate to a fiscal period fully included in the Term, shall be paid in full by Developer at or before the expiration or sooner termination of the Term.

7.2.2 Any Imposition which relates to a fiscal period partly occurring within the Term of this Lease and partly occurring prior to or after the expiration of the Term, shall be adjusted between WMATA and Developer. Developer shall pay only that portion of such Imposition which relates to that part of the fiscal period included in the Term. WMATA, subject to any exemption to which it may be entitled, shall pay such Impositions as would otherwise be payable by a non-tax-exempt owner, Developer or operator of the Lease Premises after the expiration of the Term, and WMATA retains the right to contest the payment of such Impositions.

7.3 **Challenge to Impositions.** Developer shall have the right, but not the obligation, to contest the amount or validity, in whole or in part, of any Imposition, by appropriate proceedings diligently conducted in good faith, but only after payment, or securing payment as permitted under Laws, of such Imposition. However, if such payment or securing payment, whether under protest or otherwise, would operate as a bar of such contest or interfere materially with the prosecution thereof, Developer may postpone or defer payment or securing payment of such Imposition if:

7.3.1 Neither the Developer Improvements and/or the Lease Premises, nor any part thereof, would by reason of such postponement or deferment be in danger of being forfeited or lost; and

7.3.2 Neither WMATA nor any officer, director or employee of WMATA would be in jeopardy of incurring any payment obligation whatsoever, nor of receiving any fine, penalty or other sanction (civil or criminal) nor would any such fine,

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penalty or sanction be applied to the Lease Premises or become a lien or charge applicable thereto as a result of such delay (unless in the case of imposition of a civil fine or money penalty only, Developer includes such amount in the escrow provided for in Section 7.3.3); and

7.3.3 Developer establishes an escrow account with a sound and recognized financial institution, or deposits a bond or other security (with an obligor and containing such terms both as are reasonably approved by WMATA) with ~~the~~ a Title Company selected by Developer, in the amount so contested and unpaid, together with all interest and penalties in connection therewith, and all charges that would be assessed against or become a charge on any or all of WMATA, any employee of WMATA, the Lease Premises, or the Developer Improvements, or any part thereof, if Developer were to be unsuccessful in such proceedings. Upon the termination of any such proceedings, Developer, from the proceeds of such escrow account, deposit, and, as necessary to effect full payment, from any other source, shall pay the amount of such Imposition or part thereof, if any, as finally determined in such proceedings to be owing by Developer, together with all costs and fees, including attorney's fees, incurred by Developer, interest, penalties and any other liability imposed in connection therewith, and any amount referred to in Section 7.3, and upon such full payment, Developer shall be entitled to immediate return of any remaining escrow proceeds or deposits. The provisions of this Section and the establishment of an escrow account or deposit are not intended by the parties to create any rights or third-party beneficiary rights in a non-party to this Lease in the escrow account monies or deposits, nor are they intended to limit Developer's obligations for payment of any Impositions that are determined to be due.

7.4 **WMATA Not Required to Join Developer Challenge's to Impositions.** WMATA shall not be required to join in any proceedings referred to in Section 7.3 unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the underlying fee owner's name. In such an event, WMATA may join in such proceedings or permit the same to be brought in WMATA's name. WMATA shall not be subjected to any liability for the payment of any fees, including attorney's fees, costs and expenses in connection with such proceedings. Developer hereby indemnifies and holds WMATA harmless from and against any loss, cost, damage, claim, demand or expense, including reasonable attorney's fees, costs and expenses resulting from or connected with any proceedings undertaken by Developer pursuant to this Article 7 or instituted against or in respect of any failure by Developer to pay, as and when due, any Imposition.

7.5 **Evidence of Payment of Impositions.** Developer shall furnish WMATA with satisfactory evidence of the payment of any Imposition required hereby to be paid by Developer. All indemnity and payment obligations of Developer under this Article 7 shall survive the expiration or any earlier termination of the Term of this Lease.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004219

7.6 **Acknowledgment of Tax-Exempt Status.** Developer acknowledges that WMATA is a tax-exempt entity and agrees that WMATA shall not be responsible for the payment of any taxes or Impositions relating to this Lease or the transactions contemplated by this Lease or the other Transaction Documents. Any and all taxes and other Impositions resulting solely from any and all activities of Developer shall be its sole responsibility and obligation and not that of WMATA. From and after the Effective Date, other than such Impositions as WMATA has routinely paid and is legally required to pay with respect to the Property on and before the Effective Date, Developer (and not WMATA) shall be responsible for the payment of any and all taxes and Impositions, including, without limitation, real estate taxes, relating to the Lease Premises.

ARTICLE 8
COMPLIANCE WITH LAWS AND FTA APPROVAL

8.1 **Developer's General Compliance with Laws.** Developer, at its sole cost, risk, and expense, shall comply with all Laws to which Developer is subject regarding the Lease Premises or the Developer Improvements and Developer's use and operation thereof, shall include in each Occupant's Sublease, license agreement, or other occupancy agreement the requirement that such occupancy shall comply with all Laws to which such occupancy may be subject, and shall require any Occupant(s) of the Lease Premises to comply with all Laws to which such Occupant(s) may be subject. In that connection, Developer shall make or cause to be made such repairs, replacements, alterations, and improvements from time to time as may be required to make the Lease Premises or the Developer Improvements comply with Laws. Developer agrees that due to the length of the Term, changes in Laws may from time to time require alterations, improvements, and upgrades to the Lease Premises or the Developer Improvements, and that significant capital expenditures may be required in any such event and that Developer shall be solely responsible for the costs and expenses relating thereto.

8.2 **Right to Contest.**

8.2.1 WMATA shall have the right but not the obligation, at its sole cost, to contest the application or validity, in whole or in part, of any Law purported to be applied to the Lease Premises or Developer Improvements or any part thereof during the Term of this Lease, by appropriate proceedings diligently conducted in good faith, and Developer may participate therein. No such contest shall diminish, abrogate or affect to the detriment of Developer any of WMATA's obligations under this Lease.

8.2.2 Developer shall have the right but not the obligation, at its sole cost, to contest the application or validity, in whole or in part, of any Law purported to be applied to the Lease Premises or Developer Improvements or any part thereof during the Term of this Lease, by appropriate proceedings diligently conducted in good faith, and WMATA may participate therein. No such contest shall diminish, abrogate or affect to the detriment of WMATA any of Developer's obligations under this Lease.

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8.2.3 No contest shall be allowed to be conducted by either WMATA or Developer that, by reason of such contest or any non-compliance, may: (a) cause any portion of the Lease Premises or any interest of WMATA or Developer therein to be in danger of being forfeited or lost; or (b) place any party to this Lease, or any officer, director, member, partner, or employee of such party, in jeopardy of receiving any fine, penalty, or other sanction (civil or criminal).

8.3 **Transit-Oriented Development.** In accordance with FTA requirements (including, without limitation, FTA Circular 9300. 1A, Appendix B), Developer warrants and covenants that the Project to be designed and to be constructed on the Lease Premises shall constitute a "Transit-Oriented Development". In addition, Developer warrants and covenants that it shall maintain a "Continuing Transit Orientation" each as defined below. The requirements of this Section shall be among the Covenants, Conditions and Restrictions. Developer and its heirs, successors and assigns shall cause the Lease Premises at all times to maintain a "Continuing Transit Orientation" for so long as a metrorail station is open and in operation on or about the Property or any WMATA's Adjacent Property, (or to the extent required by FTA regulations or other applicable Laws) within reasonable proximity thereof. The terms "Transit-Oriented Development" and "Continuing Transit Orientation" mean respectively, as applicable to design and construction of the Project and as to its subsequent maintenance and operation, satisfaction of each of the following, each as reasonably determined by WMATA: (a) provision of convenient pedestrian and vehicular access to a transit station; (b) incorporation of private investment and office, commercial or residential development; (c) design which enhances the effectiveness of a mass transit project and is physically or functionally related to the mass transit project; and (d) creation of non-vehicular capital improvements that are designed to result in increased transit usage.

8.4 **FTA Project Approval.** WMATA and Developer acknowledge that the Project is subject to approval by the FTA ("FTA Project Approval").

8.5 **Disclaimer.** WMATA shall have no obligation to make any change, demolition or improvement of or to the Lease Premises, WMATA's Residual Property, WMATA's Adjacent Property or any other portion of the Property, including without limitation, to comply with Applicable Laws, except as expressly set forth in this Lease.

8.6 **Americans with Disabilities Act.** All improvements constructed by Developer on the Lease Premises shall comply with Title II and III of the Americans With Disabilities Act, 42 U.S.C. 12101, et seq., as amended, and any regulations promulgated thereunder ("ADA"), to the extent applicable. If as a result of such improvements, or any subsequent alteration, addition or modification thereto, ADA-related improvements to the Metro Station or any Metro Facilities are required, Developer shall be solely responsible for the cost of all such improvements and shall pay or reimburse WMATA for all such costs on demand.

8.7 **Use of WMATA Compact.** Developer understands and agrees that in no event shall Developer claim or assert for its own benefit, or attempt to claim or assert, an exemption or immunity available to WMATA under the Washington Metropolitan Area Transit

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004221

Authority Compact, Public Law 89-774, 80 Stat. 1324, as same may be amended (the "WMATA Compact").

8.8 **Noise and Vibrations.** No claims shall be made by Developer against WMATA arising from noise or vibration caused from WMATA's operation of the Metro Station or any Metro Facilities. A provision to this effect shall be included in all Subleases entered into by Developer.

8.9 **No Interference.** Developer shall not interfere or permit any interference with any of WMATA's operations or the free flow of pedestrian traffic to and from the Metro Station, Metro Facilities, or the WMATA's Reserved Areas and Interests. Developer shall not conduct or permit any activities to be conducted that would interfere with or diminish WMATA's ability to realize transit revenues in, on or about the Property.

8.10 **Officials Not To Benefit.**

8.10.1 No member (i.e., Representative or Senator) of, or delegate to Congress, or any similar official, or any member of such person's family, shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom; but this provision shall not apply if this Lease is made with a corporation or other entity with which such official or family member has only a de minimis (in WMATA's sole opinion) contractual or ownership interest. Developer and any Consultant warrants, represents, and agrees that as of the date of this Lease, no person described in this Subparagraph, nor any entity with which such person is affiliated, has any such interest in Developer or any Consultant. Developer and any Consultant shall forthwith deliver written notice to WMATA of any breach of the foregoing warranty, representation, and agreement, and shall make reasonable inquiries from time to time to determine whether any such breach has occurred.

8.10.2 No member, officer, or employee of WMATA or of a local public body during his/her tenure or one year thereafter shall have any interest, direct or indirect, in this Lease.

8.11 **Gratuities.** In connection with this Lease, or any amendments or modifications thereto, the giving of, or offering to give, gratuities (in the form of entertainment, gifts or otherwise) by the Developer or any Consultant, or any agent, representative, or other person deemed to be acting on behalf of the Developer or any Consultant, or any contractor, subcontractor or supplier furnishing material to or performing work under this Lease, or any agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any director, officer or employee of WMATA, or to any director, officer, employee or agent of any of WMATA's agents, consultants or representatives, with a view toward securing an agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to performance under this Lease or any agreement that will be negotiated, is expressly forbidden. The terms of this Section shall be strictly construed and enforced in the event of violation hereto.

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ARTICLE 9
ENVIRONMENTAL MATTERS

9.1 **WMATA's Covenants.**

9.1.1 Subject to the remaining provisions of this Article 9, WMATA shall be solely responsible for compliance of the WMATA's Reserved Areas and Interests with all Laws relating to Hazardous Materials. As between WMATA and Developer, nothing in this Lease shall be deemed (1) to prevent the entry and parking of motor vehicles carrying flammable liquids solely for the purpose of their own propulsion, (2) to prohibit storage and use on WMATA's Reserved Areas and Interests of any liquid or material typically used in the construction, operation or maintenance of facilities of the type comprising Metro Facilities, or (3) to prohibit storage and use on the WMATA's Reserved Areas and Interests, in accordance with the requirements of applicable Environmental Law, of any Hazardous Material by any occupant of WMATA's Reserved Areas and Interests in connection with the conduct of its business.

9.1.2 During the Term of this Lease, WMATA shall notify Developer promptly upon receiving notice (whether from a governmental authority or any other Person) with respect to, or becoming actually aware of, any release, on or from WMATA's Reserved Areas and Interests of any Hazardous Material in violation of applicable Law affecting the Lease Premises.

9.2 **Developer's Covenants.**

9.2.1 During the Term of this Lease, Developer shall be solely responsible for compliance of the Lease Premises, the Developer Improvements and the activities thereon of Developer, Occupants and all third parties (other than those of WMATA, its employees, agents and contractors) with all Laws relating to Hazardous Materials. Developer shall not install, use, generate, store, transport or dispose of any Hazardous Material, on, below or about the Lease Premises or the Developer Improvements or suffer the same to occur (other than by WMATA, its employees, agents and contractors), except only, in accordance with the requirements of applicable Environmental Laws.

9.2.2 Developer shall notify WMATA promptly upon receiving notice (whether from a governmental authority or any other person) with respect to, or becoming actually aware of, any release, on or from the Lease Premises or the Developer Improvements of any Hazardous Material during the Term of this Lease, in violation of applicable Law.

9.2.3 Developer hereby agrees to indemnify, defend and hold WMATA harmless from and against any and all loss, cost, liability, damage or expense which WMATA may incur or sustain or which may be asserted against WMATA by reason of any liability WMATA may incur for clean-up, restoration costs, fines, or penalties resulting from Developer's breach of the covenants

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contained in this Article 9 or from the violation of any Law relating to Hazardous Materials released on or from the Lease Premises occurring after the Effective Date of this Lease.

9.2.4 Developer acknowledges that Developer has assumed all risk, liability, costs and responsibility for the environmental condition of the Lease Premises existing on the Effective Date to the fullest extent permitted under applicable Laws, including, without limitation, the obligation to remediate, to the extent required by applicable Laws, any and all Hazardous Materials located thereon. In the event Developer receives notice of, or otherwise becomes aware of, the presence or release of Hazardous Materials in, on or about the Leased Premises, Developer shall promptly notify WMATA thereof, and if Developer fails to cause same to be investigated and remedied, as the case may be, in accordance with the requirements of applicable Laws and this Lease, WMATA shall have the right, but not the obligation to do any and all of the following: (1) to enter upon the Lease Premises; and (2) to so investigate, including, without limitation, conducting such tests, studies, investigations and evaluations thereof as WMATA reasonably shall deem necessary at Developer's cost and expense as Additional Rent; and (3) to remediate at Developer's cost and expense as Additional Rent; or (4) to require Developer to do any or all of the foregoing for the benefit of WMATA, using contractors and consultants approved by WMATA.

9.2.5 The provisions of this Section 9.2 shall survive the expiration or any earlier termination of the Term.

ARTICLE 10
INSURANCE REQUIREMENTS

10.1 **Scope and Limits of Required Insurance Coverage.** Beginning on the Effective Date and throughout the Term of this Lease, Developer and ~~each of its contractors and subcontractors and every Person directly or indirectly employed by any of them and every Person for whose acts any of them may be liable~~or Developer's general contractor, as applicable (~~collectively,~~ the "Insurance ~~Obligors~~Obligor"), shall procure and at all times maintain without interruption, at its ~~and their~~ sole cost and expense, insurance coverage and policies to protect each of WMATA and the ~~Insurance Obligors~~ Developer and all of their respective officers, directors, agents, and employees, from claims set forth below which may arise out of or result from activities contemplated by this Lease and the other Transaction Documents by ~~any and all of~~ the Insurance ~~Obligors~~Obligor, such coverage and policies having the scope and limits not less than as set forth below:

10.1.1 **General Liability Insurance.** One or more commercial general liability insurance policies issued to and covering the liability of the Insurance ~~Obligors~~Obligor for all activities and obligations under or in connection with this Lease and the other Transaction Documents. Such coverage shall include, without limitation, completed operations and contractual liability insurance,

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explosion, collapse and underground liability coverage of not less than the following limits:

10.1.1.1 Personal Injury and Property Damage Liability for Non-Construction Activities and Obligations: $5,000,000 Combined Single Limit Each Occurrence.

10.1.1.2 Personal Injury and Property Damage Liability for Construction Activities and Obligations: $10,000,000 Combined Single Limit Each Occurrence.

10.1.2 **Commercial Property Insurance.** One or more special form insurance policies, which in the aggregate cover one hundred twenty percent (120%) of the full replacement cost of all Improvements on the Property.

10.1.3 **Builder's Risk Coverage.** To the extent not fully covered by the policies required under subsection 10.1.1, one or more policies of builder's risk insurance on the Improvements, buildings and materials, equipment and supplies on or about the Lease Premises that have been or are to be incorporated into the Project. Such insurance shall also include those Project materials, equipment, and supplies owned by WMATA and stored off-site. This insurance shall include the interests of WMATA and the Insurance ~~Obligors~~Obligor. Such insurance shall be written on a replacement cost basis and shall afford coverage at least equivalent to an "all-risk" builder's risk policy form as customarily defined within the insurance industry. One or more insurance policies in such amounts as shall be reasonably required by WMATA in respect of all construction, installation, alteration and other similar construction activities of the Insurance ~~Obligors~~Obligor.

10.1.4 One or more insurance policies, which in the aggregate fully comply with all applicable worker's compensation, disability benefit and other similar employee benefit statutes, regulations and requirements, including, without limitation, those of District of Columbia, and with all requirements of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, Admiralty Laws, or the Federal Employers' Liability Act. Such policies, without limitation, shall conform to all applicable statutory limits and, to the extent not specified to the following minimum coverage limits:

Employers' Liability:	$1,000,000
Each Accident:	$1,000,000
Disease Policy Limits:	$1,000,000
Disease-Each Employee:	$1,000,000

10.1.5 **Automobile Liability Insurance.** One or more insurance policies covering the use of all owned, non-owned, hired, rented or leased vehicles having coverage scopes and limits not less than as required by all applicable motor

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vehicle laws, including, without limitation, of the District of Columbia, to the extent not fully covered by the policies required under subsection 10.1.1. In no event shall the coverage under such policies shall have a combined single limit for bodily injury liability and property damage liability of less than $5,000,000 per occurrence.

10.1.6 **Pollution Legal Liability Insurance.** One or more insurance policies covering contractors' pollution legal liability, including, without limitation, the liability of the Insurance Obligor occasioned by environmental testing and release, removal, storage, transport and disposal of Hazardous Materials. The policy shall include coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, solid, liquid or gas, waste materials or other irritants, contaminants or pollutants from, into or upon the Property, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The coverage under such an insurance policies shall have limits not less than $3,000,000 per occurrence of claims made.

10.1.7 **Railroad Protective Liability Insurance.** One or more insurance policies covering the liability of any and all of the Insurance ~~Obligors~~Obligor for any and all personal injuries, deaths and any and all damage to property, equipment and facilities caused by work performed by the Insurance Obligor on, above, below, adjacent or within fifty (50) feet of an of the Metro Facilities. The coverage under such policies shall have limits not less than $5,000,000 combined single limit for bodily injury and property damage with a $10,000,000 aggregate.

10.1.8 One or more insurance policies covering the liability of the Insurance ~~Obligors~~Obligor for any and all indemnification obligations and indemnification liabilities under this Lease and the Transaction Documents.

10.1.9 Rent insurance with all risk coverage in an amount equal to one (1) year's current annual Base Rent plus the aggregate amount of Impositions and insurance premiums payable to WMATA for one (1) year.

10.1.10 At the request of WMATA, such other insurance in such amounts as may from time to time be reasonably required by WMATA against such other insurable hazards as at the time are commonly insured against in the case of premises similarly situated, due regard being given to the type of the Improvements, its construction and its use and occupancy.

10.2 If, by reason of changed circumstances or economic conditions, the insurance amounts referred to in this Lease become in WMATA's reasonable judgment inadequate, Developer shall increase the amounts of such insurance promptly upon WMATA's reasonable request, which increased amounts shall be consistent with that customarily

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carried with respect to premises similarly situated to the Lease Premises, giving due regard to the type of Improvements and its construction, use and occupancy.

10.3 **WMATA's Interests.** Each of the Insurance ~~Obligors~~Obligor shall cause its insurance carrier(s) to name WMATA as an additional insured under its policies and to provide not less than sixty (60) days' written Notice of modification, termination, or cancellation of the policy to WMATA and to issue an endorsement to WMATA to that effect with a copy of such Notice and endorsement to WMATA's Office of Risk Management. Such endorsement shall be delivered to WMATA on or before the earlier of the Effective Date and before the expiration of any term thereof from an insurance company licensed to do business in the jurisdiction in which the Lease Premises is located. All policies required to be procured or provided by Insurance ~~Obligors~~Obligor (i) shall be written on an occurrence basis unless otherwise indicated and WMATA's coverage shall be specified as primary policy coverage and not contributing with or in excess of any coverage which WMATA may carry; (ii) shall be on a basis which in each appropriate instance shall not make any Insurance Obligor a coinsurer; (iii) shall provide that coverage shall not be voided or reduced on account of the performance of any construction or other work on the Lease Premises; (iv) shall provide that coverage shall not be affected, limited, voided or reduced as to WMATA on account of any actions or omissions by any or all of the Insurance ~~Obligors~~Obligor, nor shall any such actions or omissions affect or limit the obligation of the insurance company to pay the amount of any loss sustained; (v) shall provide that coverage shall not be voided or reduced as to WMATA on account of WMATA's status as governmental instrumentality or public or quasi-public body; (vi) shall contain an express waiver of any right of subrogation by the insurance company against WMATA and WMATA's agents, contractors and employees, to the maximum extent possible; and (vii) shall provide for a deductible or self insured retention not to exceed $10,000. Neither the issuance of any insurance policies required hereunder, nor the minimum limits specified herein with respect to the Insurance ~~Obligors~~Obligor's insurance coverages, shall be deemed to release, limit or restrict in any way the Insurance ~~Obligors~~Obligor's liability arising under or out of this Lease or otherwise.

10.4 **Verification of Coverage.** With respect to each and every one of the insurance policies herein required to be procured by the Insurance ~~Obligors~~Obligor, on or before the Effective Date (or in the case of insurance relating solely to construction of the Project on or before the fifteenth (15th) day preceding the commencement of any construction or construction related activities) and not less than sixty (60) days before any such insurance policy shall expire, each of the Insurance ~~Obligors~~Obligor shall deliver to WMATA's Office of Risk Management (at 600 Fifth Street, N.W., Washington, DC 20001 or such other address as may be specified by WMATA) at WMATA's option either an original or copy of the entire insurance policy for each such policy or renewal thereof, as the case may be. Each and every insurance policy required to be carried hereunder by or on behalf of Insurance ~~Obligors~~Obligor shall provide (and any certificate evidencing the existence of each such insurance policy shall certify) that, unless WMATA shall first have been given sixty (60) days' prior written notice thereof: (i) such insurance policy shall not be canceled or allowed to lapse, and shall continue in full force and effect, (ii) the insurance carrier shall not, for any reason whatsoever, fail to renew such insurance policy, and no material changes may be made in such insurance policy, except in the

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event of the Insurance ~~Obligors~~Obligor's nonpayment, for which WMATA shall have been given not less than twenty (20) days' prior written notice. From time to time within ten (10) Business Days following request by WMATA, the Insurance ~~Obligors~~Obligor shall deliver to WMATA evidence reasonably satisfactory to WMATA that such insurance policies and coverages remain in full force and effect, and that all premiums which are due and payable have been paid. The terms "insurance policy" and "insurance policies" as used in this Lease shall be deemed to include any extension or renewals of such insurance policies. Evidence of each renewal or replacement of the policies required by this Lease and the other Transaction Documents shall be delivered by the Insurance ~~Obligors~~Obligor to WMATA at least twenty (20) days prior to the respective expiration of the applicable policies.

10.5 **Failure to Procure or Maintain Insurance.** In the event that Insurance ~~Obligors~~Obligor shall fail to furnish and maintain any insurance coverage required to be procured by Insurance ~~Obligors~~Obligor or fails to maintain acceptable policies of insurance, WMATA shall have the option, but not the obligation, to obtain the same and pay the premium therefor at the sole cost and expense of the Insurance ~~Obligors~~Obligor, without the need of any notice to any of the Insurance ~~Obligors~~Obligor, and the premium so paid by WMATA together with a service charge equal to ten percent (10%) shall be immediately due and payable by Developer to WMATA.

10.6 **Compliance with Insurance Requirements.** The Developer shall not itself and shall not suffer any of the Insurance ~~Obligors~~Obligor to do or permit to be done or omit to do any act or thing upon the Lease Premises that will invalidate or be in conflict with any insurance policies covering the Lease Premises or any part thereof, including all common areas or fixtures and property therein, or any other insurance policies or coverage referred to above; and Developer shall itself and shall cause each of the Insurance ~~Obligors~~Obligor to promptly comply with all rules, orders, regulations or requirements relating to such insurance policies, including all rules, orders, regulations, requirements and insurance regulations, and shall not do, or permit anything to be done, in, on or about the Property, or bring or keep anything therein, which shall increase the rate of fire insurance on the Lease Premises or on any property, including all common areas, located therein, or increase the rate or rates of any other insurance referred to in this Lease. If any act or omission of any of the Insurance ~~Obligors~~Obligor, its or their agents, employees or contractors shall result directly in any increase in the premium rates applicable to any such insurance policies carried by WMATA, or other increased costs to WMATA in order to comply with insurance regulations, in excess of the premium rates or such costs in effect, then the Developer shall reimburse WMATA for the amounts of any such increased rates or costs on account of such act or omission (with joint and several liability therefor) within fifteen (15) days after receipt of a statement therefor from WMATA.

10.7 **Minimum Qualifications of Insurance Companies.** Insurance companies providing the coverages required by this Article 10 shall be rated by A.M. Best or a comparable rating company and carry at least an "A" rating and a "Financial Size Category" of at least "X" or better or, if such ratings are not then in effect, the equivalent thereof or such other financial and size rating as WMATA may at any time consider appropriate. All

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insurance shall be procured from insurance companies authorized to do business in the jurisdiction in which the Lease Premises is located. WMATA's approval or failure to disapprove the insurance furnished by the Insurance ~~Obligors~~Obligor shall not release, limit or restrict in any way Insurance ~~Obligors~~Obligor's liability arising under or out of this Lease or otherwise.

10.8 **Survival of Insurance and Indemnification Covenants.** The obligations arising under this Article 10 shall survive the expiration or termination of this Lease and shall be included in the Covenants, Conditions and Restrictions.

ARTICLE 11
DEVELOPMENT RIGHTS AND OBLIGATIONS

11.1 **Obligation to Commence and Complete Construction.** Promptly following the Effective Date, and pursuant to the terms of the JDA and this Lease, Developer shall expeditiously commence and timely complete the development of and construction of the Project and all improvements relating thereto in a first class and workmanlike manner in accordance with all applicable health, safety and insurance requirements), free of defects and liens for labor or materials, in accordance with the JDA, this Lease, the Approved Development Plan, the Design and Construction Documents as approved by WMATA, the Construction Drawings and Specifications as approved by WMATA, the Construction Approvals and all other applicable legal requirements. It is the intention of the parties that Developer shall at its sole cost and expense provide all items necessary for the proper execution and completion of the Project, including, without limitation, securing and paying for all building permits and all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Project. Developer shall deliver to WMATA copies of all certificates, permits, approvals and consents promptly after its receipt of the same.

11.2 **Developer Construction Damage or Interference of Metro Facilities.** If the Developer damages, impedes access to, or otherwise interferes with Metro Facilities, Developer shall repair such damage within five (5) days after receiving notice of the occurrence thereof, except that in the case of emergencies or if such damage causes serious disruption to the operations of any part the Metrorail system, Developer's obligation to repair shall be immediate.

11.3 **Inspections.**

11.3.1 **Inspector(s).** WMATA shall designate in writing an employee(s) or representative(s) ("WMATA's Inspector") who shall have full escorted access to the Lease Premises and Developer's construction for the purposes set forth below. WMATA's Inspector shall be under the direction of a registered professional engineer. Such person(s) shall have the absolute authority to stop construction of Developer Improvements that impact or materially affect Metro Facilities, if in WMATA's sole but reasonable opinion, Developer's contractor(s) or subcontractor(s) is/are working in (a) a dangerous or unsafe manner, or (b) not in conformance with the approved Construction Drawings

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and Specifications. The authority of WMATA's Inspector to stop construction work shall be incorporated into all of Developer's construction contracts.

11.3.2 **Purposes**. WMATA's inspector shall have full escorted access to the Lease Premises and Developer's construction of the Developer Improvements for the following purposes.

11.3.2.1 To determine the safety of operations of Developer's contractor with regard to Developer Improvements that impact or materially affect Metro Facilities;

11.3.2.2 To determine if the construction is in conformance with the approved Construction Drawings and Specifications; and

11.3.2.3 To inspect Developer Improvements that impact or materially affect Metro Facilities as determined by WMATA.

11.3.3 **Notification to Developer and Developer's Responsibility**. WMATA shall immediately notify Developer in writing of any work that is not in conformance with the approved Construction Drawings and Specifications. Developer shall direct its contractor to remove the defective work, construction, material, structure, facility, equipment, or installation, and replace it in accordance with the approved Construction Drawings and Specifications for Developer Improvements that impact or materially affect Metro Facilities. Failure of Developer's contractor to timely comply with said direction shall not relieve Developer of its own obligation to remove and replace the defective work. Developer's failure to remove and replace, or cause to have removed and replaced, the defective work shall be an Event of Default under this Lease. If Developer has repaired or replaced defective work pursuant to this Section 11.3.3, WMATA shall inspect and provide acceptance or rejection within twenty (20) days following receipt of written notice of completion from Developer.

11.3.4 **Disclaimer of Liability.** By inspecting, having the right to inspect, or requiring the correction of any construction undertaken pursuant to this Lease, WMATA accepts no liability for any construction defects, flaws or mistakes, and waives none of its legal rights. No inspection conducted by WMATA shall be construed to be a warranty, guarantee, or assurance of the adequacy of the contractor's work or of the Improvements constructed. The inspection conducted is for WMATA's sole benefit, and is for no other party's benefit, including that of the Developer.

11.3.5 **Coordination**. WMATA's Inspector shall be notified of and shall have the right to attend scheduled job progress meetings and, upon request, shall receive copies of the meeting minutes, if any.

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11.4 **Developer As-Built Drawings**. Developer shall require its contractor(s) to maintain "As-Built" drawings during the construction of the Developer Improvements on the Lease Premises. Within thirty (30) days following the date Substantial Completion is achieved, or earlier termination of this Lease, Developer shall provide WMATA with two (2) copies of the As-Built Drawings (mylar) and an electronic media copy of the drawings in AutoCAD R14 or Auto CAD 2000 format or other format acceptable to WMATA.

11.5 **Local Codes, Laws, Regulations and Ordinances, Etc.**

11.5.1 **Compliance**. Developer agrees that the Developer Improvements to be erected, and all uses thereof, shall comply with this Lease, the local zoning regulations and building codes and other applicable laws, regulations and ordinances then in effect, and that it shall be Developer's responsibility to obtain the requisite building permits and/or approvals for the construction of the Developer Improvements.

11.5.2 **WMATA's Cooperation**.

11.5.2.1 WMATA agrees to cooperate with Developer in connection with obtaining permits and approvals, including the timely execution of documents as may be required for the construction of the Developer Improvements, provided WMATA shall not incur liability by reason of such support or execution of such documents for which it cannot be indemnified.

11.5.2.2 WMATA agrees, subject to any limitations under the WMATA Compact and the provisions of this Lease, to join with Developer in applications for permits, subdivisions, licenses, or other authorizations required by any governmental or other body claiming jurisdiction in connection with the initial construction of the Developer Improvements, or any modification, remodeling, expansion, rebuilding, alteration, or reconstruction thereof that Developer may perform in accordance with this Lease.

11.5.2.3 Any and all costs of the aforesaid applications and the prosecution thereof shall be at Developer's sole cost and expense.

11.6 **Interference with Metro Facilities**. Developer's development and use of the Lease Premises and Developer Improvements and rights set forth herein shall not adversely interfere with the operations of Metro Facilities except as provided for in this Lease.

11.7 **Diligent Prosecution and Completion of Developer Improvements.**

11.7.1 **Time for Substantial Completion**. Developer's construction of the Developer Improvements will be substantially complete and ready for occupancy prior to the end of the Pre-Stabilization Period.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004231

11.7.2 **Diligent Prosecution.** Developer shall use Best Commercially Reasonable Business Practices to insure timely completion of the Developer Improvements in accordance with the provisions set forth in this Lease and the JDA and subject to events of Force Majeure. In the event Developer shall fail or refuse to perform or carry out the work required to be done under the terms of this Lease and the JDA, and in the manner provided, or should fail to prosecute the work diligently and expeditiously, or should unnecessarily delay the same, WMATA shall have the right to take such action against Developer or against the surety on its bond or against both of them, to insure completion of the Developer Improvements in accordance with the provisions of this Lease and the JDA, including cancellation of this Lease if in WMATA's sole but reasonable discretion the Developer Improvements cannot be timely completed, provided, however, WMATA shall provide fifteen (15) days prior written notice to Developer of WMATA's election to cancel the Lease and Developer shall have a period of thirty (30) days following receipt of such written notification to resume performing the work pursuant to the Lease or JDA before WMATA may exercise such right of cancellation. If WMATA cancels this Lease under this Section 11.7.2, and provided that WMATA is not then in default under or breach of any provision of this Lease, then WMATA shall have the free use of any and all Project development plans and approvals (if and to the extent Developer has an assignable interest therein) existing as of the date of such termination.

11.8 **Compliance with WMATA's Standards and all Legal Requirements.** Construction shall comply in all circumstances to the WMATA Adjacent Construction Design Manual. In addition Developer shall comply with and give all notices required by all laws, ordinances, rules, regulations or building codes and statutes bearing on performance of the work relating to the Project. If Developer knows that any work would be at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, Developer shall promptly notify WMATA in writing thereof and effect corrections to rectify such circumstances in a manner reasonably satisfactory to WMATA (at the sole cost and expense of Developer) before commencing any work at variance with such laws, statutes, ordinances, building codes, rules and regulations.

11.9 **Maintenance of Infrastructure.** Developer acknowledges that Developer, and not WMATA, shall have a continuing obligation with respect to the maintenance, operation, repair and replacement of any and all infrastructure constructed on the Lease Premises by Developer, except only to the extent that such infrastructure constitutes a part of the WMATA's Residual Property or WMATA's Reserved Areas and Interests that are set apart from and not integrated with other infrastructure areas.

11.10 **Davis Bacon Requirements.** Developer shall comply with the "Davis-Bacon Act," 40 U.S.C. §276a, et seq. and with Section 64 of the WMATA Compact and the "Fair Labor Standards Act," 29 U.S.C.A. §201, et seq. (1978) as amended in connection with all construction activities relating in whole or in part to any or all of the WMATA's Reserved Areas and Interests on the Lease Premises.

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ARTICLE 12
INDEMNIFICATION

12.1 **Indemnity.**

12.1.1 Notwithstanding any policy or policies of insurance required of Developer, Developer shall indemnify, defend (at Developer's cost) and save harmless WMATA, its officers, directors, employees, departments, agents and representatives from and against any and all actions, claims, demands, liabilities, suits at law, in equity or before administrative tribunals, damages, losses, expenses, and costs of every kind and nature, due in whole or in part to the negligence, alleged negligence, or intentional wrongful acts of Developer and its Consultants, officers, directors, members, partners, employees, agents and contractors or arising from or related to occurrences on the Lease Premises, WMATA's Reserved Areas and Interests, WMATA's Adjacent Property, WMATA's Residual Property, or adjoining sidewalks, curbs, streets or roadways, including, but not limited to, damage to Metro Facilities and regardless of whether such liabilities, suits, actions, claims, demands, damages, losses, expenses, and costs be against or be suffered or sustained by WMATA, its officials, employees, departments, agents, and representatives, or be against or be suffered or sustained by other persons or legal entities to whom WMATA, its officials, employees, agents, and representatives may become liable therefor.

12.1.2 Developer may, and if so requested by WMATA shall, undertake to defend, at Developer's sole cost and expense with attorneys approved by WMATA, any and all suits, actions, claims, or proceedings brought against WMATA, its officials, employees, agents, and representatives in connection with any of the matters covered by Developer's indemnity.

12.2 **Survival.** The provisions of this Article 12 shall survive the termination of the insurance required by this Lease and shall survive the termination of this Lease.

ARTICLE 13
OPERATION

13.1 **Rights and Obligations.** WMATA and Developer agree to perform and exercise their rights and obligations under this Lease so as not to unnecessarily or unreasonably interfere with the use, occupancy, or enjoyment by Developer of the Lease Premises or Developer Improvements or by WMATA of Metro Facilities, WMATA's Reserved Areas and Interests and WMATA's rights under the Covenants, Conditions and Restrictions.

13.2 **Interference with Pedestrian Traffic.** WMATA shall not interfere with the free flow of pedestrian traffic to and from Developer Improvements and Developer shall not interfere with the free flow of pedestrian traffic to and from Metro Facilities. Except for security enclosures around the Metro Station entrances and other Metro Facilities reasonably

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necessary for security or maintenance/repair purposes and in the case of emergency, no fence, or any other structure shall be placed, kept, permitted or maintained in such a fashion as to materially adversely interfere with pedestrian traffic to and from Developer Improvements and to and from the Metro Station and Metro Facilities. Developer may close Developer Improvements and deny access to the public at such times and in such manner as is reasonably deemed necessary by Developer for the construction, operation, alteration, repair or razing of Developer Improvements, provided that, subject to the requirements of Laws or for safety of persons or property, such closing does not adversely WMATA's operations and access to Metro Facilities. The aforesaid shall not prevent WMATA from taking the requisite steps to carry out any capital improvement projects on the WMATA's Reserved Areas and Interests.

13.3 **Maintenance and Repair of Utilities.** Developer shall maintain and repair, and is given the right to replace, relocate, and remove, utility facilities necessary for the operation of Developer Improvements; provided that such repair activity does not adversely interfere with the operation, use, safety, integrity, systems or structural components of the Metro Facilities or access to Metro Facilities. Developer shall be responsible for, and shall pay the operating cost of, all utilities required for the operation of Developer Improvements.

13.4 **Signage.**

13.4.1 Subject to WMATA's approval, which shall not unreasonably be withheld, Developer shall be permitted to designate a name or names by which the Lease Premises and Developer Improvements shall be known.

13.4.2 Developer shall be permitted to erect or to permit the erection of signs on the Lease Premises identifying the Lease Premises, Developer Improvements and particular uses therein, including the marketing, financing and construction thereof, as long as such signs comply with all applicable federal, state, municipal and county laws, regulations and ordinances.

13.4.3 The existence, content and location of all signs proposed to be placed on the Property by Developer, or its contractors or Subtenants, and any and all signage that in any way relates or refers to WMATA or Metro Facilities shall be subject to prior written approval by WMATA in its discretion. The existence, content and location of all signs proposed to be placed and placed on the Property by WMATA or its agents, and any and all signage that in any way relates or refers to Developer shall be subject to prior written approval by Developer in its discretion.

ARTICLE 14
REPAIRS AND MAINTENANCE, ETC.

14.1 **Developer's Responsibilities.**

14.1.1 Subject to normal wear and tear, damage due to casualty and any Taking (but subject nevertheless to Developer's obligation to repair and rebuild), Developer, at its sole cost and expense, shall (i) keep and maintain the Lease

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Premises and all Developer Improvements in good condition and repair, and (ii) make all necessary repairs to Developer Improvements, or any part thereof, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall keep the Lease Premises and Developer Improvements, or any part thereof, in good condition, free of all dangerous or hazardous conditions.

14.1.2 Developer, at its sole cost and expense, shall keep and maintain such portions of the Lease Premises and the sidewalks, curbs, entrances, passageways, connections, ventilation, and stormwater management system, to the extent not maintained by any property owner's association or the jurisdiction in which the Lease Premises is located, and all areas adjoining the same, under Developer's control and in connection with the operation of activities under this Lease, in a clean and orderly condition, free of dirt, rubbish, snow, ice, and unlawful obstructions.

14.1.3 In discharging its obligations under this Section 14.1, Developer shall comply with all requirements of Laws, the Covenants, Conditions and Restrictions and the WMATA Adjacent Construction Design Manual, and shall meet commercially reasonable standards for developed properties comparable to the Lease Premises containing improvements comparable to such Improvements as then exist on the Lease Premises.

ARTICLE 15
ENTRY ON LEASE PREMISES

15.1 **Right of Entry by WMATA.** WMATA and its authorized representatives shall have the right to enter the Lease Premises and Developer Improvements at all reasonable times during the Term to inspect Metro Facilities and for compliance by Developer with this Lease; provided that WMATA gives reasonable advance notice to Developer (except in an emergency). Developer may require that WMATA be accompanied on its inspection by Developer's representative.

15.2 **Frequency of Entry and Entry to Security Areas by WMATA.** In exercising the right of entry granted in Section 15.1, WMATA shall whenever reasonably practical, avoid entering bona fide "security areas" of the Lease Premises and Developer Improvements of which it previously has been made aware in writing.

ARTICLE 16
CHANGES AND ALTERATIONS BY DEVELOPER

16.1 **Preconditions.** Subject to all of the provisions of this Section 16.1, Developer shall have the right during the Term of this Lease, and at Developer's sole cost, expense, and risk, to modify, remodel, expand, rebuild, alter, and reconstruct Developer Improvements (or any portion thereof), to build out, or cause to be built out, all or portions of the Developer

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Improvements (or any portion thereof) for Occupants, and to raze Developer Improvements (or any portion thereof), provided any such razing shall be (i) preliminary to and in connection with the rebuilding of new Developer Improvements, or (ii) required by Law, or (iii) related to a casualty or Taking (and then, either to comply with Law or incident to a rebuilding of Developer Improvements), or (iv) of Developer Improvements (or any portion thereof) which have become obsolete, unsafe, unused, or uneconomical, or (v) otherwise necessary or desirable in Developer's good faith business judgment ("**Reconstruction Activity(ies)**"). The following additional conditions apply to any Reconstruction Activity.

16.1.1 All Reconstruction Activities shall be in accordance with the Zoning Ordinance, as then in effect, all applicable Laws and the WMATA Adjacent Construction Design Manual.

16.1.2 Developer shall submit to WMATA for WMATA's prior review and approval the methods, schedules, plans and Construction Drawings and Specifications for the Reconstruction Activity, all in accordance with (i) the design and construction provisions of Article 11 of this Lease and the terms of the JDA, (ii) the Approved Development Plan and (iii) the Covenants, Conditions and Restrictions. No Reconstruction Activity may begin until Developer has received the prior written approval of WMATA, which approval shall not be unreasonably conditioned, delayed, or withheld.

16.1.3 No Reconstruction Activity shall impede or restrict the operations of WMATA, or adversely affect the safety and security of any WMATA operations, any Metro Facilities, or any of WMATA's personnel or patrons. Without limiting the generality of the preceding sentence, in all events Developer, at its sole cost and expense, shall maintain full vertical and horizontal support for Metro Facilities.

16.1.4 WMATA's inspection of any Reconstruction Activity shall be governed by the provisions of Article 11 of this Lease.

16.1.5 WMATA accepts no liability and waives no rights under this Lease by reason of its approval of the method, schedule, plans, and construction drawings or specifications for any Reconstruction Activity.

16.2 **No Downward Adjustment in Rent.** Unless specifically provided to the contrary in this Lease, Developer shall not, by reason of any Reconstruction Activity, (a) be entitled to an abatement, allowance, reduction, or suspension of Rent or other payments due WMATA, or (b) be released of or from any other obligations imposed on Developer under this Lease.

ARTICLE 17
RIGHT TO ASSIGN AND SUBLEASE

17.1 **Developer's Right to Assign; Conditions and Procedures.** Subject to the terms and conditions of this Article 17, this Lease shall not be assignable by Developer without

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WMATA's prior written approval. Developer shall not have any right to assign its interest in this least if there exists any Default under this Lease by Developer or circumstances, which with notice or the lapse of time could constitute a Default by Developer hereunder. Developer shall not have any right to assign its interest in this Lease prior to the Final Completion of the Project and the satisfaction by Developer of all of its Construction Related Obligations. All assignments by Developer shall be made expressly subject to the terms, covenants and conditions of this Lease. The assignment shall designate the name of the assignee and the address to which all notices required by this Lease shall be sent. Furthermore, the assignee shall assume all rights and obligations of Developer under this Lease arising on and after the date of assignment, including the right to mortgage, encumber and otherwise assign and sublease, subject to all duties and obligations of Developer pertaining to the then unexpired Term of this Lease. No such assignment of Developer's interest in this Lease shall operate to release Developer from any obligation or liability under this Lease accruing prior to the effective date of the assignment, including without limitation, the obligation to complete the construction and development of any Developer Improvements not yet completed by Developer or any assignee of Developer and the obligation to pay any Capital Event Participation Rent, Density Adjustment Rent, Impositions or Additional Rent accruing but unpaid prior to the date of the assignment. No assignment of Developer's interest in this Lease shall be effective unless and until WMATA shall have received a fully executed original counterpart of the approved assignment, which document shall confirm the assignee's agreement to assume and perform all obligations of the assignor under this Lease accruing after the effective date of the assignment.

17.2 **Right to Sublease.** Developer shall have the right to sublease all or any portion of the Lease Premises and Developer Improvements, provided (i) that there shall not exist any Default under this Lease by Developer, or circumstances, which with notice or the lapse of time could constitute a Default by Developer hereunder, and (ii) that no such sublease shall operate to release Developer from any obligation or liability under this Lease. Copies of each and every sublease with a Major Subtenant shall be delivered to WMATA within Ten (10) Business Days following the execution and delivery.

17.3 **WMATA's Right to Collect Rents Under Sublease.** Subject only to the rights of a Leasehold Mortgagee permitted under Article 18, Developer hereby irrevocably and unconditionally assigns to WMATA all rents and other sums of money payable to Developer under any Sublease. Upon and during the continuance of a Default, WMATA may collect rents under any Sublease but such collection shall, in and of itself, not constitute recognition of the Subtenant under such Sublease, nor a waiver of any of WMATA's right to proceed against Developer pursuant to the terms of this Lease.

17.4 **Assignment Transactions; Financial Terms.** Developer shall deliver not less than sixty (60) days' prior written notice to WMATA of any contemplated assignment under this Article 17, together with a complete description of the economic and non-economic terms of such transaction.

17.5 **WMATA's Right to Assign.** WMATA reserves the right to assign its interest in this Lease to any body, corporate and politic, organized pursuant to public law, which

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succeeds to WMATA's fee ownership of the Lease Premises or to any purchaser of WMATA's fee ownership of the Lease Premises. All assignments by WMATA shall be made expressly subject to the terms, covenants and conditions of this Lease.

ARTICLE 18
LEASEHOLD MORTGAGES

18.1 **Leasehold Mortgage.** Provided that there shall not exist any Default under this Lease by Developer (or circumstances, which with notice or the lapse of time could constitute a Default by Developer), Developer shall have the right, without WMATA's prior consent, to mortgage its interest in this Lease and any Sublease(s) pursuant to one or more Leasehold Mortgage(s) at any given time, and to assign this Lease and any sublease(s) as collateral security for such Leasehold Mortgage(s). No Leasehold Mortgage shall extend to or affect the Land or the reversionary interest and estate of WMATA in and to the Lease Premises or any part thereof. The granting of a Leasehold Mortgage does not render a Leasehold Mortgagee an assignee for purposes of this Lease. No Leasehold Mortgage shall be valid or of any force or effect (and no mortgage shall constitute a Leasehold Mortgage) unless and until (i) the Leasehold Mortgagee shall have sent to WMATA a true and correct photostatic copy of the original of the Leasehold Mortgage and each loan document referenced in the Leasehold Mortgage, together with written notice specifying the name and post office address of the Leasehold Mortgagee (and the officer of Leasehold Mortgagee then in charge of administering the Leasehold Mortgage, together with his telephone number), and (ii) the Leasehold Mortgage shall contain the following provisions:

18.1.1 "This mortgage is executed upon the condition that no purchaser at any foreclosure sale shall acquire any right, title or interest in or to the Lease hereby mortgaged, unless the said purchaser, or the person, firm or corporation to whom or to which such purchaser's right has been assigned, shall, in the instrument transferring to such purchaser or to such assignee Developer's interest under the said Lease, assume and agree to perform all of the terms, covenants and conditions of said Lease to be observed or performed on the part of Developer accruing thereafter, and moreover, that no further or additional mortgage or assignment of said Lease shall be made, except subject to the provisions contained in ARTICLE 17 and ARTICLE 18 of said Lease, and that a duplicate original of said assumption agreement, in form reasonably satisfactory to WMATA's counsel and duly executed and acknowledged by such purchaser or such assignee, is delivered to WMATA promptly after the consummation of such sale, or, in any event, prior to taking physical possession of the Lease Premises."

18.1.2 "The mortgagee waives all right and option to retain and apply the proceeds of any insurance or the proceeds of any condemnation award toward payment of the sum secured by the mortgage to the extent such proceeds are payable to WMATA or are required to be used for the repair or restoration of the

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mortgaged premises in accordance with the provisions of the Lease hereby mortgaged."

18.1.3 The inclusion of the foregoing provisions in a Leasehold Mortgage shall not negate or vitiate any of the provisions of Sections 18.2, 18.3 or 18.4. The terms "First Leasehold Mortgage" means (x) at such times as only one Leasehold Mortgage exists, such Leasehold Mortgage, and (y) at such times as more than one Leasehold Mortgage exists, the single Leasehold Mortgage which is most senior in lien (as evidenced from time to time by any title report obtained by WMATA from a reputable title company reasonably selected by WMATA), and "First Leasehold Mortgagee" means the holder of record (as evidenced from time to time by any title report obtained by WMATA from a reputable title company reasonably selected by WMATA) at the time in question of the First Leasehold Mortgage. WMATA agrees that so long as any Leasehold Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder thereof to WMATA, the following provisions shall apply:

18.1.4 There shall be no cancellation, surrender or material modification of this Lease without the prior consent in writing of the First Leasehold Mortgagee (but nothing herein shall prevent WMATA from terminating this Lease upon either a Default as provided herein, or pursuant to ARTICLE 11, ARTICLE 20 or ARTICLE 23 and WMATA shall not be required to obtain any prior consent in connection with any such termination for Default).

18.1.5 WMATA shall, upon serving Developer with any notice of default (which notice shall specify the nature of the default) or termination, serve a copy of such notice upon the First Leasehold Mortgagee. The First Leasehold Mortgagee shall thereupon have the same period as provided Developer, after service of such notice upon it, to remedy or cause to be remedied the defaults complained of, and WMATA shall accept such performance by the First Leasehold Mortgagee as if the same had been done by Developer; provided, however, that the provisions of this Section 18.1.5 shall not extend or otherwise affect any cure period granted to Developer pursuant to ARTICLE 19 or excuse any nonperformance by Developer under this Lease.

18.2 **Nullification Notice.** Notwithstanding anything to the contrary herein contained, if any Default shall occur which pursuant to any provision of this Lease entitles WMATA to terminate this Lease and if, before the expiration of thirty (30) days from the date of service of a copy of the notice of termination upon the First Leasehold Mortgagee pursuant to Section 18.1.5, the First Leasehold Mortgagee shall have notified WMATA of its desire to nullify such notice (such notification from the First Leasehold Mortgagee being herein referred to as a "Nullification Notice"), then in such event WMATA at its election either shall terminate this Lease and offer a new lease to the Leasehold Mortgagee, subject to the terms and conditions of Section 18.4 below or shall not be entitled to terminate this Lease by reason of the default specified in the Nullification Notice and any notice of termination theretofore given shall be void and of no effect,

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provided that within thirty (30) days after service of the Nullification Notice the First Leasehold Mortgagee shall (all of the following being referred to herein as, collectively, the "Cure Actions"): (i) cure any monetary defaults then existing hereunder (including, without limitation, any interest, penalties and late charges which have accrued thereon), (ii) in the case of non-monetary defaults existing hereunder which are reasonably susceptible of being cured by the First Leasehold Mortgagee without any need for the First Leasehold Mortgagee to first obtain possession of the Lease Premises, promptly (but in all events within thirty (30) days) commence to cure all such non-monetary defaults and diligently prosecute same to completion, (iii) in the case of non-monetary defaults existing hereunder which are reasonably susceptible of being cured by the First Leasehold Mortgagee upon the First Leasehold Mortgagee's obtaining possession of the Lease Premises, promptly (but in all events within thirty (30) days) institute, and thereafter diligently prosecute foreclosure and/or other proceedings under its Leasehold Mortgage in order to obtain possession of the Lease Premises as soon as feasible and, upon obtaining such possession, promptly (but in all events within thirty (30) days) commence to cure all such non-monetary defaults and diligently prosecute same to completion, (iv) in the case of non-monetary defaults existing hereunder which are not reasonably susceptible of being cured by the First Leasehold Mortgagee, promptly (but in all events within thirty (30) days) institute, and thereafter diligently prosecute foreclosure and/or other proceedings under its Leasehold Mortgage in order to obtain possession of the Lease Premises as soon as feasible, and (v) use reasonable efforts to prevent the occurrence of any future Default.

18.3 **Nullification.** If WMATA's notice of termination shall have been nullified pursuant to Section 18.2, WMATA shall not have the right subsequently to terminate this Lease, so long as the First Leasehold Mortgagee or its nominee or successor continues to pay all Rent due hereunder and the First Leasehold Mortgagee is performing the Cure Actions in accordance with the requirements of this Lease. The giving of a notice of default or termination by WMATA pursuant to the provisions of this Article does not impair WMATA's right to give, nor impair Developer's and the First Leasehold Mortgagee's right to receive, such notices for other defaults that may arise hereunder and the giving of such notices shall be subject to the provisions of this Article.

18.4 **New Lease.** WMATA agrees that, in the event of a termination of this Lease as a result of a Default, WMATA shall upon request of the First Leasehold Mortgagee (and whether or not a Nullification Notice may have been given) or pursuant to WMATA's own election as contemplated under Section 18.2, enter into a new lease of the Lease Premises with the First Leasehold Mortgagee or its designee for a term equal to what would have been the remainder of the term of this Lease if this Lease had not been terminated, which new lease shall be effective as of the date of such termination and shall be at the same Rent and upon the same terms, provisions, covenants and agreements as are herein contained, subject only (a) to the same conditions of title as this Lease is subject to on the Effective Date and any liens or encumbrances or other matters (i) which were caused or created by Developer, (ii) which are required by law or (iii) which Developer was obligated to discharge under the terms of this Lease and (b) to the rights, if any, of parties then in possession of any part of the Lease Premises, provided that:

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18.4.1 The First Leasehold Mortgagee shall make written request upon WMATA for such new lease within forty five (45) days after it receives notice from WMATA that this Lease has been terminated;

18.4.2 The First Leasehold Mortgagee or its designee executes and delivers such new lease within Five (5) Business Days after the execution and delivery of the new lease by WMATA to the First Leasehold Mortgagee in response to the request made pursuant to Section 18.4.1 above;

18.4.3 The First Leasehold Mortgagee shall pay to WMATA at the time of the execution and delivery of said new lease any and all sums which would at the time of the execution and delivery thereof be due pursuant to this Lease, but for such termination, including, without limitation, any interest, penalties and late charges which have accrued thereon, together with any costs and expenses, including reasonable attorneys' fees, which WMATA shall have incurred by reason of such termination, less the amount of any rent under subleases actually received and collected by WMATA;

18.4.4 The First Leasehold Mortgagee upon the execution of such new lease cures within thirty (30) days thereof (unless such default requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no default shall be deemed to exist so long as the First Leasehold Mortgagee shall have commenced curing the same within such thirty (30) day period and shall diligently and in good faith prosecute the same to completion) all non monetary defaults of which it has notice (and which are reasonably susceptible of cure by the First Leasehold Mortgagee) remaining uncured under this Lease as of the date of execution and delivery of the new lease; and

18.4.5 Nothing herein contained shall be deemed to impose any obligation on the part of WMATA to deliver physical possession of the Lease Premises or any Developer Improvements and WMATA shall not be required to warrant possession of the Lease Premises to the Developer under the new lease or title thereto (and the new lease shall so provide), but the Developer under such new lease shall have the same right, title and interest, in and to the Lease Premises to the extent, if any, that Developer had therein and thereto prior to the termination of this Lease, subject, however, to all Leasehold Mortgages and the rights of the holders thereunder.

18.4.6 Such new lease shall be made expressly subject to the rights, if any, of Developer under the terminated lease (provided, however, the foregoing shall not constitute an acknowledgment or implication of the existence of any such rights).

18.5 **Costs and Expenses; Attornment.** The First Leasehold Mortgagee receiving any new lease pursuant to the provisions of this Article shall pay all of WMATA's costs and

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expenses (including reasonable attorneys' fees) incident to WMATA's entering into such new lease.

18.6 **No Merger.** So long as any Leasehold Mortgage exists, the fee title to the Lease Premises and the leasehold estate created hereunder shall not merge, but shall always be kept separate and distinct, notwithstanding the union of said estates either in WMATA, Developer, any Leasehold Mortgage or its nominee, or other person, provided, however, the foregoing shall not negate or vitiate any of WMATA's rights or remedies under or with respect to this Lease, including, without limitation, WMATA's right to terminate this Lease.

18.7 **No Obligation to Restore.** Except for the above limited provision regarding execution of a new lease, WMATA shall have no obligation of restoring to any party or parties, their respective interest or status in the Lease Premises and Developer Improvements which was possessed by it or them prior to the termination of this Lease. However, such parties, among themselves, may execute and deliver such new instruments, including new mortgages and new subleases, as the case may be, and make such payments and adjustments among themselves, as shall be necessary and proper for the purpose of restoring to each of such parties as nearly as reasonably possible, the respective interest and status in the Lease Premises and Developer Improvements which was possessed by it prior to the termination of this Lease.

18.8 **No Warranty.** Upon the execution and delivery of a new lease pursuant to this Article, the Developer Improvements, and all Subleases and other agreements pertaining to the Lease Premises and the Developer Improvements which theretofore may have reverted to WMATA upon termination of this Lease and which have not terminated shall be transferred to the extent transferable, without any warranty or recourse whatsoever, by WMATA to the Developer and assumed by Developer under such new lease. Such Developer shall as a condition to the effectiveness of such new lease agree to indemnify and hold WMATA harmless against all losses, costs, expenses and liabilities relating to all such transferred subleases and agreements, and all payment and performance obligations relating thereto, arising with respect to the period after such transfer.

18.9 **Subrogation.** Any Leasehold Mortgagee, Subleasehold Mortgagee or Subtenant which cures a Default by Developer shall be subrogated to any and all rights of WMATA against Developer with respect to such Default.

18.10 **Survival.** The provisions of this ARTICLE 18 shall survive any termination of this Lease.

ARTICLE 19
TERMINATION AND DEFAULT PROVISIONS

19.1 **Developer Default.** The following shall constitute a "Default" by Developer under this Lease:

19.1.1 If Developer defaults in the due and punctual payment of any Rent due to WMATA under this Lease, or in the due and punctual payment of any

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Impositions or other charges or monetary amounts required to be paid by Developer under this Lease, and such default continues uncured for a period of ten (10) days after written notice from WMATA to Developer;

19.1.2 If Developer fails to comply with or adhere to any obligations under Article 10 (Insurance Requirements), and such failure is not cured within five (5) Business Days after receipt of Notice from WMATA;

19.1.3 If Developer fails to comply with or adhere to any obligations under Article 17 (Right to Assign and Sublease) and such failure is not cured within five (5) Business Days after receipt of Notice from WMATA;

19.1.4 If Developer fails to comply with or adhere to any obligations under Section 2.2.1 (maintaining Qualified Team) and such failure is not cured within fifteen (15) Business Days after receipt of Notice from WMATA;

19.1.5 If Developer fails to undertake Commercially Reasonable Best Efforts as and when required by the terms of this Lease and such failure is not cured within ten (10) Business Days after receipt of Notice from WMATA;

19.1.6 If Developer fails to comply with or adhere to any obligations under Article 11 in accordance with any deadlines set forth therein, or, as to any obligation for which no deadline has been set in such Article 11 within twenty (20) Business Days after receipt of Notice from WMATA;

19.1.7 If Developer fails to comply with or adhere to any obligations under the JDA, within twenty (20) Business Days after receipt of Notice from WMATA;

19.1.8 If Guarantor shall breach any covenant of Guarantor contained in the Guaranty, or any other Transaction Document to which Guarantor is a party or by which Guarantor is bound, if any, and such breach continues beyond the expiration of any applicable notice and cure period specified in the Guaranty or such other Transaction Document;

19.1.9 If Developer makes any material misrepresentation in this Lease or any of the other Transaction Documents, or if Guarantor makes any material misrepresentation in the Guaranty, or if any of them make any material misrepresentation in any other material submission to WMATA;

19.1.10 If Developer or Guarantor make any material misrepresentation to any governmental authority for or in connection with the transactions contemplated by this Lease;

19.1.11 If Developer or Guarantor files a voluntary petition in bankruptcy, or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future applicable federal or state law, or Developer or Guarantor seeks or consents to, or acquiesces, in the

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appointment of any trustee, receiver or liquidator of such Developer or Guarantor, or of all or any substantial part of its or their assets, or of the ownership interests of Developer or Guarantor under this Lease;

19.1.12 If there occurs the filing of a petition by or against Developer or Guarantor (i) in any bankruptcy or other insolvency proceeding with respect to Developer or Guarantor; (ii) seeking any relief under any state or federal debtor relief law with respect to Developer or Guarantor; (iii) for the appointment of a liquidator or receiver for all or substantially all of Developer or Guarantor's property or for Developer's interest in this Lease; or (iv) for the reorganization of Developer or Guarantor or for modification of Developer's or Guarantor's capital structure and Developer or Guarantor, as the case may be, fails to have the proceedings initiated by such petition stayed or dismissed within sixty (60) days after the filing thereof; and

19.1.13 If Developer shall breach any other material covenant of Developer contained in this Lease or in any right of entry agreement between Developer and WMATA or fail to perform any other material obligation and such failure is not cured within twenty-one (21) Business Days after receipt of Notice, so long as Developer immediately commences cure of such Default following such Notice from WMATA and thereafter diligently prosecutes such cure to completion.

19.2 **WMATA Remedies.** If a Default occurs, in addition to any other rights and remedies WMATA may have under this Lease and at law and in equity, and whether or not Developer abandons the Lease Premises and Developer Improvements, WMATA shall have the option to do any one or more of the following:

19.2.1 WMATA may continue this Lease in full force and effect and collect, by legal proceedings or otherwise, any Rent and other payments owed to WMATA by Developer, and enforce this Lease by legal proceedings or otherwise.

19.2.2 WMATA may, whether or not the Term shall have been terminated pursuant to Section 19.2.4, give Developer notice to surrender the Leased Premises to WMATA on a date specified in such notice, on which date Developer shall surrender and deliver possession of the Leased Premises to WMATA unless the Default for which the surrender is required has been cured by or on behalf of Developer. Upon or at any time after taking possession of the Leased Premises, WMATA may remove any Persons or property therefrom. WMATA shall be under no liability for or by reason of any such entry, repossession or removal. No such entry or repossession shall be construed as an election by WMATA to terminate this Lease unless WMATA gives a written notice of such intention to Developer pursuant to Section 19.2.4.

19.2.3 WMATA may remedy the Default at Developer's expense (and such expense shall constitute Additional Rent that shall be due and payable within 5 days following Notice by WMATA).

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19.2.4 WMATA may re-enter the Lease Premises and by written notice to Developer terminate this Lease on the date specified in such notice subject to the applicable provisions of this Article 19 and Article 18. Upon the date therein specified, the Term and the estate hereby granted and all rights of Developer hereunder shall expire and terminate as if such date were the date hereinabove fixed for the expiration of the Term.

19.2.5 WMATA may re-enter the Lease Premises and relet the Lease Premises and Developer Improvements, or any part thereof, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) for such rent, on such conditions (which may include concessions or free rent) and for such uses as WMATA, in its reasonable business judgment, may determine; and WMATA shall collect and receive any rents payable by reason of such reletting. The rents received on such reletting shall be applied (A) first to the expenses of such reletting and collection, including necessary renovation and alterations of the Lease Premises, reasonable and actual attorneys' fees and any reasonable and actual real estate commissions paid, and (B) thereafter toward payment of all sums due or to become due WMATA hereunder. If a sufficient amount to pay such expenses and sums shall not be realized or secured, then Developer shall pay WMATA any such deficiency monthly, and WMATA may, but shall not be required to, bring an action therefor as such monthly deficiency shall arise. WMATA shall not, in any event, be required to pay Developer any sums received by WMATA on a reletting of the Lease Premises in excess of the Rent provided in this Lease, but such excess shall reduce any accrued present or future obligations of Developer hereunder. WMATA's re-entry and reletting of the Lease Premises without termination of this Lease shall not preclude WMATA from subsequently terminating this Lease as set forth in Section 19.2.4. Developer agrees to pay WMATA, as Additional Rent, immediately upon demand, all reasonable expenses incurred by WMATA in obtaining possession and in reletting any of the Lease Premises, including, without limitation, fees and commissions of attorneys, architects, agents and brokers. WMATA shall in no way be responsible or liable for any failure to relet the Lease Premises and Developer Improvements, or any part thereof, or for any failure to collect any rent due for any such reletting.

19.3 **No Developer Redemption Rights.** Developer hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds (except as to creditors and Subtenants to the extent expressly provided in this Lease), any right and privilege which it or any of them may have under any present or future Law to redeem any of the Leased Premises or to have a continuance of this Lease after termination of this Lease or of Developer's right of occupancy or possession pursuant to any court order or any provision hereof. The provisions of this Section are not intended in any way to diminish the rights of any Leasehold Mortgagee, Subleasehold Mortgagee or Subtenant to the extent expressly set forth under Article 18.

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19.4 **Remedies Cumulative.** Except as expressly otherwise provided herein, no right or remedy conferred upon or reserved to WMATA in this Lease is intended to be exclusive of any other right or remedy; and each and every right and remedy shall be cumulative and in addition to any other right or remedy contained in this Lease or available at law or in equity. In addition to the other remedies provided in this Lease, WMATA shall be entitled, to the extent permitted by applicable Law, to injunctive relief in case of the violation or attempted or threatened violation of any of the provisions of this Lease, or to specific performance of any of the provisions of this Lease.

19.5 **No Waiver.** No delay or failure by WMATA to insist upon the strict performance by the other of any of the terms of this Lease, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance by WMATA from Developer of full or partial rent during the continuance of any such breach by Developer, shall constitute a waiver of any such breach or of any of the terms of this Lease. None of the terms of this Lease to be kept, observed or performed by WMATA or by Developer and no breach thereof, shall be waived, altered or modified except by a written instrument executed by WMATA or by Developer, whichever the case may be. No waiver of any default of Developer shall be implied from any omission by the other to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by WMATA shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition by the other.

19.6 **WMATA Default.** The following shall constitute a "Default" by WMATA under this Lease:

19.6.1 If WMATA fails to keep the Leased Premises free of liens (other than liens permitted under this Lease); and

19.6.2 If WMATA fails to perform any other material obligation under this Lease.

19.7 **Developer Remedies.** If WMATA defaults and fails to cure its default thirty (30) days after receipt of written notice (or, if cure is not practical within thirty (30) days, a reasonable additional period of time, so long as WMATA commences such cure within thirty (30) days and thereafter diligently prosecutes such cure to completion) and Developer is not otherwise in Default hereunder, then Developer shall have the right to terminate this Lease. has (i) the right to terminate this Agreement and receive a refund of all payments made. Thereafter, WMATA and Developer shall be released from any further liabilities or obligations under this Lease except for any obligations or liability which specifically survive termination of the Lease.

ARTICLE 20
DAMAGE AND DESTRUCTION

20.1 **Developer's Rights, Duties and Obligations.**

20.1.1 If the Lease Premises and/or Developer Improvements, or any part thereof, become damaged or destroyed by fire or other casualty, Developer shall (1)

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repair, alter, change, substitute for, restore, replace or rebuild the same, to such extent, condition and character as Developer shall determine, in its reasonably exercised business judgment, taking into account, inter alia, then existing market conditions ("Repair"), or (2) only if and to the extent there is no material adverse impact on the Lease Premises or the WMATA's Reserved Areas and Interests, make safe, secure and sightly the damaged or destroyed Lease Premises and Developer Improvements, removing any of the Developer Improvements as Developer shall reasonably determine ("Secure") until (x) such time as Developer may elect to proceed under clause (1) or (y) such time as the continuing failure to Repair results in a material adverse impact on the Lease Premises or the WMATA's Reserved Areas and Interests. Upon the earlier to occur of (x) or (y) above, Developer shall proceed expeditiously to effect a Repair. All costs to Repair and Secure shall be borne by Developer, regardless of whether such casualty loss is covered by insurance and whether the insurance proceeds are sufficient to cover Developer's expenses; provided, however, all insurance proceeds shall be made available to and shall be under Developer's control for such purposes. Such Repairs shall be made subject to and in conformity with the provisions of this Lease regarding the development and construction of the Improvements and the Approved Development Plan, including, without limitation, all provisions requiring the approval or consent of WMATA with respect thereto.

20.2 **Performance of Work.** Except as otherwise provided in this Article, the conditions under which any Repair work is to be performed, and the methods of proceeding with and performing the same, shall be governed by this Lease, including, without limitation, ARTICLE 11, to the extent applicable. Any such Repairs shall be completed free and clear of mechanics' and materialmen's liens in compliance with this Lease.

20.3 **Surrender of Lease.** Except as herein provided, no destruction or damage to the Lease Premises and/or Developer Improvements, or any part thereof, by fire or any other casualty, shall permit Developer to surrender this Lease or shall relieve Developer from its obligations under this Lease.

20.4 **Interference with Metro Facilities.** Developer shall not allow the Lease Premises and/or Developer Improvements, or any part thereof, to remain damaged so as to interfere with the safe use of Metro Facilities and/or access thereto. Should such damaged Lease Premises and/or Developer Improvements, or part thereof, adversely impact on Metro Facilities and/or access thereto, such damage shall be repaired to the extent necessary to alleviate such adverse impact within a reasonable time, considering the circumstances, after the occurrence of the damage.

20.4.1 If any Metro Facilities which, with any Developer Improvements, comprise an integral unit, or which provide any Developer Improvements with any structural or other physical support or service, or any part of such Metro Facilities, become damaged or destroyed by fire or other casualty, WMATA, at its sole cost and expense, but subject to appropriation if WMATA is WMATA (provided that failure of WMATA to obtain such appropriation shall

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not relieve WMATA of its obligations under this Section 20.4), shall promptly repair, alter, restore, replace or rebuild the same as nearly as reasonably possible to its condition and character prior to such casualty. WMATA shall have said obligation to repair, alter, restore, replace or rebuild provided the insurance proceeds are sufficient to cover WMATA's expenses. Such repairs, alterations, restorations, replacements or rebuilding shall include any changes or alterations that WMATA may elect to make to the Metro Facilities, provided such changes and alterations do not deprive any Developer Improvements of any aforesaid integrity, support or service, and are in conformity with the provisions of this Lease and Laws, and any temporary repairs for the protection of other property, including the Lease Premises and Developer Improvements, pending the completion of said work. Said work shall comply with all applicable requirements of this Lease and Laws.

ARTICLE 21
LIENS

21.1 **Lease Premises to Be Kept Free and Clear.** Developer shall keep the Lease Premises and the Developer Improvements free and clear of mechanics', materialmen's and other liens for or arising out of, or in connection with, work or labor done, services performed, or materials or appliances used or furnished in connection with Developer's construction, maintenance, and operations. Any work or construction, by, for or permitted by Developer on the Lease Premises and/or any Developer Improvements, and any obligation therefor incurred by Developer, or any claims upon which any such lien may or could be based, shall be promptly and fully paid and discharged or otherwise satisfied, bonded, or similarly provided for by Developer, prior to WMATA's being exposed to imminent danger of loss due thereto, subject to Developer's right to contest the same and bond off such mechanics, materialmen's and other liens in accordance with the procedures specified in Section 21.4, below. Developer shall indemnify, defend, and save WMATA harmless against any loss, damage, or cost (including but not limited to reasonable counsel fees) as a result of any such liens, claims of liens, suits, or other proceedings relating thereto, pertaining to the Lease Premises and/or Developer Improvements and arising out of Developer's acts or failures to act.

21.2 **Additions and Alterations.** Any alterations, improvements, additions, or repairs which Developer may make or permit or cause to be made on the Lease Premises and/or the Developer Improvements shall comply with the requirements of this Article 21.

21.3 **To Advise WMATA.** For lien protection purposes, Developer shall give WMATA no less than thirty (30) days advance written notice of the commencement of any construction, alteration, addition or improvement, and such oral (in the case of emergency) or written (and in advance, if practicable) notice as is reasonable in the circumstances of any repair, to Base Developer Improvements estimated to cost in excess of $_____$100,000.00 (adjusted by the CPI Adjustment), and shall post appropriate notices of WMATA's non responsibility.

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21.4 **In Contesting Liens.** Notwithstanding anything to the contrary contained herein, Developer may contest any lien by all legally permissible means. If Developer desires to contest any lien in excess of $~~_____~~, $100,000.00, it shall notify WMATA of its intention within thirty (30) days after Developer receives notice of the filing of such lien. In such case, Developer shall protect WMATA by posting a good and sufficient surety bond, or providing other reasonably satisfactory security, against such lien and any cost, liability, or damage arising out of such contest. WMATA shall not be required to make demand for such bond or security. Upon the final determination of the validity of the lien by a court of competent jurisdiction, Developer shall satisfy and discharge such lien to the extent held valid within sixty (60) days of said determination. In the event of any contest, Developer shall protect and indemnify WMATA against all loss, reasonable expenses and attorney's fees, and damage resulting therefrom.

21.5 **Survival.** The provisions of this ARTICLE 21 shall survive any termination or expiration of this Lease.

ARTICLE 22
QUIET ENJOYMENT

22.1 **Rights, Responsibilities and Duties.** Developer, upon paying the Rent and acting in compliance with the terms of this Lease, shall quietly enjoy the Lease Premises without hindrance or molestation by WMATA or by anyone claiming by, under or through WMATA, and WMATA agrees to defend Developer's right to such occupancy, use and enjoyment and the leasehold title to the Lease Premises against the claims of any and all persons whomsoever claiming the same, or any part thereof, subject, however, in each case to: (a) the exceptions, reservations and conditions of this Lease and the Transaction Documents; (b) the Zoning Ordinance; (c) all applicable Laws and governmental rules and regulations; (d) those items listed as exceptions to title in the Title Commitment (the "Permitted Exceptions"); and (e) rights of parties with respect to the Leased Premises under unrecorded agreements with WMATA or easements contemplated to be granted by WMATA but not yet of record, as listed in Exhibit 22.1.

22.2 **Title Insurance.** Developer has received and reviewed a Commitment for Title Insurance, No. _____ issued by _____, as agent for _____ (the "Title Commitment Issuer"), a copy of which is attached hereto as Exhibit C (the "Title Commitment"), and accepts the risk of obtaining such Leasehold Title Insurance Policies and Mortgagee Title Insurance Policies during the Term, for the Lease Premises and Developer Improvements, as Developer may desire to obtain for itself or for any Subtenant, Leasehold Mortgagee or Subleasehold Mortgagee (each a "Title Policy"), reflecting the state of title reflected in the Title Commitment.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004249

ARTICLE 23
CONDEMNATION

23.1 **Total Taking.** If during the Term of this Lease, there should be a Taking of the Lease Premises and Developer Improvements (a "Total Taking"), such Taking shall be deemed to have caused this Lease to terminate and expire on the date of such Taking.

23.2 **Partial Taking**

23.2.1 If the Taking involves less than all of the Lease Premises but materially involves or impairs any Developer Improvements or the operation thereof, available parking or access to the Lease Premises (a "Partial Taking") and that portion of the Lease Premises remaining, in Developer's reasonable business judgment, cannot be adequately restored, replaced or reconfigured so as to constitute a complete architectural or business unit of substantially the same usefulness, design, construction, and economic feasibility, or to provide reasonably comparable parking or access as existed or was contemplated before such Taking, then Developer shall have the right to terminate this Lease or partially release such portion from the operation of this Lease upon written notice to WMATA within one hundred twenty (120) days after the date to the Taking. Said notice shall state the date of termination or partial release, which shall not be earlier than the date of the Taking.

23.2.2 If this Lease is not terminated in its entirety by Developer upon a Partial Taking, then as to the portion of the Lease Premises and Developer Improvements taken in such condemnation proceedings, or partially released by Developer, this Lease shall terminate. Developer, at its sole cost and expense, shall proceed to make an adequate restoration, repair or reconstruction of the part of the Lease Premises not taken; provided, however, Developer's condemnation proceeds, less Developer's Condemnation Costs (which shall be reimbursed to Developer from such proceeds), shall be sufficient for and shall be made available to and shall be under Developer's control for such purposes. Such Repairs shall include any temporary Repairs for the protection of other property pending the completion of said work. Such work shall comply with all applicable requirements of this Lease. Any remaining condemnation proceeds shall be made available to and shall be under Developer's control for any costs incurred by Developer to Repair and/or Secure any of the Developer Improvements not taken.

23.3 **Date of Taking.** For the purpose of this Article, the date of Taking shall be the date on which title vests in the condemnor. All obligations under this Lease properly allocable solely to that portion of the Lease Premises taken in the Taking, shall be prorated through the effective date of termination, except that no prepaid Base Rent shall be refunded to Developer. WMATA and Developer shall execute and deliver to each other such documents as may be reasonably necessary to evidence such termination or partial release. Thereafter, neither shall have any further obligation to the other under the terms of this Lease, to the extent of such termination or partial release.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004250

23.4 **Intervention.** In the event that the Lease Premises and/or Developer Improvements, or any part thereof, shall be the subject of a proposed Taking as provided in this Article, WMATA and Developer each shall be entitled to intervene in the proceeding and claim their respective distributive share as provided in Section 23.5. WMATA and Developer shall each bear their respective costs, attorney and expert fees, and all other expenses incurred in the determination and collection of such an award ("Condemnation Costs"), subject to reimbursement pursuant to Section 23.5 or Section 23.6, as the case may be..

23.5 **Distribution of Proceeds.** The condemnation proceeds for a Taking under Section 23.1 or Section 23.2 (but subject to use as provided in Section 23.2.2), as the case may be shall be divided between WMATA and Developer in the following order of priority:

23.5.1 First, WMATA and Developer shall receive, on a pari passu basis, amounts equal to their respective Condemnation Costs; and

23.5.2 Second, WMATA shall be entitled to a sum equal to the hard and soft costs of relocating, designing and constructing in conformity with WMATA's requirements any and all Metro Facilities that in whole or in part were included in or integrated within or among the Developer Improvements affected by the Taking.

23.5.3 Third, WMATA and Developer shall be entitled to receive from the remaining condemnation proceeds, pari passu as to the three categories immediately following:

23.5.4 Developer, the sum of: (1) the fair market value of the Leasehold Interest, as determined by a qualified appraiser, mutually agreed upon by the parties, and (2) the fair market value of the Developer Improvements, as determined by a qualified appraiser, mutually agreed upon by the parties; and

23.5.5 To the extent of any proceeds remaining after making the distributions above, WMATA shall receive the fair market value of WMATA's residual interest in the Developer Improvements taken, if any, as determined by a qualified appraiser mutually agreed upon by the parties; and

23.5.6 To the extent of any proceeds remaining after making the distributions above, WMATA and Developer shall share any such balance in a ratio of Ten Percent (10%) to WMATA and Ninety Percent (90%) to Developer for those portions of the remaining condemnation proceeds as are reasonably allocated to the Term of this Lease; and

23.5.7 To the extent of any condemnation proceeds remaining after making the distributions above the full amount of such remaining condemnation proceeds shall vest in WMATA, and Developer hereby irrevocably assigns to WMATA any and all of Developer's rights in such remaining condemnation proceeds and Developer shall have no right thereto.

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23.5.8 The provisions of this Section 23.5 shall survive any termination of this Lease or partial release pursuant to this Article.

23.6 **Temporary Taking.**

23.6.1 If a Taking (whether Total or Partial) is solely for temporary use or occupancy (a "Temporary Taking"), and if such Taking shall involve a material portion of the Lease Premises for more than sixty (60) days, Developer, at its option, shall be entitled to terminate this Lease or release portions of the Lease Premises in a manner consistent with Sections 23.1 and 23.2, in which event, as to the released portions, the provisions of Section 23.3 and Section 23.5 shall apply, or to continue with this Lease, in which event, except to the extent that WMATA and Developer may be prevented from so doing pursuant to the terms of the order of the condemning authority, each shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of each to be performed and observed, as though such Taking had not occurred.

23.6.2 The condemnation proceeds for a Temporary Taking under Section 23.6.1, with respect to the Lease Premises (if this Lease is not terminated by Developer), or with respect to any portion of the Lease Premises not released by Developer (if a portion is so released), shall be divided between WMATA and Developer in the following order of priority:

23.6.2.1 First, Developer shall receive an amount equal to its Condemnation Costs.

23.6.2.2 Second, Developer shall be entitled to receive the entire remaining amount of the award made for such Taking, whether paid by way of damages, rent or otherwise, unless the period of temporary Taking shall extend to or beyond the expiration date of the Term of this Lease. In such case, the award shall be apportioned between WMATA and Developer as of the date of expiration of the Term of this Lease, as same may be extended by Developer as provided herein, based on (a) the respective periods of the Temporary Taking occurring before and after such expiration date, and (b) any allocation of portions of the award by the condemning authority to specific periods of time.

23.6.3 Upon the termination of any such period of Temporary Taking, prior to the expiration of the Term of this Lease, Developer at its option may Repair or Secure the Lease Premises and Developer Improvements, in accordance with the rights and obligations described in Section 23.2.2.

23.6.4 The provisions of this Section 23.6 shall survive any termination of this Lease or partial release pursuant to this Article.

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ARTICLE 24
DISPUTE RESOLUTION

24.1 **Alternative Dispute Resolution Mechanisms.** In the event of a dispute between the parties (including, without limitation, any claim by one party against the other party) with respect to any matter arising under this Lease or any of the Transaction Documents, the party raising a dispute or claim (the "Aggrieved Party") shall give the other party written notice specifying the nature of the dispute and the monetary amount involved, if any (the "Dispute Notice"). For a period of fifteen (15) days after receipt of the Dispute Notice, the parties' Designated Representatives shall proceed diligently and in good faith in an effort to resolve the dispute to their mutual satisfaction. If the parties fail to resolve the dispute prior to the expiration of the fifteen (15)-day period, then upon the written request of the Aggrieved Party to the other party (the "Alternative Dispute Notice"), the following provisions with respect to non-binding, alternative resolution of the dispute shall govern:

24.1.1 If the Dispute Notice specifies a monetary amount less than $_____, then (a) within three (3) days after receipt of the Alternative Dispute Notice, each party shall appoint a representative (meeting the qualifications of Section 24.1.3); provided that, if a party shall fail to timely appoint its representative, the other party may appoint such representative; (b) within three (3) days after their collective selection, the two (2) representatives selected shall select a third (3rd) representative (meeting such standards); and, (c) the three representatives (the "Dispute Review Panel") shall meet within three (3) days after their collective appointment (or at such reasonable time thereafter as a majority of the Dispute Review Panel may agree upon) to decide the disputed issue. The disputed issue shall be resolved, by not less than a majority vote of the Dispute Review Panel, within thirty (30) days after the date of the selection of the third representative. Fees of, and expenses incurred by, the representative of a party in connection with the dispute resolution shall be borne by such party, and of the third (3rd) representative, equally by both parties.

24.1.2 If the Dispute Notice (a) does not specify a monetary amount, or (b) specifies that the matter in dispute cannot be reduced to monetary terms, or (c) specifies a monetary amount equal to or greater than $_____, or if the parties do not elect to be bound by the decision and award of the Dispute Review Panel, any party the Aggrieved Party shall file a demand with the American Arbitration Association in Washington, D.C. simultaneously with delivering the Alternative Dispute Notice to the other party. Such arbitration shall be conducted in Washington, D.C. in accordance with the applicable rules of the American Arbitration Association (the "AAA Rules") by a panel of not less than three (3) arbitrators. The arbitrators shall be selected in accordance with the AAA Rules from the roll maintained by the American Arbitration Association in Washington, D.C., and shall be sworn faithfully and fairly to determine the dispute in question. Fees of, and expenses

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004253

incurred by, the arbitrators in connection with the dispute resolution shall be borne equally by both parties.

24.1.3 The representatives or arbitrators selected in accordance with this Section shall not be related by blood, marriage or professional affiliation to the parties or the principals of the parties, and must be professionals or persons with at least ten (10) years' experience in the substantive area in which the dispute has arisen.

24.2 **Discovery.** Notwithstanding any provision in the AAA Rules to the contrary, in any arbitration proceeding, the parties each (a) shall have the right to add by way of joinder any other party under contract for work or professional services of any kind relating to the Project; (b) prior to the arbitration hearing, shall be entitled to take limited discovery in the form of the right to request documents, the right to serve not more than thirty (30) interrogatories and the right to take not more than four (4) depositions, with respect to each other party and may, in addition, for good cause shown, be permitted additional discovery in the discretion of the arbitrators; and (c) at the arbitration hearing, shall be entitled to present evidence and to cross-examine witnesses.

24.3 **Binding Effect.** The decision and award of the Dispute Review Panel or the arbitration panel, as the case may be, shall be non-binding and shall only be enforceable against either party in any court of competent jurisdiction pursuant to a separate agreement to make such decision binding, which agreement shall be in each party's sole and absolute discretion.

ARTICLE 25
SURRENDER

25.1 **Surrender of Lease Premises and Developer Improvements.** On the expiration of the Term or any other termination of this Lease, Developer shall surrender the Lease Premises and any Developer Improvements to WMATA without delay, in the condition provided in Section 14.1. Any Developer Improvements shall be free and clear of all mortgages, liens, or Impositions, except (and only to the extent that) any such mortgages, liens, or Impositions were placed by WMATA or result from any work performed on the Lease Premises by WMATA, or for WMATA at WMATA's specific written request.

25.2 **Removal of Personal Property, Trade Fixtures, Etc.** Developer and any Occupant who purchased or otherwise provided signs, furniture, furnishings, trade fixtures, business equipment, and/or other similar items may remove such items at or prior to the termination or expiration of this Lease. Notwithstanding the foregoing, if such removal will cause material damage to the Developer Improvements, and if the Developer Improvements are to continue in active use in their then present condition, Developer or such Occupant, which shall be applicable, shall repair or restore the Developer Improvements to their condition immediately preceding the removal of such furniture, furnishings, trade fixtures, business equipment and/or other similar items, or pay or cause to be paid to WMATA the cost of repair or restoration necessitated by such removal.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004254

25.3 **Personal Property and Trade Fixtures Not Removed.** Any personal property of Developer or any Occupant which shall remain in or on the Lease Premises and the Developer Improvements after the termination or expiration of this Lease shall be deemed to have been abandoned, and either may be retained by WMATA as its property or disposed of without accountability in such manner as WMATA may see fit.

25.4 **WMATA's Responsibility.** In no event shall WMATA be responsible for any loss or damage occurring to any property owned by Developer or any Occupant which is not removed at or prior to the termination or expiration of this Lease.

25.5 **Survival of Article.** The provisions of this Article 25 shall survive any termination or expiration of this Lease.

ARTICLE 26
CERTIFICATES BY WMATA AND DEVELOPER

26.1 **Certificate by WMATA.** WMATA agrees, upon not less than ten (10) Business Days' prior notice from Developer, to execute, acknowledge and deliver a written statement to Developer, or to any of Developer's actual or prospective lenders, security rating agencies, auditors, purchasers, investors or as Developer may specify or to any governmental entity, if required by such governmental entity, which: (1) certifies that this Lease is unmodified and in full force and effect (or if modified that this Lease is in full force and effect as modified and states the modifications); (2) states to the best knowledge of WMATA whether Developer is in default in keeping, observing and performing any of the terms of this Lease, and, if in default, specifies each such default of which WMATA has knowledge; (3) states to the best knowledge of WMATA as to the existence of any offsets, counterclaims or defenses to this Lease on the part of Developer or WMATA; and (4) sets forth any other matters which reasonably may be requested except as to proprietary or confidential information. It is intended that any such statement delivered pursuant to this Section 26.1 may be relied upon by any prospective permitted assignee of Developer's interest in this Lease, any existing or prospective securities rating agency, auditor or lender or investor providing financing or funds to Developer, or to any other prospective lender or investor, but reliance on such certificate may not extend to any default of Developer as to which WMATA shall have no actual knowledge.

26.2 **Certificate by Developer.** Developer agrees, upon not less than ten (10) business Days' prior notice from WMATA, to execute, acknowledge and deliver to WMATA and/or to any person or governmental entity (if required by such governmental entity) designated by WMATA, a written statement which: (1) certifies that this Lease is unmodified and in full force and effect (or if modified, that this Lease is in full force and effect as modified and states the modifications); (2) states to the best knowledge of Developer whether WMATA is in default in keeping, observing and performing any of the terms of this Lease and, if in default, specifies each such default of which Developer has knowledge; (3) states to the best knowledge of Developer as to the existence of any offsets, counterclaims or defenses to this Lease on the part of WMATA or Developer; and (4) sets forth any other matters which reasonably may be requested except as to proprietary

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004255

or confidential information. It is intended that any such statement delivered pursuant to this Section 26.2 may be relied upon by WMATA or any prospective successor to WMATA's interest in the Lease Premises or any part thereof, or any governmental entity, if required by such governmental entity but reliance on such certificate may not extend to any default of WMATA as to which Developer shall have no actual knowledge.

ARTICLE 27
DETERMINATION OF FAIR MARKET VALUE

27.1 **Procedures for Determining Fair Market Value.**

27.1.1 Whenever a determination of the Fair Market Value is required under this Lease, the Designated Representative of each of WMATA and Developer shall convene and attempt to determine a mutually agreeable Fair Market Value. If the Designated Representatives of WMATA and Developer are unable to agree on the Fair Market Value within thirty (30) days of their convening, then within twenty (20) days after the expiration of such thirty (30) day period, the Designated Representative of each WMATA and Developer shall select, at its respective expense, an appraiser, who is a disinterested person with at least ten (10) years professional experience as a real estate appraiser, and who is a member of the Appraisal Institute, has an "MAI" certification, or is a member of or has a comparable certification from any successor association (or any association of comparable standing). The two selected appraisers shall then select a third appraiser. Each of the three appraisers shall complete an appraisal in accordance with the Scope of Work. Each party shall pay for its own appraisal by its selected appraiser. The parties shall split the costs of the third appraiser, if necessary. The two appraisals that are closest in their determination of fair market value shall be averaged to arrive at the Fair Market Value.

27.1.2 Each party shall require its appraiser, and such appraisers shall require the third, to prepare and deliver its appraisal to the parties within fifty (50) days after the appraiser's appointment. If either party fails to appoint its appraiser, or if its appraiser fails to prepare and timely deliver its appraisal, such appraisal shall be deemed to be the one rejected by the other party. If either party fails to appoint its appraiser, the appointed appraiser need not select a "third" appraiser, and the appraisal of such appointed appraiser shall determine the Fair Market Value.

ARTICLE 28
REPRESENTATIONS AND WARRANTIES AND COVENANTS OF WMATA AND DEVELOPER

28.1 **Representations And Warranties Of WMATA.** For the purpose of inducing Developer to enter into this Lease and to consummate the lease of the Lease Premises in accordance herewith, WMATA hereby represents and warrants to Developer the following as of the Effective Date:

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28.1.1 WMATA is a regional body, corporate and politic, organized pursuant to Public Law 89-774, 80 Stat. 1324; Maryland Acts of General Assembly, Chapter 869-1965; Virginia Acts of Assembly, Chapter 2-1966; and Resolution of D.C. Board of Commissioners adopted November 15, 1966;

28.1.2 WMATA has the full corporate power and authority to lease the Lease Premises and to execute the documents to be executed by WMATA and has taken, as applicable, all corporate, or equivalent entity actions required for the execution and delivery of this Lease and prior to the Effective Date will have taken, as applicable, all corporate, or equivalent entity actions required for the consummation of the transactions contemplated by this Lease. The parties executing this Lease on behalf of WMATA have full power and authority to bind WMATA to the obligations of WMATA set forth herein. The terms and conditions of this Lease do not conflict with, cause a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement to which WMATA is a party or by which WMATA or the Property is otherwise bound. WMATA legally exists, is in good standing under Federal and local laws, and is authorized to conduct the business in which it is engaged. The execution, delivery, and performance of this Lease will not violate any laws or breach any contract or provision of the WMATA Compact. No consent, approval, or authorization is required to be obtained by WMATA that has not already been obtained in connection with the execution, delivery, and performance of this Lease, except that in accordance with Section ____, this Lease is subject to FTA approval;

28.1.3 WMATA owns fee title to the Land, subject to encumbrances and other matters of record and existing site conditions;

28.1.4 There are no adverse or other parties in possession of the Lease Premises. WMATA will, on the Effective Date, deliver possession of the Leased Premises to Developer free and clear of any and all tenancies and occupancies, except as may be approved by Developer in writing, subject only to the exceptions and rights on behalf of WMATA as set forth in this Lease;

28.1.5 The joinder of no person or entity other than WMATA is necessary to lease the Lease Premises to Developer on the Effective Date in accordance with the terms and conditions of this Lease or for WMATA to fulfill WMATA's other obligations subject to and in conformity with the terms and conditions of this Lease;

28.1.6 To WMATA's knowledge, WMATA has not received any written notice from any governmental authority having jurisdiction over WMATA and the Lease Premises of any violation of the Lease Premises of any applicable Laws that remains pending and uncured or from any insurance company of any violation of the Lease Premises of applicable insurance requirements that would require corrective work to be performed with respect to the Lease Premises that remains pending and uncured; and

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004257

28.1.7 To WMATA's knowledge, there are no actions, proceedings, litigation, governmental investigations or condemnation actions either pending or threatened against the Lease Premises.

28.2 **As Is, Where Is Terms.** Except for the representations and warranties expressly set forth above in Section 28.1, this Lease is being executed and the Lease Premises is expressly being leased to Developer "AS IS," "WHERE IS," and "WITH ALL FAULTS." The terms and conditions set forth herein are the result of arm's-length bargaining between entities familiar with transactions of this kind, and the terms and conditions reflect the fact that, other than the representations and warranties expressly set forth above in Section 28.1, Developer shall have the benefit of, and is relying upon, no information provided by WMATA and no statements, representations or warranties, express or implied, made by or enforceable directly against WMATA, including, without limitation, any relating to the value of the Lease Premises, the feasibility, suitability, physical or environmental condition of the Lease Premises for the construction, development or installation of any Developer Improvements or for Developer's intended uses, compliance or lack of compliance of the Lease Premises with any state, federal, county or local law, ordinance, order, permit or regulation, or any other attribute of or matter relating to the Lease Premises. Developer represents and warrants that as of the date hereof it has reviewed and conducted such independent analyses, studies, reports, investigations and inspections as it deems appropriate in connection with the Lease Premises.

28.2.1 If WMATA provides or has provided any documents, opinions or work product of consultants, surveyors, architects, engineers, title companies, governmental authorities or any other person or entity with respect to the Property, Developer and WMATA agree that WMATA has done so or shall do so only for the convenience of Developer, Developer shall not rely thereon and the reliance by Developer upon any such documents, opinions or work product shall not create or give rise to any liability of or against WMATA, WMATA's Affiliates or any of their respective partners, officers, directors, participants, employees, contractors, attorneys, consultants, representatives, agents, successors, assigns or predecessors-in-interest.

28.2.2 Developer shall rely only on any title insurance obtained by Developer with respect to title to the Lease Premises and to any matter as to which a title policy endorsement is available in the jurisdiction where the Lease Premises is located.

28.2.3 Developer acknowledges and agrees that no representation has been made and no responsibility is assumed by WMATA with respect to current and future applicable zoning or building code requirements; the Lease Premises's compliance with any other laws, rules, ordinances or regulations; or the Lease Premises's financial earning capacity or expense history.

28.2.4 WMATA and Developer agree that those representations contained in Section 28.1 shall not survive the expiration or termination of this Lease. In

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004258

the event that WMATA breaches any representation contained in Section 28.1 and Developer had knowledge of such breach prior to the Effective Date, Developer shall be deemed to have waived any right of recovery and WMATA shall not have any liability in connection therewith.

28.2.5 Representations and warranties above made to the knowledge of WMATA shall not be deemed to imply any duty of inquiry. For purposes of this Lease, the term "knowledge" as it relates to WMATA shall mean and refer to only the actual knowledge of the Designated Representative of WMATA (as hereinafter defined) and shall not be construed to refer to the knowledge of any other officer, director, agent, employee or representative of WMATA, or any Affiliate of WMATA, or to impose upon such Designated Representative any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such Designated Representative any individual personal liability, which Developer hereby waives. As used herein, the term "Designated Representative" as it relates to WMATA shall refer to [redacted].

28.3 **Representations And Warranties Of Developer.** For the purpose of inducing WMATA to enter into this Lease and to consummate the lease of the Lease Premises to Developer in accordance herewith, Developer hereby represents and warrants to WMATA the following as of the Effective Date:

28.3.1 **Developer, LLC** is a District of Columbia limited liability company duly formed, validly existing and in good standing under the laws of the District of Columbia;

28.3.2 Developer, acting through any of its or their duly empowered and authorized officers, partners or members, has all necessary power and authority to own and use its properties and to transact the business in which it is engaged, and has full power and authority to enter into this Lease, to execute and deliver the documents and instruments required of Developer herein, and to perform its obligations hereunder; and no consent of any of Developer's officers, partners or members is required to so empower or authorize Developer;

28.3.3 No pending or, to the knowledge of Developer, threatened litigation exists that, if determined adversely, would restrain the consummation of the transactions contemplated by this Lease or would declare illegal, invalid or non-binding any of Developer's obligations or covenants to WMATA;

28.3.4 Developer, acting through its duly empowered and authorized [redacted] is duly authorized to execute, deliver and perform this Lease and all documents and instruments and transactions contemplated hereby or incidental hereto, and such execution, delivery and performance by Developer does not (i) violate any of the provisions of its organizational documents, operating agreements or similar organic documents, (ii) violate any provision of any Laws currently in effect, (iii) violate any

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004259

judgment, decree, writ, injunction, award, determination or order currently in effect that names or is specifically directed at Developer or its property, or (iv) require the consent, approval, order or authorization of, or any filing with or notice to, any court or other governmental authority;

28.3.5 The joinder of no person or entity other than Developer is necessary for Developer to lease the Lease Premises at the Effective Date in accordance with the terms and conditions of this Lease or for Developer to fulfill Developer's other obligations subject to and in conformity with the terms and conditions of this Lease;

28.3.6 Developer covenants, warrants, and represents to and with WMATA that Developer: (a) is formed or organized solely for the purpose of developing, constructing, selling, renovating, leasing and operating the Lease Premises and the Developer Improvements and only for conducting activities incidental thereto, (b) shall not engage in any business unrelated to such purpose and activities, (c) shall not have any assets other than those related thereto or any indebtedness other than related thereto, (d) shall maintain its own separate books and records and have its own accounts, in each case which are separate and apart from the books and records and accounts of any other person or entity, (e) shall be subject to all of the limitations on powers set forth in the organizational documentation of each such entity as of the Effective Date, (f) shall hold itself out as being a person or entity separate and apart from any other person or entity, and (g) shall otherwise satisfy usual current market criteria for constituting a single purpose entity, except for any obligation to have an "independent" director; and

28.3.7 For purposes of this Lease, the term "knowledge" as it relates to Developer shall mean and refer to only the actual knowledge of the Designated Representative (as hereinafter defined) of Developer and shall not be construed to refer to the knowledge of any other officer, director, agent, employee or representative of Developer, or any Affiliate of Developer, or to impose upon such Designated Representative any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such Designated Representative any individual personal liability, which WMATA hereby waives. As used herein, the term "Designated Representative" as it relates to Developer shall refer to _____. Developer represents that each of Developer's Designated Representative under this Section 28.3.7 is an individual to whom material facts relevant to the matters covered by the representations and warranties of Developer that are set forth in this Lease would be reported in the ordinary course of business.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004260

ARTICLE 29
MISCELLANEOUS

29.1 **Recitals, Exhibits And Schedules.** All Recitals, Exhibits and Schedules annexed hereto are incorporated herein and made a part of this Lease for all purposes.

29.2 **Binding Effect.** This Lease shall be binding upon and inure to the benefit of WMATA and Developer, and their respective successors, heirs and permitted assigns.

29.3 **Captions.** The captions, headings and arrangements used in this Lease are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

29.4 **Number And Gender Of Words.** Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

29.5 **Notices**

29.5.1 All notices, demands, requests and other communications required pursuant to or in connection with the provisions of this Lease ("Notice") shall be in writing and shall be deemed to have been properly given or served for all purposes (i) if sent by Federal Express or the nationally recognized overnight carrier for next business day delivery, on the actual date of delivery by such carrier, or (ii) if personally delivered, on the actual date of delivery or (iii) if sent by certified mail, return receipt requested postage prepaid, on the Fifth (5th) Business Day following the date of mailing addressed as follows:

If to Developer:	Banneker Ventures, LLC
	700 12th Street, NW, Suite 700
	Washington, DC 20005
	Attn: Omar A. Karim
	Phone: 202-667-4110
	Fax: 202-558-5157
And with a copy to:	DLA Piper LLP (US)
	The Marbury Building
	6225 Smith Avenue
	Baltimore, MD 21209
	Attn: Guy E. Flynn and Devorah M. Lewin, Esq.
	Phone: 410-580-4149; 410-590-4397
	Fax: 410-580-3149; 410-580-3397
If to WMATA:	~~Washington Metropolitan Avenue Transit Authority~~Washington Metropolitan Area Transit Authority

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004261

	600 Fifth Street, NW Washington, D.C. 20001 Attn: Director of Station Area Planning and Asset Management Phone:202-962-2616 Fax:
And with a copy to:	Washington Metropolitan Area Transit Authority~~Washington Metropolitan Avenue Transit Authority~~ 600 Fifth Street, NW Washington, D.C. 20001 Attn: Rosalyn Doggett Phone:202-962-2208 Fax:
And with a copy to:	Washington Metropolitan Area Transit Authority~~Washington Metropolitan Avenue Transit Authority~~ 600 Fifth Street, NW Washington, D.C. 20001 Attn: Carol O'Keeffe Phone: _____ Fax:_____

29.5.2 Any of the parties may designate a change of address by Notice in writing to the other parties in conformity with this Section. Whenever in this Lease the giving of Notice by mail or otherwise is required, the giving of such Notice may be waived in writing by the person or persons entitled to receive such Notice.

29.6 **Governing Law And Venue.** The laws of the District of Columbia shall exclusively govern the validity, construction, enforcement and interpretation of this Lease, unless otherwise specified herein, except for the conflict of laws provisions thereof. All claims, disputes and other matters in question arising out of or relating to this Lease, or the breach thereof, shall be decided by proceedings instituted and litigated in the United States District Court for the district in which the Lease Premises is situated, and the parties hereto expressly consent to the venue and jurisdiction of such court.

29.7 **Entirety And Amendments.** This Lease, the JDA, and the Transaction Documents, embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Lease Premises and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004262

29.8 **Severability.** If any provision of this Lease is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable. The Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Lease and the remaining provisions of this Lease shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Lease.

29.9 **Multiple Counterparts.** This Lease may be executed in a number of identical counterparts. If so executed, each of such counterparts is deemed an original for all purposes and all such counterparts shall, collectively, constitute one Agreement. In making proof of this Lease, it shall not be necessary to produce or account for more than one such counterpart.

29.10 **Further Acts.** In addition to the acts and deeds recited herein and contemplated to be performed, executed or delivered by WMATA and Developer, WMATA and Developer agree to perform, execute or deliver or cause to be performed, executed or delivered any and all such further acts, deeds and assurances as may be reasonably necessary or appropriate to consummate the transactions contemplated in this Lease.

29.11 **Disadvantaged Business Enterprises; Non-Discrimination Obligation.** In accordance with WMATA's voluntary minority business enterprise program, Developer acknowledges WMATA's fifteen percent (15%) aspirational goal for hiring minority contractors, with such aspirational goal to be sought using race neutral methods only. This is an aspirational goal only, and failure to achieve minority hiring goals shall not be a default hereunder. In addition, Developer agrees that it will not discriminate on the basis of race, color, national origin, sex, or any other unlawful basis in the award and performance of contracts or subcontracts.

29.12 **Sovereign Immunity; Anti Deficiency Clause.** Subject to the provisions of this Section 29.12, WMATA shall be liable for its contractual obligations to Developer under this Lease in accordance with the law of the District of Columbia (including rules on conflict of laws) and the WMATA Compact. Except to the limited and specific extent set forth in the preceding sentence, nothing in this Lease, any other related document or circumstance shall in any way waive or be deemed or construed to waive any immunity of WMATA with respect to this Lease, whether such immunity arises under the WMATA Compact, the Constitution of the United States or any Amendment thereto, any statute or regulation of the District of Columbia, the State of Maryland, the Commonwealth or Virginia, common or decisional law, or otherwise. Developer agrees that all obligations of WMATA under this Lease that directly or indirectly require, or may require, WMATA's expenditure of any of its funds are, and shall be, subject to the appropriation and availability of funding through WMATA's normal and customary budgetary procedures.

29.13 **Construction.** No provision of this Lease shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this Lease; both parties, being represented by counsel, having fully participated in the negotiation of the terms of this Lease.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004263

29.14 **Confidentiality.** Developer shall not disclose the terms and conditions contained in this Lease and shall keep the same confidential, provided that Developer may disclose the terms and conditions of this Lease (i) as required by law; (ii) to consummate the terms of this Lease, or any financing relating thereto; or (iii) to Developer's or WMATA's lenders, attorneys, accountants and the like. Any information provided by WMATA to Developer under the terms of this Lease is for informational purposes only. In providing such information to Developer, WMATA makes no representation or warranty, express, written, oral, statutory or implied, and all such representations and warranties are hereby expressly excluded. Developer shall not in any way be entitled to rely upon the accuracy of such information. Such information is also confidential and Developer shall be prohibited from making it public to any other person or entity, other than Developer's agents and legal representatives, without WMATA's prior written authorization, which may be granted or denied in WMATA's sole discretion.

29.15 **Time Of The Essence.** The parties agree that time is of the essence under this Lease.

29.16 **Cumulative Remedies And Waiver.** Except as otherwise provided in this Lease, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any right or power or be construed as a waiver thereof, but any such right and power may be exercised from time to time and as often as deemed expedient. No waiver, amendment, release or modification of this Lease shall be established by conduct, custom or course of dealing.

29.17 **Litigation Expenses.** In the event either party hereto commences litigation against the other to enforce its rights hereunder, the prevailing party in such litigation shall be entitled to recover from the other party its reasonable attorneys' fees and expenses incidental to such litigation.

29.18 **Time Periods.** Should the last day of a time period fall on a Saturday, Sunday, Federal holiday or legal holiday in the District of Columbia, Virginia or Maryland, the next Business Day thereafter shall be considered the end of the time period.

29.19 **Third Parties.** There shall be no third party beneficiaries of this Lease, and no third party may rely on or assert that any provision or statement herein contained is an admission of any party hereto.

29.20 **Memorandum of Termination.** Upon any termination of this Lease, WMATA shall have the right to record a Memorandum of Termination of this Lease. Developer shall execute and deliver to WMATA on the Effective Date in recordable form a memorandum of termination, which WMATA is authorized to record following the occurrence of any termination. Developer shall pay any and all recording fees and charges to record the memorandum and transfer taxes in respect of said items whether assessable against a grantor or grantee and notwithstanding any contrary custom or practice regarding payment of such taxes and shall indemnify WMATA for its costs of enforcing this

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004264

provision. The provisions of this Section 29.20 shall survive any termination of this Lease.

29.21 **[Insert Provisions Required Under Local Jurisdiction]**

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as an instrument under seal, as of the date first above written.

ATTEST OR WITNESS:	[DEVELOPER]
_____[SEAL]	_____
	By:_____
	Name:_____
	Title:_____
ATTEST/WITNESS:	WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
_____[SEAL]	By: _____
	Title: Contracting Officer

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004265

ACKNOWLEDGEMENTS

STATE OF _____) ss:
COUNTY OF _____)

I, _____, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____, as Contracting Officer of the Washington Metropolitan Area Transit Authority, who is known to me to be the same person whose name is subscribed to the foregoing instrument in such capacity, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as the free and voluntary act and deed of the said Washington Metropolitan Area Transit Authority, for the uses and purposes therein set forth.

GIVEN under my hand and seal this ____ day of _____, 200___.

_____
Notary Public

My commission expires: _____.

STATE OF _____) ss:
COUNTY OF _____)

I, _____, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____ [insert name of person signing], who is the _____ [insert title of signer] of _____ [insert name of managing member of Phase Developer], who is known to me to be the same person whose name is subscribed to the foregoing instrument in such capacity, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as the free and voluntary act and deed of the said [insert name of Phase Developer] for the uses and purposes therein set forth.

GIVEN under my hand and seal this ____ day of _____, 200___.

_____
Notary Public

My commission expires: _____.

ATTACHED EXHIBITIONS LIST:

A. PROPERTY DESCRIPTION
B. JDA
C. APPROVED DEVELOPMENT PLAN
D. COVENANTS, CONDITIONS, AND RESTRICTIONS
E. PROJECT SCHEDULE
F. FORM OF GUARANTY
G. LEASE PREMISES
H. MINIMUM PROJECT COMPLETION MILESTONE REQUIREMENTS
~~I.PROJECT CONCEPT PLAN~~
~~J.~~I. WMATA RESERVED AREAS AND INTERESTS
~~K.~~J. TITLE COMMITMENTS
~~L.DEVELOPMENT COVENANTS~~

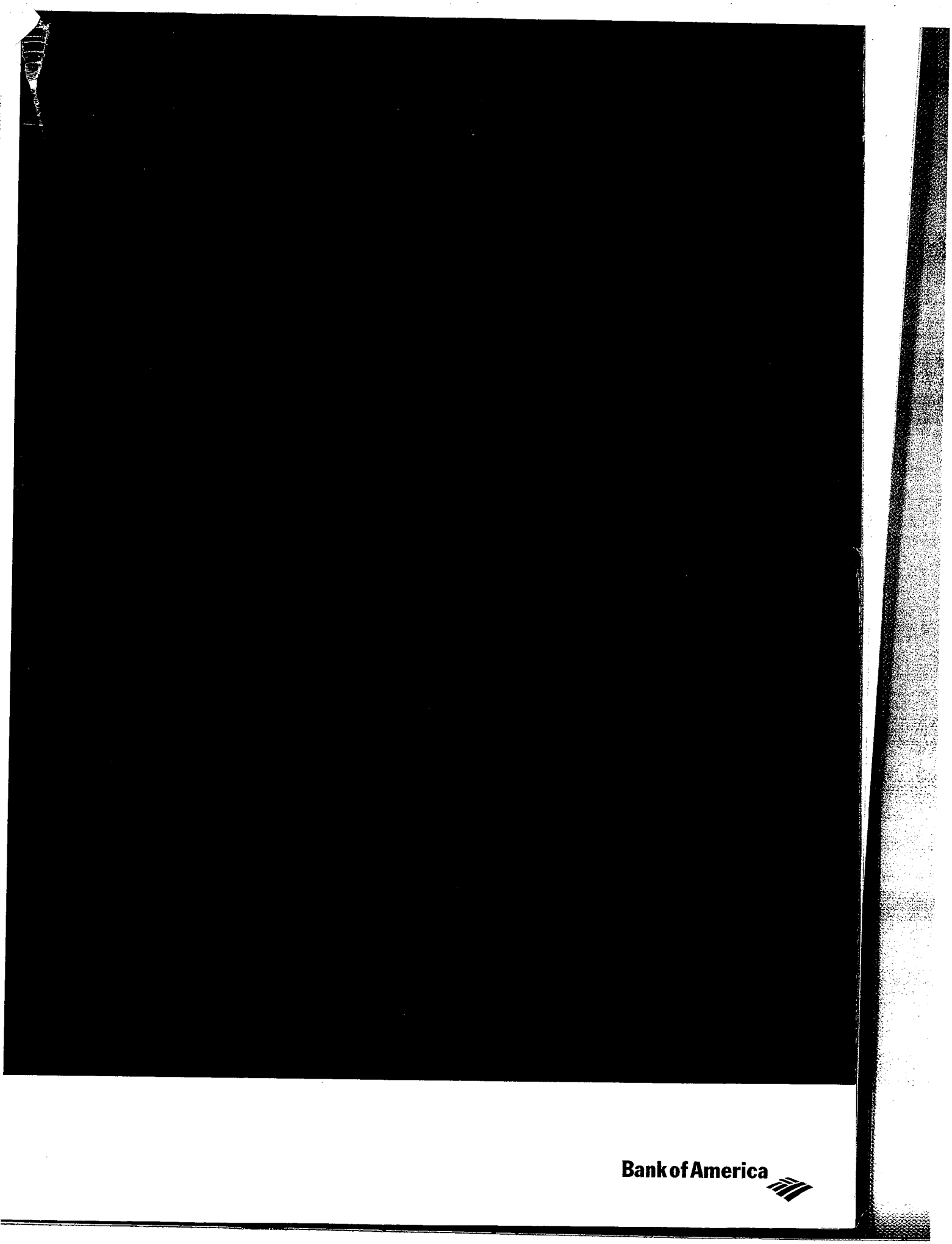
First Floor Plan

BANNEKER VENTURES / BANC OF AMERICA CDC
TORTI GALLAS AND PARTNERS

THE JAZZ @ FLORIDA AVENUE

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004268


Bank of America

WATERFRONT WATCH

Anacostia Waterfront News Digest

Anacostia Waterfront realizing the vision

Vol. 1, No. 3 March 2009

DC Streetcar Construction to Start Soon in Anacostia

The District Department of Transportation (DDOT) is ready to resurrect the District's streetcar transit system, beginning with the construction of the Anacostia line segment. A construction schedule will be finalized in early March.

WTOP first broke the streetcar story after interviewing DDOT Director Gabe Klein, who spoke at the Board of Trade's Transportation Forum on February 20th. DDOT spokesperson John Lisle told WTOP, "That segment has been extended to about two miles and will stretch from a new maintenance facility on South Capitol Street to Firth Sterling Avenue, east on Howard Road, and then north on Martin Luther King Boulevard to the area of Good Hope Road." Plans call for the streetcar system to cross the new 11th Street bridges when they are built and along the H Street corridor in Northeast.

It's been 47 years since the last streetcar ran in the District. The new streetcars will run on streets fitted with rails and will be powered by overhead electric wires. The District joins many other cities that are incorporating streetcars into their transit systems. One of the reasons that streetcars are becoming an attractive transit addition is because of the streetcar's role in stabilizing communities and promoting neighborhood improvements.

Click here to read WTOP's story:
www.wtop.com/?sid=1610001&nid=25

Anacostia Waterfront Forum 2 on March 17th

On Tuesday, March 17th, the second forum in the Anacostia Waterfront Forum Series will focus on the economics of developing the Anacostia Waterfront. **Nina Albert,** a project manager in the Office of the Deputy Mayor for Planning and Economic Development (DMPED), will be the presenter. Ms. Albert is the person responsible for coordinating DMPED's role in the Anacostia Waterfront Initiative. **Neil O. Albert,** Deputy Mayor for Planning and Economic Development, is scheduled to deliver remarks to welcome participants. Last month, the inaugural forum at the Martin Luther King, Jr. Library drew a standing-room-only crowd of over 200 people.

For more information, visit www.theanacostiawaterfront.com or call (202) 715-6641.

Also, District Channel 16 is broadcasting the inaugural forum. Stream it at:
http://www.octt.dc.gov/services/on_demand_video/channel16/2844.asx

The Next Anacostia Waterfront Forum: Tuesday, April 21, 2009

Topic: "Green Waterfront, Green Jobs, Green Living in a Green DC"

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Waterfront Park Dedicated to Slain Anacostia Youth

Diamond Teague's life was snuffed out when he was murdered in 2003. But the way the 19-year-old Anacostia youth lived his life will be memorialized in an Anacostia waterfront park that will be built and named in his honor. Mayor Adrian M. Fenty joined community leaders in a groundbreaking ceremony on February 13th for Diamond Teague Park, an $8 million waterfront park that will link Nationals Park to the Anacostia River.

Teague had been a member of the Earth Conservation Corp (ECC) for two years before his tragic death. In an exclusive interview before the groundbreaking ceremony, Diamond Teague's parents told *Waterfront Watch* how they felt about the city's recognition of their son. "I just want everybody to know there's a diamond in all of you," said Ivory Teague. His wife, Florence Teague, hugged a framed picture of Diamond and whispered, "This means so much to me. What I share today, I share with other parents."

Several piers at the park, located at First Street and Potomac Avenue, SE, are expected to be completed by April 13th, which is the Opening Day of the Nationals' baseball season. The official dedication of Diamond Teague Park is scheduled for April 28, 2009.

To read more about Diamond Teague Park, visit: www.dcbiz.dc.gov

R.E.E.L. Solutions On The 'River East'

An evening of engagement, music, and networking marked the kick-off social event for the River East Emerging Leaders (R.E.E.L.). The organization was forged by young professionals and residents who live and work in Wards 7 and 8. Hosted at the Honfleur Art Gallery in historic Anacostia, the event was a celebration of culture, civic commitment, and a new energy to revitalize Anacostia. R.E.E.L. members repeatedly sounded their pledge to improve the quality of life in 'River East', a.k.a. 'east of the river.'

"R.E.E.L. started with an idea and a shared value," said Charles Wilson, director of the Historic Anacostia Block Association and member of the R.E.E.L. steering committee. The 'River East' moniker, he added, is part of the re-branding. "Our goal is to shift and redefine how other District residents view us, and how we view ourselves."

Later in the evening, participants broke out into small groups that provided an opportunity to grapple with the challenges and possibilities for a revitalized community. The collective concerns included greater community engagement in revitalization, green development, historic preservation, and increased transparency from developers and District government as projects come off the drawing board.

Visit the newly launched R.E.E.L. blog: http://rivereastidealist.blogspot.com

Please visit the Anacostia Waterfront Facebook page.

Go to the search function on your Facebook page and type in "anacostiawaterfront".

For more information about how the District of Columbia is creating a world class Anacostia Waterfront, visit our web site: www.theanacostiawaterfront.com

Waterfront Watch is published by the Anacostia Waterfront Civic Engagement Program.

Don Edwards, coordinator (202) 715-6634
Dwight Kirk, editor (202) 715-6642
Ajeenah Amir, contributor (202) 833-9771

Anacostia Waterfront
realizing the vision

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004271

Anacostia Waterfront Forum

Connecting Voices and Neighborhoods

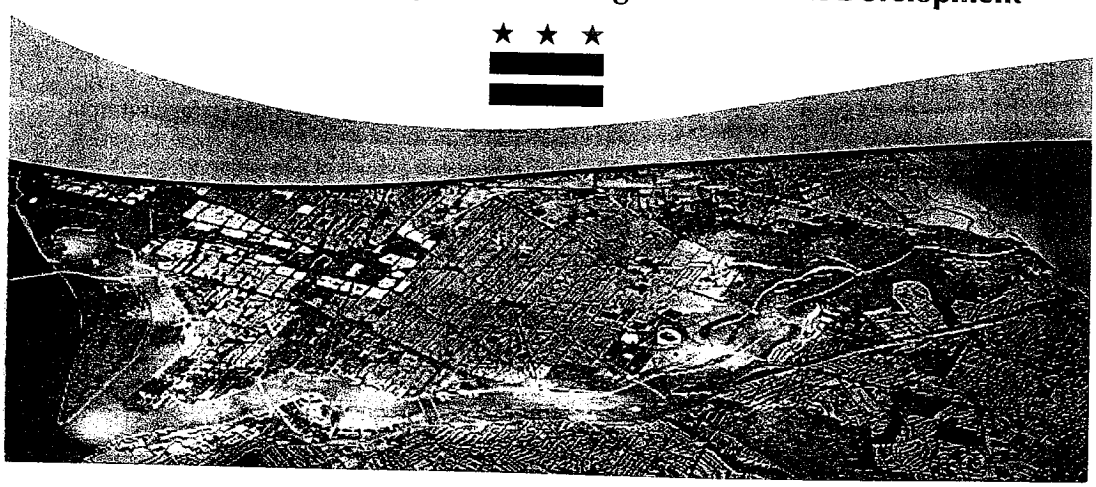
Anacostia Waterfront Initiative
realizing the vision

The Economics of Developing the Anacostia Waterfront

Martin Luther King, Jr. Library
901 G Street, NW

March 17, 2009

Sponsors:
District Department of Transportation
Office of Planning
District Department of the Environment
Office of the Deputy Mayor for Planning and Economic Development



FOIA CONFIEDENTIAL TREATMENT REQUESTED

Participants in the Anacostia Waterfront Forum

Neil O. Albert
Deputy Mayor for Planning and Economic Development, District of Columbia

Mr. Albert is responsible for executing Mayor Adrian M. Fenty's economic development strategy and managing a development pipeline worth more than $13 billion in public-private housing, retail, office and parks projects throughout the District. Mr. Albert is also responsible for District's efforts to create and preserve affordable housing and he oversees the District's business attraction and retention initiatives.

Nina Albert
Project Manager, Office of the Deputy Mayor for Planning and Economic Development, District of Columbia

Ms. Albert is a project manager in the Office of the Deputy Mayor for Planning and Economic Development. Her particular areas of focus are the redevelopment of Southwest Waterfront and coordinating various Anacostia Waterfront initiatives. Prior to joining the government of the District of Columbia, she worked for the Anacostia Waterfront Corporation. Ms. Albert graduated from the University of North Carolina with a Masters of Business Administration and Masters of Regional Planning. She received her Bachelor of Science in Mechanical Engineering from Tufts University.

Dennis Chestnut
Executive Director, Groundwork Anacostia River DC

Mr. Chestnut has over 30 years of experience in the non-profit industry, including 20 years as the executive director of the Eastern Branch Striders Track & Field Club Inc., program director of Washington Parks & People, chairman of the Watts Branch Community Alliance, chairman of the Hillbrook Community Association, and executive committee member of the DC Chapter of the Sierra Club. His board memberships include the Casey Trees Foundation, Ward 7 Nonprofit Network, and the African American Music Association.

Alex Nyhan
Development Manager, Forest City Washington

Mr. Nyhan is development manager for Forest City Washington, where he is involved with design, development, and deal structuring on multiple projects, including various projects at The Yards. Prior to joining Forest City, Mr. Nyhan worked for District Deputy Mayor Eric Price and District Deputy Mayor Stanley Jackson, focusing on public-private redevelopment initiatives. He graduated from Macalester College and holds an MBA from Harvard Business School and an MPA from the John F. Kennedy School of Government.

Don Edwards
Coordinator, Anacostia Waterfront Civic Engagement Program

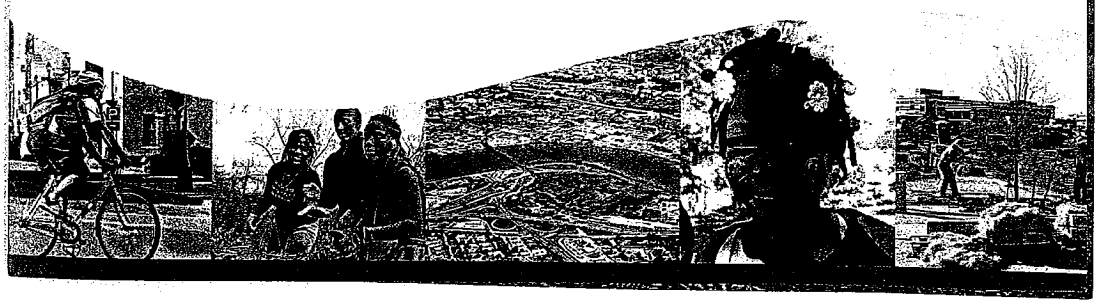
Mr. Edwards is the founding principal and CEO of Justice and Sustainability Associates. In that capacity he designs, facilitates, mediates, and documents land use decision-making processes for federal, municipal and neighborhood revitalization throughout the Metropolitan Washington region and in other U.S. cities. He holds master's degrees in public health and in nursing from Yale University.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Anacostia Waterfront Forum

PROGRAM

6:30 pm	**Open House**
7:00 pm	**Call to Order** **Moderator** Don Edwards Coordinator, Anacostia Waterfront Civic Engagement Program
7:05 pm	**Welcome** **Neil O. Albert** Deputy Mayor for Planning and Economic Development District of Columbia
7:10 pm	**Presenter** **Nina Albert** Project Manager Office of the Deputy Mayor for Planning and Economic Development
7:40 pm	**Respondents** Dennis Chestnut Executive Director, Groundwork Anacostia River DC Alex Nyhan Development Manager, Forest City Washington
8:25 pm	**Next Steps**



FOIA CONFIEDENTIAL TREATMENT REQUESTED

Anacostia Waterfront Forum Series

Anacostia Waterfront
realizing the vision

The Anacostia Waterfront Forum is a series of monthly public presentations held every third Tuesday from February through June 2009. The forums are designed to bring voices from different neighborhoods together to receive accurate and timely information about developing the Anacostia Waterfront.

Tentative topics:

- **April 21:** "Green Waterfront, Green Jobs, Green Living in a Green DC"
- **May 19:** "Waterfronts and the World's Great Capital Cities"
- **June 16:** "Today's Youth and the Future of the Anacostia Waterfront"

Anacostia Waterfront Civic Engagement Program

The Anacostia Waterfront Forum Series is an activity of the Anacostia Waterfront Civic Engagement Program, a multi-agency program responsible for building a constituency to achieve the goals of the Anacostia Waterfront Framework Plan.

For more information, visit www.theanacostiawaterfront.com
or call (202) 715-6641.

Anacostia Waterfront Facebook Page

Please visit the new Anacostia Waterfront Facebook Page.

- Go to the search function on your Facebook page.
- Type in "anacostiawaterfront" and ask us to be your Facebook friend.
- If you are not a Facebook member, go to www.facebook.com, open your own account and then become our friend.

Sponsors:

District Department of Transportation

Office of Planning

District Department of the Environment

Office of the Deputy Mayor for Planning and Economic Development

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Bank of America

Cell 7253
329 ~~7523~~

Maurice L. Perry
VP; SR Equity Manager - CDB
Real Estate Development -MF Admin

Tel: 202.442.7526 · Fax: 202.442.7542
maurice.perry@bankofamerica.com

Bank of America, DC1-701-08-04
730 15th Street NW, 8th Floor, Washington DC 20005

FOIA CONFIDENTIAL TREATMENT REQUESTED

Bank of America

Bank of America Achieves $65 Billion in Community Development Loans and Investments in 2008

$750 Billion Community Development Lending & Investment Goal

In the fourth year of its 10-year $750 billion goal, the bank provided $65 billion in loans and investments serving primarily low-and-moderate-income and minority families, individuals and communities. The final PTD total of $339 billion (2005-2008) completes the current goal program; replaced by the new $1.5 trillion goal, effective January 1, 2009. The final results are 13% above the pro-rata goal, demonstrating the company was well on track to surpass its goal ahead of schedule.

2008 Key Highlights

✓ 17,000 affordable and mixed-income housing units financed, developed or rehabilitated, as well as direct tax credit equity invested to support the creation of 27,000 units of affordable multi-family rental housing.

✓ $21.1 billion in mortgage lending to low-and-moderate-income and minority homebuyers. Over 58% of these mortgage loans were made to minority borrowers.

✓ More than 79% ($15 billion) of small business lending was for loans/lines of credit and government-guaranteed loans of $1 million or less; over 37% ($5.7 billion) for loans of less than $100,000.

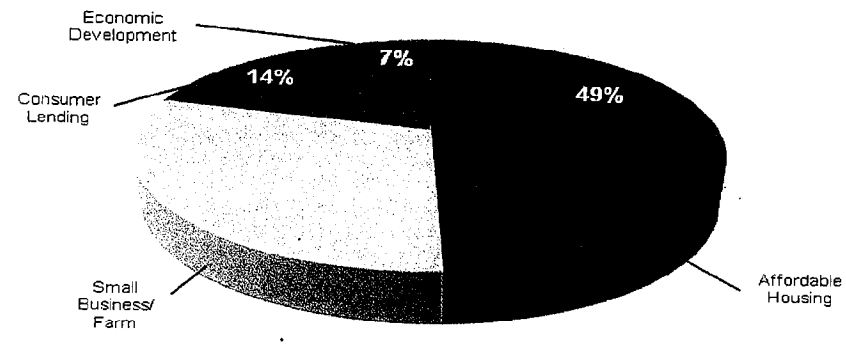
✓ $2.7 billion in loans and investments to rural and Native American regions to stimulate housing, job creation, and economic development as part of the 10-year, $25 billion Rural/Native American carve-out goal. Total four-year volume of $15 billion is 50% over PTD goal.

$750B Goal Program-to-Date (PTD) Performance

Category	10 Yr Goal	Contrib to Goal	PTD $ Achieved	% of 10-year Goal*
Total BAC	$750B	100%	$338.9B	45.2%
Affordable Housing	$500B	67%	$165.2B	33.0%
Small Business/Farm	$125B	17%	$88.7B	71.0%
Consumer Lending	$75B	10%	$65.1B	86.8%
Economic Development	$50B	7%	$19.9B	39.8%

** Straight-line trend, target performance in 4th year of goal is 40%*

2008 Product Category Contribution = $65 Billion



- $32.1 billion nationwide in affordable mortgage lending and financing for affordable housing developments.
- $19.3 billion to develop and grow small businesses through loans and investments.
- $9.3 billion in lending to help low-and-moderate income consumers meet their financial goals, such as home improvement and education.
- $4.3 billion in loans and investments for economic development and revitalization in low-income, urban core and rural communities.

June 2009

WMATA-INV 004277

BUSINESS CORPORATION ANNUAL REPORT

E-Filed Annual Report
-1-0-4794639
For year 2009
Do not data enter manually.

NAME OF BUSINESS CORPORATION: *Banc of America Community Development Corporation*

FISCAL YEAR ENDING: *2009*

STATE OF INCORPORATION: *NC*

SECRETARY OF STATE CORPORATE ID NUMBER: *0299184*

NATURE OF BUSINESS: *Community Development*

REGISTERED AGENT: *CT Corporation System*

REGISTERED OFFICE MAILING ADDRESS: *150 Fayetteville St., Box 1011*
Raleigh, NC 27601

REGISTERED OFFICE STREET ADDRESS: *150 Fayetteville St., Box 1011*
Raleigh, NC 27601 Wake County

PRINCIPAL OFFICE TELEPHONE NUMBER: *980-386-4303*

PRINCIPAL OFFICE MAILING ADDRESS: *401 N Tryon St*
NC1-021-02-20
Charlotte, NC 28255

PRINCIPAL OFFICE STREET ADDRESS: *101 S. Tryon St. NC1-002-18-02*
Charlotte, NC 28255

PRINCIPAL OFFICERS:

Name: James W Feild
Title: President
Address:
401 N Tryon St
NC1-021-02-20
Charlotte, NC 28255

Name: DUANE L SMITH
Title: Vice President
Address:
401 N Tryon St
NC1-021-02-20
Charlotte, NC 28255

Name: Harvetta M Finley
Title: Secretary
Address:
401 N Tryon St
NC1-021-02-20
Charlotte, NC 28255

Name: Joni Pesta
Title: Treasurer
Address:
401 N Tryon St
NC1-021-02-20
Charlotte, NC 28255

CERTIFICATION OF ANNUAL REPORT MUST BE COMPLETED BY ALL BUSINESS CORPORATIONS

DUANE L SMITH — 04/23/2009

FORM MUST BE SIGNED BY AN OFFICER OF THE CORPORATION — DATE

DUANE L SMITH — Vice President

TYPE OR PRINT NAME — TYPE OR PRINT TITLE

ANNUAL REPORT FEE: $18 MAIL TO: Secretary of State • Corporations Division • Post Office Box 29525 • Raleigh, NC 27626-0525

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Q-0299184

FILED

92 010 9012

ARTICLES OF INCORPORATION
OF
NATIONSBANK COMMUNITY DEVELOPMENT CORPORATION

JAN 10 1992

9:01 AM

RUFUS L. EDMISTEN
SECRETARY OF STATE
NORTH CAROLINA

The undersigned hereby submits these Articles of Incorporation for the purpose of forming a business corporation under the laws of the State of North Carolina:

1. The name of the corporation is NationsBank Community Development Corporation.

2. The number of shares the corporation is authorized to issue is one hundred thousand (100,000).

3. The address of the initial registered office of the corporation in the State of North Carolina is 225 Hillsborough Street, Raleigh, North Carolina 27603; and the name of its initial registered agent at such address is C T Corporation System.

4. The name and address of the incorporator are Robert C. Sink, 1900 Independence Center, 101 North Tryon Street, Charlotte, North Carolina 28246.

5. The corporation is organized for purposes that primarily promote community welfare, but may also involve entrepreneurial activity, consistent with the provisions of 12 C.F.R. § 7.7480 or otherwise permissible to national banks, including the following:

(a) To preserve and expand the supply of safe and decent housing that is affordable by low- and moderate-income persons;

(b) To promote housing and economic revitalization or development in low- and moderate-income areas or target areas selected by federal, state and local

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004279

government for redevelopment, and directly benefit low- and moderate-income residents or small businesses; and

(c) To promote and enhance economic and intellectual self-sufficiency for low- and moderate-income persons.

6. The number of directors constituting the initial board of directors shall be three (3); and the names and addresses of the persons who are to serve as directors until the first meeting of shareholders, or until their successors are elected and qualify, are:

Name	Address
Kenneth D. Lewis	One NCNB Plaza T-23 Charlotte, NC 28255
Catherine P. Bessant	901 Main Street 51st Floor - 49251 Dallas, TX 75202
James Dennis Rash	901 West Trade Street Suite 1020 Charlotte, NC 28202

7. To the full extent permitted by the North Carolina Business Corporation Act as it exists or may hereafter be amended, no person who is serving or who has served as a director of the corporation shall be personally liable to the corporation or any of its shareholders for monetary damages for breach of duty as a director. No amendment or repeal of this article, nor the adoption of any provision to these Articles of Incorporation inconsistent with this article, shall eliminate or reduce the protection granted

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004280

herein with respect to any matter that occurred prior to such amendment, repeal or adoption.

This the 9th day of January, 1992.

Robert C. Sink

Robert C. Sink

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004281

Consolidated Reports of Condition and Income for A Bank With Domestic and Foreign Offices - FFIEC 031

Institution Name	**BANK OF AMERICA, NATIONAL ASSOCIATION**
City	**CHARLOTTE**
State	**NC**
Zip Code	**28255**
Call Report Quarter End Date	**12/31/2008**
Report Type	**031**
RSSD-ID	**480228**
FDIC Certificate Number	**3510**
OCC Charter Number	**13044**
ABA Routing Number	**53000196**
Last updated on	**3/16/2009**

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004282

Bank Demographic Information

	Dollar amounts in thousands		
1. Reporting date	RCON9999	20081231	1.
2. FDIC certificate number	RSSD9050	3510	2.
3. Legal title of bank	RSSD9017	Bank of America, NA	3.
4. City	RSSD9130	Charlotte	4.
5. State abbreviation	RSSD9200	NC	5.
6. Zip code	RSSD9220	28255	6.

Contact Information

	Dollar amounts in thousands		
1. Contact Information for the Reports of Condition and Income			1.
a. Chief Financial Officer (or Equivalent) Signing the Reports			1.a.
1. Name	TEXTC490	CONF	1.a.1.
2. Title	TEXTC491	CONF	1.a.2.
3. E-mail Address	TEXTC492	CONF	1.a.3.
4. Telephone	TEXTC493	CONF	1.a.4.
5. FAX	TEXTC494	CONF	1.a.5.
b. Other Person to Whom Questions about the Reports Should be Directed			1.b.
1. Name	TEXTC495	CONF	1.b.1.
2. Title	TEXTC496	CONF	1.b.2.
3. E-mail Address	TEXT4086	CONF	1.b.3.
4. Telephone	TEXT8902	CONF	1.b.4.
5. FAX	TEXT9116	CONF	1.b.5.
2. Person to whom questions about Schedule RC-T - Fiduciary and Related Services should be directed			2.
a. Name and Title	TEXTB962	CONF	2.a.
b. E-mail Address	TEXTB926	CONF	2.b.
c. Telephone	TEXTB963	CONF	2.c.
d. FAX	TEXTB964	CONF	2.d.
3. Emergency Contact Information			3.
a. Primary Contact			3.a.
1. Name	TEXTC366	CONF	3.a.1.
2. Title	TEXTC367	CONF	3.a.2.
3. E-mail Address	TEXTC368	CONF	3.a.3.
4. Telephone	TEXTC369	CONF	3.a.4.
5. FAX	TEXTC370	CONF	3.a.5.
b. Secondary Contact			3.b.
1. Name	TEXTC371	CONF	3.b.1.
2. Title	TEXTC372	CONF	3.b.2.
3. E-mail Address	TEXTC373	CONF	3.b.3.
4. Telephone	TEXTC374	CONF	3.b.4.
5. FAX	TEXTC375	CONF	3.b.5.
4. USA PATRIOT Act Section 314(a) Anti-Money Laundering Contact Information			4.
a. Primary Contact			4.a.
1. Name	TEXTC437	CONF	4.a.1.
2. Title	TEXTC438	CONF	4.a.2.
3. E-mail Address	TEXTC439	CONF	4.a.3.
4. Telephone	TEXTC440	CONF	4.a.4.
5. FAX	TEXTC441	CONF	4.a.5.

	Dollar amounts in thousands		
b. Secondary Contact			4.b.
1. Name	TEXTC442	CONF	4.b.1.
2. Title	TEXTC443	CONF	4.b.2.
3. E-mail Address	TEXTC444	CONF	4.b.3.
4. Telephone	TEXTC445	CONF	4.b.4.
5. FAX	TEXTC446	CONF	4.b.5.
c. Third Contact			4.c.
1. Name	TEXTC870	CONF	4.c.1.
2. Title	TEXTC871	CONF	4.c.2.
3. E-mail Address	TEXTC872	CONF	4.c.3.
4. Telephone	TEXTC873	CONF	4.c.4.
5. FAX	TEXTC874	CONF	4.c.5.
d. Fourth Contact			4.d.
1. Name	TEXTC875	CONF	4.d.1.
2. Title	TEXTC876	CONF	4.d.2.
3. E-mail Address	TEXTC877	CONF	4.d.3.
4. Telephone	TEXTC878	CONF	4.d.4.
5. FAX	TEXTC879	CONF	4.d.5.

Optional Narrative Statement Concerning the Amounts Reported in the Reports of Condition and Income

	Dollar amounts in thousands		
1. Comments?	RCON6979	Yes	1.
2. Bank Management Statement	TEXT6980	NR	2.

Schedule RI - Income Statement

	Dollar amounts in thousands		
1. Interest income:			1.
a. Interest and fee income on loans:			1.a.
1. In domestic offices:			1.a.1.
a. Loans secured by real estate:			1.a.1.a.
1. Loans secured by 1-4 family residential properties	RIAD4435	17,531,349	1.a.1.a.1.
2. All other loans secured by real estate	RIAD4436	5,093,336	1.a.1.a.2.
b. Loans to finance agricultural production and other loans to farmers	RIAD4024	63,336	1.a.1.b.
c. Commercial and industrial loans	RIAD4012	6,338,713	1.a.1.c.
d. Loans to individuals for household, family, and other personal expenditures:			1.a.1.d.
1. Credit cards	RIADB485	0	1.a.1.d.1.
2. Other (includes single payment, installment, all student loans, and revolving credit plans other than credit cards)	RIADB486	3,356,999	1.a.1.d.2.
e. Loans to foreign governments and official institutions	RIAD4056	210	1.a.1.e.
f. All other loans in domestic offices	RIADB487	1,480,719	1.a.1.f.
2. In foreign offices, Edge and Agreement subsidiaries, and IBFs	RIAD4059	2,490,521	1.a.2.
3. Total interest and fee income on loans	RIAD4010	36,355,183	1.a.3.
b. Income from lease financing receivables	RIAD4065	822,732	1.b.
c. Interest income on balances due from depository institutions	RIAD4115	746,344	1.c.
d. Interest and dividend income on securities:			1.d.
1. U.S. Treasury securities and U.S. Government agency obligations (excluding mortgage-backed securities)	RIADB488	32,012	1.d.1.
2. Mortgage-backed securities	RIADB489	10,196,158	1.d.2.

	Dollar amounts in thousands		
3. All other securities (includes securities issued by states and political subdivisions in the U.S.)	RIAD4060	1,997,132	1.d.3.
e. Interest income from trading assets	RIAD4069	3,740,542	1.e.
f. Interest income on federal funds sold and securities purchased under agreements to resell	RIAD4020	3,711,302	1.f.
g. Other interest income	RIAD4518	278,355	1.g.
h. Total interest income	RIAD4107	57,879,760	1.h.
2. Interest expense:			2.
a. Interest on deposits:			2.a.
1. Interest on deposits in domestic offices:			2.a.1.
a. Transaction accounts (NOW accounts, ATS accounts, and telephone and preauthorized transfer accounts)	RIAD4508	200,790	2.a.1.a.
b. Nontransaction accounts:			2.a.1.b.
1. Savings deposits (includes MMDAs)	RIAD0093	3,611,049	2.a.1.b.1.
2. Time deposits of $100,000 or more	RIADA517	3,899,253	2.a.1.b.2.
3. Time deposits of less than $100,000	RIADA518	3,923,408	2.a.1.b.3.
2. Interest on deposits in foreign offices, Edge and Agreement subsidiaries, and IBFs	RIAD4172	4,213,289	2.a.2.
b. Expense of federal funds purchased and securities sold under agreements to repurchase	RIAD4180	5,027,681	2.b.
c. Interest on trading liabilities and other borrowed money	RIAD4185	5,472,052	2.c.
d. Interest on subordinated notes and debentures	RIAD4200	827,849	2.d.
e. Total interest expense	RIAD4073	27,175,371	2.e.
3. Net interest income	RIAD4074	30,704,389	3.
4. Provision for loan and lease losses	RIAD4230	13,103,595	4.
5. Noninterest income:			5.
a. Income from fiduciary activities	RIAD4070	1,643,154	5.a.
b. Service charges on deposit accounts in domestic offices	RIAD4080	10,857,344	5.b.
c. Trading revenue	RIADA220	-345,522	5.c.
d. Not available			5.d.
1. Fees and commissions from securities brokerage	RIADC886	2,668,908	5.d.1.
2. Investment banking, advisory, and underwriting fees and commissions	RIADC888	489,693	5.d.2.
3. Fees and commissions from annuity sales	RIADC887	144,973	5.d.3.
4. Underwriting income from insurance and reinsurance activities	RIADC386	49,971	5.d.4.
5. Income from other insurance activities	RIADC387	148,323	5.d.5.
e. Venture capital revenue	RIADB491	888	5.e.
f. Net servicing fees	RIADB492	2,671,111	5.f.
g. Net securitization income	RIADB493	-140,492	5.g.
h. Not applicable			5.h.
i. Net gains (losses) on sales of loans and leases	RIAD5416	-1,782,075	5.i.
j. Net gains (losses) on sales of other real estate owned	RIAD5415	1,414	5.j.
k. Net gains (losses) on sales of other assets (excluding securities)	RIADB496	257,672	5.k.
l. Other noninterest income	RIADB497	4,748,256	5.l.
m. Total noninterest income	RIAD4079	21,413,618	5.m.
6. Not available			6.
a. Realized gains (losses) on held-to-maturity securities	RIAD3521	-14,919	6.a.
b. Realized gains (losses) on available-for-sale securities	RIAD3196	-1,656,271	6.b.
7. Noninterest expense:			7.
a. Salaries and employee benefits	RIAD4135	14,401,171	7.a.
b. Expenses of premises and fixed assets (net of rental income) (excluding salaries and employee benefits and mortgage interest)	RIAD4217	4,432,281	7.b.
c. Not available			7.c.

	Dollar amounts in thousands		
1. Goodwill impairment losses	RIADC216	0	7.c.1.
2. Amortization expense and impairment losses for other intangible assets	RIADC232	742,919	7.c.2.
d. Other noninterest expense	RIAD4092	9,521,768	7.d.
e. Total noninterest expense	RIAD4093	29,098,139	7.e.
8. Income (loss) before income taxes and extraordinary items and other adjustments	RIAD4301	8,245,083	8.
9. Applicable income taxes (on item 8)	RIAD4302	2,350,491	9.
10. Income (loss) before extraordinary items and other adjustments	RIAD4300	5,894,592	10.
11. Extraordinary items and other adjustments, net of income taxes	RIAD4320	0	11.
12. Net income (loss)	RIAD4340	5,894,592	12.
1. Interest expense incurred to carry tax-exempt securities, loans, and leases acquired after August 7, 1986, that is not deductible for federal income tax purposes	RIAD4513	83,958	M.1.
2. Income from the sale and servicing of mutual funds and annuities in domestic offices (included in Schedule RI, item 8)	RIAD8431	1,792,898	M.2.
3. Income on tax-exempt loans and leases to states and political subdivisions in the U.S. (included in Schedule RI, items 1.a and 1.b)	RIAD4313	330,181	M.3.
4. Income on tax-exempt securities issued by states and political subdivisions in the U.S. (included in Schedule RI, item 1.d.(3))	RIAD4507	299,131	M.4.
5. Number of full-time equivalent employees at end of current period	RIAD4150	170158	M.5.
6. Not applicable			M.6.
7. If the reporting bank has restated its balance sheet as a result of applying push down accounting this calendar year, report the date of the bank's acquisition	RIAD9106	0	M.7.
8. Trading revenue (from cash instruments and derivative instruments):			M.8.
a. Interest rate exposures	RIAD8757	-1,483,507	M.8.a.
b. Foreign exchange exposures	RIAD8758	1,772,774	M.8.b.
c. Equity security and index exposures	RIAD8759	434,772	M.8.c.
d. Commodity and other exposures	RIAD8760	25,641	M.8.d.
e. Credit exposures	RIADF186	-1,095,202	M.8.e.
9. Net gains (losses) recognized in earnings on credit derivatives that economically hedge credit exposures held outside the trading account:			M.9.
a. Net gains (losses) on credit derivatives held for trading	RIADC889	200	M.9.a.
b. Net gains (losses) on credit derivatives held for purposes other than trading	RIADC890	989,797	M.9.b.
10. Credit losses on derivatives	RIADA251	126,715	M.10.
11. Does the reporting bank have a Subchapter S election in effect for federal income tax purposes for the current tax year?	RIADA530	No	M.11.
12. Noncash income from negative amortization on closed-end loans secured by 1-4 family residential properties (included in Schedule RI, item 1.a.(1)(a)(1))	RIADF228	10,377	M.12.
13. Net gains (losses) recognized in earnings on assets and liabilities that are reported at fair value under a fair value option:			M.13.
a. Net gains (losses) on assets	RIADF551	-754,886	M.13.a.
1. Estimated net gains (losses) on loans attributable to changes in instrument-specific credit risk	RIADF552	-956,700	M.13.a.1.
b. Net gains (losses) on liabilities	RIADF553	-547,038	M.13.b.
1. Estimated net gains (losses) on liabilities attributable to changes in instrument-specific credit risk	RIADF554	-450,559	M.13.b.1.

Schedule RI-A - Changes in Equity Capital

	Dollar amounts in thousands		
1. Total equity capital most recently reported for the December 31, 2007, Reports of Condition and Income (i.e., after adjustments from amended Reports of Income)	RIAD3217	108,480,218	1.
2. Restatements due to corrections of material accounting errors and changes in accounting principles	RIADB507	0	2.
3. Balance end of previous calendar year as restated	RIADB508	108,480,218	3.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Dollar amounts in thousands			
4. Net income (loss)	RIAD4340	5,894,592	4.
5. Sale, conversion, acquisition, or retirement of capital stock, net (excluding treasury stock transactions)	RIADB509	-5,262	5.
6. Treasury stock transactions, net	RIADB510	0	6.
7. Changes incident to business combinations, net	RIAD4356	32,311,234	7.
8. Cash dividends declared on preferred stock	RIAD4470	0	8.
9. Cash dividends declared on common stock	RIAD4460	9,075,874	9.
10. Other comprehensive income	RIADB511	-4,766,906	10.
11. Other transactions with parent holding company (not included in items 5, 6, 8, or 9 above)	RIAD4415	0	11.
12. Total equity capital end of current period	RIAD3210	132,838,002	12.

Schedule RI-B Part I - Charge-offs and Recoveries on Loans and Leases

Dollar amounts in thousands	(Column A) Charge-offs Calendar year-to-date		(Column B) Recoveries Calendar year-to-date		
1. Loans secured by real estate:					1.
a. Construction, land development, and other land loans in domestic offices:					1.a.
1. 1-4 family residential construction loans	RIADC891	494,657	RIADC892	3,727	1.a.1.
2. Other construction loans and all land development and other land loans	RIADC893	379,143	RIADC894	3,706	1.a.2.
b. Secured by farmland in domestic offices	RIAD3584	889	RIAD3585	0	1.b.
c. Secured by 1-4 family residential properties in domestic offices:					1.c.
1. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	RIAD5411	2,499,663	RIAD5412	57,150	1.c.1.
2. Closed-end loans secured by 1-4 family residential properties:					1.c.2.
a. Secured by first liens	RIADC234	924,374	RIADC217	34,815	1.c.2.a.
b. Secured by junior liens	RIADC235	1,091,216	RIADC218	36,218	1.c.2.b.
d. Secured by multifamily (5 or more) residential properties in domestic offices	RIAD3588	2,048	RIAD3589	6	1.d.
e. Secured by nonfarm nonresidential properties in domestic offices:					1.e.
1. Loans secured by owner-occupied nonfarm nonresidential properties	RIADC895	647	RIADC896	53	1.e.1.
2. Loans secured by other nonfarm nonresidential properties	RIADC897	12,816	RIADC898	503	1.e.2.
f. In foreign offices	RIADB512	26	RIADB513	110	1.f.
2. Loans to depository institutions and acceptances of other banks:					2.
a. To U.S. banks and other U.S. depository institutions	RIAD4653	0	RIAD4663	0	2.a.
b. To foreign banks	RIAD4654	0	RIAD4664	0	2.b.
3. Loans to finance agricultural production and other loans to farmers	RIAD4655	0	RIAD4665	0	3.
4. Commercial and industrial loans:					4.
a. To U.S. addressees (domicile)	RIAD4645	1,006,213	RIAD4617	99,008	4.a.
b. To non-U.S. addressees (domicile)	RIAD4646	171,747	RIAD4618	18,213	4.b.
5. Loans to individuals for household, family, and other personal expenditures:					5.
a. Credit cards	RIADB514	0	RIADB515	0	5.a.
b. Other (includes single payment, installment, all student loans, and revolving credit plans other than credit cards)	RIADB516	1,247,824	RIADB517	572,811	5.b.
6. Loans to foreign governments and official institutions	RIAD4643	0	RIAD4627	0	6.
7. All other loans	RIAD4644	392,083	RIAD4628	35,098	7.
8. Lease financing receivables:					8.

Dollar amounts in thousands	(Column A) Charge-offs Calendar year-to-date		(Column B) Recoveries Calendar year-to-date		
a. Leases to individuals for household, family, and other personal expenditures	RIADF185	396	RIADF187	238	8.a.
b. All other leases	RIADC880	78,758	RIADF188	18,182	8.b.
9. Total	RIAD4635	8,302,500	RIAD4605	879,838	9.
1. Loans to finance commercial real estate, construction, and land development activities (not secured by real estate) included in Schedule RI-B, part I, items 4 and 7, above	RIAD5409	0	RIAD5410	0	M.1.
2. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RI-B, part I, item 1, above)	RIAD4652	26	RIAD4662	110	M.2.
3. Not applicable					M.3.

Schedule RI-B Part I - Charge-offs and Recoveries on Loans and Leases

Dollar amounts in thousands			
4. Uncollectible retail credit card fees and finance charges reversed against income (i.e., not included in charge-offs against the allowance for loan and lease losses)	RIADC388	0	M.4.

Schedule RI-B Part II - Changes in Allowance for Loan and Lease Losses

Dollar amounts in thousands			
1. Balance most recently reported for the December 31, 2007, Reports of Condition and Income (i.e., after adjustments from amended Reports of Income)	RIADB522	4,645,039	1.
2. Recoveries	RIAD4605	879,838	2.
3. Charge-offs	RIADC079	8,302,500	3.
4. Write-downs arising from transfers of loans to a held-for-sale account	RIAD5523	0	4.
5. Provision for loan and lease losses	RIAD4230	13,103,595	5.
6. Adjustments	RIADC233	789,234	6.
7. Balance end of current period	RIAD3123	11,115,206	7.
1. Allocated transfer risk reserve included in Schedule RI-B, part II, item 7, above	RIADC435	0	M.1.
2. Separate valuation allowance for uncollectible retail credit card fees and finance charges.	RIADC389	0	M.2.
3. Amount of allowance for loan and lease losses attributable to retail credit card fees and finance charges	RIADC390	0	M.3.
4. Amount of allowance for post-acquisition losses on purchased impaired loans accounted for in accordance with AICPA Statement of Position 03-3 (included in Schedule RI-B, part II, item 7, above)	RIADC781	0	M.4.

Schedule RI-D - Income from Foreign Offices

Dollar amounts in thousands			
1. Total interest income in foreign offices	RIADC899	5,961,610	1.
2. Total interest expense in foreign offices	RIADC900	8,514,497	2.
3. Provision for loan and lease losses in foreign offices	RIADC901	161,031	3.
4. Noninterest income in foreign offices:			4.
a. Trading revenue	RIADC902	-2,140,221	4.a.
b. Investment banking, advisory, brokerage, and underwriting fees and commissions	RIADC903	130,480	4.b.
c. Net securitization income	RIADC904	0	4.c.
d. Other noninterest income	RIADC905	828,461	4.d.
5. Realized gains (losses) on held-to-maturity and available-for-sale securities in foreign offices	RIADC906	7,672	5.
6. Total noninterest expense in foreign offices	RIADC907	1,778,113	6.
7. Adjustments to pretax income in foreign offices for internal allocations to foreign offices to reflect the effects of equity capital on overall bank funding costs	RIADC908	128,543	7.

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		Dollar amounts in thousands	
8. Applicable income taxes (on items 1 through 7)	RIADC909	403,770	8.
9. Extraordinary items and other adjustments, net of income taxes, in foreign offices	RIADC910	0	9.
10. Net income attributable to foreign offices before internal allocations of income and expense	RIADC911	-5,940,866	10.
11. Internal allocations of income and expense applicable to foreign offices	RIADC912	-5,398	11.
12. Eliminations arising from the consolidation of foreign offices with domestic offices	RIADC913	1,483,697	12.
13. Consolidated net income attributable to foreign offices	RIADC914	-4,462,567	13.

Schedule RI-E - Explanations

		Dollar amounts in thousands	
1. Other noninterest income (from Schedule RI, item 5.l) Itemize and describe amounts greater than $25,000 that exceed 3% of Schedule RI, item 5.l:			1.
a. Income and fees from the printing and sale of checks	RIADC013	162,502	1.a.
b. Earnings on/increase in value of cash surrender value of life insurance	RIADC014	651,428	1.b.
c. Income and fees from automated teller machines (ATMs)	RIADC016	142,871	1.c.
d. Rent and other income from other real estate owned	RIAD4042	0	1.d.
e. Safe deposit box rent	RIADC015	0	1.e.
f. Net change in the fair values of financial instruments accounted for under a fair value option	RIADF229	-293,434	1.f.
g. Bank card and credit card interchange fees	RIADF555	460,915	1.g.
h. Disclose component and the dollar amount of that component:			1.h.
1. Describe component	TEXT4461	Operating Leases	1.h.1.
2. Amount of component	RIAD4461	321,553	1.h.2.
i. Disclose component and the dollar amount of that component:			1.i.
1. Describe component	TEXT4462	Click here for value	1.i.1.
2. Amount of component	RIAD4462	0	1.i.2.
j. Disclose component and the dollar amount of that component:			1.j.
1. Describe component	TEXT4463	Click here for value	1.j.1.
2. Amount of component	RIAD4463	1,107,485	1.j.2.
2. Other noninterest expense (from Schedule RI, item 7.d) Itemize and describe amounts greater than $25,000 that exceed 3% of Schedule RI, item 7.d:			2.
a. Data processing expenses	RIADC017	1,736,438	2.a.
b. Advertising and marketing expenses	RIAD0497	1,235,756	2.b.
c. Directors' fees	RIAD4136	0	2.c.
d. Printing, stationery, and supplies	RIADC018	378,706	2.d.
e. Postage	RIAD8403	564,814	2.e.
f. Legal fees and expenses	RIAD4141	313,675	2.f.
g. FDIC deposit insurance assessments	RIAD4146	0	2.g.
h. Accounting and auditing expenses	RIADF556	0	2.h.
i. Consulting and advisory expenses	RIADF557	0	2.i.
j. Automated teller machine (ATM) and interchange expenses	RIADF558	0	2.j.
k. Telecommunications expenses	RIADF559	1,030,211	2.k.
l. Disclose component and the dollar amount of that component:			2.l.
1. Describe component	TEXT4464	Click here for value	2.l.1.
2. Amount of component	RIAD4464	0	2.l.2.
m. Disclose component and the dollar amount of that component:			2.m.
1. Describe component	TEXT4467	Click here for value	2.m.1.
2. Amount of component	RIAD4467	553,388	2.m.2.

		Dollar amounts in thousands	
n. Disclose component and the dollar amount of that component:			2.n.
1. Describe component	TEXT4468	Travel Expense	2.n.1.
2. Amount of component	RIAD4468	0	2.n.2.
3. Extraordinary items and other adjustments and applicable income tax effect (from Schedule RI, item 11):			3.
a. Disclose component, the gross dollar amount of that component, and its related income tax:			3.a.
1. Describe component	TEXT4469	NR	3.a.1.
2. Amount of component	RIAD4469	0	3.a.2.
3. Applicable income tax effect	RIAD4486	0	3.a.3.
b. Disclose component, the gross dollar amount of that component, and its related income tax:			3.b.
1. Describe component	TEXT4487	NR	3.b.1.
2. Amount of component	RIAD4487	0	3.b.2.
3. Applicable income tax effect	RIAD4488	0	3.b.3.
c. Disclose component, the gross dollar amount of that component, and its related income tax:			3.c.
1. Describe component	TEXT4489	NR	3.c.1.
2. Amount of component	RIAD4489	0	3.c.2.
3. Applicable income tax effect	RIAD4491	0	3.c.3.
4. Restatements due to corrections of material accounting errors and changes in accounting principles (from Schedule RI-A, item 2):			4.
a. Cumulative-effect adjustment resulting from the initial adoption of FAS 159, Fair Value Option	RIADF465	0	4.a.
b. Disclose component and the dollar amount of that component:			4.b.
1. Describe component	TEXTB527	NR	4.b.1.
2. Amount of component	RIADB527	0	4.b.2.
5. Other transactions with parent holding company (from Schedule RI-A, item 11):			5.
a. Disclose component and the dollar amount of that component:			5.a.
1. Describe component	TEXT4498	NR	5.a.1.
2. Amount of component	RIAD4498	0	5.a.2.
b. Disclose component and the dollar amount of that component:			5.b.
1. Describe component	TEXT4499	NR	5.b.1.
2. Amount of component	RIAD4499	0	5.b.2.
6. Adjustments to allowance for loan and lease losses (from Schedule RI-B, part II, item 6):			6.
a. Disclose component and the dollar amount of that component:			6.a.
1. Describe component	TEXT4521	ACL due to merger	6.a.1.
2. Amount of component	RIAD4521	678,991	6.a.2.
b. Disclose component and the dollar amount of that component:			6.b.
1. Describe component	TEXT4522	Click here for value	6.b.1.
2. Amount of component	RIAD4522	110,243	6.b.2.
7. Other explanations:			7.
a. Comments?	RIAD4769	Yes	7.a.
b. Other explanations	TEXT4769	Click here for value	7.b.

(TEXT4462) Customer and other Miscellaneous Fees

(TEXT4463) Intercompany Procesing Fee Income

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(TEXT4464) Intercompany Management Fees

(TEXT4467) Professional Fees

(TEXT4522) Foreign Currency Translation

(TEXT4769) LaSalle Bank NA and LaSalle Bank Midwest NA merged into Bank of America, NA in October 2008. Additional lines for RI.E Line 1 Other non interest income: Banker?s Acceptance and Lc Fees = $621MM, Other Credit Card Fees:$137MM, Other Servicing Earnings=$317MM. Additional Lines for RI.E Line 2 Other non interest Expense: Non-credit Losses and Recoveries=$709MM, B/D Commissions and Clearance=$451MM, Other Operating Expense=$690MM, Other Expense $551MM, Minority Interest=$815MM.

Schedule RC - Balance Sheet

	Dollar amounts in thousands		
1. Cash and balances due from depository institutions (from Schedule RC-A):			1.
a. Noninterest-bearing balances and currency and coin	RCFD0081	31,296,506	1.a.
b. Interest-bearing balances	RCFD0071	15,385,499	1.b.
2. Securities:			2.
a. Held-to-maturity securities (from Schedule RC-B, column A)	RCFD1754	681,984	2.a.
b. Available-for-sale securities (from Schedule RC-B, column D)	RCFD1773	258,424,071	2.b.
3. Federal funds sold and securities purchased under agreements to resell:			3.
a. Federal funds sold in domestic offices	RCONB987	115,535,993	3.a.
b. Securities purchased under agreements to resell	RCFDB989	35,360,208	3.b.
4. Loans and lease financing receivables (from Schedule RC-C):			4.
a. Loans and leases held for sale	RCFD5369	16,825,059	4.a.
b. Loans and leases, net of unearned income	RCFDB528	695,495,110	4.b.
c. Allowance for loan and lease losses	RCFD3123	11,115,206	4.c.
d. Loans and leases, net of unearned income and allowance	RCFDB529	684,379,904	4.d.
5. Trading assets (from Schedule RC-D)	RCFD3545	155,638,913	5.
6. Premises and fixed assets (including capitalized leases)	RCFD2145	11,362,837	6.
7. Other real estate owned (from Schedule RC-M)	RCFD2150	1,218,556	7.
8. Investments in unconsolidated subsidiaries and associated companies (from Schedule RC-M)	RCFD2130	6,163,280	8.
9. Not applicable			9.
10. Intangible assets:			10.
a. Goodwill	RCFD3163	53,368,345	10.a.
b. Other intangible assets (from Schedule RC-M)	RCFD0426	14,191,310	10.b.
11. Other assets (from Schedule RC-F)	RCFD2160	71,798,582	11.
12. Total assets	RCFD2170	1,471,631,047	12.
13. Deposits:			13.
a. In domestic offices	RCON2200	754,919,971	13.a.
1. Noninterest-bearing	RCON6631	217,976,050	13.a.1.
2. Interest-bearing	RCON6636	536,943,921	13.a.2.
b. In foreign offices, Edge and Agreement subsidiaries, and IBFs (from Schedule RC-E, part II)	RCFN2200	199,757,609	13.b.
1. Noninterest-bearing	RCFN6631	3,885,517	13.b.1.
2. Interest-bearing	RCFN6636	195,872,092	13.b.2.
14. Federal funds purchased and securities sold under agreements to repurchase:			14.
a. Federal funds purchased in domestic offices	RCONB993	14,806,107	14.a.
b. Securities sold under agreements to repurchase	RCFDB995	130,614,497	14.b.
15. Trading liabilities (from Schedule RC-D)	RCFD3548	76,311,468	15.
16. Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases) (from Schedule RC-M)	RCFD3190	110,928,381	16.

Dollar amounts in thousands			
17. Not applicable			17.
18. Not applicable			18.
19. Subordinated notes and debentures	RCFD3200	24,873,265	19.
20. Other liabilities (from Schedule RC-G)	RCFD2930	26,084,980	20.
21. Total liabilities	RCFD2948	1,338,296,278	21.
22. Minority interest in consolidated subsidiaries	RCFD3000	496,768	22.
23. Perpetual preferred stock and related surplus	RCFD3838	0	23.
24. Common stock	RCFD3230	3,020,039	24.
25. Surplus (exclude all surplus related to preferred stock)	RCFD3839	114,725,979	25.
26. Not available			26.
a. Retained earnings	RCFD3632	26,927,834	26.a.
b. Accumulated other comprehensive income	RCFDB530	-11,835,851	26.b.
27. Other equity capital components	RCFDA130	0	27.
28. Total equity capital	RCFD3210	132,838,001	28.
29. Total liabilities, minority interest, and equity capital	RCFD3300	1,471,631,047	29.
1. Indicate in the box at the right the number of the statement below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 2007	RCFD6724	NR	M.1.

Schedule RC-A - Cash and Balances Due From Depository Institutions

Dollar amounts in thousands	(Column A) Consolidated Bank		(Column B) Domestic Offices		
1. Cash items in process of collection, unposted debits, and currency and coin	RCFD0022	28,884,990			1.
a. Cash items in process of collection and unposted debits			RCON0020	18,708,940	1.a.
b. Currency and coin			RCON0080	9,756,702	1.b.
2. Balances due from depository institutions in the U.S.			RCON0082	1,111,892	2.
a. U.S. branches and agencies of foreign banks (including their IBFs)	RCFD0083	26,699			2.a.
b. Other commercial banks in the U.S. and other depository institutions in the U.S. (including their IBFs)	RCFD0085	10,429,952			2.b.
3. Balances due from banks in foreign countries and foreign central banks			RCON0070	257,460	3.
a. Foreign branches of other U.S. banks	RCFD0073	263,519			3.a.
b. Other banks in foreign countries and foreign central banks	RCFD0074	6,659,303			3.b.
4. Balances due from Federal Reserve Banks	RCFD0090	417,543	RCON0090	417,543	4.
5. Total	RCFD0010	46,682,006	RCON0010	30,252,537	5.

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Schedule RC-B - Securities

Dollar amounts in thousands

	(Column A) Held-to-maturity Amortized Cost	(Column B) Held-to-maturity Fair Value	(Column C) Available-for-sale Amortized Cost	(Column D) Available-for-sale Fair Value	
1. U.S. Treasury securities	RCFD0211	RCFD0213	RCFD1286	RCFD1287	
	0	0	329,934	318,427	1.
2. U.S. Government agency obligations (exclude mortgage-backed securities):					
					2.
a. Issued by U.S. Government agencies	RCFD1289	RCFD1290	RCFD1291	RCFD1293	
	0	0	3,639,637	3,726,686	2.a.
b. Issued by U.S. Government-sponsored agencies	RCFD1294	RCFD1295	RCFD1297	RCFD1298	
	0	0	54,324	55,348	2.b.
3. Securities issued by states and political subdivisions in the U.S.	RCFD8496	RCFD8497	RCFD8498	RCFD8499	
	1,933	1,933	10,517,591	9,575,398	3.
4. Mortgage-backed securities (MBS):					
					4.
a. Pass-through securities:					
					4.a.
1. Guaranteed by GNMA	RCFD1698	RCFD1699	RCFD1701	RCFD1702	
	0	0	42,509,923	43,400,833	4.a.1.
2. Issued by FNMA and FHLMC	RCFD1703	RCFD1705	RCFD1706	RCFD1707	
	0	0	148,948,563	150,963,633	4.a.2.
3. Other pass-through securities	RCFD1709	RCFD1710	RCFD1711	RCFD1713	
	0	0	3,220,256	2,679,932	4.a.3.
b. Other mortgage-backed securities (include CMOs, REMICs, and stripped MBS):					
					4.b.
1. Issued or guaranteed by FNMA, FHLMC, or GNMA	RCFD1714	RCFD1715	RCFD1716	RCFD1717	
	0	0	9,872	9,787	4.b.1.
2. Collateralized by MBS issued or guaranteed by FNMA, FHLMC, or GNMA	RCFD1718	RCFD1719	RCFD1731	RCFD1732	
	0	0	0	0	4.b.2.
3. All other mortgage-backed securities	RCFD1733	RCFD1734	RCFD1735	RCFD1736	
	0	0	21,571,357	15,624,664	4.b.3.
5. Asset-backed securities (ABS)	RCFDC026	RCFDC988	RCFDC989	RCFDC027	
	605,051	605,051	24,639,122	23,428,011	5.
6. Other debt securities:					
					6.
a. Other domestic debt securities	RCFD1737	RCFD1738	RCFD1739	RCFD1741	
	0	0	1,856,343	1,773,553	6.a.

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Dollar amounts in thousands	(Column A) Held-to-maturity Amortized Cost	(Column B) Held-to-maturity Fair Value	(Column C) Available-for-sale Amortized Cost	(Column D) Available-for-sale Fair Value	
	RCFD1742	RCFD1743	RCFD1744	RCFD1746	
b. Foreign debt securities	75,000	75,000	3,896,502	3,858,490	6.b.
7. Investments in mutual funds and other equity securities with readily determinable fair values			RCFDA510	RCFDA511	
			3,068,516	3,009,309	7.
8. Total	RCFD1754	RCFD1771	RCFD1772	RCFD1773	
	681,984	681,984	264,261,940	258,424,071	8.

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Schedule RC-B - Securities

		Dollar amounts in thousands	
1. Pledged securities	RCFD0416	140,366,697	M.1.
2. Maturity and repricing data for debt securities (excluding those in nonaccrual status):			M.2.
a. Securities issued by the U.S. Treasury, U.S. Government agencies, and states and political subdivisions in the U.S.; other non-mortgage debt securities; and mortgage pass-through securities other than those backed by closed-end first lien 1-4 family residential mortgages with a remaining maturity or next repricing date of:			M.2.a.
1. Three months or less	RCFDA549	13,975,803	M.2.a.1.
2. Over three months through 12 months	RCFDA550	2,199,222	M.2.a.2.
3. Over one year through three years	RCFDA551	3,995,028	M.2.a.3.
4. Over three years through five years	RCFDA552	3,086,251	M.2.a.4.
5. Over five years through 15 years	RCFDA553	5,347,351	M.2.a.5.
6. Over 15 years	RCFDA554	17,587,161	M.2.a.6.
b. Mortgage pass-through securities backed by closed-end first lien 1-4 family residential mortgages with a remaining maturity or next repricing date of:			M.2.b.
1. Three months or less	RCFDA555	54,644	M.2.b.1.
2. Over three months through 12 months	RCFDA556	406,591	M.2.b.2.
3. Over one year through three years	RCFDA557	567,199	M.2.b.3.
4. Over three years through five years	RCFDA558	451,994	M.2.b.4.
5. Over five years through 15 years	RCFDA559	5,778,384	M.2.b.5.
6. Over 15 years	RCFDA560	186,922,937	M.2.b.6.
c. Other mortgage-backed securities (include CMOs, REMICs, and stripped MBS; exclude mortgage pass-through securities) with an expected average life of:			M.2.c.
1. Three years or less	RCFDA561	2,518,948	M.2.c.1.
2. Over three years	RCFDA562	13,115,503	M.2.c.2.
d. Debt securities with a REMAINING MATURITY of one year or less (included in Memorandum items 2.a through 2.c above)	RCFDA248	2,131,636	M.2.d.
3. Amortized cost of held-to-maturity securities sold or transferred to available-for-sale or trading securities during the calendar year-to-date (report the amortized cost at date of sale or transfer)	RCFD1778	0	M.3.
4. Structured notes (included in the held-to-maturity and available-for-sale accounts in Schedule RC-B, items 2, 3, 5, and 6):			M.4.
a. Amortized cost	RCFD8782	8,865,903	M.4.a.
b. Fair value	RCFD8783	8,363,058	M.4.b.

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Schedule RC-B - Securities

Dollar amounts in thousands	(Column A) Held-to-maturity Amortized Cost	(Column B) Held-to-maturity Fair Value	(Column C) Available-for-sale Amortized Cost	(Column D) Available-for-sale Fair Value	
5. Asset-backed securities (ABS):					M.5.
	RCFDB838	RCFDB839	RCFDB840	RCFDB841	
a. Credit card receivables	373,383	373,383	4,615,863	4,120,026	M.5.a.
	RCFDB842	RCFDB843	RCFDB844	RCFDB845	
b. Home equity lines	0	0	105,361	54,455	M.5.b.
	RCFDB846	RCFDB847	RCFDB848	RCFDB849	
c. Automobile loans	0	0	5,600,627	5,331,330	M.5.c.
	RCFDB850	RCFDB851	RCFDB852	RCFDB853	
d. Other consumer loans	0	0	290,502	258,245	M.5.d.
	RCFDB854	RCFDB855	RCFDB856	RCFDB857	
e. Commercial and industrial loans	0	0	758,329	750,578	M.5.e.
	RCFDB858	RCFDB859	RCFDB860	RCFDB861	
f. Other	231,668	231,668	13,268,440	12,913,377	M.5.f.

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Schedule RC-C Part I - Loans and Leases

Dollar amounts in thousands	(Column A) Consolidated Bank		(Column B) Domestic Offices		
1. Loans secured by real estate	RCFD1410	398,709,127			1.
a. Construction, land development, and other land loans:					1.a.
1. 1-4 family residential construction loans			RCONF158	9,578,901	1.a.1.
2. Other construction loans and all land development and other land loans			RCONF159	30,285,946	1.a.2.
b. Secured by farmland (including farm residential and other improvements)			RCON1420	1,619,432	1.b.
c. Secured by 1-4 family residential properties:					1.c.
1. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit			RCON1797	104,614,368	1.c.1.
2. Closed-end loans secured by 1-4 family residential properties:					1.c.2.
a. Secured by first liens			RCON5367	167,478,429	1.c2.a
b. Secured by junior liens			RCON5368	18,932,115	1.c2.b
d. Secured by multifamily (5 or more) residential properties			RCON1460	9,119,836	1.d.
e. Secured by nonfarm nonresidential properties:					1.e.
1. Loans secured by owner-occupied nonfarm nonresidential properties			RCONF160	17,229,122	1.e.1.
2. Loans secured by other nonfarm nonresidential properties			RCONF161	36,319,518	1.e.2.
2. Loans to depository institutions and acceptances of other banks:					2.
a. To commercial banks in the U.S.			RCONB531	16,375,675	2.a.
1. To U.S. branches and agencies of foreign banks	RCFDB532	0			2.a.1.
2. To other commercial banks in the U.S.	RCFDB533	16,375,704			2.a.2.
b. To other depository institutions in the U.S.	RCFDB534	0	RCONB534	0	2.b.
c. To banks in foreign countries			RCONB535	22,563	2.c.
1. To foreign branches of other U.S. banks	RCFDB536	7,544			2.c.1.
2. To other banks in foreign countries	RCFDB537	4,337,269			2.c.2.
3. Loans to finance agricultural production and other loans to farmers	RCFD1590	1,601,725	RCON1590	1,601,725	3.
4. Commercial and industrial loans:					4.
a. To U.S. addressees (domicile)	RCFD1763	143,475,476	RCON1763	139,925,058	4.a.
b. To non-U.S. addressees (domicile)	RCFD1764	34,092,184	RCON1764	2,003,094	4.b.
5. Not applicable					5.
6. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):					6.
a. Credit cards	RCFDB538	14,248	RCONB538	14,248	6.a.
b. Other revolving credit plans	RCFDB539	3,421,676	RCONB539	3,421,389	6.b.
c. Other consumer loans (includes single payment, installment, and all student loans)	RCFD2011	57,660,634	RCON2011	57,655,305	6.c.
7. Loans to foreign governments and official institutions (including foreign central banks)	RCFD2081	191,489	RCON2081	189,530	7.
8. Obligations (other than securities and leases) of states and political subdivisions in the U.S.	RCFD2107	15,169,659	RCON2107	15,169,659	8.
9. Other loans	RCFD1563	19,235,532			9.
a. Loans for purchasing or carrying securities (secured and unsecured)			RCON1545	3,181,886	9.a.
b. All other loans (exclude consumer loans)			RCON1564	14,356,528	9.b.
10. Lease financing receivables (net of unearned income)			RCON2165	17,928,988	10.
a. Leases to individuals for household, family, and other personal expenditures (i.e., consumer leases)	RCFDF162	0			10.a.
b. All other leases	RCFDF163	18,027,902			10.b.
11. Any unearned income on loans reflected in items 1-9 above	RCFD2123	0	RCON2123	0	11.

Dollar amounts in thousands	(Column A) Consolidated Bank		(Column B) Domestic Offices		
12. Total loans and leases, net of unearned income	RCFD2122	712,320,169	RCON2122	667,023,315	12.

Schedule RC-C Part I - Loans and Leases

Dollar amounts in thousands			
1. Loans and leases restructured and in compliance with modified terms (included in Schedule RC-C, part I, and not reported as past due or nonaccrual in Schedule RC-N, Memorandum item 1):			M.1.
a. Loans secured by 1-4 family residential properties in domestic offices	RCONF576	9,163	M.1.a.
b. Other loans and all leases (exclude loans to individuals for household, family, and other personal expenditures)	RCFD1616	13,236	M.1.b.
2. Maturity and repricing data for loans and leases (excluding those in nonaccrual status):			M.2.
a. Closed-end loans secured by first liens on 1-4 family residential properties in domestic offices (reported in Schedule RC-C, part I, item 1.c.(2)(a), column B) with a remaining maturity or next repricing date of:			M.2.a.
1. Three months or less	RCONA564	5,953,708	M.2.a.1.
2. Over three months through 12 months	RCONA565	4,232,548	M.2.a.2.
3. Over one year through three years	RCONA566	14,616,836	M.2.a.3.
4. Over three years through five years	RCONA567	16,052,696	M.2.a.4.
5. Over five years through 15 years	RCONA568	24,990,636	M.2.a.5.
6. Over 15 years	RCONA569	94,751,932	M.2.a.6.
b. All loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column A) EXCLUDING closed-end loans secured by first liens on 1-4 family residential properties in domestic offices (reported in Schedule RC-C, part I, item 1.c.(2)(a), column B) with a remaining maturity or next repricing date of:			M.2.b.
1. Three months or less	RCFDA570	367,159,058	M.2.b.1.
2. Over three months through 12 months	RCFDA571	17,760,760	M.2.b.2.
3. Over one year through three years	RCFDA572	19,288,784	M.2.b.3.
4. Over three years through five years	RCFDA573	35,433,029	M.2.b.4.
5. Over five years through 15 years	RCFDA574	56,783,597	M.2.b.5.
6. Over 15 years	RCFDA575	39,176,830	M.2.b.6.
c. Loans and leases (reported in Schedule RC-C, part I, items 1 through 10, column A) with a REMAINING MATURITY of one year or less (excluding those in nonaccrual status)	RCFDA247	224,410,787	M.2.c.
3. Loans to finance commercial real estate, construction, and land development activities (not secured by real estate) included in Schedule RC-C, part I, items 4 and 9, column A	RCFD2746	7,724,631	M.3.
4. Adjustable rate closed-end loans secured by first liens on 1-4 family residential properties in domestic offices (included in Schedule RC-C, part I, item 1.c.(2)(a), column B)	RCON5370	48,579,318	M.4.
5. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-C, part I, item 1, column A)	RCFDB837	876,053	M.5.
6. Outstanding credit card fees and finance charges included in Schedule RC-C, part I, item 6.a, column A	RCFDC391	0	M.6.
7. Purchased impaired loans held for investment accounted for in accordance with AICPA Statement of Position 03-3 (exclude loans held for sale):			M.7.
a. Outstanding balance	RCFDC779	346,198	M.7.a.
b. Carrying amount included in Schedule RC-C, part I, items 1 through 9	RCFDC780	280,334	M.7.b.
8. Closed-end loans with negative amortization features secured by 1-4 family residential properties in domestic offices:			M.8.
a. Total carrying amount of closed-end loans with negative amortization features secured by 1-4 family residential properties (included in Schedule RC-C, part I, items 1.c.(2)(a) and 1.c.(2)(b))	RCONF230	1,217,520	M.8.a.
b. Total maximum remaining amount of negative amortization contractually permitted on closed-end loans secured by 1-4 family residential properties	RCONF231	169,511	M.8.b.

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Dollar amounts in thousands			
c. Total amount of negative amortization on closed-end loans secured by 1-4 family residential properties included in the carrying amount reported in Memorandum item 8.a above	RCONF232	54,599	M.8.c.
9. Loans secured by 1-4 family residential properties in domestic offices in process of foreclosure (included in Schedule RC-C, part I, items 1.c.(1), 1.c.(2)(a), and 1.c.(2)(b))	RCONF577	1,938,495	M.9.

Schedule RC-C Part I - Loans and Leases

Dollar amounts in thousands	(Column A) Consolidated Bank		(Column B) Domestic Offices		
10. Loans measured at fair value (included in Schedule RC-C, part I, items 1 through 9):					M.10.
a. Loans secured by real estate	RCFDF608	6,100,121			M10a
1. Construction, land development, and other land loans			RCONF578	0	M10a1
2. Secured by farmland (including farm residential and other improvements)			RCONF579	0	M10a2
3. Secured by 1-4 family residential properties:					M10a3
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit			RCONF580	362,582	M10a3a
b. Closed-end loans secured by 1-4 family residential properties:					M10a3b
1. Secured by first liens			RCONF581	4,838,031	M10a3b1
2. Secured by junior liens			RCONF582	345	M10a3b2
4. Secured by multifamily (5 or more) residential properties			RCONF583	29,582	M10a4
5. Secured by nonfarm nonresidential properties			RCONF584	869,581	M10a5
b. Commercial and industrial loans	RCFDF585	5,668,385	RCONF585	3,725,861	M10b
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):					M10c
1. Credit cards	RCFDF586	0	RCONF586	0	M10c1
2. Other revolving credit plans	RCFDF587	0	RCONF587	0	M10c2
3. Other consumer loans (includes single payment, installment, and all student loans)	RCFDF588	47,629	RCONF588	47,629	M10c3
d. Other loans	RCFDF589	173,641	RCONF589	173,641	M10d
11. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-C, part I, Memorandum item 10):					M.11.
a. Loans secured by real estate	RCFDF609	6,834,483			M11a
1. Construction, and land development, and other land loans			RCONF590	0	M11a1
2. Secured by farmland (including farm residential and other improvements)			RCONF591	0	M11a2
3. Secured by 1-4 family residential properties:					M11a3
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit			RCONF592	371,002	M11a3a
b. Closed-end loans secured by 1-4 family residential properties:					M11a3b
1. Secured by first liens			RCONF593	5,076,967	M11a3b1
2. Secured by junior liens			RCONF594	6,900	M11a3b2
4. Secured by multifamily (5 or more) residential properties			RCONF595	54,945	M11a4
5. Secured by nonfarm nonresidential properties			RCONF596	1,324,669	M11a5
b. Commercial and industrial loans	RCFDF597	6,838,946	RCONF597	4,876,178	M11b
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):					M11c
1. Credit cards	RCFDF598	0	RCONF598	0	M11c1
2. Other revolving credit plans	RCFDF599	0	RCONF599	0	M11c2

Dollar amounts in thousands	(Column A) Consolidated Bank		(Column B) Domestic Offices		
3. Other consumer loans (includes single payment, installment, and all student loans)	RCFDF600	49,986	RCONF600	49,986	M11c3
d. Other loans	RCFDF601	321,183	RCONF601	321,183	M11d

Schedule RC-C Part II - Loans to Small Businesses and Small Farms

Dollar amounts in thousands			
1. Indicate in the appropriate box at the right whether all or substantially all of the dollar volume of your bank's "Loans secured by nonfarm nonresidential properties" in domestic offices reported in Schedule RC-C, part I, items 1.e.(1) and 1.e.(2), column B, and all or substantially all of the dollar volume of your bank's "Commercial and industrial loans to U.S. addressees" in domestic offices reported in Schedule RC-C, part I, item 4.a, column B, have original amounts of $100,000 or less	RCON6999	NR	1.
2. Report the total number of loans currently outstanding for each of the following Schedule RC-C, part I, loan categories:			2.
a. "Loans secured by nonfarm nonresidential properties" in domestic offices reported in Schedule RC-C, part I, items 1.e.(1) and 1.e.(2), column B	RCON5562	NR	2.a.
b. "Commercial and industrial loans to U.S. addressees" in domestic offices reported in Schedule RC-C, part I, item 4.a, column B	RCON5563	NR	2.b.

Schedule RC-C Part II - Loans to Small Businesses and Small Farms

Dollar amounts in thousands	(Column A) Number of Loans		(Column B) Amount Currently Outstanding		
3. Number and amount currently outstanding of "Loans secured by nonfarm nonresidential properties" in domestic offices reported in Schedule RC-C, part I, items 1.e.(1) and 1.e.(2), column B:					3.
a. With original amounts of $100,000 or less	RCON5564	NR	RCON5565	NR	3.a.
b. With original amounts of more than $100,000 through $250,000	RCON5566	NR	RCON5567	NR	3.b.
c. With original amounts of more than $250,000 through $1,000,000	RCON5568	NR	RCON5569	NR	3.c.
4. Number and amount currently outstanding of "Commercial and industrial loans to U.S. addressees" in domestic offices reported in Schedule RC-C, part I, item 4.a, column B:					4.
a. With original amounts of $100,000 or less	RCON5570	NR	RCON5571	NR	4.a.
b. With original amounts of more than $100,000 through $250,000	RCON5572	NR	RCON5573	NR	4.b.
c. With original amounts of more than $250,000 through $1,000,000	RCON5574	NR	RCON5575	NR	4.c.

Schedule RC-C Part II - Loans to Small Businesses and Small Farms

Dollar amounts in thousands			
5. Indicate in the appropriate box at the right whether all or substantially all of the dollar volume of your bank's "Loans secured by farmland (including farm residential and other improvements)" in domestic offices reported in Schedule RC-C, part I, item 1.b, column B, and all or substantially all of the dollar volume of your bank's "Loans to finance agricultural production and other loans to farmers" in domestic offices reported in Schedule RC-C, part I, item 3, column B, have original amounts of $100,000 or less	RCON6860	NR	5.
6. Report the total number of loans currently outstanding for each of the following Schedule RC-C, part I, loan categories:			6.
a. "Loans secured by farmland (including farm residential and other improvements)" in domestic offices reported in Schedule RC-C, part I, item 1.b, column B	RCON5576	NR	6.a.
b. "Loans to finance agricultural production and other loans to farmers" in domestic offices reported in Schedule RC-C, part I, item 3, column B	RCON5577	NR	6.b.

Schedule RC-C Part II - Loans to Small Businesses and Small Farms

Dollar amounts in thousands	(Column A) Number of Loans		(Column B) Amount Currently Outstanding		
7. Number and amount currently outstanding of "Loans secured by farmland (including farm residential and other improvements)" in domestic offices reported in Schedule RC-C, part I, item 1.b, column B:					7.
a. With original amounts of $100,000 or less	RCON5578	NR	RCON5579	NR	7.a.
b. With original amounts of more than $100,000 through $250,000	RCON5580	NR	RCON5581	NR	7.b.
c. With original amounts of more than $250,000 through $500,000	RCON5582	NR	RCON5583	NR	7.c.
8. Number and amount currently outstanding of "Loans to finance agricultural production and other loans to farmers" in domestic offices reported in Schedule RC-C, part I, item 3, column B:					8.
a. With original amounts of $100,000 or less	RCON5584	NR	RCON5585	NR	8.a.
b. With original amounts of more than $100,000 through $250,000	RCON5586	NR	RCON5587	NR	8.b.
c. With original amounts of more than $250,000 through $500,000	RCON5588	NR	RCON5589	NR	8.c.

Schedule RC-D - Trading Assets and Liabilities

Dollar amounts in thousands	(Column A) Consolidated Bank		(Column B) Domestic Offices		
1. U.S. Treasury securities	RCFD3531	15,689,040	RCON3531	15,587,275	1.
2. U.S. Government agency obligations (exclude mortgage-backed securities)	RCFD3532	0	RCON3532	0	2.
3. Securities issued by states and political subdivisions in the U.S.	RCFD3533	3,901,679	RCON3533	3,901,679	3.
4. Mortgage-backed securities (MBS):					4.
a. Pass-through securities issued or guaranteed by FNMA, FHLMC, or GNMA	RCFD3534	36,507,392	RCON3534	36,507,392	4.a.
b. Other mortgage-backed securities issued or guaranteed by FNMA, FHLMC, or GNMA (include CMOs, REMICs, and stripped MBS)	RCFD3535	69,506	RCON3535	69,506	4.b.
c. All other mortgage-backed securities	RCFD3536	2,151,982	RCON3536	653,314	4.c.
5. Other debt securities	RCFD3537	21,332,451	RCON3537	8,809,572	5.
6. Loans:					6.
a. Loans secured by real estate	RCFDF610	0			6.a.
1. Construction, land development, and other land loans			RCONF604	0	6.a.1.
2. Secured by farmland (including farm residential and other improvements)			RCONF605	0	6.a.2.
3. Secured by 1-4 family residential properties:					6.a.3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit			RCONF606	0	6a3a
b. Closed-end loans secured by 1-4 family residential properties:					6a3b
1. Secured by first liens			RCONF607	0	6a3b1
2. Secured by junior liens			RCONF611	0	6a3b2
4. Secured by multifamily (5 or more) residential properties			RCONF612	0	6.a.4.
5. Secured by nonfarm nonresidential properties			RCONF613	0	6.a.5.
b. Commercial and industrial loans	RCFDF614	2,280,850	RCONF614	1,872,341	6.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):					6.c.
1. Credit cards	RCFDF615	0	RCONF615	0	6.c.1.
2. Other revolving credit plans	RCFDF616	0	RCONF616	0	6.c.2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCFDF617	0	RCONF617	0	6.c.3.
d. Other loans	RCFDF618	0	RCONF618	0	6.d.

Dollar amounts in thousands	(Column A) Consolidated Bank		(Column B) Domestic Offices		
7. Not appliable					7.
8. Not applicable					8.
9. Other trading assets	RCFD3541	**16,640,910**	RCON3541	**16,379,375**	9.
10. Not applicable					10.
11. Derivatives with a positive fair value	RCFD3543	**57,065,103**	RCON3543	**52,510,139**	11.
12. Total trading assets	RCFD3545	**155,638,913**	RCON3545	**136,290,593**	12.
13. Not available					13.
a. Liability for short positions	RCFD3546	**40,034,042**	RCON3546	**37,084,923**	13.a.
b. Other trading liabilities	RCFDF624	**0**	RCONF624	**0**	13.b.
14. Derivatives with a negative fair value	RCFD3547	**36,277,426**	RCON3547	**36,277,426**	14.
15. Total trading liabilities	RCFD3548	**76,311,468**	RCON3548	**73,362,349**	15.
1. Unpaid principal balance of loans measured at fair value (reported in Schedule RC-D, items 6.a through 6.d):					M.1.
a. Loans secured by real estate	RCFDF790	**0**			M.1.a.
1. Construction, land development, and other land loans			RCONF625	**0**	M.1a1.
2. Secured by farmland (including farm residential and other improvements)			RCONF626	**0**	M.1a2.
3. Secured by 1-4 family residential properties:					M.1a3.
a. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit			RCONF627	**0**	M.1a3a.
b. Closed-end loans secured by 1-4 family residential properties:					M.1a3b.
1. Secured by first liens			RCONF628	**0**	M.1a3b1.
2. Secured by junior liens			RCONF629	**0**	M.1a3b2.
4. Secured by multifamily (5 or more) residential properties			RCONF630	**0**	M.1a4.
5. Secured by nonfarm nonresidential properties			RCONF631	**0**	M.1a5.
b. Commercial and industrial loans	RCFDF632	**4,439,311**	RCONF632	**3,813,997**	M.1.b.
c. Loans to individuals for household, family, and other personal expenditures (i.e., consumer loans) (includes purchased paper):					M.1.c.
1. Credit cards	RCFDF633	**0**	RCONF633	**0**	M.1c1.
2. Other revolving credit plans	RCFDF634	**0**	RCONF634	**0**	M.1c2.
3. Other consumer loans (includes single payment, installment, and all student loans)	RCFDF635	**0**	RCONF635	**0**	M.1c3.
d. Other loans	RCFDF636	**0**	RCONF636	**0**	M.1.d.
2. Not applicable					M.2.
3. Loans measured at fair value that are past due 90 days or more:					M.3.
a. Fair value	RCFDF639	**11,355**	RCONF639	**11,355**	M.3.a.
b. Unpaid principal balance	RCFDF640	**119,072**	RCONF640	**119,072**	M.3.b.

Schedule RC-D - Trading Assets and Liabilities

Dollar amounts in thousands			
4. Asset-backed securities:			M.4.
a. Residential mortgage-backed securities	RCFDF641	**38,379,806**	M.4.a.
b. Commercial mortgage-backed securities	RCFDF642	**349,074**	M.4.b.
c. Credit card receivables	RCFDF643	**114,257**	M.4.c.
d. Home equity lines	RCFDF644	**0**	M.4.d.
e. Automobile loans	RCFDF645	**29,459**	M.4.e.
f. Other consumer loans	RCFDF646	**0**	M.4.f.
g. Commercial and industrial loans	RCFDF647	**0**	M.4.g.
h. Other	RCFDF648	**1,483,970**	M.4.h.

Dollar amounts in thousands			
5. Collateralized debt obligations:			M.5.
a. Synthetic	RCFDF649	0	M.5.a.
b. Other	RCFDF650	1,595,414	M.5.b.
6. Retained beneficial interests in securitizations (first-loss or equity tranches)	RCFDF651	0	M.6.
7. Equity securities:			M.7.
a. Readily determinable fair values	RCFDF652	12,058,179	M.7.a.
b. Other	RCFDF653	2,586	M.7.b.
8. Loans pending securitization	RCFDF654	0	M.8.
9. Other trading assets (itemize and describe amounts included in Schedule RC-D, item 9, that are greater than $25,000 and exceed 25% of the item):			M.9.
a. Disclose component and the dollar amount of that component:			M.9.a.
1. Describe component	TEXTF655	Click here for value	M.9.a.1.
2. Amount of component	RCFDF655	0	M.9.a.2.
b. Disclose component and the dollar amount of that component:			M.9.b.
1. Describe component	TEXTF656	NR	M.9.b.1.
2. Amount of component	RCFDF656	0	M.9.b.2.
c. Disclose component and the dollar amount of that component:			M.9.c.
1. Describe component	TEXTF657	NR	M.9.c.1.
2. Amount of component	RCFDF657	0	M.9.c.2.
10. Other trading liabilities (itemize and describe amounts included in Schedule RC-D, item 13.b, that are greater than $25,000 and exceed 25% of the item):			M.10.
a. Disclose component and the dollar amount of that component:			M.10.a.
1. Describe component	TEXTF658	NR	M.10.a1.
2. Amount of component	RCFDF658	0	M.10.a2.
b. Disclose component and the dollar amount of that component:			M.10.b.
1. Describe component	TEXTF659	NR	M.10.b1.
2. Amount of component	RCFDF659	0	M.10.b2.
c. Disclose component and the dollar amount of that component:			M.10.c.
1. Describe component	TEXTF660	NR	M.10.c1.
2. Amount of component	RCFDF660	0	M.10.c2.

(TEXTF655) Pools of leveraged loans as part of TRS deals

Schedule RC-E Part I - Deposits in Domestic Offices

Dollar amounts in thousands	(Column A) Transaction Accounts Total Transaction accounts (including total demand deposits)	(Column B) Transaction Accounts Memo: Total demand deposits (included in column A)	(Column C) Nontransaction Accounts Total nontransaction accounts (including MMDAs)	
Deposits of:				
1. Individuals, partnerships, and corporations (include all certified and official checks)	RCONB549		RCONB550	
	81,377,298		619,302,923	1.
2. U.S. Government	RCON2202		RCON2520	
	326,764		356,858	2.
3. States and political subdivisions in the U.S.	RCON2203		RCON2530	
	11,475,851		19,200,485	3.

Dollar amounts in thousands	(Column A) Transaction Accounts Total Transaction accounts (including total demand deposits)	(Column B) Transaction Accounts Memo: Total demand deposits (included in column A)	(Column C) Nontransaction Accounts Total nontransaction accounts (including MMDAs)	
	RCONB551		RCONB552	
4. Commercial banks and other depository institutions in the U.S.	9,876,705		12,311,300	4.
	RCON2213		RCON2236	
5. Banks in foreign countries	201,713		138,058	5.
	RCON2216		RCON2377	
6. Foreign governments and official institutions (including foreign central banks)	200,822		151,194	6.
	RCON2215	RCON2210	RCON2385	
7. Total	103,459,153	92,394,457	651,460,818	7.

Schedule RC-E Part I - Deposits in Domestic Offices

Dollar amounts in thousands			
1. Selected components of total deposits:			M.1.
a. Total Individual Retirement Accounts (IRAs) and Keogh Plan accounts	RCON6835	18,599,509	M.1.a.
b. Total brokered deposits	RCON2365	2,780,789	M.1.b.
c. Fully insured brokered deposits (included in Memorandum item 1.b above):			M.1.c.
1. Brokered deposits issued in denominations of less than $100,000	RCON2343	2,737,941	M.1.c.1.
2. Brokered deposits issued in denominations of $100,000 and certain brokered retirement deposit accounts	RCON2344	42,848	M.1.c.2.
d. Maturity data for brokered deposits:			M.1.d.
1. Brokered deposits issued in denominations of less than $100,000 with a remaining maturity of one year or less (included in Memorandum item 1.c.(1) above)	RCONA243	2,185,855	M.1.d.1.
2. Brokered deposits issued in denominations of $100,000 or more with a remaining maturity of one year or less (included in Memorandum item 1.b above)	RCONA244	0	M.1.d.2.
e. Preferred deposits (uninsured deposits of states and political subdivisions in the U.S. reported in item 3 above which are secured or collateralized as required under state law)	RCON5590	20,408,917	M.1.e.
2. Components of total nontransaction accounts:			M.2.
a. Savings deposits:			M.2.a.
1. Money market deposit accounts (MMDAs)	RCON6810	267,379,572	M.2.a.1.
2. Other savings deposits (excludes MMDAs)	RCON0352	145,608,039	M.2.a.2.
b. Total time deposits of less than $100,000	RCON6648	110,829,705	M.2.b.
c. Total time deposits of $100,000 or more	RCON2604	127,643,502	M.2.c.
1. Individual Retirement Accounts (IRAs) and Keogh Plan accounts included in Memorandum item 2.c, "Total time deposits of $100,000 or more," above	RCONF233	3,473,124	M.2.c.1.
3. Maturity and repricing data for time deposits of less than $100,000:			M.3.
a. Time deposits of less than $100,000 with a remaining maturity or next repricing date of:			M.3.a.
1. Three months or less	RCONA579	40,485,199	M.3.a.1.
2. Over three months through 12 months	RCONA580	62,844,554	M.3.a.2.
3. Over one year through three years	RCONA581	5,135,640	M.3.a.3.
4. Over three years	RCONA582	2,364,312	M.3.a.4.
b. Time deposits of less than $100,000 with a REMAINING MATURITY of one year or less (included in Memorandum items 3.a.(1) and 3.a.(2) above)	RCONA241	103,329,753	M.3.b.
4. Maturity and repricing data for time deposits of $100,000 or more:			M.4.

		Dollar amounts in thousands	
a. Time deposits of $100,000 or more with a remaining maturity or next repricing date of:			M.4.a.
1. Three months or less	RCONA584	63,655,590	M.4.a.1.
2. Over three months through 12 months	RCONA585	60,812,504	M.4.a.2.
3. Over one year through three years	RCONA586	1,696,825	M.4.a.3.
4. Over three years	RCONA587	1,478,583	M.4.a.4.
b. Time deposits of $100,000 or more with a REMAINING MATURITY of one year or less (included in Memorandum items 4.a.(1) and 4.a.(2) above)	RCONA242	124,468,094	M.4.b.

Schedule RC-E Part II - Deposits in Foreign Offices including Edge and Agreement subsidiaries and IBFs

		Dollar amounts in thousands	
Deposits of:			
1. Individuals, partnerships, and corporations (include all certified and official checks)	RCFNB553	132,238,294	1.
2. U.S. banks (including IBFs and foreign branches of U.S. banks) and other U.S. depository institutions	RCFNB554	14,280,296	2.
3. Foreign banks (including U.S. branches and agencies of foreign banks, including their IBFs)	RCFN2625	37,296,067	3.
4. Foreign governments and official institutions (including foreign central banks)	RCFN2650	15,879,254	4.
5. U.S. Government and states and political subdivisions in the U.S.	RCFNB555	63,698	5.
6. Total	RCFN2200	199,757,609	6.
1. Time deposits with a remaining maturity of one year or less (included in Part II, item 6 above)	RCFNA245	173,962,415	M.1.

Schedule RC-F - Other Assets

		Dollar amounts in thousands	
1. Accrued interest receivable	RCFDB556	5,342,965	1.
2. Net deferred tax assets	RCFD2148	4,034,203	2.
3. Interest-only strips receivable (not in the form of a security) on:			3.
a. Mortgage loans	RCFDA519	0	3.a.
b. Other financial assets	RCFDA520	0	3.b.
4. Equity securities that DO NOT have readily determinable fair values	RCFD1752	4,649,841	4.
5. Life insurance assets	RCFDC009	17,133,003	5.
6. All other assets	RCFD2168	40,638,570	6.
a. Prepaid expenses	RCFD2166	0	6.a.
b. Repossessed personal property (including vehicles)	RCFD1578	0	6.b.
c. Derivatives with a positive fair value held for purposes other than trading	RCFDC010	0	6.c.
d. Retained interests in accrued interest receivable related to securitized credit cards	RCFDC436	0	6.d.
e. Disclose component and the dollar amount of that component:			6.e.
1. Describe component	TEXT3549	Click here for value	6.e.1.
2. Amount of component	RCFD3549	15,177,079	6.e.2.
f. Disclose component and the dollar amount of that component:			6.f.
1. Describe component	TEXT3550	NR	6.f.1.
2. Amount of component	RCFD3550	0	6.f.2.
g. Disclose component and the dollar amount of that component:			6.g.
1. Describe component	TEXT3551	NR	6.g.1.
2. Amount of component	RCFD3551	0	6.g.2.
7. Total	RCFD2160	71,798,582	7.

(TEXT3549) Accounts Receivables

Schedule RC-G - Other Liabilities

		Dollar amounts in thousands	
1. Not available			1.
a. Interest accrued and unpaid on deposits in domestic offices	RCON3645	1,082,047	1.a.
b. Other expenses accrued and unpaid (includes accrued income taxes payable)	RCFD3646	5,886,931	1.b.
2. Net deferred tax liabilities	RCFD3049	0	2.
3. Allowance for credit losses on off-balance sheet credit exposures	RCFDB557	416,621	3.
4. All other liabilities	RCFD2938	18,699,381	4.
a. Accounts payable	RCFD3066	7,889,229	4.a.
b. Deferred compensation liabilities	RCFDC011	0	4.b.
c. Dividends declared but not yet payable	RCFD2932	0	4.c.
d. Derivatives with a negative fair value held for purposes other than trading	RCFDC012	0	4.d.
e. Disclose component and the dollar amount of that component:			4.e.
1. Describe component	TEXT3552	Dealer Payable	4.e.1.
2. Amount of component	RCFD3552	0	4.e.2.
f. Disclose component and the dollar amount of that component:			4.f.
1. Describe component	TEXT3553	NR	4.f.1.
2. Amount of component	RCFD3553	0	4.f.2.
g. Disclose component and the dollar amount of that component:			4.g.
1. Describe component	TEXT3554	NR	4.g.1.
2. Amount of component	RCFD3554	0	4.g.2.
5. Total	RCFD2930	26,084,980	5.

Schedule RC-H - Selected Balance Sheet Items for Domestic Offices

		Dollar amounts in thousands	
1. Not applicable			1.
2. Not applicable			2.
3. Securities purchased under agreements to resell	RCONB989	27,977,366	3.
4. Securities sold under agreements to repurchase	RCONB995	126,523,383	4.
5. Other borrowed money	RCON3190	107,304,304	5.
6. Net due from own foreign offices, Edge and Agreement subsidiaries, and IBFs	RCON2163	0	6.
7. Net due to own foreign offices, Edge and Agreement subsidiaries, and IBFs	RCON2941	116,535,819	7.
8. Total assets (excludes net due from foreign offices, Edge and Agreement subsidiaries, and IBFs)	RCON2192	1,375,012,989	8.
9. Total liabilities (excludes net due to foreign offices, Edge and Agreement subsidiaries, and IBFs)	RCON3129	1,125,142,401	9.
10. U.S. Treasury securities	RCON1039	329,934	10.
11. U.S. Government agency obligations (exclude mortgage-backed securities)	RCON1041	3,693,961	11.
12. Securities issued by states and political subdivisions in the U.S.	RCON1042	10,519,524	12.
13. Mortgage-backed securities (MBS):			13.
a. Pass-through securities:			13.a.
1. Issued or guaranteed by FNMA, FHLMC, or GNMA	RCON1043	191,458,486	13.a.1.
2. Other pass-through securities	RCON1044	3,220,256	13.a.2.
b. Other mortgage-backed securities (include CMOs, REMICs, and stripped MBS):			13.b.
1. Issued or guaranteed by FNMA, FHLMC, or GNMA	RCON1209	9,872	13.b.1.
2. All other mortgage-backed securities	RCON1280	21,571,357	13.b.2.
14. Other domestic debt securities (include domestic asset-backed securities)	RCON1281	27,100,516	14.
15. Foreign debt securities (include foreign asset-backed securities)	RCON1282	2,613,742	15.

	Dollar amounts in thousands		
16. Investments in mutual funds and other equity securities with readily determinable fair values	RCONA510	2,484,458	16.
17. Total amortized (historical) cost of both held-to-maturity and available-for-sale securities.	RCON1374	263,002,106	17.
18. Equity securities that do not have readily determinable fair values	RCON1752	4,569,381	18.

Schedule RC-I - Assets and Liabilities of IBFs

	Dollar amounts in thousands		
1. Total IBF assets of the consolidated bank (component of Schedule RC, item 12)	RCFN2133	2,477,291	1.
2. Total IBF liabilities (component of Schedule RC, item 21)	RCFN2898	13,164,339	2.

Schedule RC-K - Quarterly Averages

	Dollar amounts in thousands		
1. Interest-bearing balances due from depository institutions	RCFD3381	16,667,365	1.
2. U.S. Treasury securities and U.S. Government agency obligations (excluding mortgage-backed securities)	RCFDB558	410,506	2.
3. Mortgage-backed securities	RCFDB559	221,539,540	3.
4. All other securities (includes securities issued by states and political subdivisions in the U.S.)	RCFDB560	49,465,057	4.
5. Federal funds sold and securities purchased under agreements to resell	RCFD3365	143,950,959	5.
6. Loans:			6.
a. Loans in domestic offices:			6.a.
1. Total loans	RCON3360	676,819,769	6.a.1.
2. Loans secured by real estate:			6.a.2.
a. Loans secured by 1-4 family residential properties	RCON3465	297,018,024	6.a.2.a.
b. All other loans secured by real estate	RCON3466	101,292,767	6.a.2.b.
3. Loans to finance agricultural production and other loans to farmers	RCON3386	1,314,130	6.a.3.
4. Commercial and industrial loans	RCON3387	148,233,232	6.a.4.
5. Loans to individuals for household, family, and other personal expenditures:			6.a.5.
a. Credit cards	RCONB561	14,288	6.a.5.a.
b. Other (includes single payment, installment, all student loans, and revolving credit plans other than credit cards)	RCONB562	60,601,384	6.a.5.b.
b. Total loans in foreign offices, Edge and Agreement subsidiaries, and IBFs	RCFN3360	45,734,945	6.b.
7. Trading assets	RCFD3401	173,617,802	7.
8. Lease financing receivables (net of unearned income)	RCFD3484	18,183,832	8.
9. Total assets	RCFD3368	1,554,220,565	9.
10. Interest-bearing transaction accounts in domestic offices (NOW accounts, ATS accounts, and telephone and preauthorized transfer accounts) (exclude demand deposits)	RCON3485	12,690,225	10.
11. Nontransaction accounts in domestic offices:			11.
a. Savings deposits (includes MMDAs)	RCONB563	408,584,759	11.a.
b. Time deposits of $100,000 or more	RCONA514	115,993,298	11.b.
c. Time deposits of less than $100,000	RCONA529	122,783,338	11.c.
12. Interest-bearing deposits in foreign offices, EDGE and Agreement subsidiaries, and IBFs	RCFN3404	202,209,687	12.
13. Federal funds purchased and securities sold under agreements to repurchase	RCFD3353	193,087,849	13.
14. Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases)	RCFD3355	128,282,901	14.

Schedule RC-L - Derivatives and Off-Balance Sheet Items

Dollar amounts in thousands			
1. Unused commitments:			1.
a. Revolving, open-end lines secured by 1-4 family residential properties, e.g., home equity lines	RCFD3814	103,151,895	1.a.
b. Credit card lines	RCFD3815	0	1.b.
c. Commercial real estate, construction, and land development:			1.c.
1. Commitments to fund commercial real estate, construction, and land development loans secured by real estate:			1.c.1.
a. 1-4 family residential construction loan commitments	RCFDF164	2,145,330	1.c.1.a.
b. Commercial real estate, other construction loan, and land development loan commitments	RCFDF165	15,424,083	1.c.1.b.
2. Commitments to fund commercial real estate, construction, and land development loans not secured by real estate	RCFD6550	7,377,219	1.c.2.
d. Securities underwriting	RCFD3817	0	1.d.
e. Other unused commitments	RCFD3818	278,150,459	1.e.
2. Financial standby letters of credit and foreign office guarantees	RCFD3819	102,577,795	2.
a. Amount of financial standby letters of credit conveyed to others	RCFD3820	29,670,238	2.a.
3. Performance standby letters of credit and foreign office guarantees	RCFD3821	8,533,744	3.
a. Amount of performance standby letters of credit conveyed to others	RCFD3822	3,507,113	3.a.
4. Commercial and similar letters of credit	RCFD3411	3,973,092	4.
5. Not applicable			5.
6. Securities lent (including customers' securities lent where the customer is indemnified against loss by the reporting bank)	RCFD3433	504,846	6.

Schedule RC-L - Derivatives and Off-Balance Sheet Items

Dollar amounts in thousands	(Column A) Guarantor		(Column B) Beneficiary		
7. Credit derivatives:					7.
a. Notional amounts:					7.a.
1. Credit default swaps	RCFDC968	1,004,736,144	RCFDC969	1,028,649,827	7.a.1.
2. Total return swaps	RCFDC970	9,225,106	RCFDC971	7,966,167	7.a.2.
3. Credit options	RCFDC972	0	RCFDC973	26,389	7.a.3.
4. Other credit derivatives	RCFDC974	0	RCFDC975	0	7.a.4.
b. Gross fair values:					7.b.
1. Gross positive fair value	RCFDC219	3,950,159	RCFDC221	128,085,073	7.b.1.
2. Gross negative fair value	RCFDC220	120,081,143	RCFDC222	3,668,426	7.b.2.

Schedule RC-L - Derivatives and Off-Balance Sheet Items

Dollar amounts in thousands			
8. Spot foreign exchange contracts	RCFD8765	70,592,654	8.
9. All other off-balance sheet liabilities (exclude derivatives)	RCFD3430	0	9.
a. Securities borrowed	RCFD3432	0	9.a.
b. Commitments to purchase when-issued securities	RCFD3434	0	9.b.
c. Standby letters of credit issued by a Federal Home Loan Bank on the bank's behalf	RCFDC978	0	9.c.
d. Disclose component and the dollar amount of that component:			9.d.
1. Describe component	TEXT3555	NR	9.d.1.
2. Amount of component	RCFD3555	0	9.d.2.
e. Disclose component and the dollar amount of that component:			9.e.
1. Describe component	TEXT3556	NR	9.e.1.
2. Amount of component	RCFD3556	0	9.e.2.

		Dollar amounts in thousands	
f. Disclose component and the dollar amount of that component:			9.f.
1. Describe component	TEXT3557	NR	9.f.1.
2. Amount of component	RCFD3557	0	9.f.2.
10. All other off-balance sheet assets (exclude derivatives)	RCFD5591	0	10.
a. Commitments to sell when-issued securities	RCFD3435	0	10.a.
b. Disclose component and the dollar amount of that component:			10.b.
1. Describe component	TEXT5592	NR	10.b.1.
2. Amount of component	RCFD5592	0	10.b.2.
c. Disclose component and the dollar amount of that component:			10.c.
1. Describe component	TEXT5593	NR	10.c.1.
2. Amount of component	RCFD5593	0	10.c.2.
d. Disclose component and the dollar amount of that component:			10.d.
1. Describe component	TEXT5594	NR	10.d.1.
2. Amount of component	RCFD5594	0	10.d.2.
e. Disclose component and the dollar amount of that component:			10.e.
1. Describe component	TEXT5595	NR	10.e.1.
2. Amount of component	RCFD5595	0	10.e.2.
11. Year-to-date merchant credit card sales volume:			11.
a. Sales for which the reporting bank is the acquiring bank	RCFDC223	299,883,537	11.a.
b. Sales for which the reporting bank is the agent bank with risk	RCFDC224	4,014,311	11.b.

Schedule RC-L - Derivatives and Off-Balance Sheet Items

Dollar amounts in thousands

	(Column A) Interest Rate Contracts	(Column B) Foreign Exchange Contracts	(Column C) Equity Derivative Contracts	(Column D) Commodity and Other Contracts	
12. Gross amounts (e.g., notional amounts):					12.
a. Futures contracts	RCFD8693	RCFD8694	RCFD8695	RCFD8696	
	1,520,415,870	600,671	3,713,958	9,361,433	12.a.
b. Forward contracts	RCFD8697	RCFD8698	RCFD8699	RCFD8700	
	2,158,183,346	1,306,339,191	0	149,721	12.b.
c. Exchange-traded option contracts:					12.c.
1. Written options	RCFD8701	RCFD8702	RCFD8703	RCFD8704	
	210,243,178	0	124,005,591	15,167,065	12.c.1.
2. Purchased options	RCFD8705	RCFD8706	RCFD8707	RCFD8708	
	155,784,819	0	117,914,387	13,884,833	12.c.2.
d. Over-the-counter option contracts:					12.d.
1. Written options	RCFD8709	RCFD8710	RCFD8711	RCFD8712	
	1,491,056,142	199,846,295	62,316,196	2,407,156	12.d.1.
2. Purchased options	RCFD8713	RCFD8714	RCFD8715	RCFD8716	
	1,482,938,560	175,677,954	69,041,844	1,685,164	12.d.2.
e. Swaps	RCFD3450	RCFD3826	RCFD8719	RCFD8720	
	26,623,000,797	478,672,043	29,444,109	2,109,964	12.e.
13. Total gross notional amount of derivative contracts held for trading	RCFDA126	RCFDA127	RCFD8723	RCFD8724	
	33,576,855,387	2,149,059,475	406,436,085	44,765,336	13.
14. Total gross notional amount of derivative contracts held for purposes other than trading	RCFD8725	RCFD8726	RCFD8727	RCFD8728	
	64,767,325	12,076,679	0	0	14.
a. Interest rate swaps where the bank has agreed to pay a fixed rate	RCFDA589				
	0				14.a.
15. Gross fair values of derivative contracts:					15.
a. Contracts held for trading:					15.a.
1. Gross positive fair value	RCFD8733	RCFD8734	RCFD8735	RCFD8736	
	1,281,441,477	82,326,865	29,988,318	7,332,958	15.a.1.
2. Gross negative fair value	RCFD8737	RCFD8738	RCFD8739	RCFD8740	
	1,262,740,871	84,481,095	29,173,472	7,250,560	15.a.2.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 004310

Dollar amounts in thousands	(Column A) Interest Rate Contracts	(Column B) Foreign Exchange Contracts	(Column C) Equity Derivative Contracts	(Column D) Commodity and Other Contracts	
b. Contracts held for purposes other than trading:					15.b.
	RCFD8741	RCFD8742	RCFD8743	RCFD8744	
1. Gross positive fair value	**1,005,682**	**273,220**	**0**	**0**	15.b.1.
	RCFD8745	RCFD8746	RCFD8747	RCFD8748	
2. Gross negative fair value	**559,213**	**465,013**	**0**	**0**	15.b.2.

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WMATA-INV 004311

Schedule RC-M - Memoranda

		Dollar amounts in thousands	
1. Extensions of credit by the reporting bank to its executive officers, directors, principal shareholders, and their related interests as of the report date:			1.
a. Aggregate amount of all extensions of credit to all executive officers, directors, principal shareholders, and their related interests	RCFD6164	624,195	1.a.
b. Number of executive officers, directors, and principal shareholders to whom the amount of all extensions of credit by the reporting bank (including extensions of credit to related interests) equals or exceeds the lesser of $500,000 or 5 percent of total capital as defined for this purpose in agency regulations	RCFD6165	6	1.b.
2. Intangible assets other than goodwill:			2.
a. Mortgage servicing assets	RCFD3164	11,352,001	2.a.
1. Estimated fair value of mortgage servicing assets	RCFDA590	11,415,660	2.a.1.
b. Purchased credit card relationships and nonmortgage servicing assets	RCFDB026	0	2.b.
c. All other identifiable intangible assets	RCFD5507	2,839,309	2.c.
d. Total	RCFD0426	14,191,310	2.d.
3. Other real estate owned:			3.
a. Direct and indirect investments in real estate ventures	RCFD5372	0	3.a.
b. All other real estate owned:			3.b.
1. Construction, land development, and other land in domestic offices	RCON5508	199,824	3.b.1.
2. Farmland in domestic offices	RCON5509	0	3.b.2.
3. 1-4 family residential properties in domestic offices	RCON5510	854,380	3.b.3.
4. Multifamily (5 or more) residential properties in domestic offices	RCON5511	94,438	3.b.4.
5. Nonfarm nonresidential properties in domestic offices	RCON5512	69,914	3.b.5.
6. Foreclosed properties from "GNMA loans"	RCONC979	0	3.b.6.
7. In foreign offices	RCFN5513	0	3.b.7.
c. Total	RCFD2150	1,218,556	3.c.
4. Investments in unconsolidated subsidiaries and associated companies:			4.
a. Direct and indirect investments in real estate ventures	RCFD5374	4,710,341	4.a.
b. All other investments in unconsolidated subsidiaries and associated companies	RCFD5375	1,452,939	4.b.
c. Total	RCFD2130	6,163,280	4.c.
5. Other borrowed money:			5.
a. Federal Home Loan Bank advances:			5.a.
1. Advances with a remaining maturity or next repricing date of:			5.a.1.
a. One year or less	RCFDF055	3,763,205	5.a.1.a.
b. Over one year through three years	RCFDF056	201,576	5.a.1.b.
c. Over three years through five years	RCFDF057	0	5.a.1.c.
d. Over five years	RCFDF058	681	5.a.1.d.
2. Advances with a remaining maturity of one year or less (included in item 5.a.(1)(a) above)	RCFD2651	3,763,205	5.a.2.
3. Structured advances (included in items 5.a.(1)(a) - (d) above)	RCFDF059	0	5.a.3.
b. Other borrowings:			5.b.
1. Other borrowings with a remaining maturity of next repricing date of:			5.b.1.
a. One year or less	RCFDF060	103,382,194	5.b.1.a.
b. Over one year through three years	RCFDF061	2,869,038	5.b.1.b.
c. Over three years through five years	RCFDF062	466,103	5.b.1.c.
d. Over five years	RCFDF063	245,584	5.b.1.d.
2. Other borrowings with a remaining maturity of one year or less (included in item 5.b.(1)(a) above)	RCFDB571	82,697,956	5.b.2.
c. Total	RCFD3190	110,928,381	5.c.
6. Does the reporting bank sell private label or third party mutual funds and annuities?	RCFDB569	Yes	6.
7. Assets under the reporting bank's management in proprietary mutual funds and annuities.	RCFDB570	261,032,783	7.

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Dollar amounts in thousands			
8. Primary Internet Web site address of bank (home page), if any	TEXT4087	Click here for value	8.
9. Do any of the bank's Internet Web sites have transactional capability, i.e., allow the bank's customers to execute transactions on their accounts through the Web site?	RCFD4088	Yes	9.
10. Secured liabilities:			10.
a. Amount of "Federal funds purchased in domestic offices" that are secured (included in Schedule RC, item 14.a)	RCONF064	0	10.a.
b. Amount of "Other borrowings" that are secured (included in Schedule RC-M, items 5.b.(1)(a) - (d))	RCFDF065	9,679,620	10.b.

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Schedule RC-N - Past Due and Nonaccrual Loans Leases and Other Assets

Dollar amounts in thousands	(Column A) Past due 30 through 89 days and still accruing	(Column B) Past due 90 days or more and still accruing	(Column C) Nonaccrual	
1. Loans secured by real estate:				1.
a. Construction, land development, and other land loans in domestic offices:				1.a.
	RCONF172	RCONF174	RCONF176	
1. 1-4 family residential construction loans	317,781	13,091	1,821,698	1.a.1.
2. Other construction loans and all land development and other land loans	RCONF173	RCONF175	RCONF177	
	227,715	10,305	1,209,227	1.a.2.
	RCON3493	RCON3494	RCON3495	
b. Secured by farmland in domestic offices	12,548	1,516	7,041	1.b.
c. Secured by 1-4 family residential properties in domestic offices:				1.c.
	RCON5398	RCON5399	RCON5400	
1. Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit	2,444,916	1,746,148	2,150,358	1.c.1.
2. Closed-end loans secured by 1-4 family residential properties:				1.c.2.
	RCONC236	RCONC237	RCONC229	
a. Secured by first liens	8,870,837	1,883,365	6,880,072	1.c.2.a.
	RCONC238	RCONC239	RCONC230	
b. Secured by junior liens	895,938	1,020,025	522,777	1.c.2.b.
	RCON3499	RCON3500	RCON3501	
d. Secured by multifamily (5 or more) residential properties in domestic offices	53,956	1,331	130,093	1.d.
e. Secured by nonfarm nonresidential properties in domestic offices:				1.e.
	RCONF178	RCONF180	RCONF182	
1. Loans secured by owner-occupied nonfarm nonresidential properties	41,891	0	9,234	1.e.1.
	RCONF179	RCONF181	RCONF183	
2. Loans secured by other nonfarm nonresidential properties	423,611	71,710	748,411	1.e.2.
	RCFNB572	RCFNB573	RCFNB574	
f. In foreign offices	0	0	0	1.f.
2. Loans to depository institutions and acceptances of other banks:				2.
	RCFD5377	RCFD5378	RCFD5379	
a. To U.S. banks and other U.S. depository institutions	71,133	59	3,385	2.a.

Dollar amounts in thousands	(Column A) Past due 30 through 89 days and still accruing	(Column B) Past due 90 days or more and still accruing	(Column C) Nonaccrual	
	RCFD5380	RCFD5381	RCFD5382	
b. To foreign banks	1,197	0	75,617	2.b.
	RCFD1594	RCFD1597	RCFD1583	
3. Loans to finance agricultural production and other loans to farmers.	20,641	205	15,523	3.
4. Commercial and industrial loans:				4.
	RCFD1251	RCFD1252	RCFD1253	
a. To U.S. addressees (domicile)	1,245,756	303,509	1,942,697	4.a.
	RCFD1254	RCFD1255	RCFD1256	
b. To non-U.S. addressees (domicile)	26,079	1,007	388,930	4.b.
5. Loans to individuals for household, family, and other personal expenditures:				5.
	RCFDB575	RCFDB576	RCFDB577	
a. Credit cards	0	0	0	5.a.
b. Other (includes single payment, installment, all student loans, and revolving credit plans other than credit cards)	RCFDB578	RCFDB579	RCFDB580	
	1,231,057	202,974	25,635	5.b.
	RCFD5389	RCFD5390	RCFD5391	
6. Loans to foreign governments and official institutions	0	0	0	6.
	RCFD5459	RCFD5460	RCFD5461	
7. All other loans	138,088	58,606	133,059	7.
8. Lease financing receivables:				8.
	RCFDF166	RCFDF167	RCFDF168	
a. Leases to individuals for household, family, and other personal expenditures	0	0	0	8.a.
	RCFDF169	RCFDF170	RCFDF171	
b. All other leases	180,296	22,860	55,999	8.b.
9. Debt securities and other assets (exclude other real estate owned and other repossessed assets)	RCFD3505	RCFD3506	RCFD3507	
	0	0	97,424	9.
10. Loans and leases reported in items 1 through 8 above which are wholly or partially guaranteed by the U.S. Government	RCFD5612	RCFD5613	RCFD5614	
	353,740	547,050	193,989	10.
a. Guaranteed portion of loans and leases included in item 10 above (exclude rebooked "GNMA loans")	RCFD5615	RCFD5616	RCFD5617	
	274,949	154,779	141,689	10.a.
b. Rebooked "GNMA loans" that have been repurchased or are eligible for repurchase included in item 10 above	RCFDC866	RCFDC867	RCFDC868	
	21,003	371,987	0	10.b.
1. Restructured loans and leases included in Schedule RC-N, items 1 through 8, above (and not reported in Schedule RC-C, Part I, Memorandum item 1):				M.1.
	RCONF661	RCONF662	RCONF663	
a. Loans secured by 1-4 family residential properties in domestic offices	4,092	0	472,720	M.1.a.
	RCFD1658	RCFD1659	RCFD1661	
b. Other loans and all leases (exclude loans to individuals for household, family, and other personal expenditures)	0	0	56,816	M.1.b.
	RCFD6558	RCFD6559	RCFD6560	
2. Loans to finance commercial real estate, construction, and land development activities (not secured by real estate) included in Schedule RC-N, items 4 and 7, above	71,698	1,656	77,246	M.2.
	RCFD1248	RCFD1249	RCFD1250	
3. Loans secured by real estate to non-U.S. addressees (domicile) (included in Schedule RC-N, item 1, above)	0	0	0	M.3.
4. Not applicable				M.4.

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Dollar amounts in thousands	(Column A) Past due 30 through 89 days and still accruing	(Column B) Past due 90 days or more and still accruing	(Column C) Nonaccrual	
5. Loans and leases held for sale and loans measured at fair value (included in Schedule RC-N, items 1 through 8, above):				M.5.
	RCFDC240	RCFDC241	RCFDC226	
a. Loans and leases held for sale	74,521	27,272	405,779	M.5.a.
b. Loans measured at fair value:				M.5.b.
	RCFDF664	RCFDF665	RCFDF666	
1. Fair value	0	0	0	M.5.b.1.
	RCFDF667	RCFDF668	RCFDF669	
2. Unpaid principal balance	0	0	0	M.5.b.2.

Schedule RC-N - Past Due and Nonaccrual Loans Leases and Other Assets

Dollar amounts in thousands	(Column A) Past due 30 through 89 days		(Column B) Past due 90 days or more		
6. Interest rate, foreign exchange rate, and other commodity and equity contracts: Fair value of amounts carried as assets	RCFD3529	201,834	RCFD3530	0	M.6.

Schedule RC-N - Past Due and Nonaccrual Loans Leases and Other Assets

Dollar amounts in thousands			
7. Additions to nonaccrual assets during the quarter	RCFDC410	7,913,643	M.7.
8. Nonaccrual assets sold during the quarter	RCFDC411	13,876	M.8.

Schedule RC-O - Other Data for Deposit Insurance and FICO Assessments

Dollar amounts in thousands			
1. Total deposit liabilities before exclusions (gross) as defined in Section 3(l) of the Federal Deposit Insurance Act and FDIC regulations	RCFDF236	964,137,875	1.
2. Total allowable exclusions (including foreign deposits)	RCFDF237	199,896,540	2.
3. Total foreign deposits (included in item 2 above)	RCFNF234	199,840,304	3.
4. Total daily average of deposit liabilities before exclusions (gross) as defined in Section 3(l) of the Federal Deposit Insurance Act and FDIC regulations	RCFDF238	953,911,861	4.
5. Total daily average of allowable exclusions (including foreign deposits)	RCFDF239	204,042,127	5.
6. Total daily average of foreign deposits (included in item 5 above)	RCFNF235	203,859,911	6.
1. Total deposits in domestic offices of the bank and in insured branches in Puerto Rico and U.S. territories and possessions:			M.1.
a. Deposit accounts (excluding retirement accounts) of $100,000 or less:			M.1.a.
1. Amount of deposit accounts (excluding retirement accounts) of $100,000 or less	RCONF049	331,950,931	M.1.a.1.
2. Number of deposit accounts (excluding retirement accounts) of $100,000 or less	RCONF050	NR	M.1.a.2.
b. Deposit accounts (excluding retirement accounts) of more than $100,000:			M.1.b.
1. Amount of deposit accounts (excluding retirement accounts) of more than $100,000	RCONF051	413,669,506	M.1.b.1.
2. Number of deposit accounts (excluding retirement accounts) of more than $100,000	RCONF052	909371	M.1.b.2.
c. Retirement deposit accounts of $250,000 or less:			M.1.c.
1. Amount of retirement deposit accounts of $250,000 or less	RCONF045	17,705,640	M.1.c.1.
2. Number of retirement deposit accounts of $250,000 or less	RCONF046	NR	M.1.c.2.
d. Retirement deposit accounts of more than $250,000:			M.1.d.

		Dollar amounts in thousands	
1. Amount of retirement deposit accounts of more than $250,000	RCONF047	915,258	M.1.d.1.
2. Number of retirement deposit accounts of more than $250,000	RCONF048	2384	M.1.d.2.
2. Estimated amount of uninsured deposits in domestic offices of the bank and in insured branches in Puerto Rico and U.S. territories and possessions	RCON5597	315,172,227	M.2.
3. Has the reporting institution been consolidated with a parent bank or savings association in that parent bank's or parent savings association's Call Report or Thrift Financial Report? If so, report the legal title and FDIC Certificate Number of the parent bank or parent savings association:			M.3.
a. Legal title	TEXTA545	NR	M.3.a.
b. FDIC Certificate Number	RCONA545	0	M.3.b.
4. Noninterest-bearing transaction accounts (as defined in Part 370 of the FDIC's regulations) of more than $250,000 (see instructions):			M.4.
a. Amount of noninterest-bearing transaction accounts of more than $250,000 (including balances swept from noninterest-bearing transaction accounts to noninterest-bearing savings accounts)	RCONG167	105,791,383	M.4.a.
b. Number of noninterest-bearing transaction accounts of more than $250,000	RCONG168	57258	M.4.b.

Schedule RC-P - 1-4 Family Residential Mortgage Banking Activities in Domestic Offices

		Dollar amounts in thousands	
1. Retail originations during the quarter of 1-4 family residential mortgage loans for sale:			1.
a. Closed-end first liens	RCONF066	8,450,994	1.a.
b. Closed-end junior liens	RCONF067	0	1.b.
c. Open-end loans extended under lines of credit:			1.c.
1. Total commitment under the lines of credit	RCONF670	407,731	1.c.1.
2. Principal amount funded under the lines of credit	RCONF671	233,065	1.c.2.
2. Wholesale originations and purchases during the quarter of 1-4 family residential mortgage loans for sale:			2.
a. Closed-end first liens	RCONF068	6,147,060	2.a.
b. Closed-end junior liens	RCONF069	0	2.b.
c. Open-end loans extended under lines of credit:			2.c.
1. Total commitment under the lines of credit	RCONF672	422,515	2.c.1.
2. Principal amount funded under the lines of credit	RCONF673	312,098	2.c.2.
3. 1-4 family residential mortgages sold during the quarter:			3.
a. Closed-end first liens	RCONF070	15,867,678	3.a.
b. Closed-end junior liens	RCONF071	0	3.b.
c. Open-end loans extended under lines of credit:			3.c.
1. Total commitment under the lines of credit	RCONF674	526,322	3.c.1.
2. Principal amount funded under the lines of credit	RCONF675	324,450	3.c.2.
4. 1-4 family residential mortgages held for sale at quarter-end (included in Schedule RC, item 4.a):			4.
a. Closed-end first liens	RCONF072	5,115,799	4.a.
b. Closed-end junior liens	RCONF073	345	4.b.
c. Open-end loans extended under lines of credit:			4.c.
1. Total commitment under the lines of credit	RCONF676	1,835,256	4.c.1.
2. Principal amount funded under the lines of credit	RCONF677	1,355,859	4.c.2.
5. Noninterest income for the quarter from the sale, securitization, and servicing of 1-4 family residential mortgage loans (included in Schedule RI, items 5.f, 5.g, and 5.i):			5.
a. Closed-end 1-4 family residential mortgage loans	RIADF184	501,318	5.a.
b. Open-end 1-4 family residential mortgage loans extended under lines of credit	RIADF560	11,070	5.b.
6. Repurchases and indemnifications of 1-4 family residential mortgage loans during the quarter:			6.
a. Closed-end first liens	RCONF678	376,437	6.a.

		Dollar amounts in thousands	
b. Closed-end junior liens	RCONF679	0	6.b.
c. Open-end loans extended under line of credit:			6.c.
1. Total commitment under the lines of credit	RCONF680	223	6.c.1.
2. Principal amount funded under the lines of credit	RCONF681	75	6.c.2.

Schedule RC-Q - Financial Assets and Liabilities Measured at Fair Value

Dollar amounts in thousands	(Column A) Total Fair Value Reported on Schedule RC	(Column B) LESS: Amounts Netted in the Determination of Total Fair Value	(Column C) Level 1 Fair Value Measurements	(Column D) Level 2 Fair Value Measurements	(Column E) Level 3 Fair Value Measurements	
1. Loans and leases	RCFDF243	RCFDF682	RCFDF690	RCFDF244	RCFDF245	
	11,989,776	**0**	**0**	**4,099,481**	**7,890,295**	1.
2. Trading assets	RCFDF246	RCFDF683	RCFDF691	RCFDF247	RCFDF248	
	155,638,913	**1,474,386,936**	**29,601,973**	**1,588,635,563**	**11,788,313**	2.
a. Nontrading securities at fair value with changes in fair value reported in current earnings (included in Schedule RC-Q, item 2, above)	RCFDF240	RCFDF684	RCFDF692	RCFDF241	RCFDF242	
	500,000	**0**	**0**	**500,000**	**0**	2.a.
3. All other financial assets and servicing assets	RCFDF249	RCFDF685	RCFDF693	RCFDF250	RCFDF251	
	13,366,144	**0**	**0**	**2,330,247**	**11,035,897**	3.
4. Deposits	RCFDF252	RCFDF686	RCFDF694	RCFDF253	RCFDF254	
	1,717,708	**0**	**0**	**1,717,708**	**0**	4.
5. Trading liabilities	RCFDF255	RCFDF687	RCFDF695	RCFDF256	RCFDF257	
	76,311,468	**1,469,825,957**	**35,891,301**	**1,504,549,273**	**5,696,851**	5.
6. All other financial liabilities and servicing liabilities	RCFDF258	RCFDF688	RCFDF696	RCFDF259	RCFDF260	
	0	**0**	**0**	**0**	**0**	6.
7. Loan commitments (not accounted for as derivatives)	RCFDF261	RCFDF689	RCFDF697	RCFDF262	RCFDF263	
	1,123,465	**0**	**0**	**0**	**1,123,465**	7.

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Schedule RC-R - Regulatory Capital

Dollar amounts in thousands			
1. Total equity capital (from Schedule RC, item 28)	RCFD3210	132,838,001	1.
2. Net unrealized gains (losses) on available-for-sale securities	RCFD8434	-4,164,606	2.
3. Net unrealized loss on available-for-sale equity securities	RCFDA221	27,421	3.
4. Accumulated net gains (losses) on cash flow hedges	RCFD4336	-7,592,925	4.
5. Nonqualifying perpetual preferred stock	RCFDB588	0	5.
6. Qualifying minority interests in consolidated subsidiaries	RCFDB589	496,768	6.
7. Not available			7.
a. Disallowed goodwill and other disallowed intangible assets	RCFDB590	55,002,949	7.a.
b. Cumulative change in fair value of all financial liabilities accounted for under a fair value option that is included in retained earnings and is attributable to changes in the bank's own creditworthiness	RCFDF264	0	7.b.
8. Subtotal	RCFDC227	90,061,930	8.
9. Not available			9.
a. Disallowed servicing assets and purchased credit card relationships	RCFDB591	1,077,907	9.a.
b. Disallowed deferred tax assets	RCFD5610	0	9.b.
10. Other additions to (deductions from) Tier 1 capital	RCFDB592	-5,006	10.
11. Tier 1 capital	RCFD8274	88,979,017	11.
12. Qualifying subordinated debt and redeemable preferred stock	RCFD5306	21,878,794	12.
13. Cumulative perpetual preferred stock includible in Tier 2 capital	RCFDB593	0	13.
14. Allowance for loan and lease losses includible in Tier 2 capital	RCFD5310	11,531,827	14.
15. Unrealized gains on available-for-sale equity securities includible in Tier 2 capital	RCFD2221	0	15.
16. Other Tier 2 capital components	RCFDB594	2,572	16.
17. Tier 2 capital	RCFD5311	33,413,193	17.
18. Allowable Tier 2 capital (lesser of item 11 or 17)	RCFD8275	33,413,193	18.
19. Tier 3 capital allocated for market risk	RCFD1395	0	19.
20. Deductions for total risk-based capital	RCFDB595	0	20.
21. Total risk-based capital	RCFD3792	122,392,210	21.
22. Average total assets (from Schedule RC-K, item 9)	RCFD3368	1,554,220,565	22.
23. Disallowed goodwill and other disallowed intangible assets (from item 7 above)	RCFDB590	55,002,949	23.
24. Disallowed servicing assets and purchased credit card relationships (from item 9.a above)	RCFDB591	1,077,907	24.
25. Disallowed deferred tax assets (from item 9.b above)	RCFD5610	0	25.
26. Other deductions from assets for leverage capital purposes	RCFDB596	5,006	26.
27. Average total assets for leverage capital purposes	RCFDA224	1,498,134,703	27.
28. Not available			28.
a. Adjustment to Tier 1 capital reported in item 11	RCFDC228	475,032	28.a.
b. Adjustment to total risk-based capital reported in item 21	RCFDB503	950,064	28.b.
29. Adjustment to risk-weighted assets in item 62	RCFDB504	815,828	29.
30. Adjustment to average total assets in item 27	RCFDB505	974,663	30.

Schedule RC-R - Regulatory Capital

Dollar amounts in thousands	(Column A) Percentage (Banks with Financial Subsidiaries)		(Column B) Percentage (All Banks)		
31. Tier 1 leverage ratio	RCFD7273	0.059115	RCFD7204	0.059393	31.
32. Tier 1 risk-based capital ratio	RCFD7274	0.084723	RCFD7206	0.085112	32.
33. Total risk-based capital ratio	RCFD7275	0.116254	RCFD7205	0.117072	33.

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Schedule RC-R - Regulatory Capital

Dollar amounts in thousands	(Column A) Totals (from Schedule RC)	(Column B) Items Not Subject to Risk-Weighting	(Column C) Allocation by Risk Weight Category 0%	(Column D) Allocation by Risk Weight Category 20%	(Column E) Allocation by Risk Weight Category 50%	(Column F) Allocation by Risk Weight Category 100%	
	RCFD0010	RCFDC869	RCFDB600	RCFDB601		RCFDB602	
34. Cash and balances due from depository institutions	46,682,006	373,393	10,844,325	33,556,944		1,907,344	34.
	RCFD1754	RCFDB603	RCFDB604	RCFDB605	RCFDB606	RCFDB607	
35. Held-to-maturity securities	681,984	605,051	0	1,933	0	75,000	35.
	RCFD1773	RCFDB608	RCFDB609	RCFDB610	RCFDB611	RCFDB612	
36. Available-for-sale securities	258,424,071	1,458,460	48,316,665	182,659,188	9,177,331	16,812,425	36.
37. Federal funds sold and securities purchased under agreements to resell	RCFDC225		RCFDC063	RCFDC064		RCFDB520	
	150,896,201		11,001,895	139,372,933		521,373	37.
	RCFD5369	RCFDB617	RCFDB618	RCFDB619	RCFDB620	RCFDB621	
38. Loans and leases held for sale	16,825,059	0	73,202	964,414	3,786,080	12,001,362	38.
	RCFDB528	RCFDB622	RCFDB623	RCFDB624	RCFDB625	RCFDB626	
39. Loans and leases, net of unearned income	695,495,110	134,551	3,049,329	127,460,304	81,782,372	483,068,554	39.
	RCFD3123	RCFD3123					
40. Allowance for loan and lease losses	11,115,206	11,115,206					40.
	RCFD3545	RCFDB627	RCFDB628	RCFDB629	RCFDB630	RCFDB631	
41. Trading assets	155,638,913	155,638,913	0	0	0	0	41.
	RCFDB639	RCFDB640	RCFDB641	RCFDB642	RCFDB643	RCFD5339	
42. All other assets	158,102,910	57,576,002	4,799,398	748,897	239	94,978,375	42.
	RCFD2170	RCFDB644	RCFD5320	RCFD5327	RCFD5334	RCFD5340	
43. Total assets	1,471,631,047	204,671,164	78,084,814	484,764,613	94,746,022	609,364,433	43.

Schedule RC-R - Regulatory Capital

Dollar amounts in thousands	(Column A) Face Value or Notional Amount	(Column B) Credit Equivalent Amount	(Column C) Allocation by Risk Weight Category 0%	(Column D) Allocation by Risk Weight Category 20%	(Column E) Allocation by Risk Weight Category 50%	(Column F) Allocation by Risk Weight Category 100%	
	RCFDB546	RCFDB547	RCFDB548	RCFDB581	RCFDB582	RCFDB583	
44. Financial standby letters of credit	102,604,215	102,604,215	2,302,440	34,072,901	3,853,109	62,375,765	44.
	RCFD3821	RCFDB650	RCFDB651	RCFDB652	RCFDB653	RCFDB654	
45. Performance standby letters of credit	8,533,744	4,266,872	128,312	1,850,042	0	2,288,518	45.
	RCFD3411	RCFDB655	RCFDB656	RCFDB657	RCFDB658	RCFDB659	
46. Commercial and similar letters of credit	3,973,092	794,618	4,398	173,930	0	616,291	46.

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Dollar amounts in thousands	(Column A) Face Value or Notional Amount	(Column B) Credit Equivalent Amount	(Column C) Allocation by Risk Weight Category 0%	(Column D) Allocation by Risk Weight Category 20%	(Column E) Allocation by Risk Weight Category 50%	(Column F) Allocation by Risk Weight Category 100%	
47. Risk participations in bankers acceptances acquired by the reporting institution	RCFD3429	RCFDB660	RCFDB661	RCFDB662		RCFDB663	
	0	0	0	0		0	47.
48. Securities lent	RCFD3433	RCFDB664	RCFDB665	RCFDB666	RCFDB667	RCFDB668	
	504,846	504,846	504,846	0	0	0	48.
49. Retained recourse on small business obligations sold with recourse	RCFDA250	RCFDB669	RCFDB670	RCFDB671	RCFDB672	RCFDB673	
	0	0	0	0	0	0	49.
50. Recourse and direct credit substitutes (other than financial standby letters of credit) subject to the low-level exposure rule and residual interests subject to a dollar-for-dollar capital requirement	RCFDB541	RCFDB542				RCFDB543	
	789,017	6,739,564				6,739,564	50.
51. All other financial assets sold with recourse	RCFDB675	RCFDB676	RCFDB677	RCFDB678	RCFDB679	RCFDB680	
	995,342	995,342	0	667,159	70,667	257,515	51.
52. All other off-balance sheet liabilities	RCFDB681	RCFDB682	RCFDB683	RCFDB684	RCFDB685	RCFDB686	
	0	0	0	0	0	0	52.
53. Unused commitments with an original maturity exceeding one year	RCFD3833	RCFDB687	RCFDB688	RCFDB689	RCFDB690	RCFDB691	
	254,298,060	127,149,030	688,124	21,706,659	968,628	103,785,619	53.
54. Derivative contracts		RCFDA167	RCFDB693	RCFDB694	RCFDB695		
		217,854,113	48,707,437	92,675,987	76,470,690		54.
55. Total assets, derivatives, and off-balance sheet items by risk weight category			RCFDB696	RCFDB697	RCFDB698	RCFDB699	
			130,420,371	635,911,291	176,109,116	785,427,705	55.
56. Risk weight factor							
							56.
57. Risk-weighted assets by risk weight category			RCFDB700	RCFDB701	RCFDB702	RCFDB703	
			0	127,182,258	88,054,558	785,427,705	57.
58. Market risk equivalent assets						RCFD1651	
						44,775,714	58.
59. Risk-weighted assets before deductions for excess allowance for loan and lease losses and allocated transfer risk reserve						RCFDB704	
						1,045,440,235	59.
60. Excess allowance for loan and lease losses						RCFDA222	
						0	60.
61. Allocated transfer risk reserve						RCFD3128	
						0	61.
62. Total risk-weighted assets						RCFDA223	
						1,045,440,235	62.

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Schedule RC-R - Regulatory Capital

Dollar amounts in thousands			
1. Current credit exposure across all derivative contracts covered by the risk-based capital standards	RCFD8764	80,473,843	M.1.

Schedule RC-R - Regulatory Capital

Dollar amounts in thousands	(Column A) With a remaining maturity of one year or less	(Column B) With a remaining maturity of over one year through five years	(Column C) With a remaining maturity of over five years	
2. Notional principal amounts of derivative contracts:				M.2.
	RCFD3809	RCFD8766	RCFD8767	
a. Interest rate contracts	5,839,008,854	6,917,890,880	5,427,221,132	M.2.a.
	RCFD3812	RCFD8769	RCFD8770	
b. Foreign exchange contracts	1,445,221,686	308,830,866	173,242,898	M.2.b.
	RCFD8771	RCFD8772	RCFD8773	
c. Gold contracts	211,632	176,210	0	M.2.c.
	RCFD8774	RCFD8775	RCFD8776	
d. Other precious metals contracts	63,085	11,435	0	M.2.d.
	RCFD8777	RCFD8778	RCFD8779	
e. Other commodity contracts	2,231,169	1,234,428	16,890	M.2.e.
	RCFDA000	RCFDA001	RCFDA002	
f. Equity derivative contracts	46,532,453	43,559,866	8,393,633	M.2.f.
g. Credit derivative contracts:				M.2.g.
	RCFDC980	RCFDC981	RCFDC982	
1. Investment grade	100,304,898	1,129,720,607	388,705,535	M.2.g.1.
	RCFDC983	RCFDC984	RCFDC985	
2. Subinvestment grade	42,251,432	296,315,483	93,003,857	M.2.g.2.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Schedule RC-S - Servicing Securitization and Asset Sale Activities

Dollar amounts in thousands	(Column A) 1-4 Family Residential Loans	(Column B) Home Equity Lines	(Column C) Credit Card Receivables	(Column D) Auto Loans	(Column E) Other Consumer Loans	(Column F) Commercial and Industrial Loans	(Column G) All Other Loans, All Leases, and All Other Assets	
1. Outstanding principal balance of assets sold and securitized by the reporting bank with servicing retained or with recourse or other seller-provided credit enhancements	RCFDB705	RCFDB706	RCFDB707	RCFDB708	RCFDB709	RCFDB710	RCFDB711	
	62,060,606	94,976	0	5,385,319	515,266	0	49,063,790	1.
2. Maximum amount of credit exposure arising from recourse or other seller-provided credit enhancements provided to structures reported in item 1 in the form of:								2.
a. Credit-enhancing interest-only strips (included in Schedules RC-B or RC-F or in Schedule RC, item 5)	RCFDB712	RCFDB713	RCFDB714	RCFDB715	RCFDB716	RCFDB717	RCFDB718	
	0	0	0	0	0	0	1	2.a.
b. Subordinated securities and other residual interests	RCFDC393	RCFDC394	RCFDC395	RCFDC396	RCFDC397	RCFDC398	RCFDC399	
	37,477	2,816	0	467,829	0	0	51,780	2.b.
c. Standby letters of credit and other enhancements	RCFDC400	RCFDC401	RCFDC402	RCFDC403	RCFDC404	RCFDC405	RCFDC406	
	0	0	0	0	13,205	0	1,320	2.c.
3. Reporting bank's unused commitments to provide liquidity to structures reported in item 1	RCFDB726	RCFDB727	RCFDB728	RCFDB729	RCFDB730	RCFDB731	RCFDB732	
	0	0	0	4,450	0	0	0	3.
4. Past due loan amounts included in item 1:								4.
a. 30-89 days past due	RCFDB733	RCFDB734	RCFDB735	RCFDB736	RCFDB737	RCFDB738	RCFDB739	
	2,011,540	1,462	0	80,694	11,006	0	264,557	4.a.
b. 90 days or more past due	RCFDB740	RCFDB741	RCFDB742	RCFDB743	RCFDB744	RCFDB745	RCFDB746	
	3,210,859	1,705	0	8,728	3,871	0	466,088	4.b.
5. Charge-offs and recoveries on assets sold and securitized with servicing retained or with recourse or other seller-provided credit enhancements (calendar year-to-date):								5.
a. Charge-offs	RIADB747	RIADB748	RIADB749	RIADB750	RIADB751	RIADB752	RIADB753	
	37,136	396	0	47,777	12,528	0	0	5.a.
b. Recoveries	RIADB754	RIADB755	RIADB756	RIADB757	RIADB758	RIADB759	RIADB760	
	1,066	1	0	4,289	0	0	0	5.b.
6. Amount of ownership (or seller's) interests carried as:								6.
a. Securities (included in Schedule RC-B or in Schedule RC, item 5)		RCFDB761	RCFDB762			RCFDB763		
		0	0			0		6.a.

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Dollar amounts in thousands	(Column A) 1-4 Family Residential Loans	(Column B) Home Equity Lines	(Column C) Credit Card Receivables	(Column D) Auto Loans	(Column E) Other Consumer Loans	(Column F) Commercial and Industrial Loans	(Column G) All Other Loans, All Leases, and All Other Assets	
b. Loans (included in Schedule RC-C)		RCFDB500	RCFDB501			RCFDB502		
		23,226	**0**			**0**		6.b.
7. Past due loan amounts included in interests reported in item 6.a:								
								7.
a. 30-89 days past due		RCFDB764	RCFDB765			RCFDB766		
		0	**0**			**0**		7.a.
b. 90 days or more past due		RCFDB767	RCFDB768			RCFDB769		
		0	**0**			**0**		7.b.
8. Charge-offs and recoveries on loan amounts included in interests reported in item 6.a (calendar year-to-date):								
								8.
a. Charge-offs		RIADB770	RIADB771			RIADB772		
		0	**0**			**0**		8.a.
b. Recoveries		RIADB773	RIADB774			RIADB775		
		0	**0**			**0**		8.b.
9. Maximum amount of credit exposure arising from credit enhancements provided by the reporting bank to other institutions' securitization structures in the form of standby letters of credit, purchased subordinated securities, and other enhancements	RCFDB776	RCFDB777	RCFDB778	RCFDB779	RCFDB780	RCFDB781	RCFDB782	
	0	**0**	**0**	**0**	**0**	**0**	**0**	9.
10. Reporting bank's unused commitments to provide liquidity to other institutions' securitization structures	RCFDB783	RCFDB784	RCFDB785	RCFDB786	RCFDB787	RCFDB788	RCFDB789	
	0	**0**	**0**	**0**	**0**	**0**	**0**	10.
11. Assets sold with recourse or other seller-provided credit enhancements and not securitized by the reporting bank	RCFDB790	RCFDB791	RCFDB792	RCFDB793	RCFDB794	RCFDB795	RCFDB796	
	158,131	**0**	**0**	**0**	**0**	**5,970**	**0**	11.
12. Maximum amount of credit exposure arising from recourse or other seller-provided credit enhancements provided to assets reported in item 11	RCFDB797	RCFDB798	RCFDB799	RCFDB800	RCFDB801	RCFDB802	RCFDB803	
	158,131	**0**	**0**	**0**	**0**	**5,970**	**0**	12.

FOIA CONFIEDENTIAL TREATMENT REQUESTED
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Schedule RC-S - Servicing Securitization and Asset Sale Activities

Dollar amounts in thousands

1. Small business obligations transferred with recourse under Section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994:			M.1.
a. Outstanding principal balance	RCFDA249	0	M.1.a.
b. Amount of retained recourse on these obligations as of the report date	RCFDA250	0	M.1.b.
2. Outstanding principal balance of assets serviced for others (includes participations serviced for others):			M.2.
a. Closed-end 1-4 family residential mortgages serviced with recourse or other servicer-provided credit enhancements	RCFDB804	26,653,366	M.2.a.
b. Closed-end 1-4 family residential mortgages serviced with no recourse or other servicer-provided credit enhancements	RCFDB805	1,465,557,500	M.2.b.
c. Other financial assets (includes home equity lines)	RCFDA591	127,094,134	M.2.c.
d. 1-4 family residential mortgages serviced for others that are in process of foreclosure at quarter-end (includes closed-end and open-end loans)	RCFDF699	364	M.2.d.
3. Asset-backed commercial paper conduits:			M.3.
a. Maximum amount of credit exposure arising from credit enhancements provided to conduit structures in the form of standby letters of credit, subordinated securities, and other enhancements:			M.3.a.
1. Conduits sponsored by the bank, a bank affiliate, or the bank's holding company	RCFDB806	4,320,319	M.3.a.1.
2. Conduits sponsored by other unrelated institutions	RCFDB807	0	M.3.a.2.
b. Unused commitments to provide liquidity to conduit structures:			M.3.b.
1. Conduits sponsored by the bank, a bank affiliate, or the bank's holding company	RCFDB808	59,030,763	M.3.b.1.
2. Conduits sponsored by other unrelated institutions	RCFDB809	0	M.3.b.2.
4. Outstanding credit card fees and finance charges included in Schedule RC-S, item 1, column C	RCFDC407	0	M.4.

Schedule RC-T - Fiduciary and Related Services

Dollar amounts in thousands

1. Does the institution have fiduciary powers?	RCFDA345	Yes	1.
2. Does the institution exercise the fiduciary powers it has been granted?	RCFDA346	Yes	2.
3. Does the institution have any fiduciary or related activity (in the form of assets or accounts) to report in this schedule?	RCFDB867	Yes	3.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Schedule RC-T - Fiduciary and Related Services

Dollar amounts in thousands	(Column A) Managed Assets	(Column B) Non-Managed Assets	(Column C) Number of Managed Accounts	(Column D) Number of Non-Managed Accounts	
	RCFDB868	RCFDB869	RCFDB870	RCFDB871	
4. Personal trust and agency accounts	90,503,530	12,507,482	74878	2090	4.
5. Retirement related trust and agency accounts:					5.
	RCFDB872	RCFDB873	RCFDB874	RCFDB875	
a. Employee benefit - defined contribution	7,064,874	15,293,262	605	2147	5.a.
	RCFDB876	RCFDB877	RCFDB878	RCFDB879	
b. Employee benefit - defined benefit	3,856,516	21,829,075	816	816	5.b.
	RCFDB880	RCFDB881	RCFDB882	RCFDB883	
c. Other retirement accounts	9,533,086	2,126,466	12902	1231	5.c.
	RCFDB884	RCFDB885	RCFDC001	RCFDC002	
6. Corporate trust and agency accounts	416,601	316,487,321	157	17235	6.
	RCFDB886		RCFDB888		
7. Investment management agency accounts	111,017,619		57549		7.
	RCFDB890	RCFDB891	RCFDB892	RCFDB893	
8. Other fiduciary accounts	9,114	376,604	3	138	8.
	RCFDB894	RCFDB895	RCFDB896	RCFDB897	
9. Total fiduciary accounts	222,401,340	368,620,210	146910	23657	9.
		RCFDB898		RCFDB899	
10. Custody and safekeeping accounts		115,141,997		167205	10.
	RCFNB900	RCFNB901	RCFNB902	RCFNB903	
11. Fiduciary accounts held in foreign offices (included in items 9 and 10)	0	52,955	0	5	11.

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Schedule RC-T - Fiduciary and Related Services

Dollar amounts in thousands			
12. Personal trust and agency accounts	RIADB904	CONF	12.
13. Retirement related trust and agency accounts:			13.
a. Employee benefit - defined contribution	RIADB905	CONF	13.a.
b. Employee benefit - defined benefit	RIADB906	CONF	13.b.
c. Other retirement accounts	RIADB907	CONF	13.c.
14. Corporate trust and agency accounts	RIADA479	CONF	14.
15. Investment management agency accounts	RIADB908	CONF	15.
16. Other fiduciary accounts	RIADA480	CONF	16.
17. Custody and safekeeping accounts	RIADB909	CONF	17.
18. Other fiduciary and related services income	RIADB910	CONF	18.
19. Total gross fiduciary and related services income	RIAD4070	1,643,154	19.
a. Fiduciary and related services income - foreign offices (included in item 19)	RIADB912	CONF	19.a.
20. Expenses	RIADC058	CONF	20.
21. Net losses from fiduciary and related services	RIADA488	CONF	21.
22. Intracompany income credits for fiduciary and related services	RIADB911	CONF	22.
23. Net fiduciary and related services income	RIADA491	CONF	23.
1. Managed assets held in personal trust and agency accounts:			M.1.
a. Noninterest-bearing deposits	RCFDB913	6,062	M.1.a.
b. Interest-bearing deposits	RCFDB914	1,957,238	M.1.b.
c. U.S. Treasury and U.S. Government agency obligations	RCFDB915	3,846,976	M.1.c.
d. State, county and municipal obligations	RCFDB916	10,839,538	M.1.d.
e. Money market mutual funds	RCFDB917	7,741,042	M.1.e.
f. Other short-term obligations	RCFDB918	35,822	M.1.f.
g. Other notes and bonds	RCFDB919	2,899,400	M.1.g.
h. Common and preferred stocks	RCFDB920	53,467,941	M.1.h.
i. Real estate mortgages	RCFDB921	103,348	M.1.i.
j. Real estate	RCFDB922	8,798,819	M.1.j.
k. Miscellaneous assets	RCFDB923	807,344	M.1.k.
l. Total managed assets held in personal trust and agency accounts	RCFDB868	90,503,530	M.1.l.

Schedule RC-T - Fiduciary and Related Services

Dollar amounts in thousands	(Column A) Number of Issues		(Column B) Principal Amount Outstanding		
2. Corporate trust and agency accounts:					M.2.
a. Corporate and municipal trusteeships	RCFDB927	2168	RCFDB928	1,001,551,393	M.2.a.
b. Transfer agent, registrar, paying agent, and other corporate agency	RCFDB929	3622			M.2.b.

Schedule RC-T - Fiduciary and Related Services

Dollar amounts in thousands	(Column A) Number of Funds		(Column B) Market Value of Fund Assets		
3. Collective investment funds and common trust funds:					M.3.
a. Domestic equity	RCFDB931	15	RCFDB932	1,446,481	M.3.a.
b. International/Global equity	RCFDB933	1	RCFDB934	341,404	M.3.b.
c. Stock/Bond blend	RCFDB935	0	RCFDB936	0	M.3.c.
d. Taxable bond	RCFDB937	14	RCFDB938	2,534,814	M.3.d.
e. Municipal bond	RCFDB939	8	RCFDB940	1,443,298	M.3.e.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Dollar amounts in thousands	(Column A) Number of Funds		(Column B) Market Value of Fund Assets		
f. Short term investments/Money market	RCFDB941	0	RCFDB942	0	M.3.f.
g. Specialty/Other	RCFDB943	4	RCFDB944	705,475	M.3.g.
h. Total collective investment funds	RCFDB945	42	RCFDB946	6,471,472	M.3.h.

Schedule RC-T - Fiduciary and Related Services

Dollar amounts in thousands	(Column A) Gross Losses Managed Accounts	(Column B) Gross Losses Non-Managed Accounts	(Column C) Recoveries	
4. Fiduciary settlements, surcharges, and other losses:				M.4.
	RIADB947	RIADB948	RIADB949	
a. Personal trust and agency accounts	CONF	CONF	CONF	M.4.a.
	RIADB950	RIADB951	RIADB952	
b. Retirement related trust and agency accounts	CONF	CONF	CONF	M.4.b.
	RIADB953	RIADB954	RIADB955	
c. Investment management agency accounts	CONF	CONF	CONF	M.4.c.
	RIADB956	RIADB957	RIADB958	
d. Other fiduciary accounts and related services	CONF	CONF	CONF	M.4.d.
	RIADB959	RIADB960	RIADB961	
e. Total fiduciary settlements, surcharges, and other losses	CONF	CONF	CONF	M.4.e.

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Dollar amounts in thousands	
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FOIA CONFIEDENTIAL TREATMENT REQUESTED

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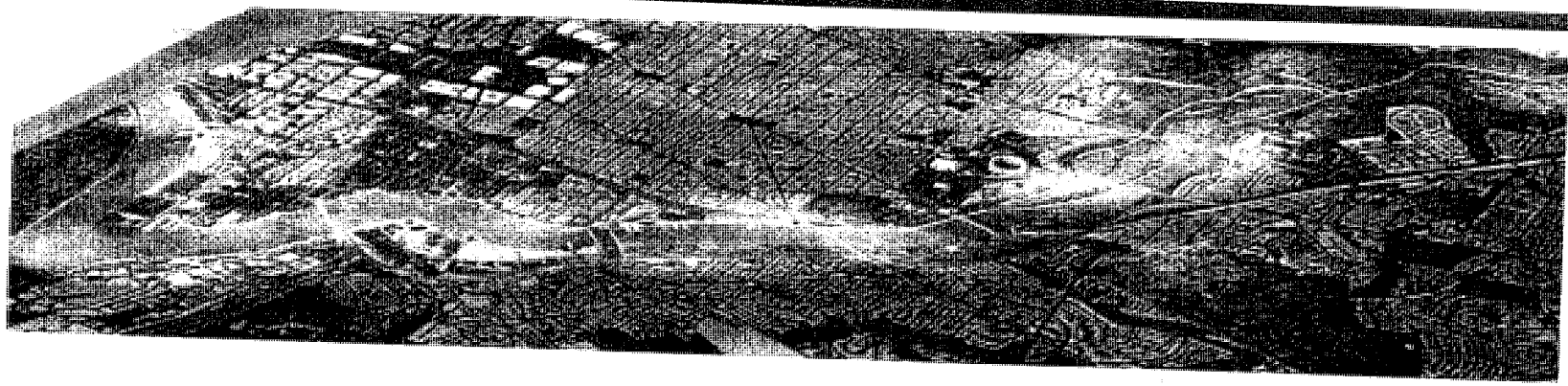
FOIA CONFIEDENTIAL TREATMENT REQUESTED



Parkside Pedestrian Bridge

Stakeholder Outreach - March 5, 2009

WMATA-INV 004333

FOIA CONFIEDENTIAL TREATMENT REQUESTED

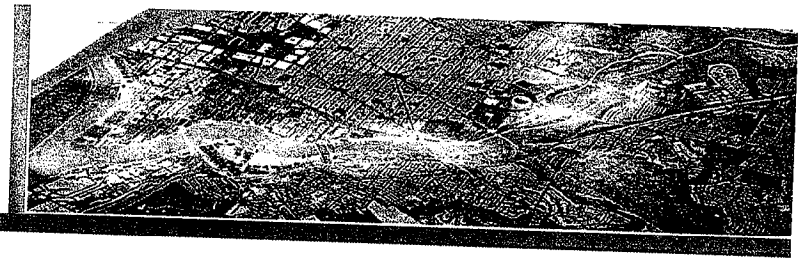
Parkside Pedestrian Bridge

- Project Background
- Recent Progress
- Design and Construction Schedule

WMATA-INV 004334

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Parkside Pedestrian Bridge
PROJECT BACKGROUND

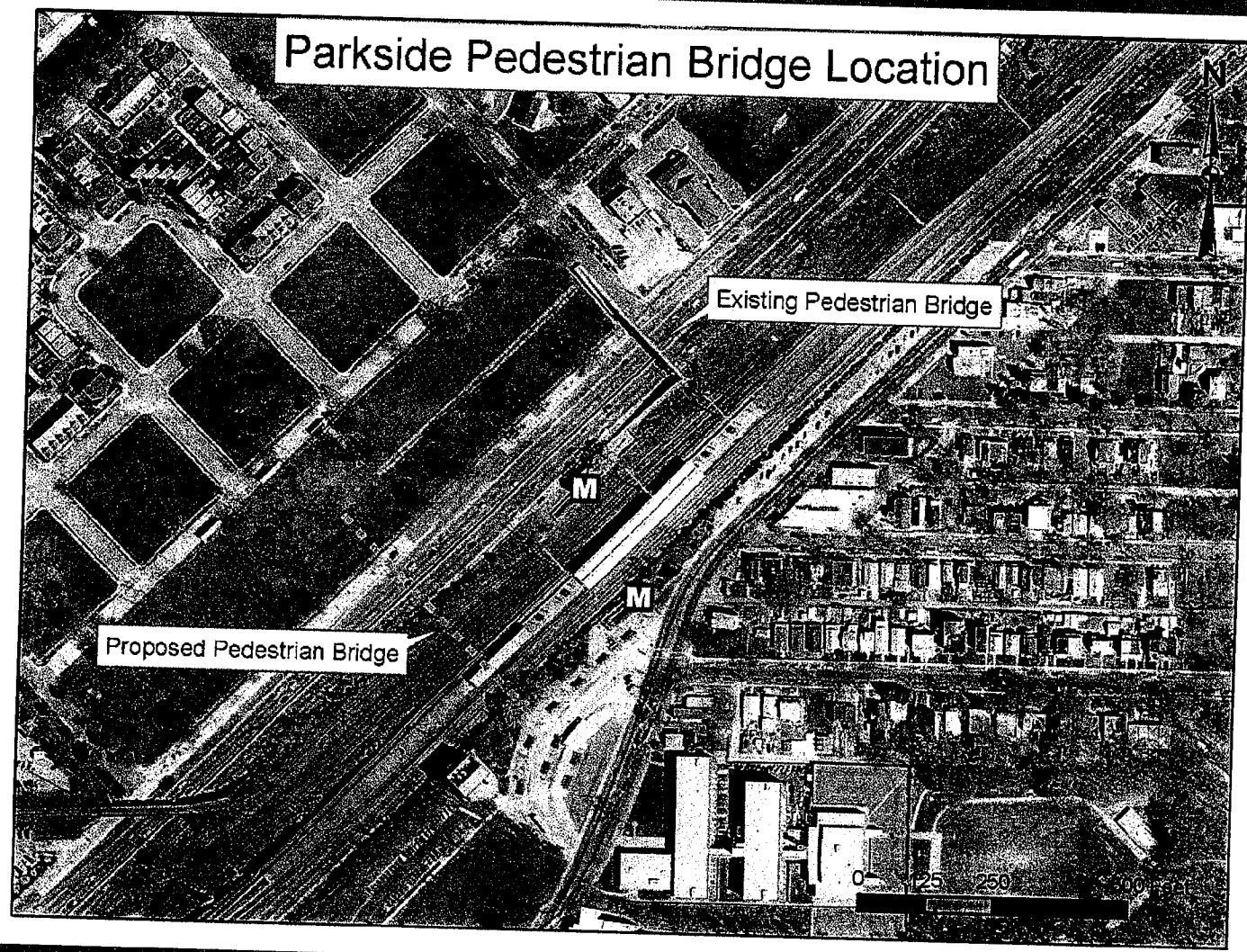


- 2005 – Parkside Neighborhood design developed leading to concept of new pedestrian bridge.

WMATA-INV 004335

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Parkside Pedestrian Bridge
PROJECT BACKGROUND



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realizing the vision

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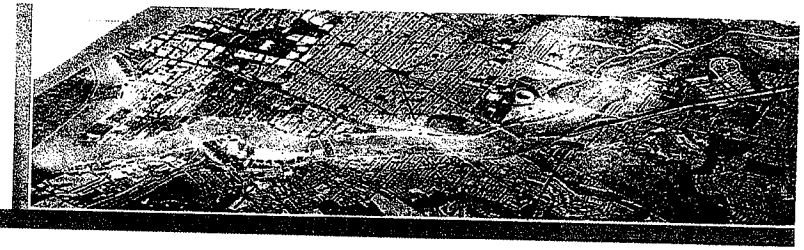
FOIA CONFIEDENTIAL TREATMENT REQUESTED

Parkside Pedestrian Bridge
PROJECT BACKGROUND

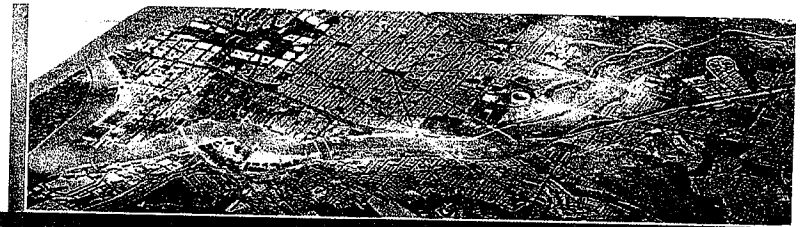


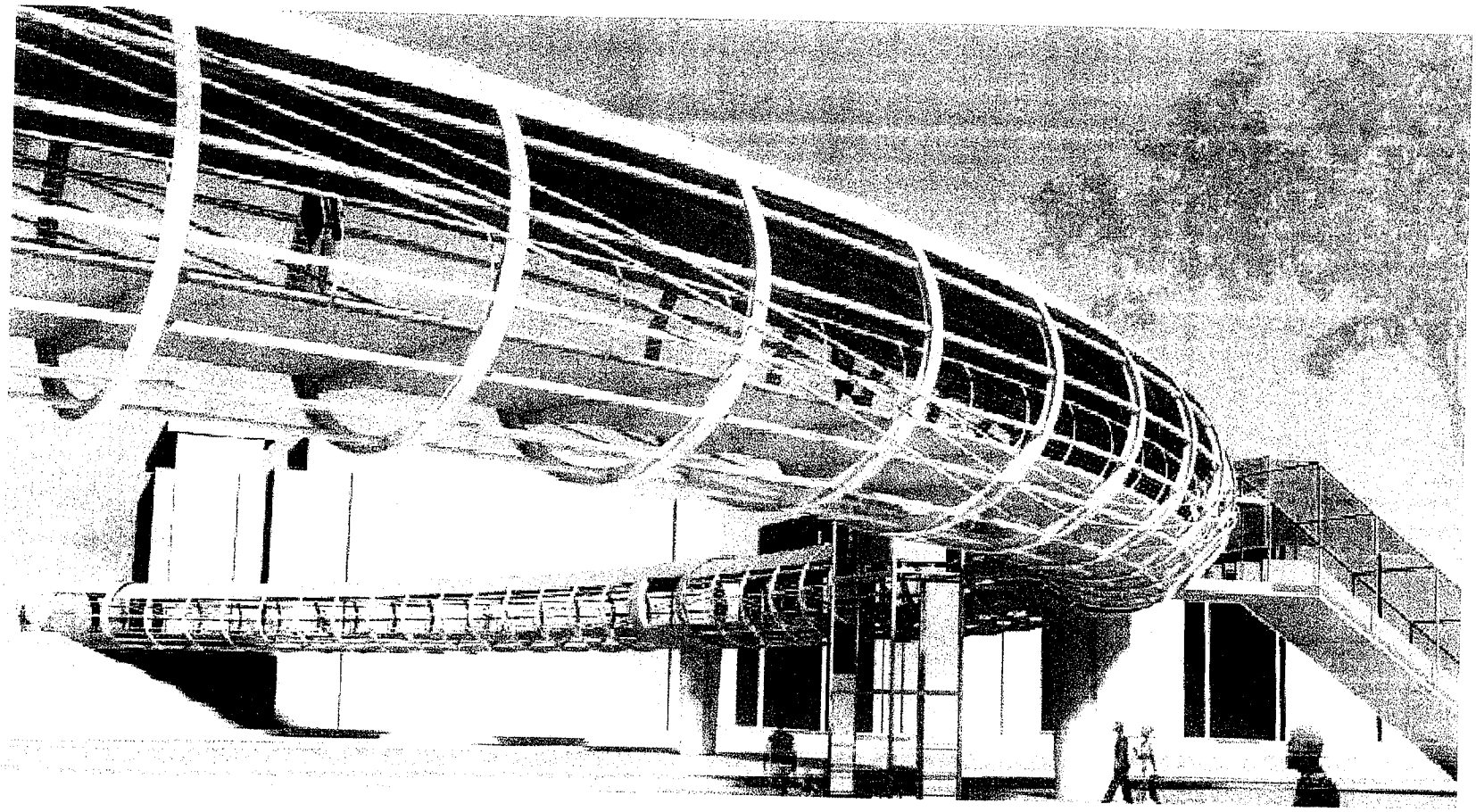
- 2005 – Parkside Neighborhood design developed leading to concept of new pedestrian bridge.
- Parkside selected as a target neighborhood under the AWI for revitalization and important gateway to Anacostia River.
- The execution of the Pedestrian Bridge Project conceived as a collaborative effort with the District Government and Parkside Developer.
- March 2007 - The Anacostia Waterfront Corporation (AWC) selected conceptual design competition winner.

WMATA-INV 004337

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Parkside Pedestrian Bridge
PROJECT BACKGROUND





AWC Conceptual Design Competition Winner

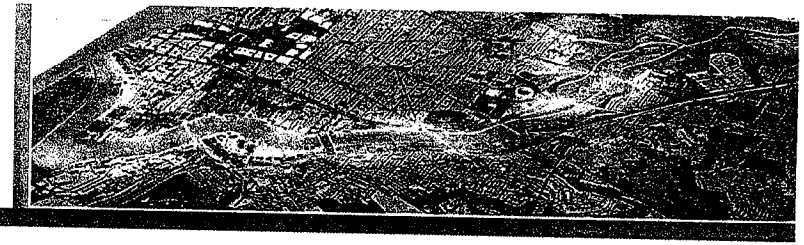
www.theanacostiawaterfront.com

Anacostia Waterfront
realizing the vision

WMATA-INV 004338

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Parkside Pedestrian Bridge
RECENT PROGRESS

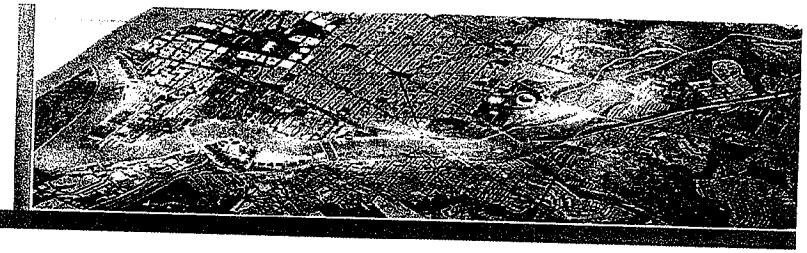


- September 2007 – AWC dissolved and project transitioned to Deputy Mayor's Office for Planning and Economic Development.
- January 2008 to October 2008 – DDOT completes preliminary engineering study including re-evaluation of design concepts

WMATA-INV 004339

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Parkside Pedestrian Bridge
RECENT PROGRESS

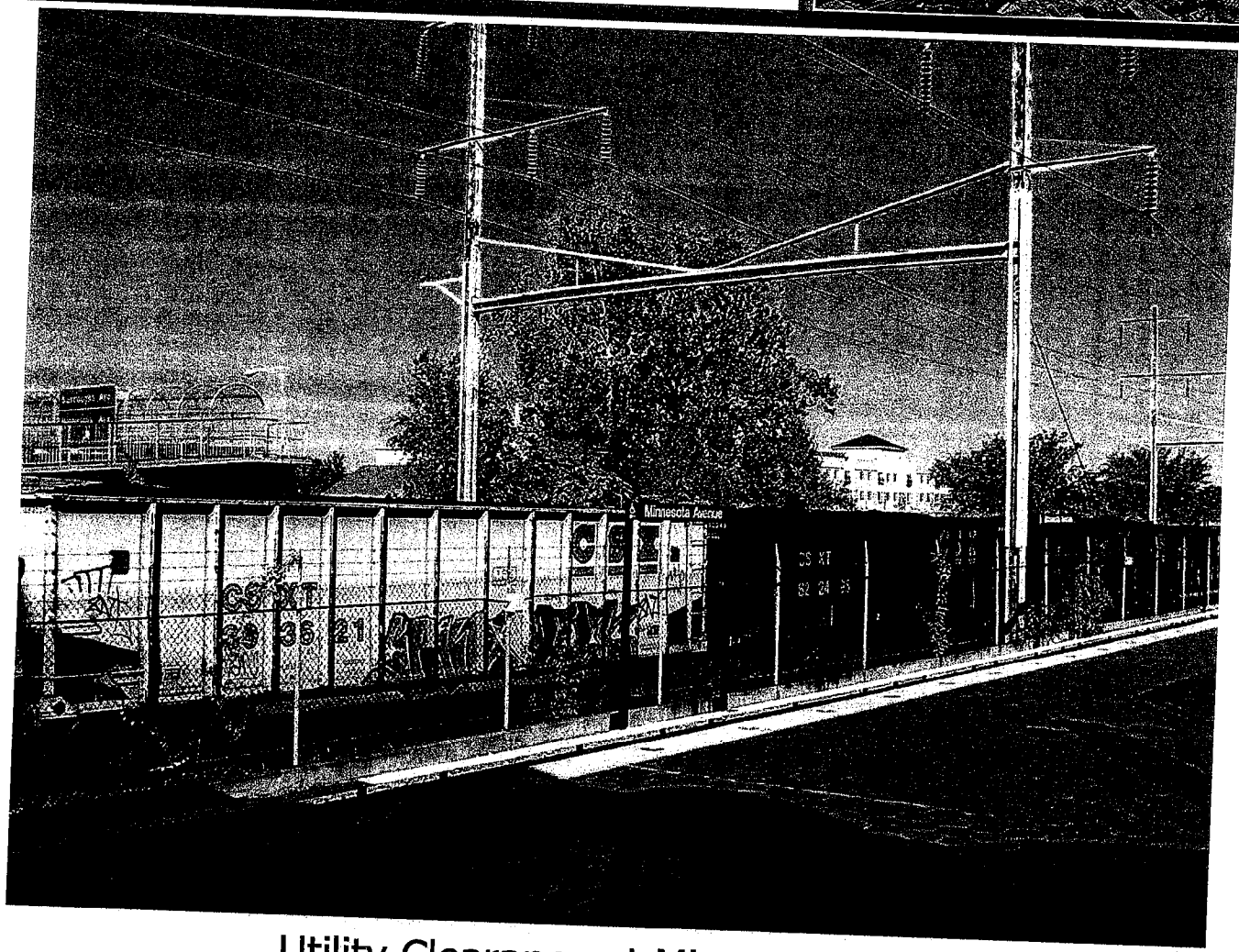


- Evaluation of Eleven Pedestrian Bridge Alternatives
  - Aesthetics
  - Functionality
  - Design/constructability issues
  - Preliminary development cost
- Drill-down of Four Design Alternatives
  - Preliminary structural analysis
  - Geotechnical considerations
  - Conflicts with utilities
  - Rail constraints
  - Timeline for construction
  - Refined cost estimates
  - Aesthetic improvements

WMATA-INV 004340

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Parkside Pedestrian Bridge
CONSTRUCTION CONSIDERATIONS



Utility Clearance at Minnesota Ave

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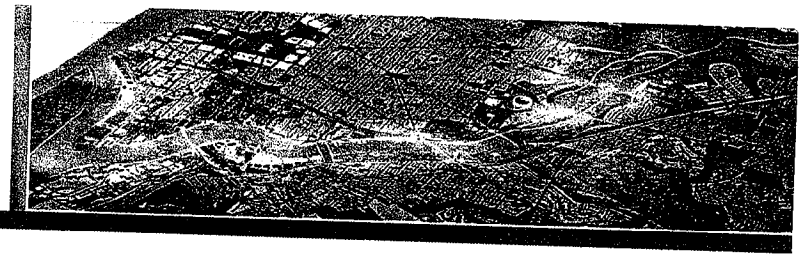
WMATA-INV 004341

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Parkside Pedestrian Bridge
RECENT PROGRESS

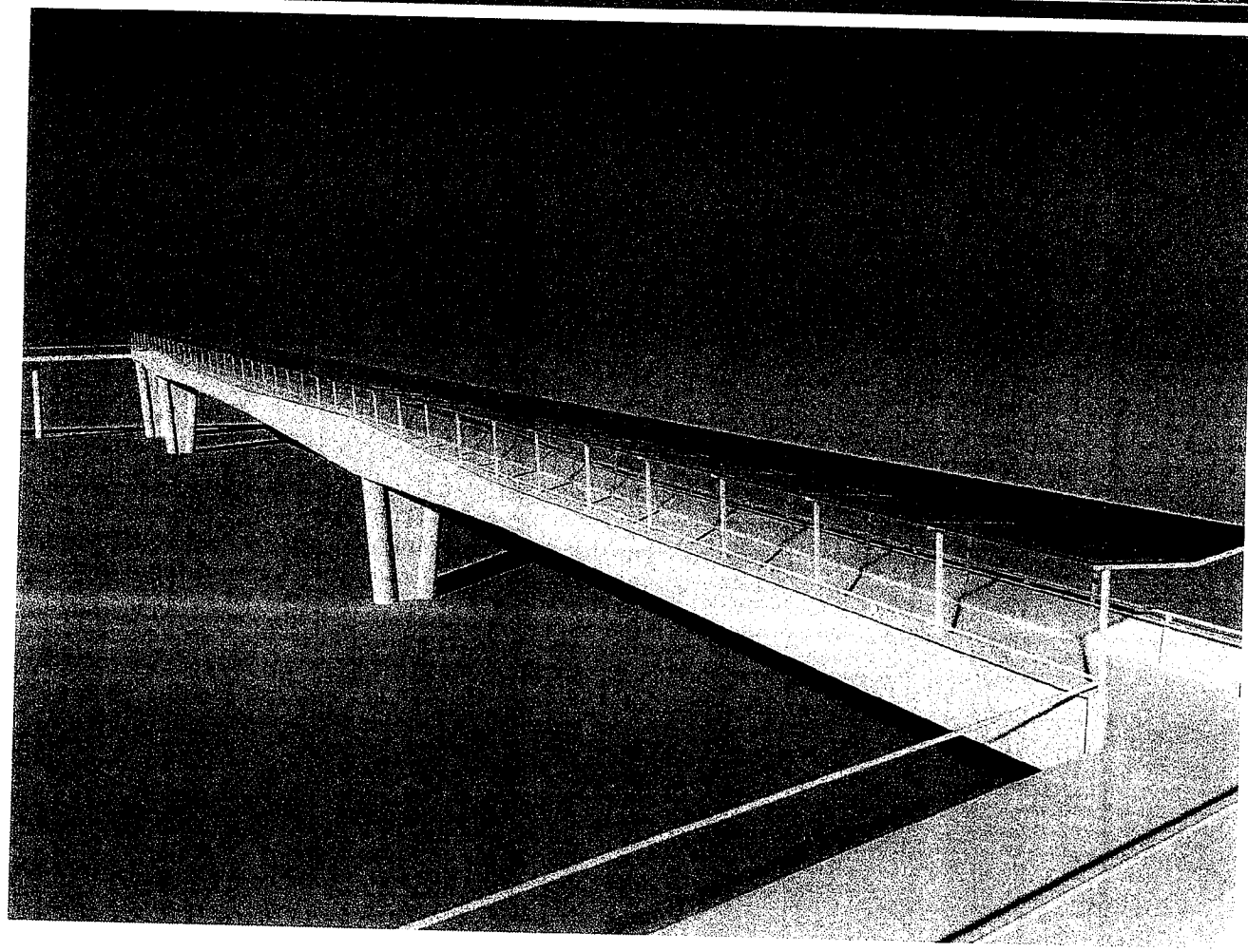


- Narrowed alternatives to 4 options that met project goals:
  - Low-rise suspension bridge
  - Cable-Stayed Bridge
  - Three Span Tied Arch
  - Three Span Girder Bridge
- Low-rise Suspension and Girder Bridges found to be most advantageous due to cost and constructibitility
- Aesthetically, Low-Rise Suspension Bridge found to be superior to Girder Bridge

WMATA-INV 004342

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Parkside Pedestrian Bridge



Girder Bridge Architectural Concept

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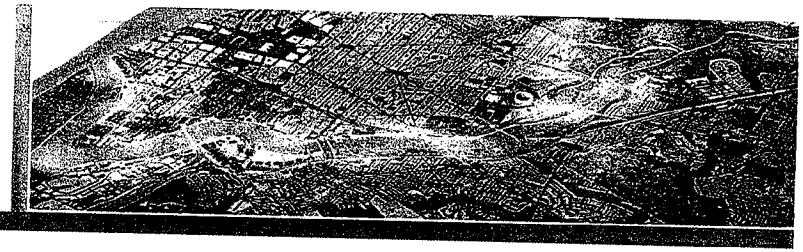
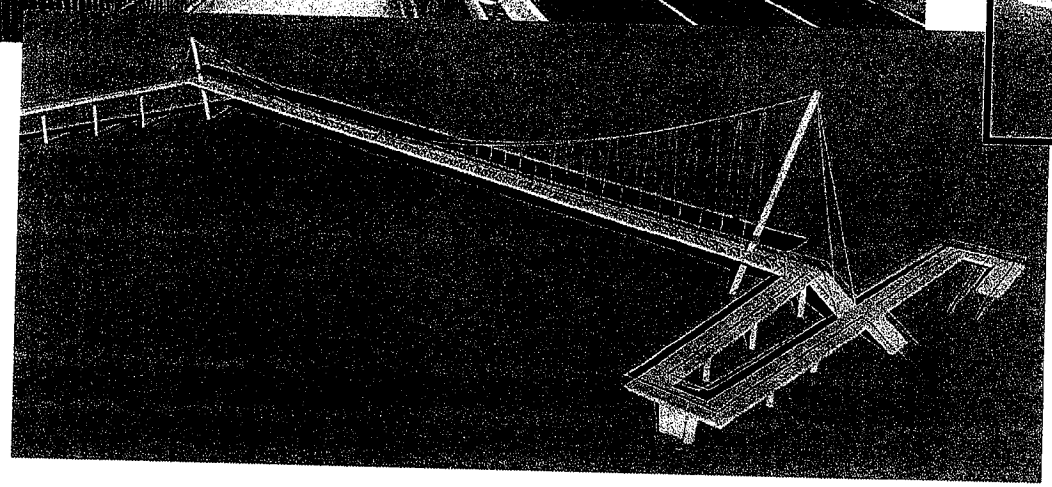
realizing the vision

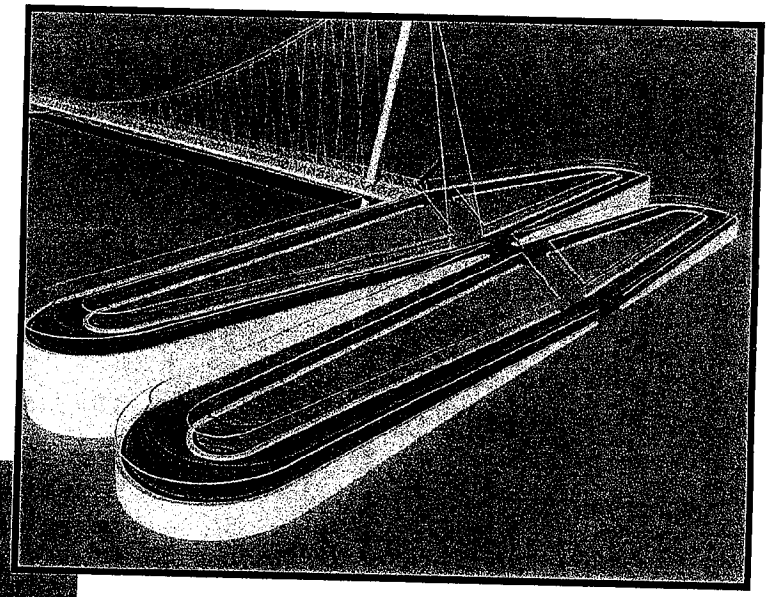
WMATA-INV 004343

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Parkside Pedestrian Bridge







Low Rise Suspension Bridge - Preferred Architectural Type

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WMATA-INV 004344

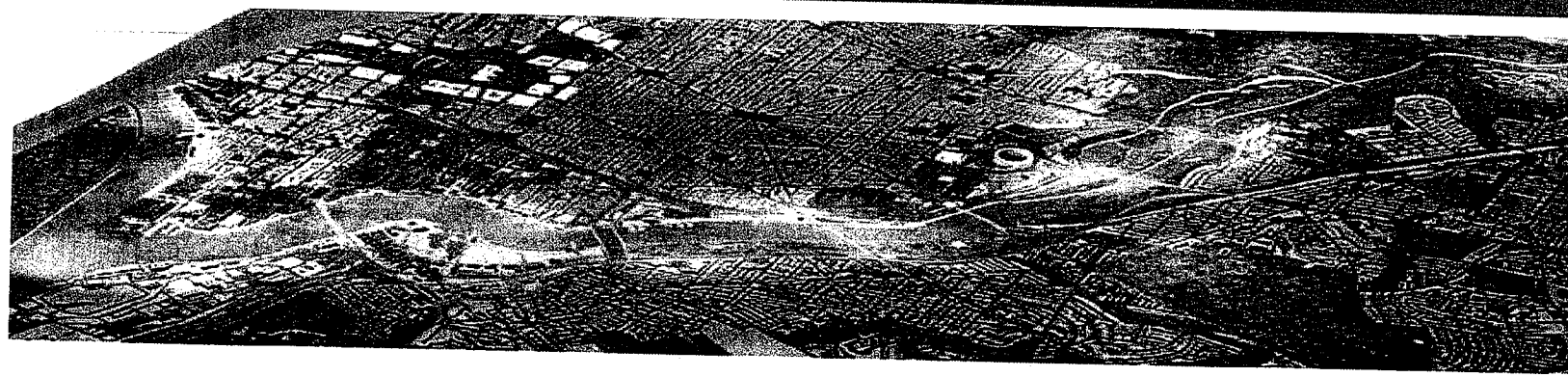
FOIA CONFIDENTIAL TREATMENT REQUESTED

Parkside Pedestrian Bridge
DESIGN AND CONSTRUCTION SCHEDULE

- Summer 2009 - Begin Full Design Effort
- Winter 2010 - Complete Design
- Summer 2010 – Begin Construction (Pending Utility and Development Coordination Requirements)

WMATA-INV 004345

FOIA CONFIEDENTIAL TREATMENT REQUESTED



QUESTIONS?

For more information, contact:

Joseph Dorsey, 202-671-4608
joseph.dorsey@dc.gov
~ or ~
Jeffrey Seltzer, 202-671-4607
jeffrey.seltzer@dc.gov

WMATA-INV 004346

BDC BUNDY DEVELOPMENT CORPORATION

DEVELOPMENT PROJECTS

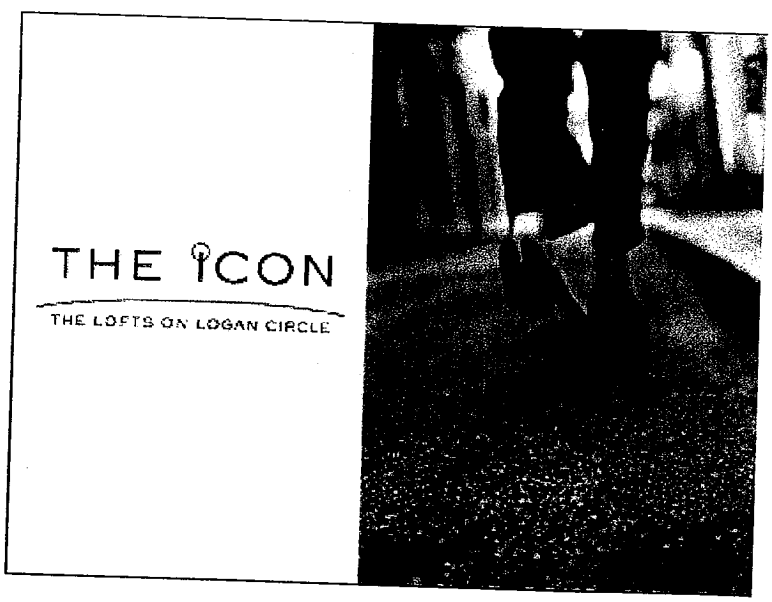
Development Projects

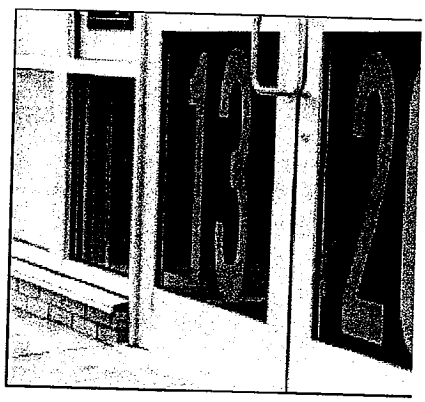
The Icon
Logan Circle

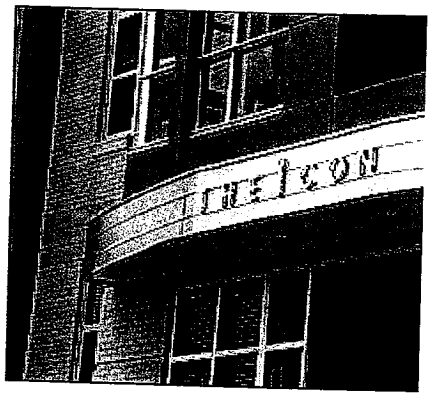
Floor to ceiling windows with spectacular views ar
The Icon at Logan Circle. Within walking distance
restaurants and shops along 14th Street, The Icor
the stately mansions of Logan Circle.

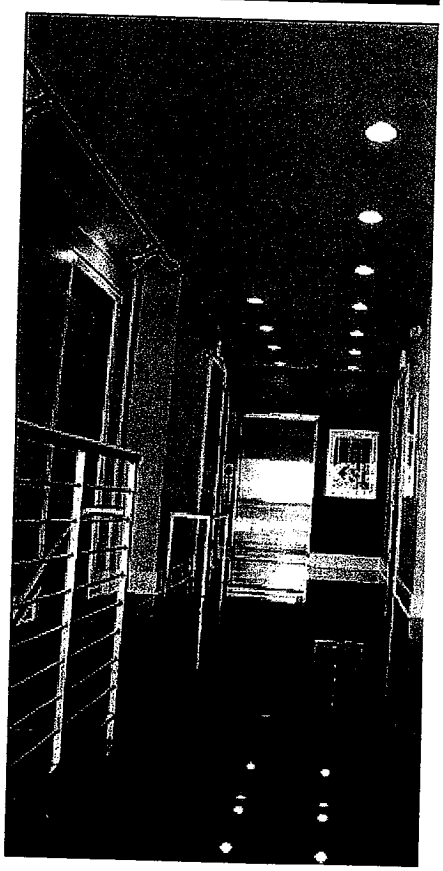
The Icon, a $5.2 million, 26,000 square foot new
developed and financed by The Bundy Developme
completed in 2004.

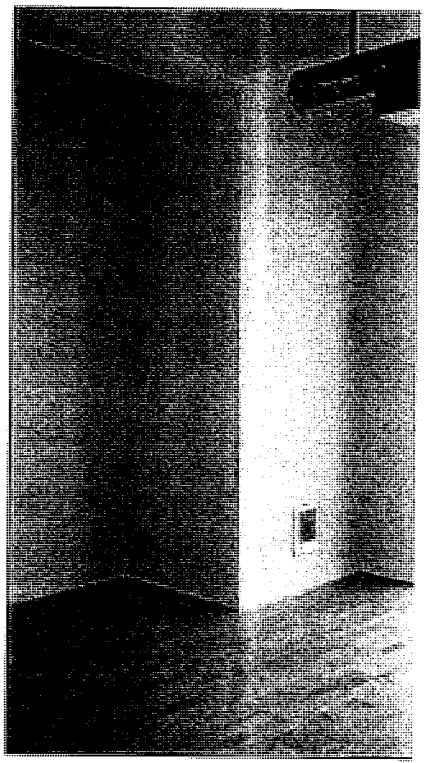
Omar says he was the project mgr for final phase:
- screening punchlist & warranties

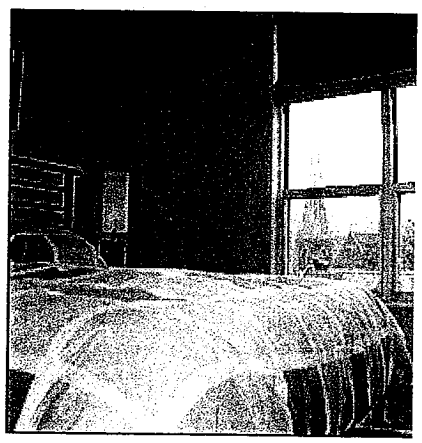












BDC's mission to capitalize on unique development opportunities to produce exceptional val

©2007 Bundy Development Corporation | design by hanskline.com

BDC BUNDY DEVELOPMENT CORPORATION

DEVELOPMENT PROJECTS

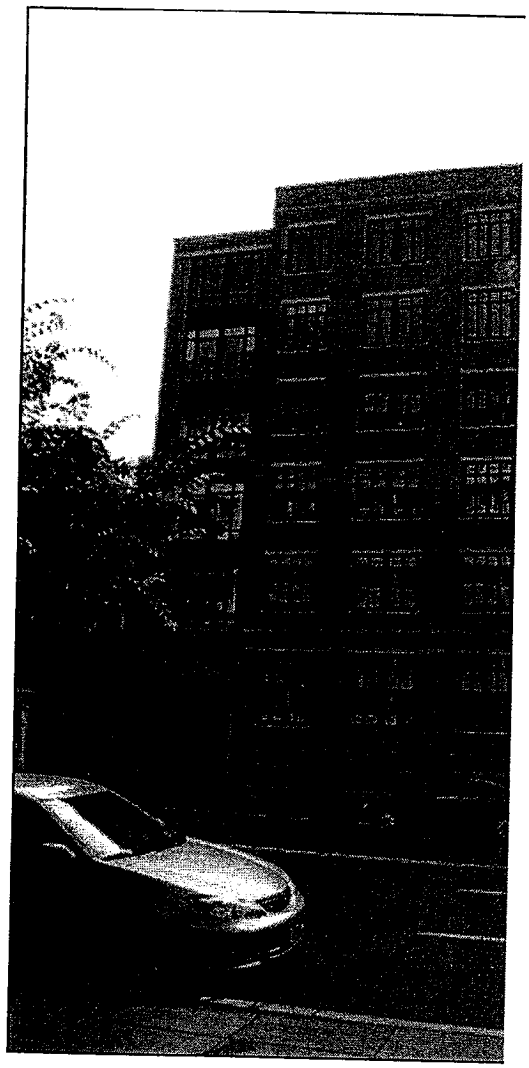
Development Projects

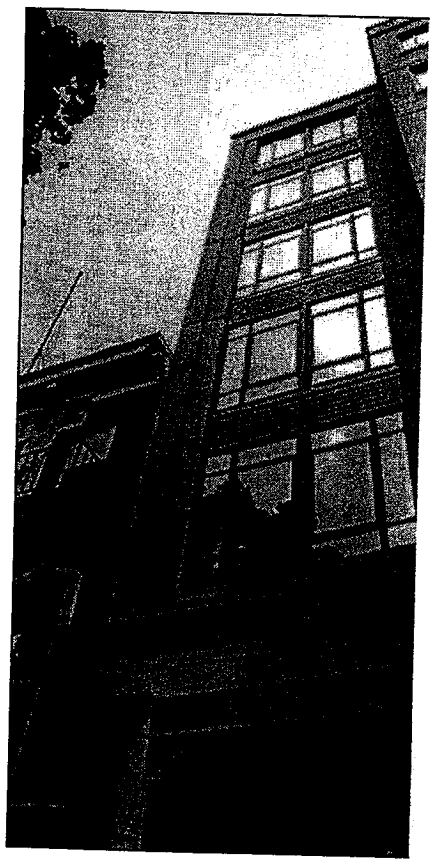
6th Street Flats
809 6th Street, NW
Chinatown

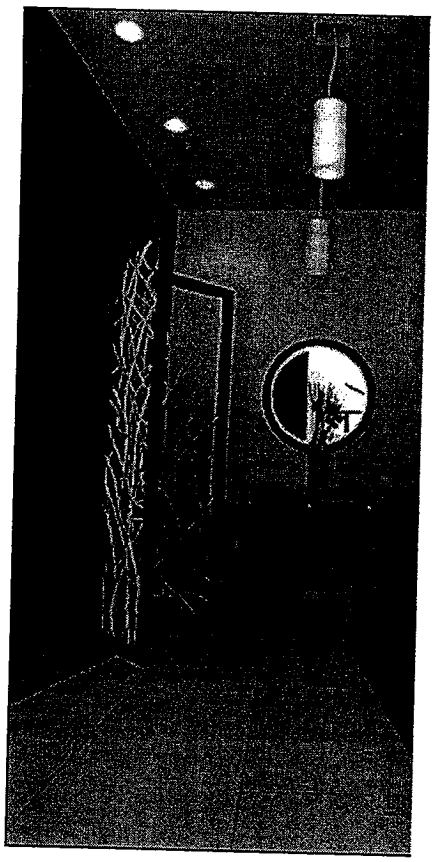
Located in Washington, DC's histor
this modern and luxurious dwelling
distance of the Verizon Center, Gal
Metro, and some of the city's best
trendiest night life.

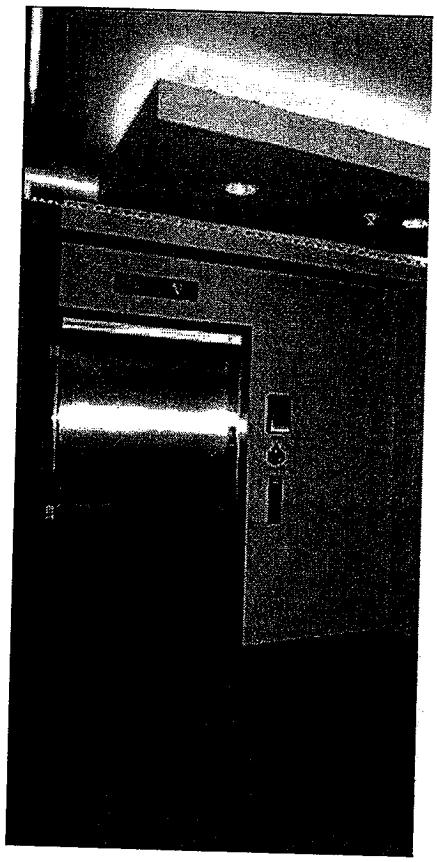
A $9 million, 40,000 square foot de
Street Flats offers 30 spacious con
six-story, newly constructed buildi
Development Corporation acquired
financed the development and com pleted
construction in 2005.

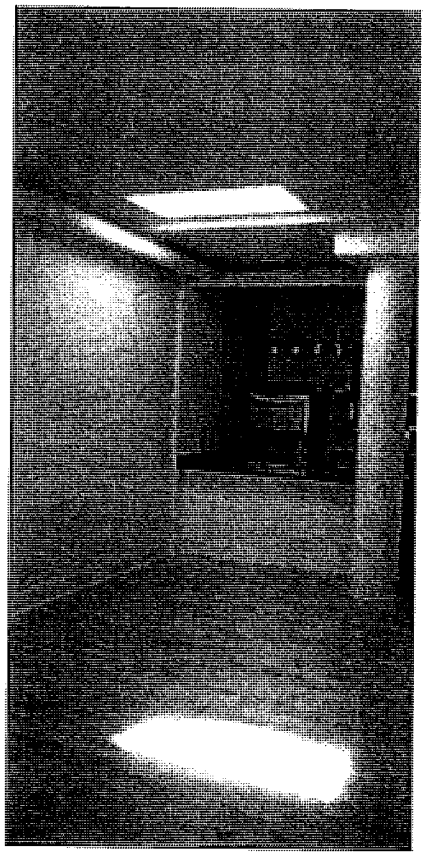
Omar says he managed all aspects of the project day-to-day on-site Const. mgmt, move-in & warranty

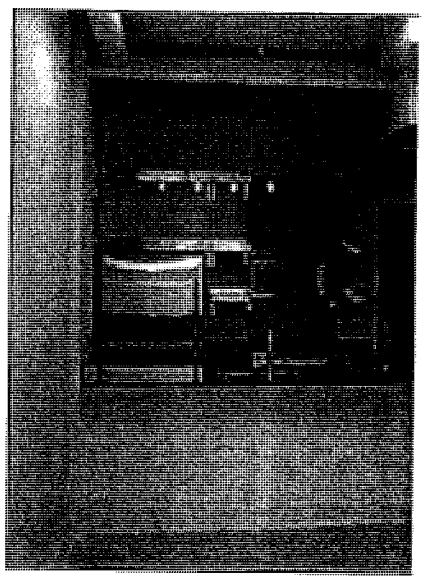












JOINT DEVELOPMENT SOLICITATION ISSUED AUGUST 24, 2007
PRESENTATION INSTRUCTIONS

These instructions are intended to provide guidance to Developers (and Development Teams) who have submitted Proposals to the Washington Metropolitan Area Transit Authority (WMATA) in response to the Joint Development Solicitation (JDS) issued on August 24, 2007, and have been invited to give a presentation to the WMATA Evaluation Team.

1. **Purpose**:
   The purpose of the oral presentations is to allow a Developer an opportunity to describe the key elements of its Proposal and to respond to questions from the WMATA Evaluation Team and jurisdictional representatives, approximately 8-12 attendees

2. **Organization of Presentations**:
   The presentation should be organized into two (2), 10-15-minute, segments. We have allotted an additional 15 minutes for questions after each presentation.

   Please note that the presentations and questions from those in attendance should be completed in approximately one (1) hour.

   The presentation should be structured in the following manner:

   a) Description of the Proposal highlighting relevant development experience of individual team development principals, Transit Oriented Development (TOD) principles, input received from both the local jurisdiction and community organizations, benefits to the local jurisdictions (taxes, jobs, etc.), anticipated schedule and timing of zoning requests, if appropriate. PLEASE DO NOT DISCLOSE ANY INFORMATION THAT YOU DO NOT WANT TO SHARE WITH THE APPLICABLE JURISDICTION. (Members of WMATA's Evaluation Team will be in attendance, and jurisdictional representatives are expected as well.)

   b) Proposed business relationship with WMATA, financial viability of the Proposal, and payments to WMATA. (Only members of WMATA's Evaluation Team will be in attendance.)

3. **Audio Visual Equipment, Handout Material and Other Aids**:
   Developers are encouraged to use maps, graphics and other visuals during their presentations. However, elaborate presentations are neither necessary nor encouraged.

   Equipment
   A slide projector, screen and/or easels will be available **upon request**. All other audio visual equipment must be provided by the Developer.

   Handouts
   Each Developer should ensure that ten (10) copies of any handout materials are available at the time of the presentation. **WMATA staff cannot be responsible for reproducing any handout materials**.

4. **Location**:
   All presentations will be held at the WMATA Headquarters Building, 600 Fifth Street, NW, Washington, DC. WMATA staff will escort you to the presentation room.

1/8/08

Tony Marquez - HSBC

He's watched Bannaker group
join
NDC
Maddie Turay
Bannaker

All in the mix

Brad Dodson, Bill's son - (Herb Miller connection

Radio One
either Wachovia or HSBC

apts. are ok

945 Florida

Washington Metropolitan Area Transit Authority
Office of Property Development and Management

Meeting: FLORIDA AVE. Banneker Presentation

Date: 12/17/07 1pm

Name	Office/Organization	Office Phone Email Address
1. Omar Karim Phinis Jones	DDG	PhinisJones@dcnet.net
2. Joshua Kern	DDG	joshuakern@districtdevelopmentgroup.com
3. Sherief Elfar	Torti Gallas ARCH	301 588 4800 selfar@Tortigallas.com
4. Stephanie ~~Elfar~~ Farrel	TORTI Gallas	301 588 4800
5. Sharon Haung	TORTI Gallas	301 588 4800
6. Brian O'Looney	TORTI Gallas	301 588 4800
7. Chip Glasgow	Holland & Knight	202-419-2460 norman.glasgowjr@hklaw.com
8. Zuhawah Scott	MacFarlane Partners	202-512-6097 zscott@macfarlanepartners.com
9. BRIAN O'LOONEY	TORTI GALLAS & PART.	301-588-4800 boolooney@tortigallas.com
10. Joel R. Washington	WMATA/SAAM	202-962-9606 jrwashington@WMATA.com
11. Tim Clinton	Ball Street Fund	(202) 625-2470 tclinton@ballstreetfund.com
12. Brian Davis	Ball Street Fund	(202) 625-2255 bdavis@ballstreetfund.com
13. Roger Roman	Bannueker Ventures, LLC	202-667-4110 roger@bannekerventures.com
14. Roselyn Doggett	WMATA/SAAM	202 962 2208 rdoggett@wmata.com
15. Tariq Bushney	WMATA/JDAC	(202) 962 2043 tbushney@WMATA.com

T:\Harrison\LAND meeting sign-in.wpd

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority
Office of Property Development and Management

Meeting: Florida Ave Brunelle Presentation

Date: 12/7/07

Name	Office/Organization	Office Phone Email Address
1. John Magarelli	WMATA/BARM	202-962-1357 jmagarelli@wmata.com
2. MARC BIONDI	WMATA/COUN	202 962 1011 MEBIONDI@WMATA.com
3. Eric Smart	Bolan Smart Associates	202 776-7740 eric.smart@bolansmart.com
4. DERRICK WOODY	OFFICE OF DM NEIL O. ALBERT	2/727.2981 derrick.woody@dc.gov
5.		
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BANNEKER VENTURES, LLC

April 23, 2008

Rosalyn Doggett
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

Re: Shaw-Howard Florida Avenue Joint Development

Dear Ms. Doggett:

You have asked that I address concerns that have been brought to your attention, by Jim Graham, District of Columbia Councilmember for Ward 1 and member of the Board of Directors of the Washington Metropolitan Area Transit Authority ("WMATA"), about the selection of Banneker Ventures, LLC ("Banneker") as the lead developer for the Shaw-Howard Florida Avenue Joint Development Site. Specifically, the concerns center on recent allegations and insinuations of questionable business practices involving Warren Williams, Jr., a principal of Banneker. The allegations relate to two matters, the closing of a night club in which Mr. Williams was an owner following the tragic death of a patron and unfounded claims by a tenants' group that Mr. Williams (as landlord) failed to maintain the building.

I hope that the Board of WMATA would not terminate our selection as the designated Developer of the above referenced site as a result of unfounded allegations. While I recognize that the WMATA Board has discretion to reject submissions where the selected developer does not have a satisfactory record of integrity and business ethics, except for the unfounded allegations mentioned above, I am unaware of any record establishing the lack of integrity or business ethics of Mr. Williams or any other member of our development team. To my knowledge, there are no criminal or administrative actions pending against Mr. Williams or any business venture in which he is involved. Notably, with respect to the tenants' group's allegations, a recent listing of District landlords charged criminally as a result of their failure and refusal to maintain their properties did NOT include Mr. Williams.

To address the controversies more directly, as I understand, Mr. Williams and his family were operators of a nightclub in the District's Reeves Center. Any outstanding debts to the District as a result of the tenancy have been paid and no amounts remain owing to the District. I can understand Mr. Graham's concern; however, the light that an unfortunate event shines on a situation can sometimes distort the facts and lead to erroneous conclusions. I respectfully submit that Mr. Graham's concerns about the nightclub do not point to any specific failures by Mr. Williams.

700 12th Street, NW • Suite 700 • Washington, D.C. 20005 • (202) 667-4110
814 Thayer Avenue • Suite 300 • Silver Spring, Maryland 20910 • (301) 565-4980
www.bannekerventures.com

Banneker believes that the allegation that Mr. Williams is a "slum lord" is unfair. Mr. Williams reports that his sole remaining rental property located at 804 Taylor Street NW ("Taylor Flats") is currently undergoing a full renovation and repositioning. The 26 unit building is now home to only 3 residents, who have all negotiated transfers in order that the construction might commence. All units will be vacant as of July 1, 2008, with an expected re-occupancy in April 2009. Quite the opposite of being a "slum lord", Mr. Williams is a responsible developer who is actively engaged in the rehabilitation of property to the benefit of its tenants and the District. Please see the enclosed letter of support, dated January 22, 2008, for the rehabilitation of Taylor Flats from Councilmember Muriel Bowser of Ward 4, whose Ward Taylor Flats is located in.

As you are well aware from all of our literature and Bid Proposal documents, Mr. Williams has and continues to play a key role in our venture and our successful Bid proposal. Up to this point, his continued involvement in the development of the site has been unquestioned. As you also know, Mr. Williams has participated in a number of housing development projects across the District, many involving the renovation and/or restoration of apartments and condominiums, bringing both market rate and affordable housing units to underserved areas. Mr. Williams brings a wealth of knowledge and experience to our project.

Other than the unsubstantiated allegations relating to Mr. Williams, there does not appear to be any record upon which WMATA should seek to invoke its discretionary power to terminate our selection as the designated Developer of the above referenced site. Further, I think it worthwhile to point out that none of the allegations involve Banneker Ventures directly. Obviously, Banneker Ventures is a separate legal entity with a distinct management team and track record. Our winning Bid Selection contemplates a joint development with Banneker in the lead. Our team has devoted significant time and resources to this project. We are professional developers in the District and plan to continue our work for a long time. We care very much about our reputation and the quality of our projects. We remain, as always, prepared to meet with you and/or the WMATA Board to discuss the concerns raised by Mr. Graham and any other concerns or issues that need clarification. If you or the Board has specific questions, I am happy to provide answers or any other reasonably requested supplemental information.

Please do not hesitate to contact me if you have any further questions or if you need further information. You may reach me by telephone at (202) 667-4110.

Yours truly,

Omar A. Karim

Enclosure

cc: Guy E. Flynn, Partner, DLA Piper US LLP

Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 406
Washington, D.C. 20004-3001

Muriel Bowser
Councilmember, Ward 4

Tel: 202.724.8052
Fax: 202.741.0908
mbowser@dccouncil.us

January 22, 2008

Warren Williams
The Warrenton Group
814 Thayer Street, Suite 300
Silver Spring, MD 20910

RE: Letter of Support for Taylor Flats at 804 Taylor Street, NW

Dear Mr. Williams:

It is my pleasure to provide you with this letter of support for the acquisition and rehabilitation of Taylor Flats. We have great, stable neighborhoods in Ward 4 with residents eager to live, work and do business in the Ward. Projects like the Taylor Flats ensure that all District residents are able to participate in the economic revitalization happening throughout the city.

Rehabilitating the Taylor Flats property, will enable the building to become one of the District's affordable housing gems. Since the property is being developed by a District based, LSDBE developer, this endeavor is a victory on many fronts. As I understand, there will be 26 units with the following unit and rent mix:

7 one bedroom, one bath	575 square feet	$965 per month
9 one bedroom, one bath, & den	700 square feet	$985 per month
10 2 bedroom, one bath	950 square feet	$1,185 per month

Taylor Flats will provide affordable housing to households earning no more than sixty percent (60%) of the Area Median Income adjusted for household size as defined by the United States Department of Housing and Urban Development. Its financing structure will include tax-exempt bond cap and an allocation of low income housing tax credits (LIHTC) from the District's Housing Finance Agency, subordinate debt from the District's Department of Housing and Community Development, and bond underwriting and LIHTC syndication from Centerline Capital Group.

I remain committed to making sure that Ward 4's neighborhoods are safe and walkable; that there is appropriate public transportation; that there is retail, dining, and affordable housing; that there are jobs created for all DC residents, and that there are recreation and wellness facilities for residents of all ages.

I wish you continued success and let me know if my office can be of any assistance.

Sincerely,

Muriel Bowser
Council Member, Ward 4

From: "Omar A. Karim" <okarim@bannekerventures.com>
To: "'Rosalyn Doggett'" <rdoggett@wmata.com>, "'Marc E. Biondi'" <mebiondi@wmata.com>
Date: 3/17/2008 2:05:01 PM
Subject: Executed copy of Outline of Operating Agreement b/t Members of Jazz @ Florida Avenue

Rosalyn and Marc,

As promised, attached please find an executed copy of the outline of the preliminary terms of the operating agreement b/t the members of the Jazz @ Florida Avenue project. Upon approval of the term sheet by WMATA's Board, and prior to the execution of the Definitive Agreement, we expect to have a more definitive and full operating agreement drafted and executed.

We look forward to speaking with you prior to your 9am meeting tomorrow.

Best,

Omar

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

CC: "'Bryant, Seth'" <Seth.Bryant@dlapiper.com>, "'Flynn, Guy'" <guy.flynn@dlapiper.com>, "Warren Williams" <warren@bannekerventures.com>, "'Joshua Kern'" <joshuakern@districtdevelopmentgroup.com>, <phinisjones@comcast.net>, <malone@metropolis-dc.com>

1. Agreement with Metropolis

2. Define ~~Stabilization~~ Pre-Stabilization

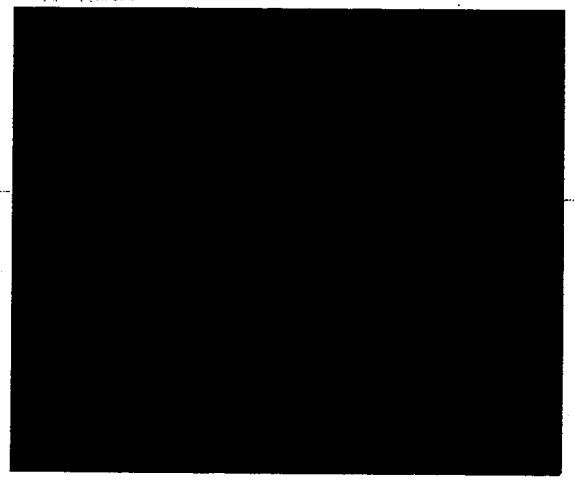
   90% Leased

3. Right of Entry Permit -
   Substantially in the form attached

washingtonpost.com

Council Expresses Skepticism About Gaming Firm

Advertisement



By Yolanda Woodlee
Washington Post Staff Writer
Tuesday, April 8, 2008; B02

Several D.C. Council members grilled city lottery and finance officials yesterday about a proposed $120 million contract the District wants to award to a start-up company, saying they want to know more about its experience in the gaming industry and whether it is a "bona fide" joint-venture firm.

At a hearing of the council's Committee on Finance and Revenue, members were skeptical about the company, W2I, a partnership between W2Tech, a nine-month-old local firm, and Intralot, an international lottery services provider. They wanted to know about the company's owners and partners and whether the process to select the firm was fair and transparent.

Council member Jim Graham (D-Ward 1) said the principals identified with W2Tech, Warren C. Williams Jr. and his father, Warren C. Williams Sr., raised a red flag with him because they had both been involved in controversies.

The pair owned Club U, a nightspot in the Frank D. Reeves Municipal Center that was closed after a man was fatally stabbed on the dance floor. And Williams Jr., a real estate developer, was recently accused by tenants of trying to force them out of their homes by not maintaining an apartment building he owns. Graham asked for a list of all officers of W2I.

"There are so many issues we need to look at here for real," Graham said. "Are there things they've done that would affect their ability to perform?"

Council member Jack Evans (D-Ward 2), the committee chairman, asked whether Sinclair Skinner, a friend of Mayor Adrian M. Fenty (D), was involved in the deal, but city officials said his name did not appear in the paperwork that W2I submitted.

Eric W. Payne, the contracting director for the finance office, defended the city's decision to abandon a 25-year contract with Lottery Technology Enterprises as a financial one, contending that W2I could do a better job for less money. W2I offered the "best technology solution and the lowest price," he said.

Payne said the new contract would reduce lottery costs from $11 million to $6 million a year, which he called a "win-win" for the city. He predicted that the savings would result from new games, more revenue and better technology.

But council members asked if the new firm actually could save that much money or if the contract was low-balled to win the award. Payne and Jeffrey "Jay" Young, the lottery's fiscal officer, said they would resign if the savings were not realized the first year.

The proposal presented to the council says that the contract would start at about $11 million a year for

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six years; after that, it could reach about $120 million if a five-year renewal option were exercised.

Payne said that Lottery Technology Enterprises, which has run the city's lottery for about 25 years, has an antiquated gaming system and that W2I would overhaul it. He said that Intralot, the junior partner of W2I, is providing similar lottery services in Idaho, Nebraska and Montana and has been awarded contracts in South Carolina and New Mexico.

Intralot also brings greater cash reserves to the table than do LTE and its partner, GTech, Payne said.

But some council members questioned how much money the majority partner, W2Tech, was investing and whether its principals had experience in operating lotteries. Payne said that Warren Williams Sr. was involved with the D.C. Lottery when it was first implemented and has more than 35 years of experience in the gaming industry. But when pressed by Graham to prove that the senior Williams had provided lottery services for the entire time, Payne said he would have to get back to the council.

Council member David A. Catania (I-At Large) asked for a copy of the firm's incorporation papers to make sure it is "a bona fide" joint venture.

Council member Kwame R. Brown (D-At Large) said it would be unusual for the city to allow the junior partner of a team to put up 51 percent of the capital.

"If this is what we're doing today, this is something different," Brown said. "Other business partners have been denied. I'm not saying you're doing something wrong, but . . . different."

LTE has accused the city of giving an unfair advantage to W2I by extending the dates to submit a proposal to allow the company to get certified as a joint venture. Ann Walker Marchant, a spokeswoman for the company, said LTE filed a formal protest, including a complaint that the contract submission date was moved from Sept. 13 to Sept. 2o to allow W2I to get its joint venture certified.

Leonard Manning, chief executive of LTE, said he got a telephone call Sept. 12 from the finance office notifying him of the date change.

"I thought it was a hoax to get us not to submit something on time," Manning said.

For the contract to take effect this summer, the council would have to approve it during its meeting next Tuesday. If a vote is not taken, the proposal will be disapproved.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004367

GOVERNMENT CONTRACT BATTLE

City Wants Judge to Seal Lottery Bid

Attorney General Cites Sensitivity of Company Secrets

By Nikita Stewart
Washington Post Staff Writer

The office of the D.C. attorney general asked an administrative judge yesterday to seal records in the fight over the contract to run the D.C. Lottery, a deal that could be worth $120 million.

Last month, Lottery Technology Enterprises, which has operated the lottery for 25 years, filed a formal complaint with the Contract Appeals Board to challenge the District's choice of W2I Ventures to take over the gaming system next year.

The District responded yesterday with the request for a protective order, mainly to guard proprietary products of W2I's winning contract proposal, interim Attorney General Peter Nickles said.

Nickles called the request "standard."

"The papers contain some commercial and trade secrets," he said. "By tomorrow or the next day, we'll determine what parts will be public."

The proposed contract, which must be approved by the D.C. Council, has been a volatile issue over the past month. LTE is accusing the city of showing favoritism toward W2I.

The council tabled the proposal at a meeting last week, but Mayor Adrian M. Fenty (D) resubmitted it the next day, giving the council 45 more days to take action.

LTE is a joint venture of locally owned New Tech Games and international gaming powerhouse GTech. City officials have criticized the company for antiquated equipment, glitches and a security breach that produced fake tickets worth $70,000 in 2006.

W2I is a partnership between locally owned W2Tech and Intralot, GTech's international rival. W2I is a 10-month-old company.

Although W2Tech is new, the family of husband and wife owners Alaka and Warren Williams Jr. is not new to doing business with the city.

Williams and his father owned a nightclub that leased space in the Frank D. Reeves Municipal Center and was closed after a patron was fatally stabbed in 2005. Also, the younger Williams has been accused of being a neglectful landlord.

The two-page order is followed by a page for signatures from attorneys for the city, W2I and LTE.

Under the agreement, if approved by the judge, documents would be limited to the parties involved.

According to LTE's initial April 4 protest, the company supports a protective order regarding proprietary information, but it wanted the city to provide it with all worksheets, summaries and other documents related to the best and final offers of both companies. It also requested the names of the panel that picked the winner.

LTE wants a hearing before Jonathan D. Zischkau, chief administrative judge for the appeals board, before signing any document that will restrict any parts of the contract from public view, said Ana Walker Marchant, a spokeswoman for LTE and daughter of New Tech Games partner George Walker.

"We think the protective order is way too broad," she said. "There should be transparency in the procurement process."

The company fears that other parts of the document that have nothing to do with trade secrets will be hidden, Marchant said. LTE saw some documents in the bidding and award process for the first time yesterday, she said, declining to go into detail until Zischkau announces a decision.

washingtonpost.com

City Backs Out of Deal With New Company

CFO Taking 'Second Look' at Contractor

By Yolanda Woodlee
Washington Post Staff Writer
Thursday, April 10, 2008; B04

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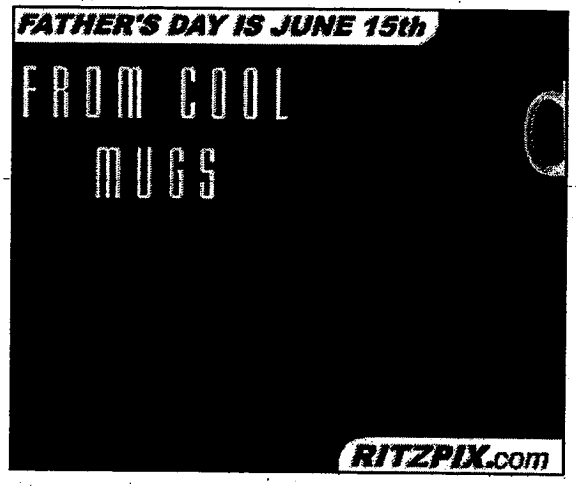

At the D.C. chief financial officer's request, Mayor Adrian M. Fenty has withdrawn a proposal to award a lottery contract worth more than $120 million to a new company. D.C. Council members had questioned the background and gaming industry experience of the company's owners.

The revelation came yesterday as Chief Financial Officer Natwar M. Gandhi testified at a routine budget hearing before the council's Committee on Finance and Revenue.

"We are taking a second look," Gandhi said. Later, in an e-mail, he said the office needed more time to "review and respond to the questions raised by the committee."

Gandhi, however, defended the contract, saying it will save more than $6 million a year and is "the best technological solution for the District." He said the office might resubmit the contract after completing criminal and civil background reviews.

Gandhi and Fenty (D) recommended awarding the lottery contract to W2I, a joint venture between local company W2Tech, created nine months ago, and international gaming giant Intralot. Lottery Technology Enterprises and its partner, GTech, a national lottery services provider, have had the contract for almost 25 years and have filed a formal protest over the deal.

In a letter to the council, Fenty said the D.C. Lottery and Charitable Games Control Board would save about $5 million a year by awarding the contract to a company that could provide state-of-the-art technology to help boost lottery sales and offer more games. LTE, which has been paid $80 million since 2000, has been plagued by an aging network. Its contract expires in November 2009, but the city wants to end it early to save costs.

W2Tech, the parent of the W2I partnership, was created by Warren C. Williams Jr., a real estate developer recently criticized by tenants for allowing his property to deteriorate. Williams has denied tenants' allegations that he was attempting to force them to move out so he could convert their apartments into condominiums. He and his father also owned Club U, which the District closed in 2005 after a patron was fatally stabbed there.

The council was skeptical of the contract, which could grow from $11 million a year for six years to $120 million if a five-year extension is granted.

Questions about the proposal were raised for the second time this week when D.C. Council member Jim Graham (D-Ward 1) asked Gandhi about the status of the lottery contract. During Monday's committee hearing, several council members expressed concerns about the background of W2I's owners and

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fairness and transparency in the bidding process.

Graham said yesterday that the city should "get our facts straight" before awarding the contract, which could have come before the council for a vote as early as Tuesday.

"I am asking you to withdraw this contract," Graham said yesterday.

Finance committee Chairman Jack Evans (D-Ward 2) told Graham the council and finance office, which oversees the lottery, had discussed dropping the proposal with Gandhi the previous day.

"Mr. Graham, we talked, remember," Evans said. "I actually made that request already."

Graham responded: "I was not aware a decision had been made."

In an interview after the meeting, Graham said he wanted to make sure the private discussion was stated publicly.

"I had known that the requests had been made," he said. "I wanted to hear it, on the public record, that this is in fact a withdrawn contract. If they come back with this, I want to see scrutiny."

The questions raised by some council members this week focused on the ownership of W2Tech and whether its partnership with Intralot, which is owned by a Greek conglomerate, constituted a bona fide joint venture. It appeared that Intralot was investing more money in the joint venture than its local partner, W2Tech.

Eric W. Payne, the contracting officer for the finance office, testified Monday that Janisha Richardson, a Ward 1 advisory neighborhood commissioner, was W2Tech's controller. City records indicate that Richardson is the company's principal owner.

Payne also said he did not know whether Alaka Williams, who was listed as the company's contact and with whom he was communicating, was related to Warren Williams Jr. She is his wife. Payne also said that Warren Williams Sr. had 35 years of gaming experience, including with the D.C. lottery when it started in 1982. He could not say whether the elder Williams had remained active in lottery services.

"Having those facts wrong robs you of the feeling of confidence of what they know and don't know," Graham said.

Council members also wanted to know whether Club U had paid $100,000 in back rent. The club was in the Frank D. Reeves Municipal Center at 14th and U streets NW. Bill Rice, spokesman for the D.C. Office of Property Management, said the back rent was paid, as scheduled, by January 2007.

Staff writer Nikita Stewart contributed to this report.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004370

Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 406
Washington, D.C. 20004-3001

Muriel Bowser
Councilmember, Ward 4

Tel: 202.724.8052
Fax 202.741.0908
mbowser@dccouncil.us

January 22, 2008

Warren Williams
The Warrenton Group
814 Thayer Street, Suite 300
Silver Spring. MD 20910

RE: Letter of Support for Taylor Flats at 804 Taylor Street, NW

Dear Mr. Williams:

It is my pleasure to provide you with this letter of support for the acquisition and rehabilitation of Taylor Flats. We have great, stable neighborhoods in Ward 4 with residents eager to live, work and do business in the Ward. Projects like the Taylor Flats ensure that all District residents are able to participate in the economic revitalization happening throughout the city.

Rehabilitating the Taylor Flats property, will enable the building to become one of the District's affordable housing gems. Since the property is being developed by a District based, LSDBE developer, this endeavor is a victory on many fronts. As I understand, there will be 26 units with the following unit and rent mix:

7 one bedroom, one bath	575 square feet	$965 per month
9 one bedroom, one bath, & den	700 square feet	$985 per month
10 2 bedroom, one bath	950 square feet	$1,185 per month

Taylor Flats will provide affordable housing to households earning no more than sixty percent (60%) of the Area Median Income adjusted for household size as defined by the United States Department of Housing and Urban Development. Its financing structure will include tax-exempt bond cap and an allocation of low income housing tax credits (LIHTC) from the District's Housing Finance Agency, subordinate debt from the District's Department of Housing and Community Development, and bond underwriting and LIHTC syndication from Centerline Capital Group.

I remain committed to making sure that Ward 4's neighborhoods are safe and walkable; that there is appropriate public transportation; that there is retail, dining, and affordable housing; that there are jobs created for all DC residents, and that there are recreation and wellness facilities for residents of all ages.

I wish you continued success and let me know if my office can be of any assistance.

Sincerely,

Muriel Bowser
Council Member, Ward 4

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Power Play

The D.C. Council is playing games with a fair process for choosing a lottery contractor

PLAYING THE lottery is all about risk and money. But the games the D.C. Council is playing with a proposed new lottery contract risk more than tens of millions of dollars. They threaten to seriously compromise the integrity of how the District government does business.

Yesterday, council members tabled consideration of a $120 million, multi-year contract that would switch operation of the games to a new company. Their inaction jeopardizes what the chief financial officer has judged to be — without reservation — the best deal for the District. The deadline for action is Thursday. The company, W2I Venture, is not only the lowest bidder (its plan would save the city at least $5 million a year) but also promises to bring new technologies and games to the District. Consider also that the District has been none too happy with the current contract holder, giving it poor ratings for services and performance. Lottery Technology Enterprises has had the D.C. contract for 25 years, prompting W2I to charge that politics, not merit, is behind the council's handling of its bid. There is no question that the lobbying has been fierce, with each side trying to call in political chits.

It is troubling that the council at first tried to simply run out the clock on the contract shift. Council Chairman Vincent C. Gray (D) belatedly put the item on yesterday's agenda after we and others raised pointed questions. But then the council held no discussion and conducted no up-or-down vote. Only council member David A. Catania (I-At Large) had the gumption to vote against tabling the measure. Council member Jim Graham (D-Ward 1), who made the motion to table the matter, asserted that there are unanswered questions about the winning bid; the contention is belied by the hundreds of pages of documents the chief financial officer compiled during a rigorous, year-and-a-half-long process. The office even went the extra mile to answer questions from council members that were not germane to whether the firm is a credible, responsible bidder. The bidding process was reviewed by the city's interim attorney general, who found it to be complete and proper. Moreover, there is an appeals process available to losing bidders.

The next move is up to D.C. Mayor Adrian M. Fenty (D). He could — and we hope he does — try to postpone the deadline and resubmit the contract for council consideration. The alternative would be to start all over and rebid the contract. Why, though, would any business owner in his or her right mind bother with a process that, it would seem, can be ignored or overturned on political whim?

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004372

From: "Flynn, Guy" <guy.flynn@dlapiper.com>
To: <jrwashington@wmata.com>
Date: 5/9/2008 2:09:14 PM
Subject: Shaw-Howard/Florida Avenue Project

Mr. Washington,

Please see the attached letter regarding this matter.

Thank you.

<http://www.dlapiper.com/>

Guy E. Flynn

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Thank you.

—

CC: "Rosalyn Doggett" <rdoggett@wmata.com>, "Marc E. Biondi" <mebiondi@wmata.com>, "Warren Williams" <warren@bannekerventures.com>, "Omar A. Karim" <okarim@bannekerventures.com>, "Josh Kern" <jkern@districtdevelopmentgroup.com>, "Merrick Malone" <malone@metropolis-dc.com>

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May 9, 2008

VIA E-MAIL AND REGULAR MAIL

Mr. Joel Washington
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

Re: Shaw-Howard/Florida Avenue Joint Development Site and April 24, 2008 WMATA Board Meeting

Dear Mr. Washington:

We are writing on behalf of our client, Banneker Ventures, LLC ("Banneker"), as well as on behalf of District Development Group ("DDG") and Metropolis Development Company ("Metropolis") (Banneker, DDG and Metropolis are, collectively, "Developer"), in connection with the Shaw-Howard/Florida Avenue Joint Development Site (the "Site"). We understand that the Washington Metropolitan Area Transit Authority ("WMATA") Board of Directors met on April 24, 2008 to, among other things, approve a Term Sheet setting forth Developer's proposal for the Site (the "Proposal"). We further understand that at the April 24th meeting, the WMATA Board voted to defer its decision on the Proposal for at least sixty days. It is our understanding that WMATA has neither given Developer any official reason for the delay nor given Developer any information regarding what is to happen during the deferral period.

We are writing to seek confirmation of Developer's status and to seek clarification regarding the next steps in the process. As you might imagine, Developer has expended significant resources in connection with this process and is anxious to move forward once Board action is finalized on this important first step.

We understand that Banneker, as lead for Developer, has offered to provide to WMATA any additional information relevant to the Proposal (in addition to the full information already provided by Developer in its response to WMATA's RFP). Please advise if there is any specific

information that the WMATA Board would find necessary or useful in its deliberations on the Proposal.

Developer remains committed to the development of the Site and looks forward to moving ahead expeditiously with the proposed project. Should you or the WMATA Board require any additional information, please do not hesitate to contact me or Banneker, on behalf of the Developer team, directly. I may be reached at (410) 580-4149. Omar Karim of Banneker may be reached at (202) 667-4110 or (301) 523-1810.

Very truly yours,

Guy E. Flynn

GEF:dad

cc: Omar A. Karim, Banneker Ventures, LLC (via E-mail)
Warren Williams, Jr., Banneker Ventures, LLC (via E-mail)
Rosalyn Doggett, WMATA (via E-mail)
Marc Biondi, WMATA (via E-mail)
Josh Kern, District Development Group, LLC (via E-mail)
Merrick T. Malone, Metropolis Development Company, LLC (via E-mail)

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

BANNEKER VENTURES, LLC

April 23, 2008

Rosalyn Doggett
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

Re: Shaw-Howard Florida Avenue Joint Development

Dear Ms. Doggett:

You have asked that I address concerns that have been brought to your attention, by Jim Graham, District of Columbia Councilmember for Ward 1 and member of the Board of Directors of the Washington Metropolitan Area Transit Authority ("WMATA"), about the selection of Banneker Ventures, LLC ("Banneker") as the lead developer for the Shaw-Howard Florida Avenue Joint Development Site. Specifically, the concerns center on recent allegations and insinuations of questionable business practices involving Warren Williams, Jr., a principal of Banneker. The allegations relate to two matters, the closing of a night club in which Mr. Williams was an owner following the tragic death of a patron and unfounded claims by a tenants' group that Mr. Williams (as landlord) failed to maintain the building.

I hope that the Board of WMATA would not terminate our selection as the designated Developer of the above referenced site as a result of unfounded allegations. While I recognize that the WMATA Board has discretion to reject submissions where the selected developer does not have a satisfactory record of integrity and business ethics, except for the unfounded allegations mentioned above, I am unaware of any record establishing the lack of integrity or business ethics of Mr. Williams or any other member of our development team. To my knowledge, there are no criminal or administrative actions pending against Mr. Williams or any business venture in which he is involved. Notably, with respect to the tenants' group's allegations, a recent listing of District landlords charged criminally as a result of their failure and refusal to maintain their properties did NOT include Mr. Williams.

To address the controversies more directly, as I understand, Mr. Williams and his family were operators of a nightclub in the District's Reeves Center. Any outstanding debts to the District as a result of the tenancy have been paid and no amounts remain owing to the District. I can understand Mr. Graham's concern; however, the light that an unfortunate event shines on a situation can sometimes distort the facts and lead to erroneous conclusions. I respectfully submit that Mr. Graham's concerns about the nightclub do not point to any specific failures by Mr. Williams.

700 12th Street, NW • Suite 700 • Washington, D.C. 20005 • (202) 667-4110
814 Thayer Avenue • Suite 300 • Silver Spring, Maryland 20910 • (301) 565-4980
www.bannekerventures.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED

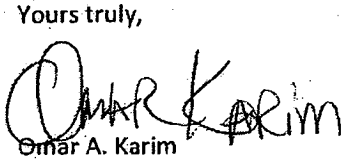
Banneker believes that the allegation that Mr. Williams is a "slum lord" is unfair. Mr. Williams reports that his sole remaining rental property located at 804 Taylor Street NW ("Taylor Flats") is currently undergoing a full renovation and repositioning. The 26 unit building is now home to only 3 residents, who have all negotiated transfers in order that the construction might commence. All units will be vacant as of July 1, 2008, with an expected re-occupancy in April 2009. Quite the opposite of being a "slum lord", Mr. Williams is a responsible developer who is actively engaged in the rehabilitation of property to the benefit of its tenants and the District. Please see the enclosed letter of support, dated January 22, 2008, for the rehabilitation of Taylor Flats from Councilmember Muriel Bowser of Ward 4, whose Ward Taylor Flats is located in.

As you are well aware from all of our literature and Bid Proposal documents, Mr. Williams has and continues to play a key role in our venture and our successful Bid proposal. Up to this point, his continued involvement in the development of the site has been unquestioned. As you also know, Mr. Williams has participated in a number of housing development projects across the District, many involving the renovation and/or restoration of apartments and condominiums, bringing both market rate and affordable housing units to underserved areas. Mr. Williams brings a wealth of knowledge and experience to our project.

Other than the unsubstantiated allegations relating to Mr. Williams, there does not appear to be any record upon which WMATA should seek to invoke its discretionary power to terminate our selection as the designated Developer of the above referenced site. Further, I think it worthwhile to point out that none of the allegations involve Banneker Ventures directly. Obviously, Banneker Ventures is a separate legal entity with a distinct management team and track record. Our winning Bid Selection contemplates a joint development with Banneker in the lead. Our team has devoted significant time and resources to this project. We are professional developers in the District and plan to continue our work for a long time. We care very much about our reputation and the quality of our projects. We remain, as always, prepared to meet with you and/or the WMATA Board to discuss the concerns raised by Mr. Graham and any other concerns or issues that need clarification. If you or the Board has specific questions, I am happy to provide answers or any other reasonably requested supplemental information.

Please do not hesitate to contact me if you have any further questions or if you need further information. You may reach me by telephone at (202) 667-4110.

Yours truly,



Omar A. Karim

Enclosure

cc: Guy E. Flynn, Partner, DLA Piper US LLP

washingtonpost.com

A Failure in Enforcement

Agency's Ineffectiveness Has Helped Landlords Profit From Neglect

By Debbie Cenziper and Sarah Cohen
Washington Post Staff Writers
Tuesday, March 11, 2008; A01

The District agency entrusted with protecting tenants has routinely overlooked decrepit and dangerous conditions at rent-controlled apartment buildings in recent years despite claims that landlords were letting buildings rot to force families out.

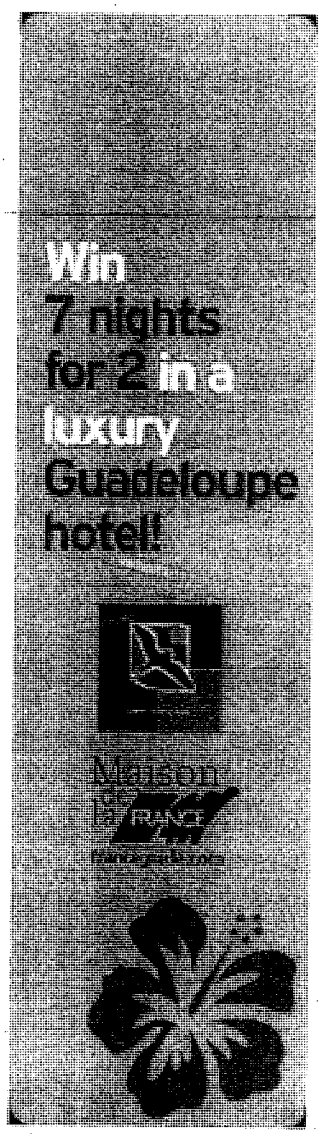
At the same time, the Department of Consumer and Regulatory Affairs helped landlords profit once tenants had left -- approving more than 200 requests to begin converting newly emptied rental buildings into condominiums worth hundreds of millions of dollars. The agency regularly failed to conduct even the most cursory investigations, which in dozens of cases would have revealed filthy conditions, questionable evictions and letters urging tenants to leave.

"It's a total abdication of DCRA's responsibilities," said Julie Becker, a lawyer with the Legal Aid Society of the District of Columbia. "It's not just betraying tenants. It's betraying the law."

The most critical line of defense for tenants in the city's 135,000 rental units, DCRA is charged with enforcing housing codes and, until recently, a 28-year-old District law that gives tenants the right to decide whether apartment buildings convert to condominiums.

But a Washington Post investigation, which reviewed nearly 1,000 court cases, 128,000 housing code violation reports and hundreds of government records, found serious breakdowns at the agency:

Â¿ DCRA's goal is to investigate emergency complaints about shoddy buildings within 48 hours, but only about half are inspected that quickly. Dozens of investigations for utility outages, infestations, broken pipes and sewer backups have stalled for weeks or even months.



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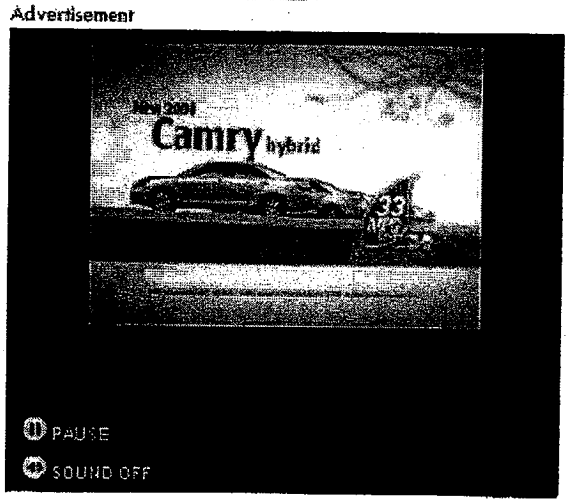

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004379

Â¿ Agency leaders acknowledge that inspectors only sporadically made return visits to ensure repairs were completed, so it is impossible to know how many infractions have gone uncorrected. Last October, 1,900 reinspections were past due for all residential properties.

Â¿ DCRA took nearly 1,000 housing code cases to court in the past three years, but nearly half of the completed cases were dismissed, often because of agency failures. More than 30 cases died when officials for DCRA didn't show up for hearings.

Â¿ Even when judges have found owners liable and levied fines, DCRA often didn't try to collect the money. Of $572,000 in fines imposed during the past three years, landlords paid less than $112,000, court records show. DCRA can place liens on properties with outstanding fines, but a review of unpaid fines from 2005 shows that it often doesn't happen.

DCRA Director Linda Argo acknowledged the problems, saying the agency is providing more training to its 44 residential housing inspectors and sharing information about troubled properties with the newly independent Office of the Tenant Advocate.

Argo said reinspections of problem properties are "falling by the wayside," but the agency is developing a comprehensive system to better track inspections and reinspections. DCRA's computer program that monitors complaints, violations and inspections crashed for months in 2006 and now requires a $100-an-hour contractor on site 20 hours a week just to keep it running.

Argo, appointed in mid-2007, also said she wants to inspect troubled buildings on a regular basis, not just when tenants complain. Already, she said, there are signs of progress: The backlog for reinspections was cut in half over the past five months .

"There's a total consciousness about this," Argo said. "It is on our radar screen. It is a priority."

* * *

But change has been slow at DCRA, which Mayor Adrian M. Fenty (D) has repeatedly declared one of the city's most troubled agencies. It is also one of the most crucial: 52 percent of the city's residents are renters, one of the highest rates among comparable-size cities nationwide.

The sprawling agency, which oversees everything from construction permits to business licensing, has had five directors in seven years and has been studied by consultants, staff, auditors, lawyers and other professional groups at least 10 times in the past decade.

D.C. Council members have criticized a series of DCRA employees. They include Raenelle Humbles Zapata, in charge of overseeing rental housing, accused during a hearing by council member Jim Graham (D-Ward 1) of "gross negligence" for erroneously approving eviction requests for three rental complexes. At the time, Zapata said she had made a mistake but "had excellent reviews" at DCRA. She left in 2005.

Graham also questioned DCRA official Linda Harried for giving landlords letters approving the sale of apartment buildings without offering them to tenants first, as District law requires. Harried and others argued that they were following the law at the time. Harried left DCRA months later.

She reported to former DCRA administrator James Aldridge, who acknowledged during a council

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hearing in 2005 that he did not intervene when Harried signed off on the sales. When Aldridge would not say that the agency had done anything wrong, council member Kwame R. Brown (D-At Large) fumed, "I am a little bit irate that the residents of the District of Columbia, who have been paying the salary of this employee for over twenty-some years, cannot get what I consider an accurate or honest answer."

Aldridge said in an interview that Graham was "simply grandstanding."

"DCRA interpreted the [law] as the council drafted it," he said.

Graham said DCRA for years has favored landlords, even when it was clear that tenants' rights were violated.

"Landlords are forever finding, by hook or by crook, another loophole," Graham said. "It's the profit engine that drives on and on here. A DCRA that is not very aggressive and marginally competent . . . all of that plays into the hands of those who want to make a buck off tenants."

* * *

One of the most striking imbalances plays out in the enforcement of the city's housing codes.

A Post analysis of data from the agency's tracking system found that just half of the 2,100 urgent complaints from 2007 were handled within 48 hours, DCRA's standard. Using different data, the agency put the figure at 76 percent in reports to the mayor.

At 804 Taylor St. NW, tenants have called DCRA complaining of no heat or water, cracked walls and a rat infestation, records show. The building is owned by Warren Williams Jr., a real estate developer.

In 2006, Williams started pressing tenants to leave the building, offering $3,000 and help finding a new apartment. He noted that if the building converted to condominiums, tenants would have the right to purchase a unit before any other buyers.

Tenants say the building fell into disrepair. On an afternoon last fall, rotting trash was piled in heaps in the back yard, and inside, a ceiling had collapsed and chunks of the walls had fallen into the stairwells.

"No cleaning, sweeping, security, repairs to lighting," said tenant John Parks, 44. Parks, a graduate student, doesn't want to give up his apartment because he can walk to Howard University, his rent is $425 a month and he can take his 3-year-old son to a nearby playground.

In February 2007, DCRA found more than 25 violations, but it dropped the case in April, saying the inspector couldn't get inside the building to reinspect. The agency went back in October for a buildingwide inspection and found more than 30 violations. The case was closed in January, with DCRA saying violations had been fixed.

Tenants say that some repairs were made but that the fixes were often cosmetic. The roof is still leaking, the walls are peeling and lights are not working, they say.

"DCRA has been very lax," said tenant James Posey, a city employee who has lived in the building for seven years. "I've been trying to get this stuff resolved since July of last year, but there's no sense of urgency on DCRA's part. Absolutely none."

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A DCRA official said the agency has often had trouble getting into the building for inspections.

Williams said that his property manager had been absent from the building for personal reasons but that repairs have been made. He denied that he had tried to force tenants out by refusing to maintain the building.

"That's never been any intention of mine," Williams said. "Never, never."

When landlords fail to make repairs, DCRA can take them to court at the city's Office of Administrative Hearings and pursue fines. But poor record-keeping and follow-through have allowed dozens of landlords to escape penalties.

In the past three years, DCRA regularly sent legal notices to landlords using old or inaccurate addresses or notified the wrong person or company, a problem that administrative law judges have warned the agency about for years.

When mail is returned "undeliverable," judges give the agency a second chance to get the address right. But DCRA has often opted to dismiss cases without trying a second time.

Even when DCRA had the correct address, it often failed to follow up with a required second notice to unresponsive landlords. The agency, for example, filed more than 20 cases in 2005 against the company run by former D.C. Council member H.R. Crawford, citing uncollected trash and weeds at the company's apartment complex in Southeast. But the cases were dismissed in 2006 after Crawford failed to respond and DCRA did not send a required second notice.

Crawford said that he responded to all violations but that the complex was scheduled to be torn down and had become a dumping ground. He added that his company in late 2004 became a silent partner in the property.

DCRA officials attribute the dismissals to administrative problems.

In 11 cases, violations were dropped because the legal notices themselves were defective. In one case, DCRA attempted to fine a landlord $1,000 but didn't say why, inexplicably citing an unrelated statute that governs payments to dead firefighters and police officers.

Together, the hundreds of dismissed cases represented $664,000 in potential fines against landlords.

When judges imposed fines and landlords didn't pay, DCRA often failed to take the next step, putting liens on properties. A review of the 80 cases from 2005 with unpaid fines shows that DCRA placed liens on just 29 properties.

Argo said DCRA recently changed the way it sends legal notices to landlords to ensure that cases aren't dismissed. She also said that the agency is working out glitches with the Office of Administrative Hearings. Since January 2007, she said, the agency has issued 154 liens against properties for failure to pay delinquent fines.

"We are not just putting a fresh new coat of paint on the walls here," she said. "We are getting into the guts of DCRA and revitalizing our staff, our process and our procedures from the bottom up."

* * *

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While one arm of DCRA failed to enforce housing codes, another routinely granted landlords permission to convert newly emptied buildings to condominiums. The law requires that tenants vote to approve condominiums and that developers pay a conversion fee to help uprooted tenants: 5 percent of the sales price of every new unit. But vacant buildings are exempt.

Records show DCRA regularly approved "vacancy exemptions" without requiring inspectors to go inside newly emptied buildings to look for signs that tenants had been forced out. Of 144 case files produced by DCRA, just 35 show interior inspections. Inspectors simply signed off on dozens of applications after claiming they couldn't get inside buildings because the owners had locked the doors.

In other cases, it would have been impossible for inspectors to determine what conditions had been like for tenants because the landlords -- even before receiving exemptions -- had launched wholesale renovations to prepare for condominiums.

Lauren Pair, who has overseen vacancy exemptions since August 2006, also said she does not research building code violations before approving exemptions because the law does not give her authority to reject an application on those grounds.

She and others said the law governing exemptions is vague. On the application, landlords are required to provide an explanation of how buildings became vacant, which the city calls a "self-certifying process."

"The law does not give the authority to challenge the information that we get from a landlord," said Keith Anderson, a rental property program specialist. "Unless we have knowledge about a property, we're basically bound to take their explanation."

But a review of more than 200 vacancy exemption applications shows that some landlords provided little or no explanation. DCRA approved the exemptions with few questions.

Pair said she has rejected some applications for "technical reasons," which were often quickly resolved, but has held up only one application in recent years. It was for a building on Vernon Street NW, where every fled after a late night fire in 2006. Investigators said the fire was deliberately set but have not determined who was responsible.

DCRA has overlooked tenants in other ways, too.

The law requires the city to provide displaced families with funds collected from the condominium conversion fee. But in the past three years, the exemptions have saved landlords $16 million in fees.

DCRA has collected $2.4 million since 2004 from landlords who did not have exemptions. But even then, few tenants benefited -- less than 2 percent of the money has been spent on housing assistance. The rest has been sitting untapped, officials said, even as thousands of families search for affordable housing. The fund was recently transferred to the Office of the Tenant Advocate.

Last October, city officials transferred oversight of vacancy exemptions and rental housing from DCRA to the Department of Housing and Community Development, saying the move would put more focus on the preservation of affordable housing.

The D.C. Council has for more than a year raised questions about the exemptions. It approved a measure from Graham in 2006 to repeal the provision, but the repeal was put on an emergency hold when developers raised concerns, and council members are expected to address the issue again in the coming

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SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE: PROPOSAL SUBMISSION REQUIREMENTS

SECTION 1: ADMINISTRATIVE AND CONTRACTUAL INFORMATION

1.1. Issuing Information

This Joint Development Solicitation (JDS) is issued in accordance with WMATA's Joint Development Policies and Guidelines, Revised July 21, 2005. The three parcels which comprise the Joint Development Site in this solicitation are available primarily under a long-term lease, as WMATA's preference is to lease, rather than sell, its property. If a sale is proposed, the Proposal must clearly demonstrate that a sale is more advantageous to WMATA than a long-term lease. WMATA reserves the right to select different Developers for individual parcels.

1.2. Purpose and Scope

This JDS is intended to provide interested Developers with sufficient summary information about WMATA's requirements to facilitate Proposal preparation. It contains instructions on Proposal content and format, but does not attempt to define all of WMATA's Joint Development contract requirements in detail. Certain contract requirements are non-negotiable.

1.3. Amendments and Supplements to JDS

WMATA reserves the right to issue Amendments and/or Supplements to this JDS. Developers will be required to acknowledge in writing the receipt of an Amendment and/or Supplement.

1.4. Acceptance/Rejection of Proposals

This JDS does not commit WMATA to designate a Selected Developer or to enter into a Development Agreement. WMATA reserves the right to accept or reject any or all Proposals.

1.5. Acceptance of Terms and Conditions

By submitting a Proposal, a Developer is deemed to have agreed to and accepted all terms and conditions set forth in this JDS. Notwithstanding the foregoing, WMATA reserves the right to amend or modify any of the terms and conditions.

1.6. Selected Developer Status

A designation as Selected Developer for a Joint Development Site does not mean WMATA accepts the Proposal without further negotiation. Rather, the Developer's Proposal is the foundation for further negotiation and WMATA reserves the right to negotiate a Development Agreement with a Selected Developer containing benefits to WMATA that exceed those set forth in the Proposal.

1.7. Binding Agreement

An executed Development Agreement, approved by the WMATA Board of Directors, is the only binding commitment of and by WMATA with respect to a Joint Development Site. Designation of a Selected Developer, WMATA's agreement to a Term Sheet or any conduct or oral representations by WMATA shall not in any way constitute a binding obligation or commitment by WMATA. In submitting a Proposal, the Developer acknowledges it will have no legal or equitable right to, or interest in, any Joint Development Site except as set forth in an executed Development Agreement.

1.8. Schedule of Activities

Item	Date
Request for Proposals	AUG 14, 2007
Proposals Due	SEPT 28, 2007
Meetings with Developers (if required)	OCT/NOV 2007
Final Proposals Due (if required)	DEC 2007

1.9. Costs

WMATA shall not be liable for any costs incurred by a Developer and/or Development Team responding to this JDS or any costs incurred with respect to the negotiation of the Development Agreement and related final documentation.

1.10. Approvals

The designation of Selected Developer and the terms of a Development Agreement

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negotiated pursuant to this JDS are subject to the approval of the WMATA Board of Directors and the Federal Transit Administration of the U.S. Department of Transportation (FTA).

1.11. Pre-Proposal Conference
Intentionally omitted

1.12. Inspections
Intentionally omitted

1.13. Inquiries
Inquiries concerning this JDS are to be submitted in writing to:

Mr. Nat Bottigheimer
Contracting Officer
Office of Property Development
and Management
Washington Metropolitan Area
Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

Any written response made by WMATA's Contracting Officer will be disseminated to all Developers from whom a Proposal was requested. Oral responses are not binding.

1.14. Closing Date for Proposal Submission
One original and 10 copies of the Proposal must be received in a sealed package not later than 3 p.m. on Friday, **September 21, 2007** (Closing Date) addressed as provided in Section 2.7.

1.15. Late Proposals
Any Proposal received by WMATA after the Closing Date shall be considered a Late Proposal. A Late Proposal may be accepted and evaluated by WMATA at the sole discretion of WMATA's Contracting Officer.

1.16. Jurisdictional and Community Participation Requirements
Prior to submitting a Proposal, Developers are required to meet with jurisdictional representatives from the Office of Planning and interested community organizations, including the Advisory Neighborhood Commission, to share information about a pending Proposal submission to WMATA and to seek their views. Failure to comply with this requirement may result in a Proposal's being rejected.

1.17. WMATA Facilities
WMATA Facilities are critical to the efficient operation of the transit system and must be accommodated in the site plan. Information on the WMATA facilities beneath the Joint Development Site was provided with the advertisement requiring a May 31, 2007 proposal.

SECTION 2: PROPOSAL PREPARATION/ FORMAT/CONTENT/SUBMISSION

2.1. General
To be considered, a Developer must submit a complete response to this JDS. WMATA encourages creative and innovative Proposals which promote Transit-Oriented Development consistent with local land use policies. Failure to respond with the requisite information may result in a Developer's being eliminated from consideration.

2.2. Proposal Submission Structure
Proposals must be submitted in **two separate**, 8.5 x 11 inch bound volumes with Volume 1 containing Technical Information and Volume 2 containing Economic Information.

The contents of each volume must comply with Section 2.3 and Section 2.4 of this JDS. Proposals should include the identical titles and numbering for each subsection as set forth in this JDS. NOTE: No financial information is to be included or referenced in Volume 1.

2.3. Proposal Contents: Volume 1–Technical Information

A. Transmittal Letter -- a letter signed by an officer authorized to make a binding commitment for the Developer which states that the Proposal is valid for a minimum of 180 days from the date of submission and that if selected, the Developer will negotiate in good faith with WMATA.

B. Completed Proposal Form (3 pages) -- See ATTACHMENT A.

C. Table of Contents.

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D. Executive Summary excluding all financial information (5 pages maximum).

E.Develo pment Team Information

1. A description of the Developer and the proposed Development Team and the role of each principal member.

2. A statement that the Developer has the power and authority to enter into a Development Agreement and all final documentation as required by WMATA without the consent or joinder of any other party or authority.

F. Development Entity

1. A description of the Developer's business entity and, if a different entity will be formed, details of the structure of this other entity.

2. A detailed description of how the Project's ownership and management will be structured.

G. A proposed site plan and a description of land uses, including an explanation of how the Project complies with Transit-Oriented Development principles. The site plans must show building elevations and heights with number of stories.

Additionally, one jpeg on a disk and one full color visual of the site plan at least 2' by 3' in size must accompany the Proposal. The visual may be rolled up or mounted on posterboard.

H. An explanation of the anticipated impact that the Project will have, if any, on WMATA Facilities beneath the sites. Information on the WMATA facilities was provided with the advertisement for which proposals were requested by May 31, 2007.

I. The proposed Project schedule, starting in April 2007, in Microsoft Project or similar format, which at a minimum includes the following tasks and milestones, if applicable:

1. Term Sheet negotiations (assume 120 calendar days from the Proposal submission);

2. Approval of Selected Developer and Term Sheet by WMATA's Board of Directors (assume 30 calendar days from conclusion of Term Sheet negotiations);

3. Development Agreement and final documentation negotiations and execution (assume 120 calendar days from Selected Developer and Term Sheet approval);

4.Approval of Development Agreement and final documentation by WMATA's Board of Directors (assume 30 calendar days from conclusion of Development Agreement negotiations);

5. Agreement(s) for the acquisition of parcels to be assembled with the Joint Development Site, if applicable;

6. Concept plan preparation and approval;

7. Intentionally omitted.

8. Development plan preparation and approval, including interim WMATA Replacement Facilities plan (allow 30 calendar days for WMATA approval);

9. Local and other governmental approvals and actions (zoning, site plan, alley closings, grants, etc., as applicable);

10. Project financing approval;

11. Schematic design and construction document preparation and approval (allow 25 business days for WMATA approval of 35% construction documents, 20 business days for WMATA approval of 65% construction documents, and 15 business days for WMATA approval of 100% construction documents);

NOTE: if documents are not approved, WMATA comments must be addressed

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and resubmitted for approval.

12. Local permitting process;

13. Intentionally omitted.

14. Project construction period (per phase, if applicable);

15. Initial occupancy; and

16. Stabilization period.

J. Zoning

1. The existing zoning classification and, if a change will be sought, the proposed zoning category.

2. The permitted FAR (floor area ratio) or other density measure, and the proposed FAR or other density measure, as applicable.

K. The proposed business relationship with WMATA and the proposed terms (lease, sale, etc.) including, but not limited to, the following:

Lease (WMATA preference is 60 years.

1. Identification of the portion of the Joint Development Site to be leased by location and approximate land area. (NOTE: The leased premises will exclude all WMATA Reserved Areas and Interests.)

Sale

1. Identification of the portion of the Joint Development Site proposed to be purchased in fee simple by location and approximate land area. (NOTE: The sale will exclude all WMATA Reserved Areas and Interests.)

2. An explanation of why the Project should not be developed under a lease and why a sale is more advantageous to WMATA than a long term lease.

L. A market analysis and marketing strategy for the proposed uses of the WMATA joint development site.

M. A summary (specific financial analysis required in Economic Section) of the Project's impact on the tax base of the local jurisdiction as follows:

1. Identification of the property taxes, sales taxes, amount of fees and contributions and other local public income.

N. A statement identifying each of the community organizations that the Developer has met with and the meeting dates; the specific information that the Developer shared; the reaction of each community organization to the proposed development concept; the issues raised by each community organization; and how the Proposal addresses these issues. See Section 1.16.

O. A statement describing the Developer's contact with local jurisdiction staff, (representatives' names and meeting dates) and the views and expectations of the local jurisdiction regarding the Project, including any existing or anticipated jurisdictional issues or concerns. See Section 1.16.

P. A statement on whether the Project's feasibility is contingent on any local, state or federal government action or financial support (including a change in regulations; street or alley closing; funding, including guarantees and issuance of tax-exempt bonds; financing and credit enhancements; leasing of space; granting of access to the Joint Development Site; and the justification and process for obtaining government support).

Q. Statements that:

1. The Project is compatible with local land use requirements.

2. The Project will conform to all applicable federal, state and local laws, regulations and ordinances including all

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federal and relevant local environmental regulations.

R. A quantitative analysis of the Project's beneficial effect on WMATA's total daily transit ridership. Note that, for this JDS, WMATA will conduct the analysis, and there is no requirement of the Developer.

S. A statement identifying the past, current or anticipated contractual or financial relationship of any member of the Development Team (including but not limited to, the Developer, partners or co-venturers) with WMATA or any of its staff or Board Members. The Development Team must also disclose any contractual or financial relationship which may give the appearance of a conflict of interest.

T. The following information about Developer's previous projects:

1. Illustrative materials on three recent successful projects of similar or comparable scope for which substantial financing was obtained.

2. The sources and amounts of debt and equity capital that were raised in previous projects.

U. A list of any projects on which the Developer, its parent company, or any member of the Development Team has defaulted or declared bankruptcy and an explanation of each default or bankruptcy.

V. Detailed information regarding any criminal indictments and felony or fraud convictions of the Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team.

W. A statement indicating whether the Developer is willing to include Disadvantaged Business Enterprises ("DBEs"), as defined in Section 6, in its Project. WMATA encourages Developers to include DBEs and will assist Developers in identifying such firms.

X. If the proposed Project consists of an assemblage of the WMATA Joint Development Site with adjacent property, a statement identifying the adjacent property ownership, and if the property owner and the Developer are not the same, an executed agreement between the property owner and the Developer defining the property owner's participation, if any, in the Project.

Y. Any other information to assist WMATA in its evaluation of the Proposal, including a statement of why WMATA should select the Developer and its Development Team.

2.4. Proposal Contents: Volume 2 – Economic Information

A. Table of Contents.

B. Executive Summary of economic information only.

C. The Developer's estimated fair market value of WMATA's land or interest, how the value was derived and the assumptions underlying the value.

D. If the proposed business relationship with WMATA is a Lease (the term must be specified and preferably will be 60 years):

1. A statement that the Developer will pay WMATA a non-refundable option fee of $100,000 for the right to negotiate a Development Agreement upon designation as Selected Developer and approval of the Term Sheet. This fee is separate and distinct from the other payments, deposits and fees which WMATA requires.

2. The amount and timing of pre-development rent to be paid to WMATA during the interval period after the Development Agreement is executed but before the Project produces income (include the estimated length of this period).

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3. The guaranteed base rent to be paid to WMATA throughout the term of the lease, including escalations. The description of escalations must include the method used to calculate escalations, their timing, and the projected amount of each escalation.

4. The method of adjusting the base rent if it does not commence by the date projected and/or the final approved density is greater than that proposed.

WMATA expects that the present value of its financial return will not be diminished by delays in the development process.

5. How any environmental remediation costs will be handled.

6. WMATA's participating share of gross income from the Project.

7. WMATA's share of proceeds from a capital event such as an assignment of the leasehold interest, transfer of interest in the Developer's business entity, refinancing or sale of the Project, or any other capital event after construction.

8. Identification of any additional payments to WMATA based upon factors chosen by the Developer.

9. Intentionally omitted

E. If the proposed business relationship with WMATA is a Sale:

1. A statement that the Developer will pay WMATA a non-refundable option fee of $100,000 for the right to negotiate a Development Agreement upon designation as Selected Developer and approval of the Term Sheet. This fee is separate and distinct from the purchase price and the other payments, deposits and fees WMATA requires.

2. The amount and timing of pre-development fees to be paid to WMATA during the interval period after the Development Agreement is executed but before WMATA realizes income from the sale (include the estimated length of this period).

3. The proposed purchase price for each portion of the Joint Development Site including:

a. The schedule of purchase price escalations if the sale is not completed by the date projected.

WMATA expects that the present value of its financial return will not be diminished by delays in the development process.

b. The method of adjusting the purchase price if the final approved density is greater than that proposed.

4. How any environmental remediation costs will be handled.

5. Proposed business arrangement under which WMATA will retain an interest in any development rights in excess of those used by the development constructed pursuant to the Proposal. Under such an arrangement, WMATA will receive payments over and above the purchase price if, upon subsequent redevelopment of the Joint Development Site within 25 years of closing, the redeveloped density is greater than the original density.

6. Identification of any additional payments to WMATA based upon factors chosen by the Developer.

F. A summary table of the sources (including debt, equity and other financing) and uses of funds to design and construct the Project.

G. A 15 year pre-development, construction and operating period cash flow statement which starts in October 2007. It should include each separate phase of development and land use type by phase and contain at a minimum:

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1. The following assumptions:

Financing
Construction loan rate, term and amount
Permanent loan rate, term and amount
Loan-to-value ratio
Equity as a percentage of total construction costs
Revenues
Office rent ($/GSF and #GSF)
Retail rent ($/GSF and #GSF)
Residential ($/DU and #DU)
Parking
Other revenues
Construction Costs
Total hard costs
Total soft costs (also as a percentage of total hard costs)
Cost of improvements on a unit basis ($/FAR SF for office and retail, $/DU)
Cost per structured parking space
Cost per surface parking space
Land value per FAR SF
Ground rent to WMATA
Operating Costs
Operating Expenses (in $, $/GSF and as a percentage of revenues)

2. The following line items presented as a pro forma on an annual basis:

Sources
Equity
Construction Financing
Permanent Financing
Other Financing
Total Financing
Revenues
Office
Residential
Retail
Parking
Other Revenues
Total Gross Revenues
Total Net Revenues (less vacancy)
Uses
WMATA Rent or Sales Price (as applicable)
Construction Costs
Soft - by line item
Hard - by line item
Total
Operating Expenses (all non-debt Operating Costs, e.g.: direct costs, G&A, taxes, legal, marketing, commissions, etc.)
Net Operating Income
Debt Service (including any fees or expenses associated with loans)
Net Cash Flow (defined as revenue less operating expenses, debt service and ground rent to WMATA if applicable)
Percentage Rent to WMATA
Distributions to Investors
Free Cash Flow
Returns
Developer's Internal Rate of Return
Return on Investment
Return on Equity

NOTE: The pro forma (and any budgets in other parts of the Proposal) should clearly show all of the fees and income that the Developer, its partners, and affiliates receive from the Project. Those line items should be taken from the pro forma and shown together on the spreadsheet as individual line items in a separate report. Annual replacement reserves (total, $/GSF and $/DU) should also be broken out and shown).

3. The analysis must be presented in current dollars with an annual escalation rate of 3%.

4. All financial models must be submitted to WMATA on disk as well as hard copy. All financial information must be linked in a single spreadsheet, and all files must be in Microsoft Excel and retain all cell relationships.

H. A detailed financial analysis, with assumptions given, of the Project's impact on the tax base of the local jurisdiction as follows:

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1. Identification of the property taxes, sales taxes, amount of fees and contributions and other local public income.

I. Copies of Developer's balance sheets, income statements and sources and uses of funds statements for the past three fiscal years.

J. Statements regarding the Developer's financial creditworthiness and past development experience which can be verified, including the following:

The names and addresses of at least three commercial or institutional credit references and a letter authorizing each credit reference to respond to inquiries from WMATA. At least two of the references should be lending institutions.

2.5. Proposal Security

Each Proposal must be accompanied by Proposal Security in the amount of One Hundred Thousand Dollars ($100,000). (Alternative Proposals for the same Joint Development Site require only one Proposal Security.) Acceptable forms of Proposal Security include a proposal bond in the form set forth in ATTACHMENT B, a bank letter of credit in the form set forth in ATTACHMENT C, a cashier's check, certified check or money order. All Proposal Security must be drawn on a U.S. based national bank and contain the following:

At top of Proposal Security document, insert the JDS Number _____ and Joint Development Site _____.

WMATA will hold all funds that can be deposited into a financial institution in an interest-bearing account, and interest will be paid on such funds. No later than 15 business days after the WMATA Board of Directors identifies and approves the Selected Developer for a specific Joint Development Site, the Proposal Security will be returned to all Developers other than the designated Selected Developer. WMATA shall retain the designated Selected Developer's Proposal Security until a Development Agreement is executed and provisions are made with respect to the disposition of the Proposal Security in the Development Agreement.

2.6. Intentionally omitted

2.7. Submission of Proposal

A complete Proposal shall include the items set forth in Section 2.3. and Section 2.4. and the requisite Proposal Security. On or before the Closing Date, one original and 15 copies of the Proposal (marked Proposal in response to JDS Number ___) must be submitted in a sealed package, addressed and mailed or delivered in person to:

Mr.Nat Bottigheimer
Contracting Officer
Office of Property Development
and Management
Washington Metropolitan Area
Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

SECTION 3. PROPOSAL REVIEW, EVALUATION, DEVELOPER SELECTION AND POST DEVELOPER SELECTION PROCESS

3.1. Proposal Review Process

WMATA will review and evaluate Proposals as follows:

A. The Contracting Officer receives and processes all Proposals. Proposals that in WMATA's sole and non-reviewable discretion are deemed non-responsive or not reasonably susceptible of being selected for award will be rejected and returned to the Developer with a written explanation. Please note that any Proposal that does not satisfy the requirements for jurisdictional officials and community organization participation may be rejected as technically unacceptable and returned to the Developer. WMATA reserves the right to accept or reject any Proposal without negotiation or discussion.

B. The Contracting Officer designates an Evaluation Team composed of WMATA's Joint Development staff assisted by other WMATA staff, jurisdictional

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representative(s) and consultants, as appropriate. An analysis and evaluation of each Proposal deemed to be reasonably susceptible of being selected for award is conducted.

C. The Evaluation Team may meet with all or select Developers for both an oral presentation and specific discussions about a Proposal. If such meetings are held, details on the oral presentation will be provided as part of the scheduling process. Such discussions will include identifying areas of the Proposal that: require clarification or improvement including architectural and engineering designs and drawings, or do not comply with the JDS.

D. If requested by WMATA, Developers submit Final Proposals. The Final Proposal may be significantly changed from the Initial Proposal submitted. WMATA reserves the right to waive the Final Proposal submission requirement, to request further clarification of a Final Proposal, or to request a Revised Final Proposal.

E. The Evaluation Team will, in coordination with the Contracting Officer, rate each responsive Proposal, and rank it based upon the Proposal Evaluation Factors in Section 3.2. The Evaluation Team will then forward its ranking to the Contracting Officer, who will decide to tentatively designate a Selected Developer. The Joint Development project manager will commence negotiation of a Term Sheet. If negotiations are unsuccessful, the Joint Development staff, in coordination with the Contracting Officer, may terminate negotiations and commence negotiations with the second ranked Developer and those ranked thereafter, in order of ranking. Alternatively, the Joint Development staff may, in coordination with the Contracting Officer, decide upon competitive negotiations with two or more ranked Developers.

F. As soon as the principal business terms for the tentatively Selected Developer's Project have been reduced to a Term Sheet, the Contracting Officer submits a recommendation regarding the designation of a Selected Developer and approval of the Term Sheet to WMATA's Real Estate Committee and to the WMATA Board of Directors.

G. Designation of a Selected Developer must be approved by the WMATA Board of Directors.

3.2. Proposal Evaluation Factors

Each Proposal will be evaluated using FTA's requirements for "Highest and Best Use" or "Highest and Best Transit Use" (see www.fta.dot.gov/library/policy/9300.1A/appenB.htm) and the following criteria:

A. Technical Criteria

1. Degree to which the Project reflects Transit-Oriented Development principles;

2. The market viability of the Project;

3. The experience and prior performance of the Development Team;

4. The innovation and creativity of the Project;

5. The compatibility of the Project with local Transit-Oriented Development plans and land use policies; and

6. Benefits accruing to the local jurisdiction.

B. Economic Criteria

1. Financial benefits accruing to WMATA;

2. Financial viability of the Project; and

3. Enhanced ridership.

3.3. Post Developer Selection Process

A. A Developer designated by the WMATA Board of Directors as a Selected Developer will be required to send a letter to each of the community organizations with which its representatives met to

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inform them as to how the Proposal presented to WMATA addresses their issues or concerns. A copy of this letter must also be submitted to WMATA.

B. A Developer designated by the WMATA Board of Directors as a Selected Developer will be required to pay WMATA, in immediately available funds, a non-refundable option fee for WMATA's granting to the Selected Developer the exclusive right to negotiate a Development Agreement. The amount and timing of the non-refundable option fee shall be as set forth in the Proposal (or Final Proposal, as the case may be), in accordance with Section 2.4.

C. After WMATA's Board of Directors has designated a Selected Developer and approved the Term Sheet, WMATA staff, in coordination with the Contracting Officer, will negotiate with the Selected Developer a Development Agreement (and other necessary final documentation) that incorporates the provisions of the Term Sheet. Such Development Agreement shall be completed within 150 days following the WMATA Board's designation of the Selected Developer and approval of the Term Sheet.

   In the event that this schedule is not met, the Selected Developer designation expires, the Proposal is no longer viable, and WMATA may retain the Proposal Security (in addition to the non-refundable option fee) in accordance with Section 5.2. WMATA may choose to reestablish the Selected Developer designation and provide a specific time frame to the Selected Developer for the completion of negotiations or to re-advertise the Joint Development Site.

D. As soon as the Development Agreement (and related final documentation) is completed and executed by the Developer, the Contracting Officer submits a recommendation and summary of the final Development Agreement to WMATA's Real Estate Committee and to the WMATA Board of Directors for approval. There is no binding agreement between the Selected Developer and WMATA until such time as the WMATA Board of Directors has approved the final

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Development Agreement and the Development Agreement has been executed by the parties.

3.4. Disclosure and Use of Data

WMATA is required to brief its Board of Directors on all aspects of a Proposal. The proposed business terms of a Proposal will be held in confidence only until the Development Agreement and all final documentation have been approved and executed. WMATA reserves the right to review the zoning and land use aspects of any Proposal with local zoning, land use planning, transportation and environmental officials (and in the State of Maryland, with state officials). Additionally, at the sole discretion of the WMATA Board of Directors, such review may include conducting public hearings, town meetings and similar public forums.

NOTE: WMATA's "Public Access to Records Policy" is available at MetroOpensDoors.com (click"About Metro," then click "Public access to records policy.")

SECTION 4. WMATA'S NONNEGOTIABLE REQUIREMENTS AND CONDITIONS

The following requirements and conditions are nonnegotiable and the concepts will be included in the Development Agreement and final documentation executed by the Selected Developer and WMATA. By submitting a Proposal in response to this JDS, a Developer is agreeing to accept and comply with these nonnegotiable requirements and conditions.

4.1. WMATA's Reserved Areas and Interests

The location of WMATA's Reserved Areas and Interests shall be determined by WMATA in its sole and absolute discretion. Additionally, the conveyance or lease of any WMATA property shall be subject to a reservation by WMATA of a permanent, exclusive and irrevocable easement for vertical and horizontal support and as otherwise necessary for the operation and maintenance of present and future WMATA Facilities, WMATA Improvements and WMATA Reserved Areas and Interests.

4.2. WMATA's Approval Rights and Adjacent Construction Requirements

The following rights and requirements apply to all Projects:

A. Approval Rights

WMATA shall have the right to approve in its sole and absolute discretion:

1. Matters that affect the integrity, functionality, efficiency, safety, operation, maintenance, legal compliance, cost or profitability of WMATA's business, customers, operations or activities;

2. Matters that affect WMATA Facilities, WMATA Replacement Facilities, WMATA Reserved Areas and Interests, ingress/egress to WMATA Facilities, etc.;

3. Matters that affect any of WMATA's adjacent property;

4. The design and construction of interim and permanent WMATA Replacement Facilities; and

5. Matters that affect the Selected Developer's obligations as they relate to timing (changes in Project schedule) and performance (changes in what will be constructed, i.e., the product mix).

B. WMATA's Comment Rights

WMATA shall have the right to comment on the development plan/site plan and on other matters concerning the Project which do not affect the integrity, functionality, efficiency, safety, operation or maintenance of WMATA Facilities, WMATA Improvements, or WMATA Reserved Areas and Interests. The Selected Developer shall be obligated to consider WMATA's comments and to respond reasonably.

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C. WMATA's Construction Requirements

In order to avoid adverse impact on WMATA Facilities, Projects must be built in compliance with WMATA's adjacent construction criteria as contained in WMATA's Adjacent Construction Design Manual, Revision I and as further revised, and WMATA's Manual of Design Criteria (Release 7), which are available by calling 202-962-2043. Additionally, Developers must comply with WMATA's requirements for the relocation and maintenance of operations during construction which include the uninterrupted and unimpeded operation of WMATA Facilities. WMATA will review and approve Developer plans in accordance with established WMATA procedures.

4.3. Relocation or Replacement of WMATA Facilities

Intentionally omitted.

4.4. Selected Developer's Funding of WMATA Compact Public Hearing

Intentionally omitte.

4.5. No Subordination of WMATA's Fee Interest

WMATA will not subordinate its fee interest in its property. In a lease situation, WMATA will permit lenders to have a leasehold security interest in the Project, which security interest would be subordinate to WMATA's right to terminate the lease upon a default by the Selected Developer (subject to the lender's right to cure).

4.6. Federal Transit Administration (FTA) Requirements

WMATA is subject to the requirements of the FTA. The terms of the Development Agreement negotiated with the Selected Developer, as it pertains to WMATA property, are subject to FTA approval. While FTA may impose additional requirements which cannot be known until FTA reviews a specific Project, FTA requires that the Selected Developer comply with certain laws and regulations barring discrimination on the basis of race, color, national origin or disabilities; and further requires compliance with FTA requirements regarding conflicts of interest and debarment.

FTA also requires, as a covenant running with the land, that the entire Joint Development Project constitute a Transit-Oriented Development as defined in the latest applicable FTA Regulations. See FTA Circular 9300.1A, Appendix B, The Relationship Between Joint Development and Livable Communities on the FTA web site at: www.fta.dot.gov/library/policy/IFT/iftb.html.

4.7. Americans With Disabilities Act (ADA)

All Projects shall be constructed in compliance with Titles II and III of the Americans with Disabilities Act, 42 USCA Section 12101, et seq., as amended, and any regulations promulgated thereunder. Proposals must include a plan indicating how access from the Project to the Metro station will be provided for persons with disabilities. Additionally, if a Project or any subsequent addition, modification or alteration triggers ADA-related improvements to the Metro station, the Selected Developer shall be responsible for the costs of such improvements. The only exceptions are when the ADA-related improvements predate the date of completion of the Project and are required to be made regardless of the Project, or constitute ADA-related improvements that WMATA is implementing at Metro stations in general as part of its system-wide improvements or alterations.

4.8. Direct Connections

If alntentionally Omitted

A.

4.9. Davis-Bacon Act/Fair Labor Standards Act

The construction of any WMATA Replacement Facility or WMATA Improvement must be built in compliance with the Davis-Bacon Act, 40 USC Section 276a, et seq., and overtime compensation must be paid in compliance with Section 64 of the WMATA Compact, and the Fair Labor Standards Act, 29 USCA Section 201, et seq. (1978), as amended.

4.10. Other Laws, Regulations and Requirements

Developers are responsible for being fully informed of and complying with the

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requirements of applicable federal, State of Maryland, District of Columbia, Commonwealth of Virginia, and local jurisdictional laws and regulations. Additionally, the Selected Developer shall be responsible for obtaining, at its own cost and expense, all requisite approvals, licenses and permits.

4.11. WMATA's Indemnification Policy
The terms of any Development Agreement and final documentation will require that the Selected Developer and its contractors and subcontractors (and subtenants, where applicable) indemnify WMATA against all claims, liabilities and costs of whatsoever kind and nature including environmental claims which may be imposed upon, or incurred by, or asserted against WMATA in connection with the Selected Developer's performance under the Development Agreement or related agreements.

WMATA will accept financial responsibility for environmental damage to the site caused by WMATA prior to the transfer of the site to the Selected Developer.

4.12. WMATA's Insurance Requirements
The terms of any Development Agreement and final documentation will require that the Selected Developer, its contractors and subcontractors procure and maintain insurance coverage in amounts determined by WMATA, which may include, but is not limited to: General Liability, All Risk Property, Builder's Risk, Worker's Compensation, Automobile Liability, Contractors' Pollution Legal Liability, Railroad Protective Liability, Rental Value Insurance, Professional Errors and Omissions Liability and Boiler and Machinery (during operations only).

4.13. Payment, Performance and Completion Bonds
WMATA requires that the Selected Developer secure and file with WMATA a payment bond equal to 100% of the value of each phase of the Project from a federally approved surety company, with sufficient assets. The payment bond must name WMATA for the benefit of laborers, subcontractors, material suppliers and others that have or may have claims or liens against the Project or the realty.

WMATA also requires the Selected Developer to secure and file with WMATA a performance bond equal to 100% of the value of each construction phase of the Project from a federally approved surety company, with sufficient assets and which bond names WMATA for the completion of the planned construction in that phase.

Additionally, if there are WMATA Replacement Facilities being constructed, WMATA requires the Selected Developer to secure and file with WMATA a completion bond equal to 100% of the value of the WMATA Replacement Facilities from a federally approved surety company, with sufficient assets, and which bond names WMATA as the sole obligee for the completion of the Replacement Facilities.

All bonds must be in a form acceptable to WMATA and countersigned by a Commonwealth of Virginia, State of Maryland or District of Columbia resident agent of the surety, with a copy of the agent's license, as issued by the appropriate Insurance Commissioner.

4.14. WMATA's Disclaimer of Liability
WMATA disclaims all responsibility and liability for the completeness or accuracy of any information that it provides.

4.15. Inspection of Accounting Records
The Selected Developer will be required to permit WMATA, or any of its duly authorized representatives, at reasonable times and places, access to any books, documents, papers and records, including certified financial statements, which are directly pertinent to the Development Agreement. WMATA shall be permitted to audit, inspect, examine, copy and transcribe such books, documents, papers and records. The Selected Developer shall retain all records for three years after submission of any statement required for determining any variable payment obligations under the Development Agreement or related agreements.

4.16. WMATA's Tax Exempt Status
WMATA is tax exempt pursuant to the WMATA Compact. Any taxes, assessments or impositions on the Project or the real estate

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shall be assumed by the Selected Developer. In no event shall the Selected Developer assert or attempt to assert for its own benefit, an exemption or immunity available to WMATA under the WMATA Compact.

4.17. Financing Requirement

The Selected Developer shall be obligated to obtain the requisite financing to consummate the lease/sale of the WMATA Joint Development Site, and the development, construction and final completion of the Project by a reasonable date certain, or WMATA may terminate the Development Agreement.

SECTION 5. ADDITIONAL JOINT DEVELOPMENT REQUIREMENTS AND PROCEDURES

5.1. Assignment of Proposal, Change in Developer or Withdrawal of Developer

WMATA considers the designation of Selected Developer to be in the nature of a personal services contract. The Selected Developer will be designated because of its skills, experience, knowledge and financial standing.

A Developer who submits a Proposal in response to this JDS may withdraw, assign its Proposal or change the composition of its Development Team only as follows:

A. Withdrawal of Proposal

At any time prior to designation of the Selected Developer, a Developer may elect to withdraw its Proposal. Under such circumstances, WMATA shall return the Proposal Security without interest.

B. Assignment of Proposal

At any time prior to designation of the Selected Developer, a Developer may request WMATA's approval to assign its Proposal to another development entity. No purported assignment is valid unless WMATA has given its prior written approval. The Developer and its proposed assignee shall submit all documents required by WMATA before the request will be considered. WMATA is under no obligation to approve the request. If WMATA refuses to grant approval, and the Developer does not want to proceed in accordance with its Proposal, WMATA will return the Proposal Security without interest. An assignment may be subject to the requirement of a Guaranty pursuant to Section 5.7.

C. Change in Composition of Developer or Development Team

1. Prior to designation of the Selected Developer, a Developer may change its composition or the composition of its Development Team only with WMATA's prior written approval. If WMATA does not approve the change, and the Developer does not want to proceed in accordance with its Proposal, WMATA will return the Proposal Security without interest.

2. After designation as the Selected Developer, the Selected Developer must request WMATA's written approval to change its composition or the composition of its Development Team. If WMATA does not approve the change, and the Selected Developer does not want to proceed in accordance with its Proposal, WMATA may terminate the Selected Developer designation and retain the Proposal Security.

D. Other Situations

An assignment or change in the composition of the Development Team which is not addressed above is at the sole discretion of WMATA's Contracting Officer. For any such assignment or change to be valid, WMATA's prior written approval is required. Any purported assignment occurring without WMATA's prior written approval shall be void.

5.2. Termination of Selected Developer Designation

WMATA may terminate the Selected Developer designation for any of the following reasons and retain the Proposal Security and any other deposit held by WMATA (except as stated otherwise in subsections I and J):

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A. The Selected Developer fails to negotiate and execute the Development Agreement within 150 days following the designation of the Selected Developer and approval of the Term Sheet by the WMATA Board of Directors.

In the event that the foregoing schedule is not met, WMATA may terminate the designation of the Selected Developer and retain the Proposal Security without any liability or further obligation to the Selected Developer. The foregoing deadlines can only be extended by action of the WMATA Board of Directors in its sole and non-reviewable discretion.

B. The Selected Developer or any individual or entity holding ownership in or comprising the Development Team declares bankruptcy.

C. The ownership structure of the Selected Developer changes without WMATA's prior written approval. Structural changes include changes in percentages of ownership interests or changes in ownership of any entity holding an ownership interest in the Selected Developer.

D. The Selected Developer assigns its designation or transfers its rights in a WMATA Joint Development Site without WMATA's prior written approval.

E. The Selected Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team is indicted for, or convicted of, a fraud or a felony.

F. The Selected Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team is found not to have a satisfactory record of integrity and business ethics, in WMATA's sole and non-reviewable discretion.

G. The Selected Developer provided materially incorrect or incomplete information in any of its submissions to WMATA, as determined in WMATA's sole and non-reviewable discretion.

H. The Selected Developer does not comply with this JDS, its Proposal or the terms of the Development Agreement as negotiated by the parties.

I. In accordance with Section 5.5, the Selected Developer conducts environmental due diligence and consequently modifies its Proposal in a manner which is unacceptable to WMATA. Under such circumstances, WMATA shall return the Proposal Security with any interest that may have accrued, less site restoration costs actually incurred by WMATA.

J. WMATA determines (in its sole and non-reviewable discretion) that termination is in its best interest. Under such circumstances, WMATA shall return the Proposal Security with any interest that may have accrued.

5.3. Metro Station Access Roads and Interior Maintenance Roads

Intentionally omitted.

5.4. Developer's Research Obligations

A Developer is expected to know all information reasonably ascertainable concerning the site size, and character, quality, and quantity of surface and subsurface materials or obstacles on the Joint Development Site as well as the existing utilities on the Joint Development Site. Some of this information is available from a visual inspection of the Joint Development Site and may be available from technical drawings and specifications (as built drawings) which WMATA will make available upon request, utility companies serving the area and local land records. WMATA disclaims all responsibility and liability for the completeness or accuracy of any information it provides. All Joint Development Sites are subject to existing physical and legal conditions, whether of record or not.

Additionally, a Developer is expected to know

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the conditions affecting construction on the Joint Development Site, which include but are not restricted to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, the topography and conditions of the ground, and the character of equipment and facilities needed before and during prosecution of the work.

5.5. Environmental Matters

WMATA has undertaken no comprehensive environmental investigations of the presence or absence of contaminated material or other environmental conditions that may affect development except as specifically identified in PART ONE. Interested Developers may request permission to perform a due diligence environmental site assessment prior to Proposal submission, after Proposal submission or after designation as the Selected Developer. Such due diligence site assessment and all associated costs shall be the sole responsibility of the Developer. Permission will be granted by WMATA subject to the execution of a Right of Entry Agreement with standard insurance and indemnity provisions. A sample Right of Entry Agreement is available from the Joint Development Coordinator who may be reached through 202-962-2395.

WMATA shall be provided, in a timely manner, a copy of each test result and report addressing the environmental site investigation. If environmental contamination is found that requires a clean-up or remediation of the Joint Development Site under a governmental regulatory agency's review, the Developer may withdraw its Proposal (including its Final Proposal) but is responsible for site restoration costs. In the event that the due diligence environmental site assessment is performed after the designation of the Selected Developer, but prior to the execution of the Development Agreement, the Selected Developer and WMATA may negotiate the transaction based upon the levels of contaminated materials or other environmental conditions encountered which would substantially delay development or substantially increase the costs of excavation, removal or disposal of soil/materials, or the treatment of groundwater. If the parties cannot agree upon the resolution of these issues the Selected Developer may withdraw its Proposal but the Developer is responsible for site restoration costs, and WMATA has the corresponding right to terminate the Selected Developer designation in accordance with Section 5.2.I.

5.6. Protest Policy

The policy and procedure for the administrative resolution of protests involving the designation of a Selected Developer arising pursuant to this JDS are as follows:

A. Only an Interested Party may submit a protest. An Interested Party is defined as a Developer who submitted a Proposal pursuant to this JDS.

B. Protests must be submitted no later than 30 calendar days after WMATA's designation of the Selected Developer. Any protest submitted subsequent to this time may be deemed by WMATA's Contracting Officer to be untimely and denied on that basis unless the Contracting Officer concludes that the issue(s) raised by the protest involves fraud, gross abuse of the selection process, or otherwise indicates substantial prejudice to the integrity of the selection process.

C. The Interested Party wishing to file a protest shall submit a written document to WMATA's Contracting Officer which contains the following:

1. The name and address of the Interested Party;

2. Description of the nature of the protest;

3 Identification of the provision(s) of this JDS, applicable Joint Development Policies and Guidelines or laws upon which the protest is based;

4. A statement of the specific relief requested; and

5. Any documents relevant to the protest.

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D. WMATA's Contracting Officer shall carefully review the protest in consultation with WMATA staff. At the discretion of the Contracting Officer, a conference may be held with the Interested Party. The Contracting Officer shall have 30 calendar days to render a written decision on the merits of the protest. A determination by the Contracting Officer that a protest is meritorious may result in a change in the terms, conditions or format of this JDS in the form of an Amendment; the rejection of a Proposal; the cancellation of this JDS; or the termination of the designated Selected Developer.

E.Th is Protest Policy is not applicable to actions taken by WMATA in response to legal proceedings filed in the courts, or actions taken by WMATA in its sole and non-reviewable discretion.

5.7 Guaranty
WMATA may require a third party to guarantee some or all of the obligations of the Selected Developer, including but not limited to construction obligations.

SECTION 6: DEFINITIONS

Contracting Officer
WMATA's Managing Director of the Office of Property Development and Management, or, if such position is vacant at the time in question, the person designated to act in such capacity at such time.

Developer(s)
The entity submitting or contemplating the submission of a Proposal in response to this Joint Development Solicitation (JDS). The Developer may be any qualified individual or entity with real estate development-related experience and access to financing sufficient to undertake the proposed Project, including real estate brokers, non-profit organizations, public agencies, etc. Real estate brokers are invited to participate as the Developer or as a member of the Development Team as opposed to participating in a purely marketing role. WMATA will not pay any broker's commissions.

Development Agreement
The legal document (lease, sales contract, combination lease/sale, master development agreement or other agreement) that constitutes the contract between WMATA and the Selected Developer.

Development Team
The Developer and the principal persons and/or entities (including officers, directors, partners, members, managers or the equivalent of such persons and/or entities) identified by the Developer as the participants in the Project.

Disadvantaged Business Enterprise (DBE)
For the purpose of Joint Development Projects, a DBE is a for-profit, small business concern that is owned and controlled (at least 51%) by one or more socially and economically disadvantaged persons. Socially and economically disadvantaged persons are persons who are citizens of the United States (or lawfully admitted permanent residents), and who are either:

A. Black Americans (meaning persons having origin in any of the Black racial groups of Africa);

B. Hispanic Americans (meaning persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portugese culture or origin, regardless of race);

C. Native Americans (meaning persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians);

D. Asian-Pacific Americans (meaning persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong);

E.Su bcontinent Asian American (meaning persons whose origins are from India,

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Pakistan, Bangladesh, Bhutan, the Maldive Islands, Nepal or Sri Lanka); or

F. Women.

Evaluation Team
WMATA staff assigned by the Contracting Officer to analyze the Proposals and make recommendations.

Federal Transit Administration (FTA)
The federal agency within the U.S. Department of Transportation which administers the federal rules and regulations governing joint development programs and oversees other aspects of real property purchased with federal funds for transit purposes.

Final Proposal
If requested by WMATA, the final document or compilation of documents submitted by the Developer for analysis before the Evaluation Team makes its recommendation. See definition of Proposal.

Initial Proposal
The initial document or compilation of documents submitted by the Developer in response to this JDS. See definition of Proposal.

Joint Development
A creative program through which property interests owned and/or controlled by WMATA are marketed to office, retail/commercial, recreational/entertainment and residential developers with the objective of developing Transit-Oriented Development projects. See definition of Transit-Oriented Development.

Joint Development Policies and Guidelines
The procedures approved by the WMATA Board of Directors which govern the Joint Development Program and are available at MetroOpensDoors.com (click"About Metro," then click "Business opportunities" and "Joint development opportunities").

Joint Development Project
The development ideas, concepts and plans that a Developer presents in its Proposal. Also refers to the development plans of the Selected Developer.

Joint Development Site(s)
The property areas and interests identified in Part I.

Joint Development Work Program
A document prepared annually of Joint Development opportunities associated with WMATA-owned properties. The Joint Development Work Program is drafted in coordination with the local jurisdictions and approved by the WMATA Board of Directors.

Project
The joint development ideas, concepts and plans that a Developer presents in its Proposal. Also refers to the development plans of the Selected Developer. Project is synonymous with Joint Development Project.

Proposal(s)
The development-related documents submitted in response to this Joint Development Solicitation (JDS). The term Proposal can include both the Initial Proposal and, if requested by WMATA, the Final Proposal.

Selected Developer
The Developer with the exclusive right to negotiate a Development Agreement with WMATA. WMATA's designation of the Selected Developer shall not become final and binding until a Development Agreement has been negotiated and executed by the parties.

Term Sheet
The nonbinding document which summarizes the development concept, financial structure and other major business terms of the Project.

Transit-Oriented Development
Those projects that integrate WMATA's transit facilities, reduce automobile dependency, increase pedestrian/bicycle originated transit trips, foster safe station areas, enhance surrounding area connections to transit stations, provide mixed use including housing and the opportunity to obtain goods and services near transit stations, offer active public spaces and promote and enhance ridership and sound growth in the communities which WMATA serves. See also FTA's definition at www.fta.dot.gov/library/policy/IFT/iftb.html.

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WMATA Compact
Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as may be amended.

WMATA Facility
Any improvements, structures, infrastructure components, tangible property and/or areas required, in the judgment of WMATA, for the use, operation, access, maintenance, repair, servicing, replacement or removal of structures and supports, any and all access, parking, operation and service facilities and areas relating to WMATA's operations or activities, including without limitation, the Metro station, tunnels, rails, tracks, bus stations, bus transfer areas, supervision kiosks, employee bathrooms, electric substations, conduits and lines, communications equipment and structures, pedestrian ways, waiting and shelter areas, facilities serving persons with disabilities, cooling towers, chiller plants, vent and fan shafts, bicycle rack and locker areas, storm water management facilities, landscaping, lighting and all other associated facilities.

WMATA Improvement(s)
Those improvements, whether an interim replacement facility or a new facility, which will be designed and/or constructed by the Selected Developer for WMATA in a configuration acceptable to WMATA. Upon final acceptance by WMATA, a WMATA Improvement will become a WMATA Facility.

WMATA Replacement Facility
A WMATA Improvement designed and/or constructed by the Selected Developer for WMATA in a configuration acceptable to WMATA that replaces any displaced or disrupted WMATA Facility which will be turned over to WMATA.

WMATA Reserved Areas and Interests
Includes (a) all areas of, within or adjacent to the Joint Development Site containing any WMATA Facility; (b) all areas of, within or adjacent to the Joint Development Site relating to the use, operation, access, maintenance, repair, servicing, replacement or removal of any WMATA Facility; and (c) any and all easements and other reserved rights required by WMATA in connection with its use, operation, access, maintenance, repair, servicing, replacement or removal of any WMATA Facility or WMATA operations and business generally, whether expressly provided for or reasonably contemplated. Such easements and other reserved rights shall include, without limitation, easements and reserved rights (whether at, above or below ground level) for (i) the construction, operation, maintenance, repair, replacement, removal or relocation of any and all existing tunnels and related facilities, (ii) all WMATA Facilities (including, without limitation, any replacement facilities) which have piling or other structural support within or adjacent to the Joint Development Site, (iii) any and all service facilities serving such tunnels or any WMATA Facility, (iv) all underground power lines and other utilities, (v) horizontal and vertical support for all WMATA Facilities in, on and about the WMATA Joint Development Site, including without limitation, structures, equipment or installations such as foundations, beams, columns, bracing and similar structural features which maintain vertical and horizontal support and are necessary for the maintenance, operation and protection of any WMATA Facility and (vi) protections and approval rights satisfactory to WMATA in its sole and unreviewable discretion with respect to limits on loads and pressures which may affect any WMATA Facility, whether vertical or lateral.

FOIA CONFIEDENTIAL TREATMENT REQUESTED **WMATA-INV 004402**

PRESENTED AND ADOPTED: November 20, 2008

SUBJECT: AMENDMENT OF JOINT DEVELOPMENT GUIDELINES TO ESTABLISH SELECTION CRITERION FOR INTEGRITY AND BUSINESS ETHICS

2008-58
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, The Board of Directors approved the updated Joint Development Policies and Guidelines on February 28, 2008, which permit but do not require consideration of prospective developers' integrity and business ethics prior to developer selection; and

WHEREAS, In analogous contexts offerors on government projects are required to complete certificates to assist the government to evaluate integrity and business ethics; and

WHEREAS, The Board of Directors has determined that the Joint Development Guidelines should explicitly include a selection criterion requiring evaluation of offeror integrity and business ethics, and further requiring each offeror to complete and maintain a certificate regarding its integrity and business ethics; now, therefore be it

RESOLVED, That the Board of Directors approves the proposed amendment to the Joint Development Policies and Guidelines appended as Attachment A hereto; and be it finally

RESOLVED, That this Resolution shall be effective immediately and apply to all joint development solicitations issued after the date of the Board of Directors approval of this Resolution.

Reviewed as to form and legal sufficiency,

Carol B. O'Keeffe
General Counsel

Motioned by Mrs. Hudgins, seconded by Mr. Benjamin
Ayes: 6 - Mr. Zimmerman, Mr. Graham, Mr. Benjamin, Mrs. Hudgins, Mr. Albert, Ms. Hewlett

Attachment A: Proposed Amendment to Joint Development Guidelines - Integrity and Business Ethics

7.6 Initial Evaluation

In evaluating proposals, WMATA will use commercially reasonable business practices, consistent with FTA's requirements, which include the following:

Technical

1. Degree to which the project reflects transit-oriented development principles
2. Market/financial viability of the joint development project
3. Development team experience and prior performance
4. Innovation and creativity
5. Compatibility of development with local requirements and transit area
6. Effects on WMATA facilities

Economic

1. Enhanced Metrorail and Metrobus ridership
2. Financial benefits accruing to WMATA and the local jurisdiction
3. Joint development project completion time-line

Integrity and Business Ethics

As a condition of award, each offeror shall self-certify as to its integrity and business ethics using a form required by WMATA (Attachment One to these Policies and Guidelines). An offeror that fails to execute this certification or fails to provide adequate information for WMATA to evaluate its inability to certify to the statements in this certification may be ineligible for award. The offeror shall provide immediate written notice to WMATA if at any time it learns that its certificate was erroneous when submitted or has become erroneous by reason of changed circumstances.

Other Non-Direct Benefits

WMATA may also consider non-direct compensation benefits such as the provision of affordable housing for WMATA employees or special enhancements to transit system ridership over and above those normally provided by joint development.

* * *

8.4.1 Criteria

The criteria for selecting such developers shall include prior experience in developing projects of the type and size contemplated, financial capacity to complete the project, prior experience in dealing with communities, qualifications and experience of members of the project team, and the specific personnel assigned to the project. Prior experience in public/private transactions may also be considered. As a condition to becoming the selected developer, each proposer shall self-certify as to its integrity and business ethics using a form required by WMATA (Attachment One to these Policies and Guidelines). An offeror that fails to execute this certification or fails to provide adequate information for WMATA to evaluate its inability to certify to the statements in this certification may be ineligible for award. The offeror shall provide immediate written notice to WMATA if at any time it learns that its certificate was erroneous when submitted or has become erroneous by reason of changed circumstances. A submittal from a proposer in response to these criterial shall be collectively referred to herein

as the proposer's "Qualifications." Where local stakeholders desire to participate in the process, evaluation criteria for reviewing developer Qualifications should be established in collaboration with local jurisdiction stakeholders. Evaluation criteria may include evaluation factors or mutual WMATA and local jurisdiction interest including, for example, demonstrated experience in hiring local contractors, DBE contractors, etc. It is clearly understood, however, that WMATA staff will be solely responsible for making recommendations to the Board regarding the criteria that will be used for evaluation of Qualifications under the RFQ process.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004405

Attachment One: Self-Certification for Prospective Developers

The offeror hereby certifies to the best of its knowledge and belief that it, any principal of the offeror, any member of the offeror (including a principal of any member that is an entity):

1. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from award of contracts by any governmental entity.

2. has not within the past ten years been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a contract or subcontract with a governmental entity; violation of antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating criminal tax laws, or receiving stolen property;

3. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in the previous paragraph;

4. is not in arrears or in default of payment of any money or obligation of a value greater than $3,000 due a governmental entity;

5. has no adjudicated violations nor has paid penalties during the past ten years relating to the housing and building laws, regulations, codes and ordinances of any governmental entity; and

6. during the past ten years has not had a license revoked that was issued in accordance with the housing, building or professional licensing laws, regulations, codes and ordinances of any governmental entity.

"Principal" means an officer, director, owner, partner or other person with management or supervisory responsibilities or otherwise in a position to control or significantly influence the offeror's activities or finances.

An offeror that is unable to certify to the statements in this certification shall attach an explanation to this proposal. An offeror that fails to execute this certification or fails to provide adequate information for WMATA to evaluate its inability to certify to the statements in this certification may be ineligible for award.

This certification is a material representation of fact upon which reliance will be placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to WMATA, WMATA may in its discretion terminate the contract resulting from this solicitation for default. The offeror shall provide immediate written notice to WMATA if at any time it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Signature: _____

Title: _____

Date: _____

Minutes

1331st Meeting of the Board of Directors
June 26, 2008

Mr. Zimmerman called the meeting to order at 11:10 a.m. Present were:

Directors
Mr. Chris Zimmerman
Mr. Jim Graham
Mr. Peter Benjamin
Mrs. Catherine Hudgins
Mr. Emeka Moneme
Ms. Elizabeth Hewlett

Alternate Directors
Mr. Marion Barry
Mr. Jeff McKay
Mr. Anthony Giancola
Mr. Gordon Linton

Staff
Mr. John Catoe
Mr. Gerald Francis
Ms. Helen Lew
Ms. Carol O'Keeffe
Mr. Shiva Pant
Mr. Chuck Woodruff
Mrs. Leen'da Chambliss

Public Comment Period:

There were no speakers during the public comment period.

Approval of Agenda:

The agenda was approved as submitted by unanimous consent.

Approval of Minutes:

The minutes of the May 22, 2008 meeting were approved as submitted.

Washington Metropolitan Area Transit Authority

600 Fifth Street, NW
Washington, D.C. 20001
202/962-1234

By Metrorail:
Judiciary Square-Red Line
Gallery Place-Chinatown
Red, Green and Yellow Lines

A District of Columbia, Maryland and Virginia

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004407

Report by Planning, Development and Real Estate Committee

E. Florida Avenue Developer Selection

Mrs. Hudgins referred the Board to the request to select Banneker Ventures as the developer of the Shaw-Howard U/Florida Avenue joint development site, approve the term sheet and authorize negotiation of the development agreement. The final agreement will reflect the inclusion of an affordable housing component and staff will provide documentation to the Board that clarifies the roles and responsibilities of the members of the development team.

Mr. Graham requested that his comments from the committee meeting be included as part of the record for the Board meeting. In his comments, Mr. Graham noted the importance of providing affordable housing; requested clarification on the Board's policy on business ethics and integrity requirements relating to joint development projects; and raised concerns about the financial viability of the project, as proposed.

Mrs. Hudgins moved, seconded by Mr. Moneme, approval of this action. This motion was unanimously approved.

Ayes: 6 - Mr. Zimmerman, Mr. Graham, Mr. Benjamin, Mrs. Hudgins, Mr. Moneme and Ms. Hewlett

A. Policy Concerning Use of WMATA Property for Non-WMATA Transit Projects

Mrs. Hudgins referred the Board to the request to approve a resolution for a policy allowing no-cost transfers of WMATA-owned real property to local jurisdictions and state governments for reimbursable and other transit projects.

Mrs. Hudgins moved, seconded by Mr. Benjamin, approval of this action. This motion was unanimously approved.

Ayes: 6 - Mr. Zimmerman, Mr. Giancola, Mr. Benjamin, Mrs. Hudgins, Mr. Moneme and Ms. Hewlett

A copy of the approved Resolution (2008-29) has been made a part of the official file.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004408

[redacted]
Develop Selection
MEAD FL Ave
4-08

Joel's Mead Ufo

ID — 942516

Password — Richey 1 Richey("one")

M E M O R A N D U M

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Sites- Tentative Developer Selection

DATE: February 26, 2008

FROM: Nat Bottigheimer

TO: John B. Catoe, Jr.

The Department of Planning and Joint Development (PLJD) recommends tentative selection of Banneker Ventures as developer of Metro's three Shaw-Howard/Florida Avenue parcels and preparation and negotiation of a term sheet with that team. If negotiations are unsuccessful, we recommend turning to the Moddie Turay Company for negotiation of a term sheet.

In early 2007, Metro issued Requests for Expressions of Interest for its Shaw-Howard/Florida Avenue joint development sites: Parcel 1, 3,800 sf on Florida Avenue at 9th St, NW; Parcel 2, 8,600 sf on Florida Avenue between 8th and 9th streets, NW, and Parcel 3, 16,500 sf on Florida Avenue between 7th and 8th streets.

After evaluation of responses, Metro requested six developers to submit more detailed proposals, and four did so with two combining as one team.

On October 5, 2007, Metro received three proposals from teams led by:

1. Banneker Ventures
2. Lakritz Adler
3. Moddie Turay Company

Washington Metropolitan Area Transit Authority

The recommendation to tentatively select Banneker Ventures is based on the Metro Evaluation Team's ranking of the proposals (memo attached) in accordance with the evaluation criteria in the Joint Development Solicitation and Source Selection Plan.

Metro team members comprising the Evaluation Team were from the Office of Station Area Planning and Asset Management (SAAM) and the Office of the General Counsel (COUN) with participation by the Office of Joint Development and Adjacent Construction (JDAC) since the sites are partly over Metrorail tunnels. In addition to Metro staff review and due diligence, outside real estate consultant Bolan Smart provided financial and market analysis, and representatives from the District of Columbia's Office of the Deputy Mayor for Economic Development and Office of Planning evaluated the proposals for conformance with city plans and policies.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

The Banneker and Moddie Turay proposals both encompass residential development over ground floor retail for all three sites and are not substantially different in concept.

In many other aspects, the teams match up evenly. A major difference was the financial offer from Banneker providing approximately $2.2 million more in net present value to Metro over the course of a 60-year lease. Further, the Banneker proposal has less complication than the Moddie Turay proposal, which envisions combining the smallest Metro site with an alley to be closed and adjacent historic district property to be acquired. The financial terms for this acquisition have not been agreed to, and the city staff has informed us that the prospects for closing an alley and removing two contributing historic structures are uncertain.

Staff is aware that a key potential benefit to the community of Metro's joint development program is the promotion of high-quality transit-oriented development. As a result, staff took pains to evaluate the degree to which proposals submitted by adjacent property owners could contribute to a higher-quality development project compared to a project developed independent of adjacent property owner projects.

Of particular interest were the buildings next to the Metro property fronting on 9th Street. To evaluate the potential benefits of combining Metro's property with adjacent property, staff visited these sites, consulted with District of Columbia planning and historic preservation staff, and reviewed each of the joint development proposals with attention to this important evaluation factor.

In staff's opinion, developing Metro's property independently of the development of the adjacent properties would not reduce the potential of adjacent properties to be redeveloped in accordance with historic district requirements.

Further, combining the adjacent properties with Metro's three parcels (1) would result in a significant potential for delaying the redevelopment of Metro's property because of the historic district and the alley closing issues mentioned above and (2) would not appear to offer substantial benefits in terms of transit oriented development quality.

cc. Jack Requa
Chuck Woodruff
Carol O'Keeffe
Shiva Pant

M E M O R A N D U M

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Sites - Tentative Developer Selection

DATE: January 29, 2008

FROM: Rosalyn Doggett

THRU: Joel R. Washington JRW

TO: Nat Bottigheimer

WMATA received 3 proposals for its Shaw-Howard/Florida Avenue joint development sites: Parcel 1, 3,800 sf on Florida Avenue at 9th St, NW; Parcel 2, 8,600 sf on Florida Avenue between 8th and 9th streets, NW, and Parcel 3, 16,500 sf on Florida Avenue between 7th and 8th streets. In accordance with the Source Selection Plan for the Shaw-Howard/Florida Avenue Joint Development Sites, an Evaluation Team composed of Rosalyn Doggett, Chair, John Magarelli and Marc Biondi met a number of times to rate proposals from each of three teams. Two meetings were held before interviews with the teams, and two were held after interviews and additional due diligence. The development teams are led by:

Banneker Ventures
Lakritz Adler
Moddie Turay Company

The Evaluation Team recommends tentative selection of Banneker Ventures and preparation and negotiation of a term sheet with that team. If negotiations are unsuccessful, the Evaluation Team recommends turning next to the Moddie Turay Company for negotiation of a term sheet.

The Lakritz Adler proposal does not meet the threshold test in the Source Selection Plan of providing WMATA with net present value of rent over a 60-year lease that meets WMATA's current fair market value appraisal for the site ($7.5 million as of August 2007). The failure to meet appraisal value, alone, eliminates the team from further consideration. Further, Lakritz Adler offers one-half or less of the present value offered by the other two teams so it is thought that the deficit cannot be made up through negotiation even if there were other reasons to select the team, which there do not appear to be.

Washington Metropolitan Area Transit Authority

FOIA CONFIEDENTIAL TREATMENT REQUESTED

The net present values of the offers over a sixty-year lease period are:

Banneker	$14 million
Moddie Turay	$11.8 million
Lakritz Adler	$ 6 million

Banneker Ventures has been recommended because it provides greater rental present value to WMATA, approximately $2.2 million more than its remaining competitor.

Both teams propose 4 to 5 story residential development over retail for all three parcels that comprise the joint development site, at a matter-of-right FAR of 4.5. Moddie Turay proposes combining Parcel 1 with two small adjacent parcels totaling 3,000 sf, which it controls, and utilizing the air rights over an alley proposed to be closed between Parcels 1 and 2; however its financial offer is not contingent on the two parcels being incorporated or the alley closing. Banneker proposes 103 dwelling units and 12,000 sf of retail whereas, utilizing the combined properties and alley closing, Moddie Turay proposes 130 dwelling units and 26,000 sf of retail. Otherwise, there is little difference in design concept between the two teams.

The Evaluation Team ranked the teams according to the evaluation criteria in the Source Selection Plan. These final rankings are shown in the accompanying table, which lists the evaluation criteria underlined below.

The Team found that both proposals reflect TOD principles since they are on a walkable street within blocks of two different Green Line Metro stations (Shaw-Howard and U Street-Cardozo-African American Civil War Memorial), maximize matter-of-right density and provide a mix of uses that will contribute to the ongoing revitalization of the area. The Banneker proposal includes a modest amount of affordable housing and represents that its building will be "green." Both proposals are equally viable in the market provided that the apartment market remains strong in the area. Each proposes some ground floor arts/retail uses that would be an asset to the community if realized. Their proposals conform to the District of Columbia's Duke Plan (except that the plan advocates even taller buildings if possible through a PUD; lack of space for underground parking may be a constraint, however). Also, the Office of Planning has since indicated that it will support by-right development. Both provide similar benefits to the local jurisdiction in terms of property and sales taxes.

The Moddie Turay proposal is slightly more creative in that it combines Parcel 1 with adjoining property, making a larger and more regular development parcel. However, it is not clear from talking to District planning and regulatory officials that the developer can accomplish either the alley closing

or the demolition of two structures which "contribute" to the historic district in which they are located. There may be issues with combining the adjoining fee property with leased WMATA property; also a sales price has not yet been agreed upon between Moddie Turay and the adjoining property owner. Price and historic preservation negotiations could delay project execution. Neither project will have an impact on WMATA facilities though construction over the Metro tunnel which runs partially beneath each parcel will need to be coordinated by JDAC. Once more detailed designs are prepared it is possible that the teams may need to seek a variance for required parking because of limitations in construction over the Metro tunnel.

There is little difference in experience. The Banneker team members (led by Omar Karim) include the District Development Group and, recently added, Metropolis Development, which has replaced Donatelli Development as a team member. Metropolis Development has extensive experience in developing new and adaptive residential buildings with ground floor retail in the Shaw neighborhood, including the Langston Lofts condominium project at 14th and V streets, a WMATA joint development site. The other teams members are less experienced but are obtaining approvals for a Silver Spring residential building at the present time. The Banneker Team architect, Torti Gallas, is experienced in residential and retail design on nearby U Street and over Metro tunnels. Moddie Turay and his company staff appear to have somewhat less experience but have an experienced local architect, Suman Sorg, and have teamed with Clark Enterprises represented by General Counsel Rebecca Owen who stated in interviews that Clark will deploy the necessary personnel to build the project for which the Moddie Turay Company will be project manager. Ms. Owen added that this could be either Clark Realty Capital, Clark's housing arm (which has participated in Fort Totten and Huntington but elected not to follow through on its contract for Western Bus Garage) or new personnel hired by Clark Enterprises, the parent company. Clark Enterprises clearly has construction expertise; however Banneker has stated that it intends to use Tompkins Builders, a local firm with Metro-related experience.

Financial benefit to WMATA was discussed earlier, and Banneker's offer is clearly superior in that regard. In terms of financial viablility, neither proposal has obvious flawed market or financial assumptions though Banneker depends on rent increases, which appear to be achievable, to subsidize affordable housing. Clark would more likely have access to financial sources. However, lender references for both teams indicated an interest in financing projects on these sites. Equity for Banneker would be provided by MacFarlane Partners, who are active team participants, and Clark will furnish its own equity, which it has the resources to do. Both teams provide modest enhancement to Metro Ridership.

It should be noted that WMATA requested both lease and sale proposals and received both. Net present value analysis showed that the lease proposals generate more revenue for WMATA over 60 years than the sale proposals. Since the Board's preference is to lease, the sale proposals were not considered further.

The accompanying table summarizes the land use and financial elements of the two finalist lease proposals. Both have financial elements that would likely need to be strengthened or provided in negotiations, for example, capital event participation for both teams; bonus density rent provisions and slightly higher base rent for Banneker; and annual base rent escalation for Moddie Turay. It is conceivable that negotiations could change the relative positions of the teams.

But for the present, it appears fair to start with the Banneker team since its financial offer is superior and its proposal does not have the potential complications of combining property with an adjacent owner. The Moddie Turay team, though close in ranking, has no clear superiority overall.

Rosalyn Doggett, Chair

John Magarelli

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FLORIDA AVENUE PROPOSALS EVALUATION 1-08				
	POSSIBLE POINTS	BANNEKER	LAKRITZ ADLER	MODDIE TURAY
TECHNICAL CRITERIA	50 Total	42	45	45
1 ReflectsTOD Principles	10	10	10	10
2 Market Viability	10	7	8	7
3 Prior Team Experience	10	7	8	9
4 Innovation/Creativity	5	3	4	4
5 Compatibility with Local Land Use Plan	5	5	5	5
6 Benefits to Local Jurisdiction	10	10	10	10
ECONOMIC CRITERIA	50 Total	35	20	30
1 Financial Benefits to WMATA	35	25	10	20
2 Financial Viability of Proposal	5	5	5	5
3 Enhanced Ridership	10	5	5	5
TOTAL POINTS	100	77	65	75

WMATA-INV 004417

FOIA CONFIDENTIAL TREATMENT REQUESTED

1/7/08

BSA Table 1
Florida Avenue / Shaw - Mid December 2007 Proposals

			1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	11 2018	12 2019	13 2020	14 2021	15 2022	60 2067
Banneker / District - lease																		
Revenues																		
Option Fee			$100,000															
Predevelopment Rent			$60,000	$100,000	$100,000													
Offeror Land Valuation																		
Base Rent	3.00%	fixed annual escalations				$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$2,617,307
Other Base Rent Adjustment		not applicable																
Total Gross Revenue			$160,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$2,617,307
WMATA Participation	10.00%	of defined capital events																
Implied Initial Land Value	$7,647,280	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual			$160,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$48,075,772
NPV																		
Base Rent	5.73%	discount rate	$12,338,401															
With Residual	5.73%	discount rate	$14,036,328	X														

5.9% discount rate

Moodie Turay / Clark - lease (Option One: illustrative without alley closing, assumed 130,000 FAR with initial value held at $65 / FAR)

Revenues																		
Option Fee			$100,000															
Predevelopment Rent	$10,000	per month	$90,000	$120,000	$120,000	$120,000												
Offeror Land Valuation	2.00%	pre stabilization escalator	$8,450,000	$8,619,000	$8,791,380	$8,967,208	$9,146,552											
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$0	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$281,153	$2,476,086
Total Gross Revenue			$190,000	$120,000	$120,000	$120,000	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$1,012,877	$3,207,810
WMATA Participation	5.00%	of defined capital events																
Implied Initial Land Value	$0	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual			$190,000	$120,000	$120,000	$120,000	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$1,012,877	$48,666,275
NPV																		
Base Rent	5.73%	discount rate	$10,161,978															
With Residual	5.73%	discount rate	$11,767,887	X														
With Base Rent Escal	9.00%	disc rate on escalation	$13,574,499	(illustrative)														
With Base Rent Escal	5.73%	disc rate on escalation	$16,966,012	(illustrative)														

Moodie Turay / Clark - lease (Option Two: illustrative without alley closing, assumed 130,000 FAR with initial value held at $61.50 / FAR)

Revenues																		
Option Fee			$100,000															
Predevelopment Rent	$10,000	per month	$90,000	$120,000	$120,000	$120,000												
Offeror Land Valuation	3.00%	pre stabilization escalator	$7,995,000	$8,234,850	$8,481,896	$8,736,352	$8,998,443											
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$0	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$276,601	$2,435,991
Total Gross Revenue			$190,000	$120,000	$120,000	$120,000	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$996,476	$3,155,866
WMATA Participation	5.00%	of defined capital events																
Implied Initial Land Value	$0	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual			$190,000	$120,000	$120,000	$120,000	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$996,476	$48,614,332
NPV																		
Base Rent	5.73%	discount rate	$10,003,812															
With Residual	5.73%	discount rate	$11,609,720															
With Base Rent Escal	9.00%	disc rate on escalation	$13,387,076	(illustrative)														
With Base Rent Escal	5.73%	disc rate on escalation	$16,723,673	(illustrative)														

WMATA-INV 004418

FOIA CONFIDENTIAL TREATMENT REQUESTED

11/7/08

BSA Table 1
Florida Avenue / Shaw - Mid December 2007 Proposals

		1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	11 2018	12 2019	13 2020	14 2021	15 2022	60 2067
Banneker / District - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent		$60,000	$100,000	$100,000													
Offeror Land Valuation																	
Base Rent	3.00% fixed annual escalations				$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$2,617,307
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$160,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$2,617,307
WMATA Participation	10.00% of defined capital events																
Implied Initial Land Value	$7,947,280 FY08 assessed values																
Terminal Value	3.00% annual compounded increase $45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$160,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$48,075,772
NPV																	
Base Rent	5.73% discount rate	$12,338,401															
With Residual	5.73% discount rate	$14,036,328	X														

3.9% discount rate

Moodie Turay / Clark - lease (Option One: illustrative without alley closing, assumed 130,000 FAR with initial value held at $65 / FAR)

Revenues																	
Option Fee		$100,000															
Predevelopment Rent	$10,000 per month	$90,000	$120,000	$120,000	$120,000												
Offeror Land Valuation	2.00% pre stabilization escalator	$8,450,000	$8,619,000	$8,791,380	$8,967,208	$9,146,552											
Base Rent	8.00% of offeror land valuation	$0	$0	$0	$0	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724
Base Rent Adjustment	3.00% 10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$281,153	$2,476,086
Total Gross Revenue		$190,000	$120,000	$120,000	$120,000	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$1,012,877	$3,207,810
WMATA Participation	5.00% of defined capital events																
Implied Initial Land Value	$0 FY08 assessed values																
Terminal Value	3.00% annual compounded increase $45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual		$190,000	$120,000	$120,000	$120,000	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$1,012,877	$48,666,275
NPV																	
Base Rent	5.73% discount rate	$10,161,978															
With Residual	5.73% discount rate	$11,767,867	X														
With Base Rent Escal	9.00% disc rate on escalation	$13,574,499	(illustrative)														
With Base Rent Escal	5.73% disc rate on escalation	$16,966,012	(illustrative)														

Moodie Turay / Clark - lease (Option Two: illustrative without alley closing, assumed 130,000 FAR with initial value held at $61.50 / FAR)

Revenues																	
Option Fee		$100,000															
Predevelopment Rent	$10,000 per month	$90,000	$120,000	$120,000	$120,000												
Offeror Land Valuation	3.00% pre stabilization escalator	$7,995,000	$8,234,850	$8,481,896	$8,736,352	$8,998,443											
Base Rent	8.00% of offeror land valuation	$0	$0	$0	$0	$719,876	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875
Base Rent Adjustment	3.00% 10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$276,601	$2,435,991
Total Gross Revenue		$190,000	$120,000	$120,000	$120,000	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$996,476	$3,155,866
WMATA Participation	5.00% of defined capital events																
Implied Initial Land Value	$0 FY08 assessed values																
Terminal Value	3.00% annual compounded increase $45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual		$190,000	$120,000	$120,000	$120,000	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$996,476	$48,614,332
NPV																	
Base Rent	5.73% discount rate	$10,003,812															
With Residual	5.73% discount rate	$11,609,720															
With Base Rent Escal	9.00% disc rate on escalation	$13,387,078	(illustrative)														
With Base Rent Escal	5.73% disc rate on escalation	$16,723,673	(illustrative)														

WMATA-INV 004419

Execution Copy

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, and dated as of the date last executed below, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

1. Parties

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC ("Banneker"), together with District Development Group, LLC ("DDG") and Metropolis Development Company LLC ("Metropolis"), will form a limited liability company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or another name as determined by Banneker, DDG and Metropolis (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, except for any equity partners that the DEVELOPER needs to provide financing for the Project, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, such consent not to be unreasonably withheld, with the terms of such consent to be provided in the Definitive Agreement.

2. Definitive Agreement

The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within five months of Board Term Sheet approval, will be a Joint Development Agreement ("JDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement or the start of construction of the Project.

3. Property to Be Leased by Developer

WMATA will lease to DEVELOPER approximately 28, 892 sf of land area outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31. The Leased Premises shall not include those property interests necessary for protection of WMATA's Transit Facilities.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

4. Project

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47 below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide knowledge-qualified representations customarily made by WMATA in transactions of this type, including with respect to title to the Leased Premises and the environmental history or condition of the property. Subject to the continued accuracy of such representations, and subject further to DEVELOPER'S Study Period rights as provided herein and satisfaction or waiver by DEVELOPER of all conditions precedent herein provided, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right-of-Entry Permit for entry into the Leased Premises, substantially in the form attached hereto as **Exhibit C**. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit or the Proposal Security (as defined below), as applicable, and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004421

6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00), (the "Security Deposit") to secure DEVELOPER's performance. The Security Deposit will replace the $100,000 Proposal Security.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if DEVELOPER shall be in default under the Definitive Agreement beyond applicable notice, cure and grace periods therein provided. In such event, the Security Deposit may be applied by WMATA in whole or in part to cure such default. No such application of the Security Deposit shall constitute a waiver of any such default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.4 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance (not to be unreasonably withheld, delayed or conditioned) by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

6.5 WMATA shall return the Security Deposit plus interest to DEVELOPER within twenty (20) business days of its receipt of a copy of the Certificate of Occupancy for the Project.

7. Consideration

7.1 Option Fee: DEVELOPER will pay WMATA $100,000 (the "Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet and written notification to the DEVELOPER by WMATA of such approval. The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be non-refundable.

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement or forty-five (45) months after WMATA Board approval and execution of the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004422

Definitive Agreement (the "Pre-stabilization Period"). Pre-stabilization Rent, for the first fifteen (15) months, will be $100,000 per year payable in advance in quarterly instalments of $25,000. Pre-stabilization Rent will increase to $115,000.00 per year for the next twelve (12) months. For the remaining Pre-stabilization Period, rent shall be $130,000.00 per year.

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a penalty payment, the amount of which to be determined in the Definitive Agreement. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly, payable in advance in quarterly instalments of one-quarter of the Initial Base Rent. In no event shall the Initial Base Rent (for a full year) be less than Five Hundred and Ninety-Seven Thousand and No/100 Dollars ($597,000.00). After the Initial Base Rent payment, Base Rent will be due annually, in quarterly instalments, beginning on the first business day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent multiplied by 1.5% for that year (the "Initial Escalation Factor").

7.3.2 For the second through tenth years of Base Rent payments, subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of Base Rent payments and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004423

land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.5 DEVELOPER shall lease the Leased Premises for a period of sixty (60) years (the "Lease Period"). The Definitive Agreement will provide a mechanism by which Developer may request an extension of the Lease Period, subject to completion of a written agreement between the parties and approval, if necessary, by WMATA's Board of Directors.

7.4 Capital Event Participation: Capital Events (defined hereinbelow) shall be permitted in accordance with this Section 7.4. Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital Event" include any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of DEVELOPER's Improvements, (iii) other dispositions, transfers, and conversions that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event. The Parties agree that Non-Capital Events, which will require WMATA approval, but not WMATA monetary participation, also exist and will be defined in the Definitive Agreement. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Capital Event.

7.5 Periodic Rent Revaluation: Upon a Capital Event or every ten years, whichever is earlier, the Base Rent will be adjusted to 7 % of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Periodic Rent Revaluation.

7.6 WMATA Improvements: intentionally omitted

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004424

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within five months following Board Term Sheet Approval (as provided in Section 2 above), WMATA will refund DEVELOPER's full Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER within twenty (20) business days.

7.8 WMATA Delays: The maximum length of 45months for the Pre-stabilization Period will be extended, on a day-for-day basis, for delays caused by WMATA actions or failure to act, including obtaining FTA Approval in accordance with Section 8.5 below and . In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, even though DEVELOPER's schedule may take longer than anticipated.

7.9 Force Majeure Delays: The maximum length of 45 months for the Pre-stabilization Period may be extended, subject to an increase in the rental payments due in order to maintain the net present value of the Definitive Agreement to WMATA, for any delays caused by acts of God, terrorism, casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement.

7.10 Changes to Project: Changes to Project, which increase Project density may be requested by the Developer, subject to the terms and conditions for such changes to the Project as may be required by WMATA in the Definitive Agreement. Such terms and conditions will require increases in rent or other compensation to WMATA.

7.11 Additional Density:

7.11.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf (subject to true-up of 3% per year from the execution of the Definitive Agreement) of additional density and multiplying the product derived (Project land value) by 7%.

7.11.2 During the term of the Lease, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those originally shown in the Approved Site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above, with such additional Base Rent including the incremental increase associated with any actually constructed DEVELOPER Improvements.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004425

8. Conditions to Definitive Agreement Consummation

If each of the following conditions is not satisfied within the timeframes provided below therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

8.6 Financing Contingency: Developer shall have received a commitment for construction financing from a bank or other lending institution in such amounts, and upon such terms and conditions, as shall be consistent with the approved development budget for the Project and as shall otherwise be reasonably satisfactory to Developer and WMATA.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004426

9. Special Considerations

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area as specified by WMATA,to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the applicable District agency or agencies a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004427

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS—2007 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten (10) calendar days prior to commencement of construction of the DEVELOPER Improvements.

9.7 Interim Improvements: intentionally omitted

9.8 Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin. The adequacy of security and need for this Guarantee to be further discussed in Definitive Agreement.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law, which can be found at 72 FR 5788.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004428

9.10 Transit Operations: Neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to WMATA Transit Facilities located under the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004429

12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

By: _____
Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By: _____

Title: _____

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

◉Action ○Information	MEAD Number: 99972	Resolution: ○Yes ◉No

TITLE:

Shaw-FL Av Developer Selection

PURPOSE:

Approve the selection of, and term sheet with, the Banneker Ventures LLC development team as Developer for the Shaw-Howard/Florida Avenue joint developent parcels and authorize the negotiation of a Development Agreement to be presented to the Board.

DESCRIPTION:

Metro owns three parcels totaling 28,892 sf on Florida Avenue, NW between 7th and 9th streets. Originally purchased for construction of the Green Line tunnel, which runs partially beneath them, the parcels are now available for development. In accordance with a joint development work program approved by the Board in July 2006, Metro issued a request for Expressions of Interest in the spring of 2007. Metro subsequently issued a joint development solicitation for which three responses were received in October 2007.

Staff recommends selecting the Banneker Ventures, LLC team as developer of the parcels. The team consists of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC; they will form an LLC for this project. The team has the experience to complete the project; for example, Metropolis recently developed the Langston Lofts joint development project at 14th and V streets. The developer provided a better financial offer than its closest competitor and the same type of development: 4 to 5-stories of residential units over a ground floor devoted to retail and arts uses. This is the type of development recommended in the District of Columbia's adopted Duke Plan for the area. The third competitor did not meet appraisal benchmarks.

Under a 60-year ground lease, the developer proposes to build a minimum of 104 apartments and devote 11,750 sf of the ground floor to retail and arts uses, consistent with the Uptown Arts Overlay District in which the three parcels are located. The parcels are also in an historic district. Their development will help extend the successful U Street/Florida Avenue Transit Oriented Development of the past few years from Metro's redeveloped sites near the U Street/African-American Civil War Memorial/Cardozo Metro station (13th-14th and U streets) eastward to the Shaw-Howard University Metro station at 7th Street.

No Metro facilities will be displaced. Work over and next to the Metro tunnel and the 8th Street fan shaft/air vents will need to be approved by staff.

FUNDING IMPACT:

Lease revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

RECOMMENDATION:

That the Board of Directors approve the selection of, and term sheet with, the Banneker Ventures, LLC development team as developer for the Shaw-Howard University/Florida Avenue joint development parcels and authorize the negotiation of a development agreement that will be presented to the Board for approval.

Washington Metropolitan Area Transportation Authority
Board Action/Information Summary

PURPOSE

Approve the selection of, and term sheet with, the Banneker Ventures LLC development team as developer for the Shaw-Howard University/Florida Avenue joint development parcels and authorize the negotiation of a development agreement to be presented to the Board.

DESCRIPTION

Metro owns three parcels totaling 28,892 sf on Florida Avenue, NW between 7th and 9th streets. Originally purchased for construction of the Green Line tunnel, which runs partially beneath them, the parcels are now available for development. In accordance with a joint development work program approved by the Board in July 2006, and after litigation affecting the parcels was resolved, Metro issued a request for Expressions of Interest in the spring of 2007. Metro subsequently issued a joint development solicitation for which three responses were received in October 2007.

Staff recommends selecting the Banneker Ventures, LLC team as developer of the parcels. The team consists of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC; they will form an LLC tentatively named The Jazz @ Florida Avenue. The team has the experience to complete the project; Metropolis recently developed the Langston Lofts joint development project at 14th and V streets. The developer provided a better financial offer (see attached Confidential Statement) than its closest competitor and the same type of development: 4 to 5-stories of residential units over a ground floor devoted to retail and arts uses. This is the type of development recommended in the District of Columbia's adopted Duke Plan for the area. The third competitor did not meet appraisal benchmarks.

Under a 60-year ground lease, the developer proposes to build a minimum of 104 apartments and devote 11,750 sf of the ground floor to retail and arts uses, consistent with the Uptown Arts Overlay District in which the three parcels are

located. The parcels are also in an historic district. Their development will help extend the successful U Street/Florida Avenue Transit Oriented Development of the past few years from Metro's redeveloped sites near the U Street/African-American Civil War Memorial/Cardozo Metro station (13th-14th and U streets) eastward to the Shaw-Howard University Metro station at 7th Street.

No Metro facilities will be displaced. Work over and next to the Metro tunnel and the 8th Street fan shaft/air vents will need to be approved by staff.

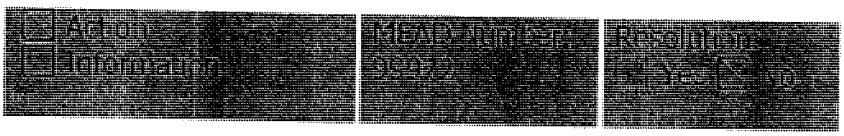
FUNDING IMPACT

Lease revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

RECOMMENDATION

That the Board of Directors approve the selection of, and term sheet with, the Banneker Ventures, LLC development team as developer for the Shaw-Howard University/Florida Avenue joint development parcels and authorize the negotiation of a development agreement that will be presented to the Board for approval.

Washington Metropolitan Area Transportation Authority
Board Action/Information Summary



PURPOSE

Approve the selection of, and term sheet with, the Banneker Ventures LLC development team as developer for the Shaw-Howard University/Florida Avenue joint development parcels and authorize the negotiation of a development agreement to be presented to the Board.

DESCRIPTION

Metro owns three parcels totaling 28,892 sf on Florida Avenue, NW between 7th and 9th streets. Originally purchased for construction of the Green Line tunnel, which runs partially beneath them, the parcels are now available for development. In accordance with a joint development work program approved by the Board in July 2006, and after litigation affecting the parcels was resolved, Metro issued a request for Expressions of Interest in the spring of 2007. Metro subsequently issued a joint development solicitation for which three responses were received in October 2007.

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From: <ProcAdmin@wmata.com>
To: <rdoggett@wmata.com>
Date: 6/30/2008 8:40:11 AM
Subject: MEAD Routing (APPROVED!) - MEAD(99972) Shaw-FL Av Developer Selection

TO: ROSALYN DOGGETT
DOCUMENT: MEAD(99972) Shaw-FL Av Developer Selection
SUBJECT: The document specified above has just been approved.

All approver(s) have approved your document.

SOURCE SELECTION PLAN

FOR

JOINT DEVELOPMENT PROPOSALS

JDS ISSUED AUGUST 24, 2007

SHAW-HOWARD/FLORIDA AVENUE
JOINT DEVELOPMENT SITE

ONLY INDIVIDUALS HAVING AUTHORIZATION
TO SOURCE SELECTION SENSITIVE INFORMATION
MAY READ THE ATTACHED MATERIAL

IF FOUND, PLEASE RETURN TO: Joel Washington, SAAM, ext. 2616

PLEASE SAFEGUARD ATTACHED INFORMATION AT ALL TIMES
SOURCE SELECTION SENSITIVE INFORMATION

FOIA CONFIEDENTIAL TREATMENT REQUESTED

SOURCE SELECTION PLAN
JOINT DEVELOPMENT PROPOSALS
JDS ISSUED AUGUST 2007

APPROVE: Joel R. Washington — 11/29/07

Joel R. Washington
Director
Station Area Planning and Asset Management
Contracting Officer
Source Selection Authority

Date

CONCUR: Nat Bottigheimer — 12/3/07

Nat Bottigheimer
Assistant General Manager
Planning and Joint Development

Date

FOIA CONFIEDENTIAL TREATMENT REQUESTED

SOURCE SELECTION PLAN
JOINT DEVELOPMENT PROPOSALS

1. INTRODUCTION

This Source Selection Plan is in accordance with the WMATA Joint Development Policies and Guidelines, Revised July 21, 2005

2. PROGRAM OVERVIEW AND DESCRIPTION

WMATA issued a Joint Development Solicitation (JDS) on August 24, 2007 seeking Proposals for Transit-Oriented Development at three parcels comprising the Shaw-Howard/Florida Avenue Joint Development Sites. Additionally, it stated that WMATA's preference is to lease rather than sell its property, but a sale will be considered if it is determined by WMATA to be in its best interest. The JDS stated that WMATA seeks Proposals for Joint Development Projects that:

- Promote Transit Oriented Development (TOD) by incorporating the following smart growth development principles: reduce automobile dependency; increase pedestrian/bicycle originated transit trips; foster safe station areas; enhance surrounding area connections to transit stations, including bus access; provide mixed-use development including housing in compliance with local regulations, retail and office uses; provide the opportunity to obtain goods and services near transit stations; and offer active public spaces;

- Attract new riders to the transit system by fostering commercial and residential development projects on WMATA-owned or controlled land and on private properties adjacent to Metrorail stations;

- Create sources of revenue for WMATA to operate and maintain the transit system by expediently negotiating Development Agreements between WMATA and public or private development entities; and

- Assist the WMATA local jurisdictions to recapture a portion of their past financial contributions, and to continue making subsidy payments by expanding the local property tax base and adding value to available local revenue.

3. SOURCE SELECTION ORGANIZATION

The source selection organization consists of an Evaluation Team for each Joint Development Site for which Proposals were received. The Evaluation Team is set

FOIA CONFIEDENTIAL TREATMENT REQUESTED

forth in Attachment 1.

4. PRE-PROPOSAL CONFERENCE

No pre-proposal conference was conducted.

5. BASIS OF AWARD

This is a competitively negotiated procurement. An award will be made to the Developer who possesses the best set of management, financial and technical capabilities necessary to fulfill the requirements of a Joint Development Project and whose Proposal conforms to the JDS requirements.

6. ADMINISTRATIVE PROCEDURES

The members of the Evaluation Team have been informed of the confidential nature of the Proposals and that unauthorized disclosure of source selection proprietary information could damage the integrity of the selection process, the need to restrict information to members of the source selection organization and the need to avoid any circumstances that may result in real, apparent, possible or potential conflict of interest. Copies of the Proposals will be provided to each Evaluation Team Member who will maintain the security of the source selection materials.

7. SCHEDULE OF EVENTS

Joint Development Solicitation (JDS) issued	August 24, 2007
Closing Date for Proposal Submission	October 5, 2007
Evaluation Team Meets	November 2007
Meetings with Developers, if required	November/December 2007
Final Proposals Due, if required	December-January 2008

8. EVALUATION PROCESS

8.1. Evaluation Procedure

The JDS generally states in Part 2, Section 3.1 that WMATA will review and evaluate Proposals as follows:

A. The Contracting Officer receives and processes all Proposals. Proposals that in WMATA's sole discretion are deemed non-responsive or not reasonably susceptible of being selected for award will be

FOIA CONFIEDENTIAL TREATMENT REQUESTED

rejected and returned to the Developer with a written explanation. Any Proposal that does not satisfy both the jurisdictional and community participation requirements set forth in Part 2, Section 1.16 may be rejected as technically unacceptable and returned to the Developer. WMATA reserves the right to accept or reject a Proposal without negotiation or discussion.

B. The Contracting Officer designates an Evaluation Team comprised of the Station Area Planning and Asset Management (joint development) staff assisted by other WMATA staff, jurisdictional representative(s) and consultants, as appropriate. An analysis and evaluation of each Proposal deemed to be reasonably susceptible of being selected for award is conducted. Jurisdictional representatives will participate in the technical evaluation of Proposals.

C. The Evaluation Team <u>may</u> meet with all or select Developers for both an oral presentation and specific discussions about a Proposal. If such meetings are held, details on the oral presentation will be provided as part of the scheduling process. Such discussions will include identifying areas of the Proposal that: (1) require clarification or improvement including architectural and engineering designs and drawings, or (2) do not comply with the JDS. Any oral explanation or instruction given by WMATA is not binding on WMATA unless set forth in an Amendment to the JDS.

D. If requested by WMATA, Developers submit Final Proposals. The Final Proposal may be significantly changed from the Initial Proposal submitted. WMATA reserves the right to waive the Final Proposal submission requirement, to request further clarification of the Final Proposal, or to request a Revised Final Proposal.

E. The Evaluation Team will, in coordination with the Contracting Officer, rate each responsive Proposal, and rank it based upon the Proposal Evaluation Factors listed in Section 8.2. The Evaluation Team will then, in coordination with the Contracting Officer, tentatively designate a Selected Developer, and WMATA will commence negotiation of a Term Sheet. If negotiations are unsuccessful, the Evaluation Team, in coordination with the Contracting Officer, may terminate negotiations and commence negotiations with the second ranked Developer and those ranked thereafter, in order of ranking. Alternatively, the Evaluation Team may, in coordination with the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004442

Contracting Officer, decide upon competitive negotiations with two or more ranked Developers.

G. As soon as the principal business terms for the tentatively Selected Developer's Project have been reduced to a Term Sheet, the Contracting Officer makes a recommendation regarding the designation of a Selected Developer and approval of the Term Sheet to WMATA's Planning, Development and Real Estate Committee and to the WMATA Board of Directors.

H. No Project will be recommended that fails to meet or exceed appraised fair market value as required by the Federal Transit Administration.

I. Designation of a Selected Developer must be approved by the WMATA Board of Directors.

8.2. Proposal Evaluation Factors

The JDS states in Part 2, Section 3.2 that:

Each Proposal will be evaluated using FTA's requirements for "Highest and Best Use" or "Highest and Best Transit Use" (see www.fta.dot.gov/library/policy/9300.1A/appenB.htm) and the following:

A. Technical Criteria

1. Degree to which the Project reflects TOD principles

2. The market viability of the Project

3. The experience and prior performance of the Developer and Development Team

4. The innovation and creativity of the Project

1. The compatibility of the Project with local TOD plans and land use policies

6. Benefits accruing to the local jurisdiction

B. Economic Criteria

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1. Financial benefits accruing to WMATA

2. Financial viability of the Project

3. Enhanced ridership

8.3. Evaluation Methodology

The weight given to each of the Evaluation Factors is set forth in Attachment 2.

8.4. Evaluation Reports

Evaluation Reports summarizing the findings of the Evaluation Team will be prepared. A scoring matrix will be used for each of the Joint Development Sites for which competitive Proposals were received.

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ATTACHMENT 1

EVALUATION TEAM MEMBERS

Rosalyn Doggett, SAAM, Chair
John Magarelli, SAAM
Marc Biondi, COUN

The voting members of each Evaluation Team are the Chair and the next two named individuals. Members, below, are advisory only.

Tariq Bushnaq, JDAC, and appropriate offices within Access Services, Planning and Joint Development, Operations Services, Bus, Rail, Safety, Security and Emergency Management, and Corporate Strategy & Communications, as needed (Advisors only, non-voting)

Jurisdictional Representatives: Harriet Tregoning or designees
Neil Albert or designees

Consultant: Bolan Smart Associates

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ATTACHMENT 2

SOURCE SELECTION PLAN

A. TECHNICAL CRITERIA **(50 points)**

1. **Degree to Which Project Reflects TOD Principles** **(10 points)***
   WMATA will use as its guide "Transit-Oriented Development Criteria: A Framework for Screening Station Area Proposals," December 2002.

2. **Market Viability of Project** **(10 points)**
   WMATA will take into account the market analysis and strategy, as well as the proposed Project schedule, and the need for contingent action on the part of local government or other entities to make the Project feasible.

3. **Experience and Prior Performance of Developer and Development Team** **(15 points)**
   WMATA will consider the information presented on the Developer's previous projects, as well as related information on defaults and bankruptcy, and the development team's capability/experience for the uses proposed.

4. **Compatibility of Project with Local Transit-Oriented Development Plans and Land Use Policies** **(5 points)**
   WMATA will take into account compatibility based on WMATA's own review, the review of local public officials and the Developer's statements regarding contacts with community organizations and local jurisdiction staff.

5. **Benefits Accruing to the Local Jurisdiction** **(10 points)***
   WMATA will consider the tax revenue, job and any related benefits such as new public facilities.

6. **[NOT IN THE JDS] Impact on WMATA Facilities** **(0 points)**
   The Project's impact on the safe, convenient and efficient operation of WMATA facilities during construction and upon completion.

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B. ECONOMIC CRITERIA **(50 points)**

1. Financial Benefits Accruing to WMATA **(35 points)***
WMATA will take into account the time-value of guaranteed payments to WMATA vis a vis WMATA's appraisal of site value, lease versus sale proposal, value of participatory income, the value of WMATA replacement facilities and degree to which WMATA assumes any financial risk.

2. **Financial Viability of the Proposed Project** **(5 points)**
WMATA will consider the financial capability of the Developer, the adequacy of assumptions on estimated costs and revenues and the thoroughness of the cash flow analyses.

3. **Enhanced Ridership** **(10 points)***
WMATA will evaluate the Developer's estimate of new ridership.

* Joint Development Program goal

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SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE: PROPOSAL SUBMISSION REQUIREMENTS

SECTION 1: ADMINISTRATIVE AND CONTRACTUAL INFORMATION

1.1. Issuing Information

This Joint Development Solicitation (JDS) is issued in accordance with WMATA's Joint Development Policies and Guidelines, Revised July 21, 2005. The three parcels which comprise the Joint Development Site in this solicitation are available primarily under a long-term lease, as WMATA's preference is to lease, rather than sell, its property. If a sale is proposed, the Proposal must clearly demonstrate that a sale is more advantageous to WMATA than a long-term lease. WMATA reserves the right to select different Developers for individual parcels.

1.2. Purpose and Scope

This JDS is intended to provide interested Developers with sufficient summary information about WMATA's requirements to facilitate Proposal preparation. It contains instructions on Proposal content and format, but does not attempt to define all of WMATA's Joint Development contract requirements in detail. Certain contract requirements are non-negotiable.

1.3. Amendments and Supplements to JDS

WMATA reserves the right to issue Amendments and/or Supplements to this JDS. Developers will be required to acknowledge in writing the receipt of an Amendment and/or Supplement.

1.4. Acceptance/Rejection of Proposals

This JDS does not commit WMATA to designate a Selected Developer or to enter into a Development Agreement. WMATA reserves the right to accept or reject any or all Proposals.

1.5. Acceptance of Terms and Conditions

By submitting a Proposal, a Developer is deemed to have agreed to and accepted all terms and conditions set forth in this JDS. Notwithstanding the foregoing, WMATA reserves the right to amend or modify any of the terms and conditions.

1.6. Selected Developer Status

A designation as Selected Developer for a Joint Development Site does not mean WMATA accepts the Proposal without further negotiation. Rather, the Developer's Proposal is the foundation for further negotiation and WMATA reserves the right to negotiate a Development Agreement with a Selected Developer containing benefits to WMATA that exceed those set forth in the Proposal.

1.7. Binding Agreement

An executed Development Agreement, approved by the WMATA Board of Directors, is the only binding commitment of and by WMATA with respect to a Joint Development Site. Designation of a Selected Developer, WMATA's agreement to a Term Sheet or any conduct or oral representations by WMATA shall not in any way constitute a binding obligation or commitment by WMATA. In submitting a Proposal, the Developer acknowledges it will have no legal or equitable right to, or interest in, any Joint Development Site except as set forth in an executed Development Agreement.

1.8. Schedule of Activities

Item	Date
Request for Proposals	AUG 8, 2007
Proposals Due	SEPT 21, 2007
Meetings with Developers (if required)	OCT/NOV 2007
Final Proposals Due (if required)	DEC 2007

1.9. Costs

WMATA shall not be liable for any costs incurred by a Developer and/or Development Team responding to this JDS or any costs incurred with respect to the negotiation of the Development Agreement and related final documentation.

1.10. Approvals

The designation of Selected Developer and the terms of a Development Agreement

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004448

negotiated pursuant to this JDS are subject to the approval of the WMATA Board of Directors and the Federal Transit Administration of the U.S. Department of Transportation (FTA).

1.11. Pre-Proposal Conference
Intentionally omitted

1.12. Inspections
Intentionally omitted

1.13. Inquiries
Inquiries concerning this JDS are to be submitted in writing to:

Mr. Nat Bottigheimer
Contracting Officer
Office of Property Development
and Management
Washington Metropolitan Area
Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

Any written response made by WMATA's Contracting Officer will be disseminated to all Developers from whom a Proposal was requested. Oral responses are not binding.

1.14. Closing Date for Proposal Submission
One original and 10 copies of the Proposal must be received in a sealed package not later than 3 p.m. on Friday, **September 21, 2007** (Closing Date) addressed as provided in Section 2.7.

1.15. Late Proposals
Any Proposal received by WMATA after the Closing Date shall be considered a Late Proposal. A Late Proposal may be accepted and evaluated by WMATA at the sole discretion of WMATA's Contracting Officer.

1.16. Jurisdictional and Community Participation Requirements
Prior to submitting a Proposal, Developers are required to meet with jurisdictional representatives from the Office of Planning and interested community organizations, including the Advisory Neighborhood Commission, to share information about a pending Proposal submission to WMATA and to seek their views. Failure to comply with this requirement may result in a Proposal's being rejected.

1.17. WMATA Facilities
WMATA Facilities are critical to the efficient operation of the transit system and must be accommodated in the site plan. Information on the WMATA facilities beneath the Joint Development Site was provided with the advertisement requiring a May 31, 2007 proposal.

SECTION 2: PROPOSAL PREPARATION/ FORMAT/CONTENT/SUBMISSION

2.1. General
To be considered, a Developer must submit a complete response to this JDS. WMATA encourages creative and innovative Proposals which promote Transit-Oriented Development consistent with local land use policies. Failure to respond with the requisite information may result in a Developer's being eliminated from consideration.

2.2. Proposal Submission Structure
Proposals must be submitted in **two separate**, 8.5 x 11 inch bound volumes with Volume 1 containing Technical Information and Volume 2 containing Economic Information.

The contents of each volume must comply with Section 2.3 and Section 2.4 of this JDS. Proposals should include the identical titles and numbering for each subsection as set forth in this JDS. NOTE: No financial information is to be included or referenced in Volume 1.

2.3. Proposal Contents: Volume 1–Technical Information

A. Transmittal Letter -- a letter signed by an officer authorized to make a binding commitment for the Developer which states that the Proposal is valid for a minimum of 180 days from the date of submission and that if selected, the Developer will negotiate in good faith with WMATA.

B. Completed Proposal Form (3 pages) -- See ATTACHMENT A.

C. Table of Contents.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004449

D. Executive Summary excluding all financial information (5 pages maximum).

E. Development Team Information

1. A description of the Developer and the proposed Development Team and the role of each principal member.

2. A statement that the Developer has the power and authority to enter into a Development Agreement and all final documentation as required by WMATA without the consent or joinder of any other party or authority.

F. Development Entity

1. A description of the Developer's business entity and, if a different entity will be formed, details of the structure of this other entity.

2. A detailed description of how the Project's ownership and management will be structured.

G. A proposed site plan and a description of land uses, including an explanation of how the Project complies with Transit-Oriented Development principles. The site plans must show building elevations and heights with number of stories.

Additionally, one jpeg on a disk and one full color visual of the site plan at least 2' by 3' in size must accompany the Proposal. The visual may be rolled up or mounted on posterboard.

H. An explanation of the anticipated impact that the Project will have, if any, on WMATA Facilities beneath the sites. Information on the WMATA facilities was provided with the advertisement for which proposals were requested by May 31, 2007.

I. The proposed Project schedule, starting in April 2007, in Microsoft Project or similar format, which at a minimum includes the following tasks and milestones, if applicable:

1. Term Sheet negotiations (assume 120 calendar days from the Proposal submission);

2. Approval of Selected Developer and Term Sheet by WMATA's Board of Directors (assume 30 calendar days from conclusion of Term Sheet negotiations);

3. Development Agreement and final documentation negotiations and execution (assume 120 calendar days from Selected Developer and Term Sheet approval);

4.Approval of Development Agreement and final documentation by WMATA's Board of Directors (assume 30 calendar days from conclusion of Development Agreement negotiations);

5. Agreement(s) for the acquisition of parcels to be assembled with the Joint Development Site, if applicable;

6. Concept plan preparation and approval;

7. Intentionally omitted.

8. Development plan preparation and approval, including interim WMATA Replacement Facilities plan (allow 30 calendar days for WMATA approval);

9. Local and other governmental approvals and actions (zoning, site plan, alley closings, grants, etc., as applicable);

10. Project financing approval;

11. Schematic design and construction document preparation and approval (allow 25 business days for WMATA approval of 35% construction documents, 20 business days for WMATA approval of 65% construction documents, and 15 business days for WMATA approval of 100% construction documents);

NOTE: if documents are not approved, WMATA comments must be addressed

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004450

and resubmitted for approval.

12. Local permitting process;

13. Intentionally omitted.

14. Project construction period (per phase, if applicable);

15. Initial occupancy; and

16. Stabilization period.

J. Zoning

1. The existing zoning classification and, if a change will be sought, the proposed zoning category.

2. The permitted FAR (floor area ratio) or other density measure, and the proposed FAR or other density measure, as applicable.

K. The proposed business relationship with WMATA and the proposed terms (lease, sale, etc.) including, but not limited to, the following:

Lease (WMATA preference is 60 years.

1. Identification of the portion of the Joint Development Site to be leased by location and approximate land area. (NOTE: The leased premises will exclude all WMATA Reserved Areas and Interests.)

Sale

1. Identification of the portion of the Joint Development Site proposed to be purchased in fee simple by location and approximate land area. (NOTE: The sale will exclude all WMATA Reserved Areas and Interests.)

2. An explanation of why the Project should not be developed under a lease and why a sale is more advantageous to WMATA than a long term lease.

L. A market analysis and marketing strategy for the proposed uses of the WMATA joint development site.

M. A summary (specific financial analysis required in Economic Section) of the Project's impact on the tax base of the local jurisdiction as follows:

1. Identification of the property taxes, sales taxes, amount of fees and contributions and other local public income.

N. A statement identifying each of the community organizations that the Developer has met with and the meeting dates; the specific information that the Developer shared; the reaction of each community organization to the proposed development concept; the issues raised by each community organization; and how the Proposal addresses these issues. See Section 1.16.

O. A statement describing the Developer's contact with local jurisdiction staff, (representatives' names and meeting dates) and the views and expectations of the local jurisdiction regarding the Project, including any existing or anticipated jurisdictional issues or concerns. See Section 1.16.

P. A statement on whether the Project's feasibility is contingent on any local, state or federal government action or financial support (including a change in regulations; street or alley closing; funding, including guarantees and issuance of tax-exempt bonds; financing and credit enhancements; leasing of space; granting of access to the Joint Development Site; and the justification and process for obtaining government support).

Q. Statements that:

1. The Project is compatible with local land use requirements.

2. The Project will conform to all applicable federal, state and local laws, regulations and ordinances including all

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004451

federal and relevant local environmental regulations.

R. A quantitative analysis of the Project's beneficial effect on WMATA's total daily transit ridership. The analysis must be conducted in accordance with the study titled 2005 Development-Related Ridership Survey Final Report which may be found at MetroOpensDoors.com (click "About Metro," then click "Business opportunities," and "Joint development opportunities").

Developers should use Tables 4 and 7 as well as Figure 14 in preparing transit usage estimates for the office building components of their Proposals. However, Developers should note that the sample size for Table 4 "Suburban - Outside the Beltway" is very small and that the mode splits for sites of this type should take into account surrounding land uses, i.e., mixed-use and adjacent higher density uses generate more transit ridership.

Tables 10 and 11 as well as Figure 15 should be used in preparing transit usage estimates for residential components. Transit usage estimates for retail, hotel, and entertainment components should be based on Table 15. Developers should note that the sample sizes for these uses were small and that the mode splits for site of this type should take into account surrounding land uses, i.e., mixed-use and adjacent higher density uses generate more transit ridership.

The analysis must include the number of incremental transit trips in both peak and off-peak periods generated by the Project. (Peak periods are generally defined as 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m., Monday through Friday.) In addition to the Tables and Figures cited in the previous paragraph, Developers will find Appendices C.1.1. (Table C-11), C.1.2. (Table C-18), C.1.3 (Tables C-23 and C-27) useful in generating peak and off-peak period estimates.

Additional information regarding the 2005 Development-Related Ridership Survey Final Report may be obtained from Ms. Kristin Haldeman at 202-962-1848.

S. A statement identifying the past, current or anticipated contractual or financial relationship of any member of the Development Team (including but not limited to, the Developer, partners or co-venturers) with WMATA or any of its staff or Board Members. The Development Team must also disclose any contractual or financial relationship which may give the appearance of a conflict of interest.

T. The following information about Developer's previous projects:

1. Illustrative materials on three recent successful projects of similar or comparable scope for which substantial financing was obtained.

2. The sources and amounts of debt and equity capital that were raised in previous projects.

U. A list of any projects on which the Developer, its parent company, or any member of the Development Team has defaulted or declared bankruptcy and an explanation of each default or bankruptcy.

V. Detailed information regarding any criminal indictments and felony or fraud convictions of the Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team.

W. A statement indicating whether the Developer is willing to include Disadvantaged Business Enterprises ("DBEs"), as defined in Section 6, in its Project. WMATA encourages Developers to include DBEs and will assist Developers in identifying such firms.

X. If the proposed Project consists of an assemblage of the WMATA Joint

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004452

Development Site with adjacent property, a statement identifying the adjacent property ownership, and if the property owner and the Developer are not the same, an executed agreement between the property owner and the Developer defining the property owner's participation, if any, in the Project.

Y. Any other information to assist WMATA in its evaluation of the Proposal, including a statement of why WMATA should select the Developer and its Development Team.

2.4. Proposal Contents: Volume 2 – Economic Information

A. Table of Contents.

B. Executive Summary of economic information only.

C. The Developer's estimated fair market value of WMATA's land or interest, how the value was derived and the assumptions underlying the value.

D. If the proposed business relationship with WMATA is a Lease (the term must be specified and preferably will be 60 years):

1. A statement that the Developer will pay WMATA a non-refundable option fee of $100,000 for the right to negotiate a Development Agreement upon designation as Selected Developer and approval of the Term Sheet. This fee is separate and distinct from the other payments, deposits and fees which WMATA requires.

2. The amount and timing of pre-development rent to be paid to WMATA during the interval period after the Development Agreement is executed but before the Project produces income (include the estimated length of this period).

3. The guaranteed base rent to be paid to WMATA throughout the term of the lease, including escalations. The description of escalations must include the method used to calculate escalations, their timing, and the projected amount of each escalation.

4. The method of adjusting the base rent if it does not commence by the date projected and/or the final approved density is greater than that proposed.

WMATA expects that the present value of its financial return will not be diminished by delays in the development process.

5. How any environmental remediation costs will be handled.

6. WMATA's participating share of gross income from the Project.

7. WMATA's share of proceeds from a capital event such as an assignment of the leasehold interest, transfer of interest in the Developer's business entity, refinancing or sale of the Project, or any other capital event after construction.

8. Identification of any additional payments to WMATA based upon factors chosen by the Developer.

9. Intentionally omitted

E. If the proposed business relationship with WMATA is a Sale:

1. A statement that the Developer will pay WMATA a non-refundable option fee of $100,000 for the right to negotiate a Development Agreement upon designation as Selected Developer and approval of the Term Sheet. This fee is separate and distinct from the purchase price and the other payments, deposits and fees WMATA requires.

2. The amount and timing of pre-development fees to be paid to WMATA during the interval period after the Development Agreement is executed but before WMATA realizes income from the sale (include the estimated length of this period).

3. The proposed purchase price for

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each portion of the Joint Development Site including:

a. The schedule of purchase price escalations if the sale is not completed by the date projected.

WMATA expects that the present value of its financial return will not be diminished by delays in the development process.

b. The method of adjusting the purchase price if the final approved density is greater than that proposed.

4. How any environmental remediation costs will be handled.

5. Proposed business arrangement under which WMATA will retain an interest in any development rights in excess of those used by the development constructed pursuant to the Proposal. Under such an arrangement, WMATA will receive payments over and above the purchase price if, upon subsequent redevelopment of the Joint Development Site within 25 years of closing, the redeveloped density is greater than the original density.

6. Identification of any additional payments to WMATA based upon factors chosen by the Developer.

F. A summary table of the sources (including debt, equity and other financing) and uses of funds to design and construct the Project.

G. A 15 year pre-development, construction and operating period cash flow statement which starts in October 2007. It should include each separate phase of development and land use type by phase and contain at a minimum:

1. The following assumptions:

Financing
Construction loan rate, term and amount
Permanent loan rate, term and amount
Loan-to-value ratio
Equity as a percentage of total construction costs
Revenues
Office rent ($/GSF and #GSF)
Retail rent ($/GSF and #GSF)
Residential ($/DU and #DU)
Parking
Other revenues
Construction Costs
Total hard costs
Total soft costs (also as a percentage of total hard costs)
Cost of improvements on a unit basis ($/FAR SF for office and retail, $/DU)
Cost per structured parking space
Cost per surface parking space
Land value per FAR SF
Ground rent to WMATA
Operating Costs
Operating Expenses (in $, $/GSF and as a percentage of revenues)

2. The following line items presented as a pro forma on an annual basis:

Sources
Equity
Construction Financing
Permanent Financing
Other Financing
Total Financing
Revenues
Office
Residential
Retail
Parking
Other Revenues
Total Gross Revenues
Total Net Revenues (less vacancy)
Uses
WMATA Rent or Sales Price (as applicable)
Construction Costs
Soft - by line item
Hard - by line item
Total
Operating Expenses (all non-debt Operating Costs, e.g.: direct

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costs, G&A, taxes, legal, marketing, commissions, etc.)
Net Operating Income
Debt Service (including any fees or expenses associated with loans)
Net Cash Flow (defined as revenue less operating expenses, debt service and ground rent to WMATA if applicable)
Percentage Rent to WMATA
Distributions to Investors
Free Cash Flow
Returns
Developer's Internal Rate of Return
Return on Investment
Return on Equity

NOTE: The pro forma (and any budgets in other parts of the Proposal) should clearly show all of the fees and income that the Developer, its partners, and affiliates receive from the Project. Those line items should be taken from the pro forma and shown together on the spreadsheet as individual line items in a separate report. Annual replacement reserves (total, $/GSF and $/DU) should also be broken out and shown).

3. The analysis must be presented in current dollars with an annual escalation rate of 3%.

4. All financial models must be submitted to WMATA on disk as well as hard copy. All financial information must be linked in a single spreadsheet, and all files must be in Microsoft Excel and retain all cell relationships.

H. A detailed financial analysis, with assumptions given, of the Project's impact on the tax base of the local jurisdiction as follows:

1. Identification of the property taxes, sales taxes, amount of fees and contributions and other local public income.

I. Copies of Developer's balance sheets, income statements and sources and uses of funds statements for the past three fiscal years.

J. Statements regarding the Developer's financial creditworthiness and past development experience which can be verified, including the following:

The names and addresses of at least three commercial or institutional credit references and a letter authorizing each credit reference to respond to inquiries from WMATA. At least two of the references should be lending institutions.

2.5. Proposal Security

Each Proposal must be accompanied by Proposal Security in the amount of One Hundred Thousand Dollars ($100,000). (Alternative Proposals for the same Joint Development Site require only one Proposal Security.) Acceptable forms of Proposal Security include a proposal bond in the form set forth in ATTACHMENT B, a bank letter of credit in the form set forth in ATTACHMENT C, a cashier's check, certified check or money order. All Proposal Security must be drawn on a U.S. based national bank and contain the following:

At top of Proposal Security document, insert the JDS Number _____ and Joint Development Site _____.

WMATA will hold all funds that can be deposited into a financial institution in an interest-bearing account, and interest will be paid on such funds. No later than 15 business days after the WMATA Board of Directors identifies and approves the Selected Developer for a specific Joint Development Site, the Proposal Security will be returned to all Developers other than the designated Selected Developer. WMATA shall retain the designated Selected Developer's Proposal Security until a Development Agreement is executed and provisions are made with respect to the disposition of the Proposal Security in the Development Agreement.

Ace Language

Replaced by Security Deposit

2.6. Intentionally omitted

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2.7. Submission of Proposal

A complete Proposal shall include the items set forth in Section 2.3. and Section 2.4. and the requisite Proposal Security. On or before the Closing Date, one original and 15 copies of the Proposal (marked Proposal in response to JDS Number ___) must be submitted in a sealed package, addressed and mailed or delivered in person to:

Mr.Nat Bottigheimer
Contracting Officer
Office of Property Development
and Management
Washington Metropolitan Area
Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

SECTION 3. PROPOSAL REVIEW, EVALUATION, DEVELOPER SELECTION AND POST DEVELOPER SELECTION PROCESS

3.1. Proposal Review Process

WMATA will review and evaluate Proposals as follows:

A. The Contracting Officer receives and processes all Proposals. Proposals that in WMATA's sole and non-reviewable discretion are deemed non-responsive or not reasonably susceptible of being selected for award will be rejected and returned to the Developer with a written explanation. Please note that any Proposal that does not satisfy the requirements for jurisdictional officials and community organization participation may be rejected as technically unacceptable and returned to the Developer. WMATA reserves the right to accept or reject any Proposal without negotiation or discussion.

B. The Contracting Officer designates an Evaluation Team composed of WMATA's Joint Development staff assisted by other WMATA staff, jurisdictional representative(s) and consultants, as appropriate. An analysis and evaluation of each Proposal deemed to be reasonably susceptible of being selected for award is conducted.

C. The Evaluation Team may meet with all or select Developers for both an oral presentation and specific discussions about a Proposal. If such meetings are held, details on the oral presentation will be provided as part of the scheduling process. Such discussions will include identifying areas of the Proposal that: require clarification or improvement including architectural and engineering designs and drawings, or do not comply with the JDS.

D. If requested by WMATA, Developers submit Final Proposals. The Final Proposal may be significantly changed from the Initial Proposal submitted. WMATA reserves the right to waive the Final Proposal submission requirement, to request further clarification of a Final Proposal, or to request a Revised Final Proposal.

E. The Evaluation Team will, in coordination with the Contracting Officer, rate each responsive Proposal, and rank it based upon the Proposal Evaluation Factors in Section 3.2. The Evaluation Team will then forward its ranking to the Contracting Officer, who will decide to tentatively designate a Selected Developer. The Joint Development project manager will commence negotiation of a Term Sheet. If negotiations are unsuccessful, the Joint Development staff, in coordination with the Contracting Officer, may terminate negotiations and commence negotiations with the second ranked Developer and those ranked thereafter, in order of ranking. Alternatively, the Joint Development staff may, in coordination with the Contracting Officer, decide upon competitive negotiations with two or more ranked Developers.

F. As soon as the principal business terms for the tentatively Selected Developer's Project have been reduced to a Term Sheet, the Contracting Officer submits a recommendation regarding the designation of a Selected Developer and approval of the Term Sheet to WMATA's

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Real Estate Committee and to the WMATA Board of Directors.

G. Designation of a Selected Developer must be approved by the WMATA Board of Directors.

3.2. Proposal Evaluation Factors

Each Proposal will be evaluated using FTA's requirements for "Highest and Best Use" or "Highest and Best Transit Use" (see www.fta.dot.gov/library/policy/9300.1A/appenB.htm) and the following criteria:

A. Technical Criteria

1. Degree to which the Project reflects Transit-Oriented Development principles;

2. The market viability of the Project;

3. The experience and prior performance of the Development Team;

4. The innovation and creativity of the Project;

5. The compatibility of the Project with local Transit-Oriented Development plans and land use policies; and

6. Benefits accruing to the local jurisdiction.

B. Economic Criteria

1. Financial benefits accruing to WMATA;

2. Financial viability of the Project; and

3. Enhanced ridership.

3.3. Post Developer Selection Process

A. A Developer designated by the WMATA Board of Directors as a Selected Developer will be required to send a letter to each of the community organizations with which its representatives met to inform them as to how the Proposal presented to WMATA addresses their issues or concerns. A copy of this letter must also be submitted to WMATA.

B. A Developer designated by the WMATA Board of Directors as a Selected Developer will be required to pay WMATA, in immediately available funds, a non-refundable option fee for WMATA's granting to the Selected Developer the exclusive right to negotiate a Development Agreement. The amount and timing of the non-refundable option fee shall be as set forth in the Proposal (or Final Proposal, as the case may be), in accordance with Section 2.4.

C. After WMATA's Board of Directors has designated a Selected Developer and approved the Term Sheet, WMATA staff, in coordination with the Contracting Officer, will negotiate with the Selected Developer a Development Agreement (and other necessary final documentation) that incorporates the provisions of the Term Sheet. Such Development Agreement shall be completed within 150 days following the WMATA Board's designation of the Selected Developer and approval of the Term Sheet.

In the event that this schedule is not met, the Selected Developer designation expires, the Proposal is no longer viable, and WMATA may retain the Proposal Security (in addition to the non-refundable option fee) in accordance with Section 5.2. WMATA may choose to reestablish the Selected Developer designation and provide a specific time frame to the Selected Developer for the completion of negotiations or to re-advertise the Joint Development Site.

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D. As soon as the Development Agreement (and related final documentation) is completed and executed by the Developer, the Contracting Officer submits a recommendation and summary of the final Development Agreement to WMATA's Real Estate Committee and to the WMATA Board of Directors for approval. There is no binding agreement between the Selected Developer and WMATA until such time as the WMATA Board of Directors has approved the final Development Agreement and the Development Agreement has been executed by the parties.

3.4. Disclosure and Use of Data

WMATA is required to brief its Board of Directors on all aspects of a Proposal. The proposed business terms of a Proposal will be held in confidence only until the Development Agreement and all final documentation have been approved and executed. WMATA reserves the right to review the zoning and land use aspects of any Proposal with local zoning, land use planning, transportation and environmental officials (and in the State of Maryland, with state officials). Additionally, at the sole discretion of the WMATA Board of Directors, such review may include conducting public hearings, town meetings and similar public forums.

NOTE: WMATA's "Public Access to Records Policy" is available at MetroOpensDoors.com (click"About Metro," then click "Public access to records policy.")

SECTION 4. WMATA'S NONNEGOTIABLE REQUIREMENTS AND CONDITIONS

The following requirements and conditions are nonnegotiable and the concepts will be included in the Development Agreement and final documentation executed by the Selected Developer and WMATA. By submitting a Proposal in response to this JDS, a Developer is agreeing to accept and comply with these nonnegotiable requirements and conditions.

4.1. WMATA's Reserved Areas and Interests

The location of WMATA's Reserved Areas and Interests shall be determined by WMATA in its sole and absolute discretion. Additionally, the conveyance or lease of any WMATA property shall be subject to a reservation by WMATA of a permanent, exclusive and irrevocable easement for vertical and horizontal support and as otherwise necessary for the operation and maintenance of present and future WMATA Facilities, WMATA Improvements and WMATA Reserved Areas and Interests.

4.2. WMATA's Approval Rights and Adjacent Construction Requirements

The following rights and requirements apply to all Projects:

A. Approval Rights

WMATA shall have the right to approve in its sole and absolute discretion:

1. Matters that affect the integrity, functionality, efficiency, safety, operation, maintenance, legal compliance, cost or profitability of WMATA's business, customers, operations or activities;

2. Matters that affect WMATA Facilities, WMATA Replacement Facilities, WMATA Reserved Areas and Interests, ingress/egress to WMATA Facilities, etc.;

3. Matters that affect any of WMATA's adjacent property;

4. The design and construction of interim and permanent WMATA Replacement Facilities; and

5. Matters that affect the Selected Developer's obligations as they relate to timing (changes in Project schedule) and performance (changes in what will be constructed, i.e., the product mix).

B. WMATA's Comment Rights

WMATA shall have the right to comment on the development plan/site plan and on other matters concerning the Project which do not affect the integrity, functionality, efficiency, safety, operation or maintenance of WMATA Facilities, WMATA Improvements, or WMATA Reserved Areas and Interests. The Selected Developer shall be obligated to

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consider WMATA's comments and to respond reasonably.

C. WMATA's Construction Requirements

In order to avoid adverse impact on WMATA Facilities, Projects must be built in compliance with WMATA's adjacent construction criteria as contained in WMATA's Adjacent Construction Design Manual, Revision I and as further revised, and WMATA's Manual of Design Criteria (Release 7), which are available by calling 202-962-2043. Additionally, Developers must comply with WMATA's requirements for the relocation and maintenance of operations during construction which include the uninterrupted and unimpeded operation of WMATA Facilities. WMATA will review and approve Developer plans in accordance with established WMATA procedures.

4.3. Relocation or Replacement of WMATA Facilities

Intentionally omitted.

4.4. Selected Developer's Funding of WMATA Compact Public Hearing

Intentionally omitte.

4.5. No Subordination of WMATA's Fee Interest

WMATA will not subordinate its fee interest in its property. In a lease situation, WMATA will permit lenders to have a leasehold security interest in the Project, which security interest would be subordinate to WMATA's right to terminate the lease upon a default by the Selected Developer (subject to the lender's right to cure).

4.6. Federal Transit Administration (FTA) Requirements

WMATA is subject to the requirements of the FTA. The terms of the Development Agreement negotiated with the Selected Developer, as it pertains to WMATA property, are subject to FTA approval. While FTA may impose additional requirements which cannot be known until FTA reviews a specific Project, FTA requires that the Selected Developer comply with certain laws and regulations barring discrimination on the basis of race, color, national origin or disabilities; and further requires compliance with FTA requirements regarding conflicts of interest and debarment.

FTA also requires, as a covenant running with the land, that the entire Joint Development Project constitute a Transit-Oriented Development as defined in the latest applicable FTA Regulations. See FTA Circular 9300.1A, Appendix B, The Relationship Between Joint Development and Livable Communities on the FTA web site at: www.fta.dot.gov/library/policy/IFT/iftb.html.

4.7. Americans With Disabilities Act (ADA)

All Projects shall be constructed in compliance with Titles II and III of the Americans with Disabilities Act, 42 USCA Section 12101, et seq., as amended, and any regulations promulgated thereunder. Proposals must include a plan indicating how access from the Project to the Metro station will be provided for persons with disabilities. Additionally, if a Project or any subsequent addition, modification or alteration triggers ADA-related improvements to the Metro station, the Selected Developer shall be responsible for the costs of such improvements. The only exceptions are when the ADA-related improvements predate the date of completion of the Project and are required to be made regardless of the Project, or constitute ADA-related improvements that WMATA is implementing at Metro stations in general as part of its system-wide improvements or alterations.

4.8. Direct Connections

If alntentionally Omitted

A.

4.9. Davis-Bacon Act/Fair Labor Standards Act

The construction of any WMATA Replacement Facility or WMATA Improvement must be built in compliance with the Davis-Bacon Act, 40 USC Section 276a, et seq., and overtime compensation must be paid in compliance with

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Section 64 of the WMATA Compact, and the Fair Labor Standards Act, 29 USCA Section 201, et seq. (1978), as amended.

4.10. Other Laws, Regulations and Requirements

Developers are responsible for being fully informed of and complying with the requirements of applicable federal, State of Maryland, District of Columbia, Commonwealth of Virginia, and local jurisdictional laws and regulations. Additionally, the Selected Developer shall be responsible for obtaining, at its own cost and expense, all requisite approvals, licenses and permits.

4.11. WMATA's Indemnification Policy

The terms of any Development Agreement and final documentation will require that the Selected Developer and its contractors and subcontractors (and subtenants, where applicable) indemnify WMATA against all claims, liabilities and costs of whatsoever kind and nature including environmental claims which may be imposed upon, or incurred by, or asserted against WMATA in connection with the Selected Developer's performance under the Development Agreement or related agreements.

WMATA will accept financial responsibility for environmental damage to the site caused by WMATA prior to the transfer of the site to the Selected Developer.

4.12. WMATA's Insurance Requirements

The terms of any Development Agreement and final documentation will require that the Selected Developer, its contractors and subcontractors procure and maintain insurance coverage in amounts determined by WMATA, which may include, but is not limited to: General Liability, All Risk Property, Builder's Risk, Worker's Compensation, Automobile Liability, Contractors' Pollution Legal Liability, Railroad Protective Liability, Rental Value Insurance, Professional Errors and Omissions Liability and Boiler and Machinery (during operations only).

4.13. Payment, Performance and Completion Bonds

WMATA requires that the Selected Developer secure and file with WMATA a payment bond equal to 100% of the value of each phase of the Project from a federally approved surety company, with sufficient assets. The payment bond must name WMATA for the benefit of laborers, subcontractors, material suppliers and others that have or may have claims or liens against the Project or the realty.

WMATA also requires the Selected Developer to secure and file with WMATA a performance bond equal to 100% of the value of each construction phase of the Project from a federally approved surety company, with sufficient assets and which bond names WMATA for the completion of the planned construction in that phase.

Additionally, if there are WMATA Replacement Facilities being constructed, WMATA requires the Selected Developer to secure and file with WMATA a completion bond equal to 100% of the value of the WMATA Replacement Facilities from a federally approved surety company, with sufficient assets, and which bond names WMATA as the sole obligee for the completion of the Replacement Facilities.

All bonds must be in a form acceptable to WMATA and countersigned by a Commonwealth of Virginia, State of Maryland or District of Columbia resident agent of the surety, with a copy of the agent's license, as issued by the appropriate Insurance Commissioner.

4.14. WMATA's Disclaimer of Liability

WMATA disclaims all responsibility and liability for the completeness or accuracy of any information that it provides.

4.15. Inspection of Accounting Records

The Selected Developer will be required to permit WMATA, or any of its duly authorized representatives, at reasonable times and places, access to any books, documents, papers and records, including certified financial statements, which are directly pertinent to the Development Agreement. WMATA shall be permitted to audit, inspect, examine, copy and transcribe such books, documents, papers and records. The Selected Developer shall retain all records for three years after submission of any

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statement required for determining any variable payment obligations under the Development Agreement or related agreements.

4.16. WMATA's Tax Exempt Status
WMATA is tax exempt pursuant to the WMATA Compact. Any taxes, assessments or impositions on the Project or the real estate shall be assumed by the Selected Developer. In no event shall the Selected Developer assert or attempt to assert for its own benefit, an exemption or immunity available to WMATA under the WMATA Compact.

4.17. Financing Requirement
The Selected Developer shall be obligated to obtain the requisite financing to consummate the lease/sale of the WMATA Joint Development Site, and the development, construction and final completion of the Project by a reasonable date certain, or WMATA may terminate the Development Agreement.

SECTION 5. ADDITIONAL JOINT DEVELOPMENT REQUIREMENTS AND PROCEDURES

5.1. Assignment of Proposal, Change in Developer or Withdrawal of Developer
WMATA considers the designation of Selected Developer to be in the nature of a personal services contract. The Selected Developer will be designated because of its skills, experience, knowledge and financial standing.

A Developer who submits a Proposal in response to this JDS may withdraw, assign its Proposal or change the composition of its Development Team only as follows:

A. Withdrawal of Proposal

At any time prior to designation of the Selected Developer, a Developer may elect to withdraw its Proposal. Under such circumstances, WMATA shall return the Proposal Security without interest.

B. Assignment of Proposal

At any time prior to designation of the Selected Developer, a Developer may request WMATA's approval to assign its Proposal to another development entity. No purported assignment is valid unless WMATA has given its prior written approval. The Developer and its proposed assignee shall submit all documents required by WMATA before the request will be considered. WMATA is under no obligation to approve the request. If WMATA refuses to grant approval, and the Developer does not want to proceed in accordance with its Proposal, WMATA will return the Proposal Security without interest. An assignment may be subject to the requirement of a Guaranty pursuant to Section 5.7.

C. Change in Composition of Developer or Development Team

1. Prior to designation of the Selected Developer, a Developer may change its composition or the composition of its Development Team only with WMATA's prior written approval. If WMATA does not approve the change, and the Developer does not want to proceed in accordance with its Proposal, WMATA will return the Proposal Security without interest.

2. After designation as the Selected Developer, the Selected Developer must request WMATA's written approval to change its composition or the composition of its Development Team. If WMATA does not approve the change, and the Selected Developer does not want to proceed in accordance with its Proposal, WMATA may terminate the Selected Developer designation and retain the Proposal Security.

D. Other Situations

An assignment or change in the composition of the Development Team which is not addressed above is at the sole discretion of WMATA's Contracting Officer. For any such assignment or change to be valid, WMATA's prior written approval is required. Any purported assignment occurring without WMATA's prior written approval shall be void.

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5.2. Termination of Selected Developer Designation

WMATA may terminate the Selected Developer designation for any of the following reasons and retain the Proposal Security and any other deposit held by WMATA (except as stated otherwise in subsections I and J):

A. The Selected Developer fails to negotiate and execute the Development Agreement within 150 days following the designation of the Selected Developer and approval of the Term Sheet by the WMATA Board of Directors.

   In the event that the foregoing schedule is not met, WMATA may terminate the designation of the Selected Developer and retain the Proposal Security without any liability or further obligation to the Selected Developer. The foregoing deadlines can only be extended by action of the WMATA Board of Directors in its sole and non-reviewable discretion.

B. The Selected Developer or any individual or entity holding ownership in or comprising the Development Team declares bankruptcy.

C. The ownership structure of the Selected Developer changes without WMATA's prior written approval. Structural changes include changes in percentages of ownership interests or changes in ownership of any entity holding an ownership interest in the Selected Developer.

D. The Selected Developer assigns its designation or transfers its rights in a WMATA Joint Development Site without WMATA's prior written approval.

E. The Selected Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team is indicted for, or convicted of, a fraud or a felony.

F. The Selected Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team is found not to have a satisfactory record of integrity and business ethics, in WMATA's sole and non-reviewable discretion.

G. The Selected Developer provided materially incorrect or incomplete information in any of its submissions to WMATA, as determined in WMATA's sole and non-reviewable discretion.

H. The Selected Developer does not comply with this JDS, its Proposal or the terms of the Development Agreement as negotiated by the parties.

I. In accordance with Section 5.5, the Selected Developer conducts environmental due diligence and consequently modifies its Proposal in a manner which is unacceptable to WMATA. Under such circumstances, WMATA shall return the Proposal Security with any interest that may have accrued, less site restoration costs actually incurred by WMATA.

J. WMATA determines (in its sole and non-reviewable discretion) that termination is in its best interest. Under such circumstances, WMATA shall return the Proposal Security with any interest that may have accrued.

5.3. Metro Station Access Roads and Interior Maintenance Roads

Intentionally omitted.

5.4. Developer's Research Obligations

A Developer is expected to know all information reasonably ascertainable concerning the site size, and character, quality, and quantity of surface and subsurface materials or obstacles on the Joint Development Site as well as the existing utilities on the Joint Development Site. Some of this information is available from a visual inspection of the Joint Development Site and may be available from technical drawings and specifications (as built drawings) which WMATA will make available upon request,

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utility companies serving the area and local land records. WMATA disclaims all responsibility and liability for the completeness or accuracy of any information it provides. All Joint Development Sites are subject to existing physical and legal conditions, whether of record or not.

Additionally, a Developer is expected to know the conditions affecting construction on the Joint Development Site, which include but are not restricted to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, the topography and conditions of the ground, and the character of equipment and facilities needed before and during prosecution of the work.

5.5. Environmental Matters

WMATA has undertaken no comprehensive environmental investigations of the presence or absence of contaminated material or other environmental conditions that may affect development except as specifically identified in PART ONE. Interested Developers may request permission to perform a due diligence environmental site assessment prior to Proposal submission, after Proposal submission or after designation as the Selected Developer. Such due diligence site assessment and all associated costs shall be the sole responsibility of the Developer. Permission will be granted by WMATA subject to the execution of a Right of Entry Agreement with standard insurance and indemnity provisions. A sample Right of Entry Agreement is available from the Joint Development Coordinator who may be reached through 202-962-2395.

WMATA shall be provided, in a timely manner, a copy of each test result and report addressing the environmental site investigation. If environmental contamination is found that requires a clean-up or remediation of the Joint Development Site under a governmental regulatory agency's review, the Developer may withdraw its Proposal (including its Final Proposal) but is responsible for site restoration costs. In the event that the due diligence environmental site assessment is performed after the designation of the Selected Developer, but prior to the execution of the Development Agreement, the Selected Developer and WMATA may negotiate the transaction based upon the levels of contaminated materials or other environmental conditions encountered which would substantially delay development or substantially increase the costs of excavation, removal or disposal of soil/materials, or the treatment of groundwater. If the parties cannot agree upon the resolution of these issues the Selected Developer may withdraw its Proposal but the Developer is responsible for site restoration costs, and WMATA has the corresponding right to terminate the Selected Developer designation in accordance with Section 5.2.I.

5.6. Protest Policy

The policy and procedure for the administrative resolution of protests involving the designation of a Selected Developer arising pursuant to this JDS are as follows:

A. Only an Interested Party may submit a protest. An Interested Party is defined as a Developer who submitted a Proposal pursuant to this JDS.

B. Protests must be submitted no later than 30 calendar days after WMATA's designation of the Selected Developer. Any protest submitted subsequent to this time may be deemed by WMATA's Contracting Officer to be untimely and denied on that basis unless the Contracting Officer concludes that the issue(s) raised by the protest involves fraud, gross abuse of the selection process, or otherwise indicates substantial prejudice to the integrity of the selection process.

C. The Interested Party wishing to file a protest shall submit a written document to WMATA's Contracting Officer which contains the following:

   1. The name and address of the Interested Party;

   2. Description of the nature of the protest;

   3 Identification of the provision(s) of this JDS, applicable Joint Development

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Policies and Guidelines or laws upon which the protest is based;

4. A statement of the specific relief requested; and

5. Any documents relevant to the protest.

D. WMATA's Contracting Officer shall carefully review the protest in consultation with WMATA staff. At the discretion of the Contracting Officer, a conference may be held with the Interested Party. The Contracting Officer shall have 30 calendar days to render a written decision on the merits of the protest. A determination by the Contracting Officer that a protest is meritorious may result in a change in the terms, conditions or format of this JDS in the form of an Amendment; the rejection of a Proposal; the cancellation of this JDS; or the termination of the designated Selected Developer.

E. This Protest Policy is not applicable to actions taken by WMATA in response to legal proceedings filed in the courts, or actions taken by WMATA in its sole and non-reviewable discretion.

5.7 Guaranty
WMATA may require a third party to guarantee some or all of the obligations of the Selected Developer, including but not limited to construction obligations.

SECTION 6: DEFINITIONS

Contracting Officer
WMATA's Managing Director of the Office of Property Development and Management, or, if such position is vacant at the time in question, the person designated to act in such capacity at such time.

Developer(s)
The entity submitting or contemplating the submission of a Proposal in response to this Joint Development Solicitation (JDS). The Developer may be any qualified individual or entity with real estate development-related experience and access to financing sufficient to undertake the proposed Project, including real estate brokers, non-profit organizations, public agencies, etc. Real estate brokers are invited to participate as the Developer or as a member of the Development Team as opposed to participating in a purely marketing role. WMATA will not pay any broker's commissions.

Development Agreement
The legal document (lease, sales contract, combination lease/sale, master development agreement or other agreement) that constitutes the contract between WMATA and the Selected Developer.

Development Team
The Developer and the principal persons and/or entities (including officers, directors, partners, members, managers or the equivalent of such persons and/or entities) identified by the Developer as the participants in the Project.

Disadvantaged Business Enterprise (DBE)
For the purpose of Joint Development Projects, a DBE is a for-profit, small business concern that is owned and controlled (at least 51%) by one or more socially and economically disadvantaged persons. Socially and economically disadvantaged persons are persons who are citizens of the United States (or lawfully admitted permanent residents), and who are either:

A. Black Americans (meaning persons having origin in any of the Black racial groups of Africa);

B. Hispanic Americans (meaning persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portugese culture or origin, regardless of race);

C. Native Americans (meaning persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians);

D. Asian-Pacific Americans (meaning persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004464

Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong);

E. Subcontinent Asian American (meaning persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldive Islands, Nepal or Sri Lanka); or

F. Women.

Evaluation Team
WMATA staff assigned by the Contracting Officer to analyze the Proposals and make recommendations.

Federal Transit Administration (FTA)
The federal agency within the U.S. Department of Transportation which administers the federal rules and regulations governing joint development programs and oversees other aspects of real property purchased with federal funds for transit purposes.

Final Proposal
If requested by WMATA, the final document or compilation of documents submitted by the Developer for analysis before the Evaluation Team makes its recommendation. See definition of Proposal.

Initial Proposal
The initial document or compilation of documents submitted by the Developer in response to this JDS. See definition of Proposal.

Joint Development
A creative program through which property interests owned and/or controlled by WMATA are marketed to office, retail/commercial, recreational/entertainment and residential developers with the objective of developing Transit-Oriented Development projects. See definition of Transit-Oriented Development.

Joint Development Policies and Guidelines
The procedures approved by the WMATA Board of Directors which govern the Joint Development Program and are available at MetroOpensDoors.com (click"About Metro," then click "Business opportunities" and "Joint development opportunities").

Joint Development Project
The development ideas, concepts and plans that a Developer presents in its Proposal. Also refers to the development plans of the Selected Developer.

Joint Development Site(s)
The property areas and interests identified in Part I.

Joint Development Work Program
A document prepared annually of Joint Development opportunities associated with WMATA-owned properties. The Joint Development Work Program is drafted in coordination with the local jurisdictions and approved by the WMATA Board of Directors.

Project
The joint development ideas, concepts and plans that a Developer presents in its Proposal. Also refers to the development plans of the Selected Developer. Project is synonymous with Joint Development Project.

Proposal(s)
The development-related documents submitted in response to this Joint Development Solicitation (JDS). The term Proposal can include both the Initial Proposal and, if requested by WMATA, the Final Proposal.

Selected Developer
The Developer with the exclusive right to negotiate a Development Agreement with WMATA. WMATA's designation of the Selected Developer shall not become final and binding until a Development Agreement has been negotiated and executed by the parties.

Term Sheet
The nonbinding document which summarizes the development concept, financial structure and other major business terms of the Project.

Transit-Oriented Development
Those projects that integrate WMATA's transit facilities, reduce automobile dependency, increase pedestrian/bicycle originated transit

FOIA CONFIEDENTIAL TREATMENT REQUESTED

trips, foster safe station areas, enhance surrounding area connections to transit stations, provide mixed use including housing and the opportunity to obtain goods and services near transit stations, offer active public spaces and promote and enhance ridership and sound growth in the communities which WMATA serves. See also FTA's definition at www.fta.dot.gov/library/policy/IFT/iftb.html.

WMATA Compact
Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as may be amended.

WMATA Facility
Any improvements, structures, infrastructure components, tangible property and/or areas required, in the judgment of WMATA, for the use, operation, access, maintenance, repair, servicing, replacement or removal of structures and supports, any and all access, parking, operation and service facilities and areas relating to WMATA's operations or activities, including without limitation, the Metro station, tunnels, rails, tracks, bus stations, bus transfer areas, supervision kiosks, employee bathrooms, electric substations, conduits and lines, communications equipment and structures, pedestrian ways, waiting and shelter areas, facilities serving persons with disabilities, cooling towers, chiller plants, vent and fan shafts, bicycle rack and locker areas, storm water management facilities, landscaping, lighting and all other associated facilities.

WMATA Improvement(s)
Those improvements, whether an interim replacement facility or a new facility, which will be designed and/or constructed by the Selected Developer for WMATA in a configuration acceptable to WMATA. Upon final acceptance by WMATA, a WMATA Improvement will become a WMATA Facility.

WMATA Replacement Facility
A WMATA Improvement designed and/or constructed by the Selected Developer for WMATA in a configuration acceptable to WMATA that replaces any displaced or disrupted WMATA Facility which will be turned over to WMATA.

WMATA Reserved Areas and Interests
Includes (a) all areas of, within or adjacent to the Joint Development Site containing any WMATA Facility; (b) all areas of, within or adjacent to the Joint Development Site relating to the use, operation, access, maintenance, repair, servicing, replacement or removal of any WMATA Facility; and (c) any and all easements and other reserved rights required by WMATA in connection with its use, operation, access, maintenance, repair, servicing, replacement or removal of any WMATA Facility or WMATA operations and business generally, whether expressly provided for or reasonably contemplated. Such easements and other reserved rights shall include, without limitation, easements and reserved rights (whether at, above or below ground level) for (i) the construction, operation, maintenance, repair, replacement, removal or relocation of any and all existing tunnels and related facilities, (ii) all WMATA Facilities (including, without limitation, any replacement facilities) which have piling or other structural support within or adjacent to the Joint Development Site, (iii) any and all service facilities serving such tunnels or any WMATA Facility, (iv) all underground power lines and other utilities, (v) horizontal and vertical support for all WMATA Facilities in, on and about the WMATA Joint Development Site, including without limitation, structures, equipment or installations such as foundations, beams, columns, bracing and similar structural features which maintain vertical and horizontal support and are necessary for the maintenance, operation and protection of any WMATA Facility and (vi) protections and approval rights satisfactory to WMATA in its sole and unreviewable discretion with respect to limits on loads and pressures which may affect any WMATA Facility, whether vertical or lateral.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004466

T:\JDS 2007 - U ST FLA AVE
properties\Submission Requirements.wpd
Update: July 24, 2006 (11:22am)

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority

METRO ELECTRONIC ACTION DOCUMENT

NARRATIVE

Metro owns three parcels totaling 28,892 sf on Florida Avenue, NW between 7th and 9th streets. Originally purchased for construction of the Green Line tunnel, which runs partially beneath them, the parcels are now available for development. In accordance with a joint development work program approved by the Board in July 2006, ~~and after litigation affecting the parcels was resolved,~~ Metro issued a request for Expressions of Interest in the spring of 2007. Metro subsequently issued a joint development solicitation for which three responses were received in October 2007.

Staff recommends selecting the Banneker Ventures, LLC team as developer of the parcels. The team consists of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC; they will form an LLC ~~tentatively named The Jazz @ Florida Avenue.~~ The team has the experience to complete the project; Metropolis recently developed the Langston Lofts joint development project at 14th and V streets. The developer provided a better financial offer ~~(see attached Confidential Statement)~~ than its closest competitor and the same type of development: 4 to 5-stories of residential units over a ground floor devoted to retail and arts uses. This is the type of development recommended in the District of Columbia`s adopted Duke Plan for the area. ~~The third competitor did not meet appraisal benchmarks.~~

Under a 60-year ground lease, the developer proposes to build a minimum of 104 apartments and devote 11,750 sf of the ground floor to retail and arts uses, consistent with the Uptown Arts Overlay District in which the three parcels are located. The parcels are also in an historic district. Their development will help extend the successful U Street/Florida Avenue Transit Oriented Development of the past few years from Metro`s redeveloped sites near the U Street/African-American Civil War Memorial/Cardozo Metro station (13th-14th and U streets) eastward to the Shaw-Howard University Metro station at 7th Street.

No Metro facilities will be displaced. Work over and next to the Metro tunnel and the 8th Street fan shaft/air vents will need to be approved by staff.

FUNDING IMPACT

Lease revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004468

RECOMMENDATION

That the Board of Directors approve the selection of, and term sheet with, the Banneker Ventures, LLC development team as developer for the Shaw-Howard University/Florida Avenue joint development parcels and authorize the negotiation of a development agreement that will be presented to the Board for approval.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004469

Washington Metropolitan Area Transit Authority

METRO ELECTRONIC ACTION DOCUMENT

MEAD ID: 99972

IDENTIFICATION			
ACTION:	N/A	LAST MODIFIED:	03/20/2008
AWARD VALUE:	(Not yet awarded)	CONTRACT: (Proposed)	

DESCRIPTION	
SUBJECT:	Approval of Developer and Term Sheet for Shaw-Howard/Florida Avenue Joint Development Site.
PURPOSE:	Approve the selection of, and term sheet with, the Banneker Ventures LLC development team as Developer for the Shaw-Howard/Florida Avenue joint developent parcels and authorize the negotiation of a Development Agreement to be presented to the Board.

ORIGINATION					
INITIATOR				DEPARTMENTAL APPROVAL	
ROSALYN DOGGETT on 03/13/2008				Approved by BOTTIGHEIMER, JOHN 03/19/2008	
PHONE:	202-962-	OFFICE:	LAND	DEPT:	Secretary and Chief of St

COORDINATION (ROUTING)			
OFFICE	NAME	ACTION/DATE	COMMENTS
CREL (67400)	BROWN, CARL	*(Reviewer)*	
LAND (73400)	MEISTER, MARK	Approved 03/19/2008	
PRMT (74100)	GRISWOLD, RAYMOND	Approved 03/18/2008	
AGMP (81100)	BOTTIGHEIMER, JOHN	Approved 03/19/2008	
LAND (73100)	WASHINGTON, JOEL	Re-assigned 03/19/2008	[Reassigned to: MARK MEISTER, by:ROSALYN DOGGETT] reassigned
OIG (13110)	LEW, HELEN	*(Reviewer)*	
FIMA (23100)	HARCUM, RICHARD	*(Reviewer)*	
(31160)	REQUA, JOHN	Approved 03/19/2008	
COUN (14100)	O'KEEFFE, CAROL	Approved 03/19/2008	
(1111)	PENDING, COUNAPPROVAL	Re-assigned 03/19/2008	[Reassigned to: CAROL O'KEEFFE, by:COUNAPPROVAL PENDING] for sign off
DGMR (12110)	FRANCIS, GERALD	Approved 03/20/2008	

FINAL APPROVALS	
OFFICE	NAME/ACTION
BUDGT_CMT_CFO	Approved for CFO1 by HARRY WOODRUFF on 03/19/2008
CHOS	SHIVA PANT (Not Yet Approved)
BEMR	Approved for by HOPE-LEEN'DA CHAMBLISS on 03/20/2008

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004470

GM	GMGR CEO (Not Yet Approved)
BOARD	BOARD WMATA (Not Yet Approved)

SUPPORTING DOCUMENTATION	
DESCRIPTION	FILE
	99972-MEAD-ENC-BAIS-REVISION_3.doc

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004471

Washington Metropolitan Area Transit Authority

METRO ELECTRONIC ACTION DOCUMENT

NARRATIVE

Metro owns three parcels totaling 28,892 sf on Florida Avenue, NW between 7th and 9th streets. Originally purchased for construction of the Green Line tunnel, which runs partially beneath them, the parcels are now available for development. In accordance with a joint development work program approved by the Board in July 2006, and after litigation affecting the parcels was resolved, Metro issued a request for Expressions of Interest in the spring of 2007. Metro subsequently issued a joint development solicitation for which three responses were received in October 2007.

Staff recommends selecting the Banneker Ventures, LLC team as developer of the parcels. The team consists of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC; they will form an LLC tentatively named The Jazz @ Florida Avenue. The team has the experience to complete the project; Metropolis recently developed the Langston Lofts joint development project at 14th and V streets. The developer provided a better financial offer (see attached Confidential Statement) than its closest competitor and the same type of development: 4 to 5-stories of residential units over a ground floor devoted to retail and arts uses. This is the type of development recommended in the District of Columbia`s adopted Duke Plan for the area. The third competitor did not meet appraisal benchmarks.

Under a 60-year ground lease, the developer proposes to build a minimum of 104 apartments and devote 11,750 sf of the ground floor to retail and arts uses, consistent with the Uptown Arts Overlay District in which the three parcels are located. The parcels are also in an historic district. Their development will help extend the successful U Street/Florida Avenue Transit Oriented Development of the past few years from Metro`s redeveloped sites near the U Street/African-American Civil War Memorial/Cardozo Metro station (13th-14th and U streets) eastward to the Shaw-Howard University Metro station at 7th Street.

No Metro facilities will be displaced. Work over and next to the Metro tunnel and the 8th Street fan shaft/air vents will need to be approved by staff.

FUNDING IMPACT

Lease revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004472

RECOMMENDATION

That the Board of Directors approve the selection of, and term sheet with, the Banneker Ventures, LLC development team as developer for the Shaw-Howard University/Florida Avenue joint development parcels and authorize the negotiation of a development agreement that will be presented to the Board for approval.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004473

From: "Omar A. Karim" <okarim@bannekerventures.com>
To: "Marc E. Biondi" <mebiondi@wmata.com>, "Rosalyn Doggett" <rdoggett@wmata.com>
Date: 3/18/2008 12:19:43 PM
Subject: Re: Final - WMATA Florida Avenue Term Sheet

Rosalyn and Marc,
Upon Board approval, we will, without reservation, sign the Term Sheet referenced in the email below. We look forward to working with you to negotiate and execute a Definitive Agreement and Lease and developing this exciting project.
We will use the Term Sgeet that you just sent as the final version for our records to be executed by WMATA staff and a representative of Banneker following next month's Board meeting.
My best,
Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell

-----Original Message-----
From: "Marc E. Biondi" <mebiondi@wmata.com>

Date: Tue, 18 Mar 2008 10:33:30
To:"Omar A. Karim" <okarim@bannekerventures.com>,"Rosalyn Doggett" <rdoggett@wmata.com>
Cc:"Warren Williams" <warren@bannekerventures.com>,"'Joshua Kern'" <joshuakern@districtdevelopmentgroup.com>,"'Guy Flynn'" <guy.flynn@dlapiper.com>,"'Seth Bryant'" <Seth.Bryant@dlapiper.com>,"'Merrick Malone'" <malone@metropolis-dc.com>
Subject: Re: Final - WMATA Florida Avenue Term Sheet

Attached please find a red-lined and clean copy of the Final Term Sheet.

Please note three things:

As discussed by Roz and Omar, "Lease" has been replaced by "Base Rent payment" in Sections 7.3.2 and 7.3.3.

No change was found in the document provided this morning in section 8.5 regarding FTA Approvals, please let me know if a change was made as indicated in Omar's email below.

The language following section 8.6, was relocated to the beginning of section 8 in the last WMATA draft and that insert remains in this draft. (The language was originally provided by DLA at the end of Section 8)

Omar please sign (or e-mail to say without reservation that you will sign upon Board approval).

Thanks for the speedy turnarounds,

Marc

Marc Biondi
Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW

Washington, DC 20001

Direct Dial: 202-962-1011
Fax: 202-962-2550
mebiondi@wmata.com

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>>> "Omar A. Karim" <okarim@bannekerventures.com> 3/18/2008 9:03 AM >>>
Ms. Doggett,

As promised, attached please find a Final copy of the Term Sheet for the Florida Avenue project. We made five small comments reflected in Section 5.2 7.2, 8.5, 8.6 and 9.8.

Please call me with any questions.

Thank you in advance.

Omar

Omar A. Karim.

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

CC: "Warren Williams" <warren@bannekerventures.com>, "'Joshua Kern'" <joshuakern@districtdevelopmentgroup.com>, "Guy Flynn" <guy.flynn@dlapiper.com>, "Seth Bryant" <seth.bryant@dlapiper.com>, "Merrick Malone" <malone@metropolis-dc.com>

Agenda
Planning, Development and Real Estate Committee
April 24, 2008

I. Approval of Agenda

II. Approval of Minutes of March 27, 2008

III. Action Items

A. Florida Avenue Developer Selection (N. Bottigheimer)
B. Royal Street Relocation Project (J. Thomas)

IV. Information Item

A. Bus Priority Corridor Plan (J. Hughes/N. Bottigheimer)

V. Subsequent Planning, Development and Real Estate Committee Agendas

Washington Metropolitan Area Transit Authority

Committee Members
Catherine Hudgins, Chair
Emeka Moneme, Vice Chair
Chris Zimmerman
Jim Graham
Peter Benjamin
Elizabeth Hewlett
William D. Euille
Marion Barry
Gordon Linton
Jeff McKay
Anthony Giancola
Marcell Solomon

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Planning, Development and Real Estate Committee

Board Action Item III-A

April 24, 2008

Florida Avenue Developer Selection

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transportation Authority
Board Action/Information Summary

☒ Action ☐ Information	MEAD Number: 99972	Resolution: ☐ Yes ☒ No

PURPOSE

Approve the selection of, and term sheet with, the Banneker Ventures LLC development team as developer for the Shaw-Howard University/Florida Avenue joint development parcels and authorize the negotiation of a development agreement to be presented to the Board.

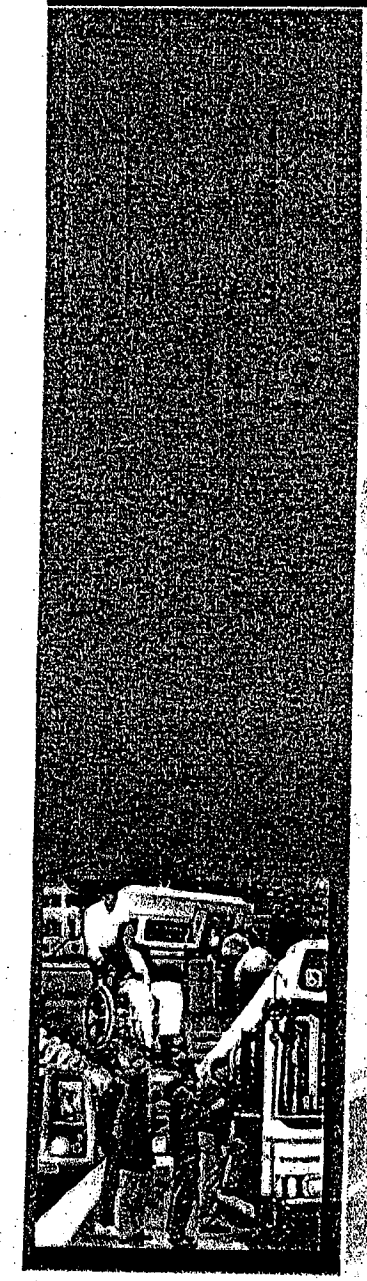
DESCRIPTION

WMATA owns three parcels totaling 28,892 sf on Florida Avenue, NW between 7th and 9th Streets. Originally purchased for construction of the Green Line tunnel, which runs partially beneath them, the parcels are now available for development. In accordance with a joint development work program approved by the Board in July 2006, and after litigation affecting the parcels was resolved, Metro issued a request for Expressions of Interest in the Spring of 2007. Metro subsequently issued a joint development solicitation for which three responses were received in October 2007.

Staff recommends selecting the Banneker Ventures, LLC team as developer of these sites. The team consists of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC; they will form an LLC tentatively named The Jazz @ Florida Avenue. The team has the experience to complete the project; Metropolis recently developed the Langston Lofts joint development project at 14th and V Streets. The developer provided a better financial offer (see attached Confidential Statement) than its closest competitor and the same type of development: 4 to 5-stories of residential units over a ground floor devoted to retail and arts uses. This is the type of development recommended in the District of Columbia's adopted Duke Plan for the area. The third competitor did not meet appraisal benchmarks.

Under a 60-year ground lease, the developer proposes to build a total of 104 apartments and devote 11,750 sf of the ground floor to retail and arts uses, consistent with the Uptown Arts Overlay District in which the three parcels are

FOIA CONFIEDENTIAL TREATMENT REQUESTED



Shaw-Howard U./Florida Avenue Joint Development Site

Developer Selection And Term Sheet Approval

Presented to the Board of Directors:

Planning, Development and Real Estate Committee

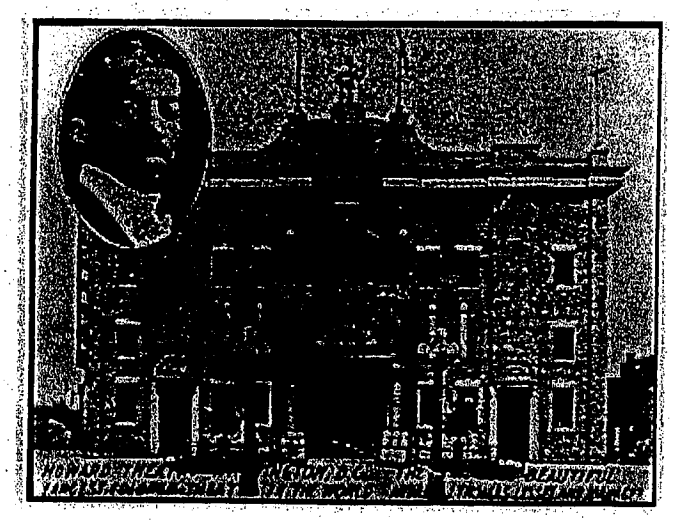
April 24, 2008

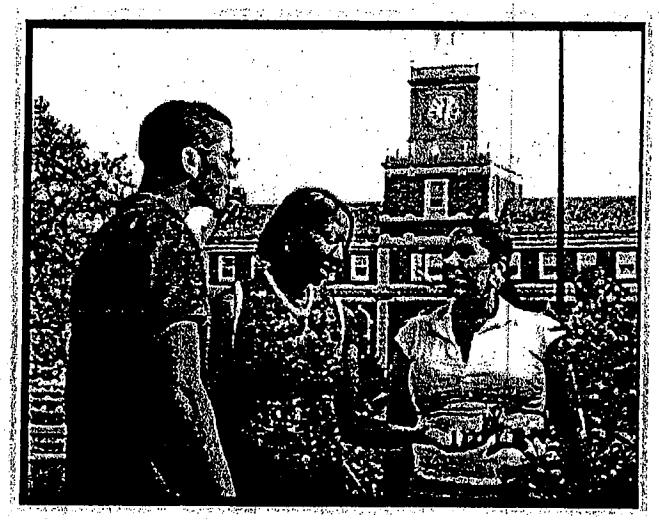
WMATA-INV 004480

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Purpose

- Approve Banneker Ventures team as developer of Shaw-Howard U./Florida Avenue joint development site
- Approve term sheet
- Authorize negotiation of development agreement





WMATA-INV 004481

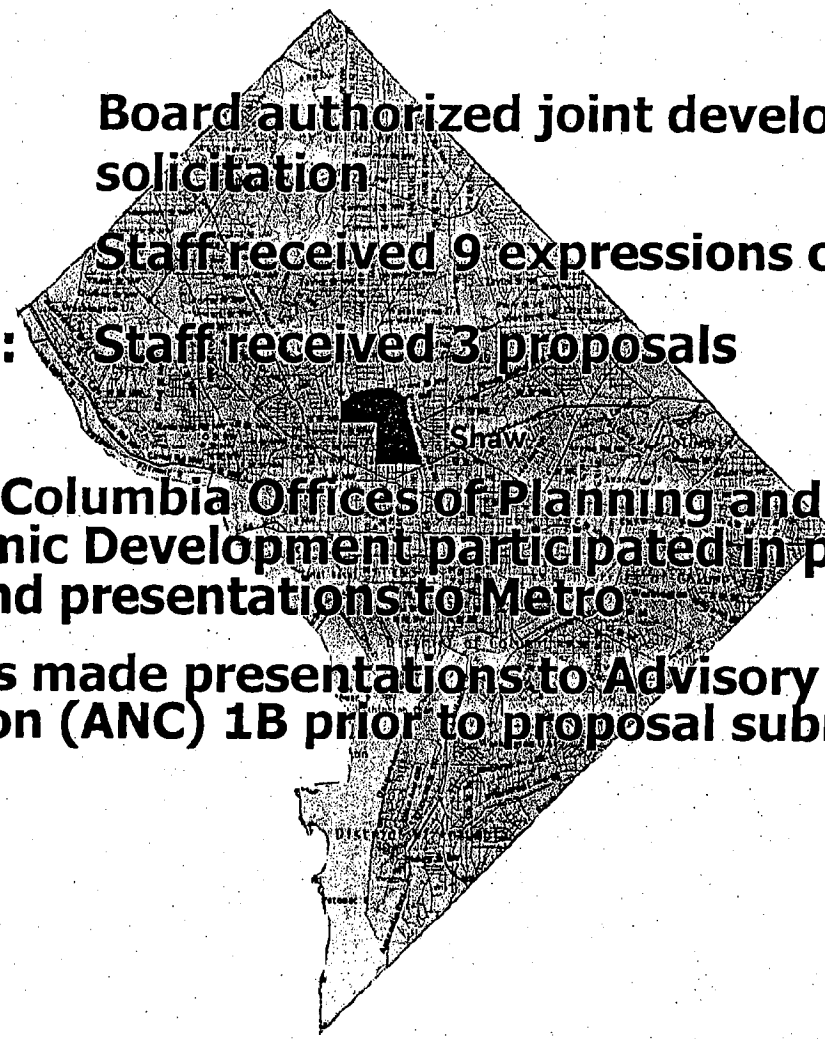
FOIA CONFIDENTIAL TREATMENT REQUESTED

Community Involvement

July 2006: Board authorized joint development solicitation

Spring 2007: Staff received 9 expressions of interest

October 2007: Staff received 3 proposals

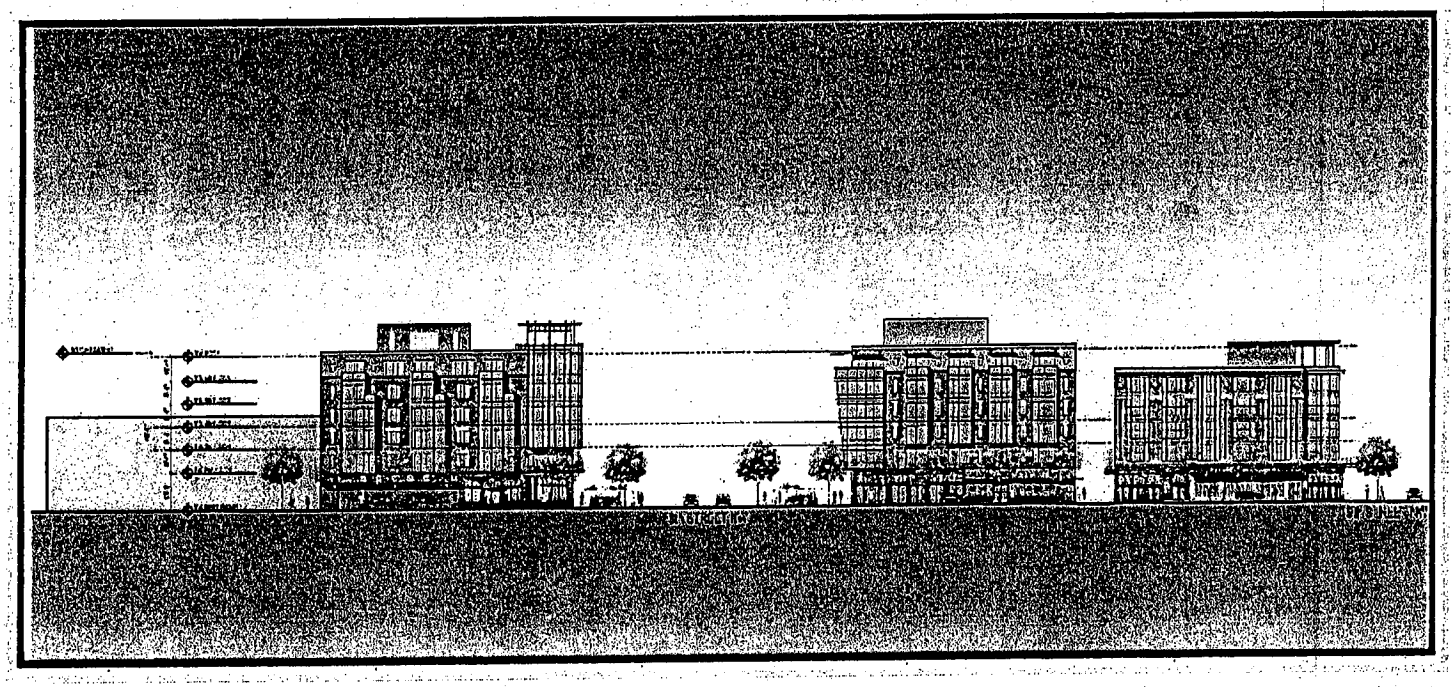


- District of Columbia Offices of Planning and Deputy Mayor for Economic Development participated in proposal reviews and presentations to Metro
- Developers made presentations to Advisory Neighborhood Commission (ANC) 1B prior to proposal submission

WMATA-INV 004482

FOIA CONFIDENTIAL TREATMENT REQUESTED

Elevation



- **Provides 104 apartments**
- **Allocates 11,750 sf for retail/arts uses**

WMATA-INV 004483

Planning, Development and Real Estate Committee

Board Action Item III-B

April 24, 2008

Royal Street Relocation Project

Washington Metropolitan Area Transportation Authority
Board Action/Information Summary

☒ Action ☐ Information	MEAD Number: 99971	Resolution: ☒ Yes ☐ No

PURPOSE

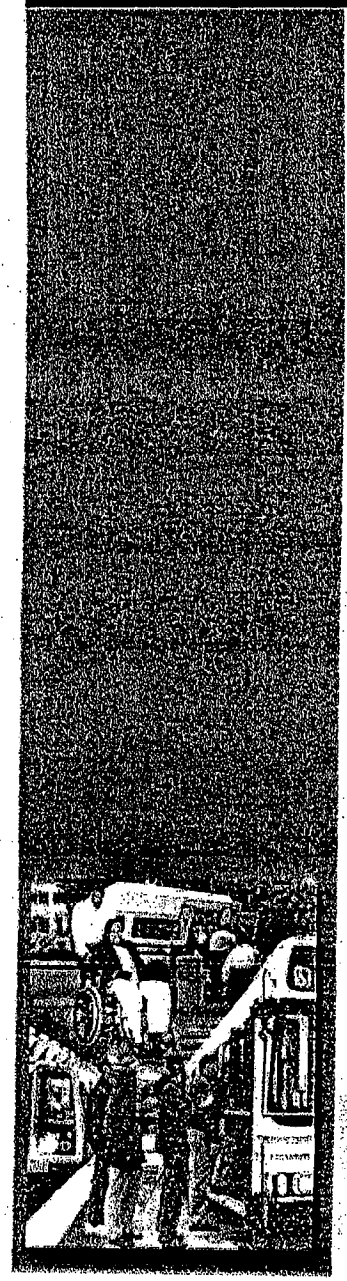
To obtain concurrence from the Planning, Development and Real Estate Committee and Board approval to:
1. Establish a project for the replacement of the Royal Street Bus Garage;
2. Establish a $3,500,000 budget and increase the FY08 SAP from $X to $Y; and
3. Authorize tasks to P2D for the alternatives analysis and Public Hearing process.

DESCRIPTION

The City of Alexandria and the community surrounding the Royal Street Garage are in favor of redeveloping the bus garage site to higher and better use. Ten sites in Virginia have been identified as possible locations for the new garage. Additionally, the Mayor of Alexandria recently requested that the potential site, DC Village, for a new bus garage to replace the Southeastern Division Garage, be analyzed as a potential site to house the Royal Street Garage buses. The first step in determining the location for a new garage is conducting an alternatives analysis that will look at each site and determine which are worthy of a more detailed study and which have too many issues that would make the site ineligible for further study. The sites that survive the alternatives analysis would proceed into the PE/NEPA and or WMATA Public Hearing Process to select the preferred site for the new garage. Staff will return to the Board with the results of the alternatives analysis with a request to hold a Public Hearing for the sites that survive the analysis.

Funding for the alternatives analysis, preliminary engineering, the subsequent public hearing and WMATA project management will come from FTA grants in the amount of $3.5 million. The grants are hereby used to establish the initial project budget.

FOIA CONFIEDENTIAL TREATMENT REQUESTED



AMEND FY08 SAP FOR REPLACEMENT OF ROYAL STREET BUS GARAGE

Presented to the Board of Directors:

Planning, Development and Real Estate Committee

April 24, 2008

WMATA-INV 004486

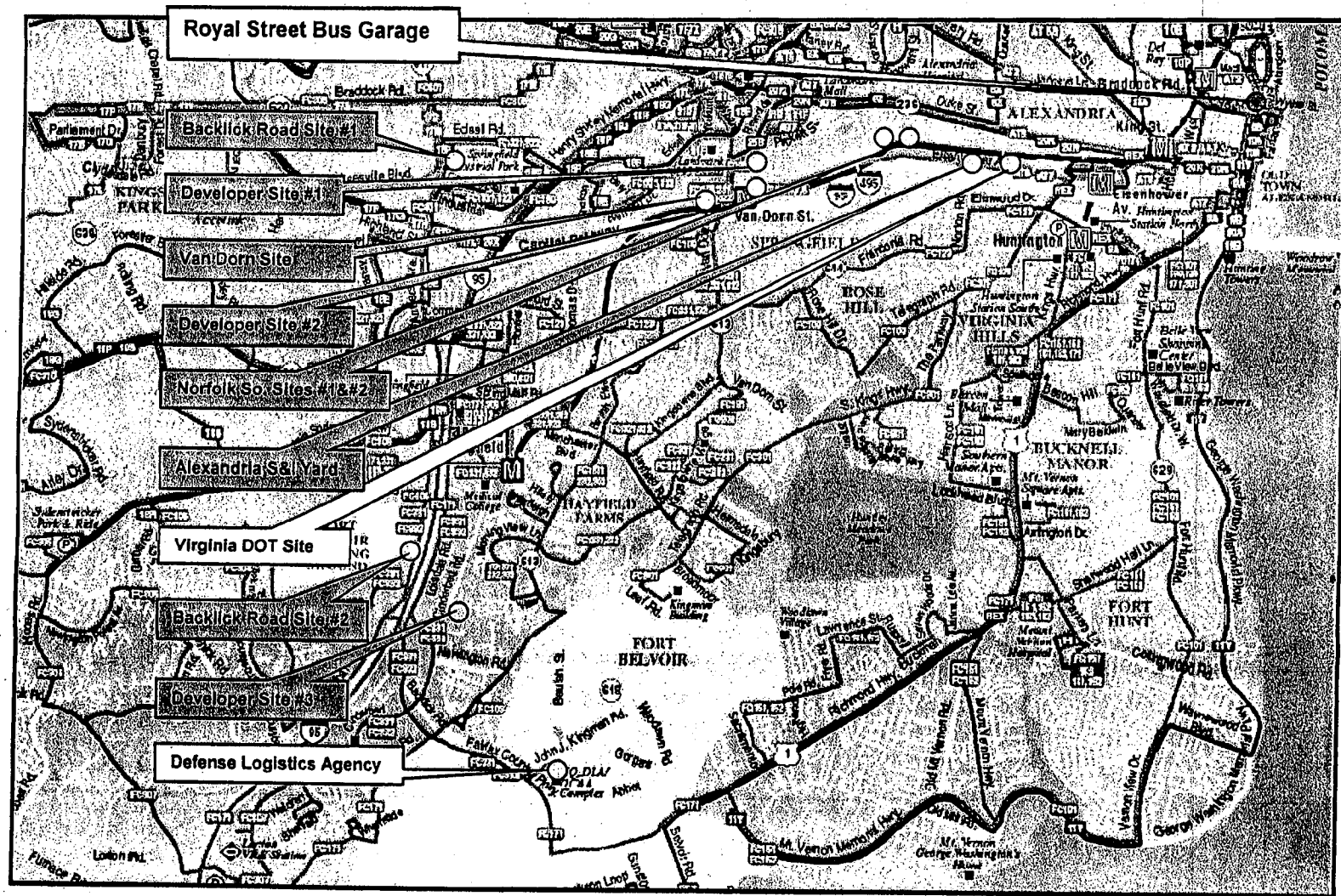
FOIA CONFIEDENTIAL TREATMENT REQUESTED

Background

WMATA-INV 004487

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Potential Replacement Sites



WMATA-INV 004488

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Recommendation

That the Planning, Development and Real Estate Committee concur and forward to the Board for approval:

1. Establishment of a project for the replacement of the Southeastern Bus Garage;

2. Establishment of a $3,500,000 budget and an increase to the FY08 SAP from $X to $Y; and

3. Authorization of tasks to P2D for the alternatives analysis and Public Hearing process.

WMATA-INV 004489

Planning, Development and Real Estate Committee

Board Information Item IV-A

April 24, 2008

Bus Priority Corridor Plan

Washington Metropolitan Area Transportation Authority
Board Action/Information Summary

☐ Action ☒ Information	MEAD Number:	Resolution: ☐ Yes ☒ NO

Reduce # of pages

PURPOSE

To brief the Board on a staff proposal for a regional Metrobus Priority Corridor Network Plan to provide an integrated, multi-year program to improve bus services throughout the region and discuss Board policy and implementation considerations.

DESCRIPTION

The Priority Corridor Network Plan is a strategy for improving bus service travel times, reliability, capacity, productivity and system access and is consistent with the Regional Transportation Vision, Regional Bus Study, Core Capacity Study and APTA Peer Review. The included service and capital projects would constitute a six-year implementation program affecting 24 corridors across the region and impacting half of all bus riders in the current Metrobus system.

Staff, working with jurisdictional stakeholders will prepare comprehensive Corridor Plans to provide for integrated service and capital investments, including new MetroExtra routes, to improve the performance of all routes in the corridor. Implementation will include investments in bus stops, runningway enhancements, street operations management and safety and security strategies to reduce travel times and provide more reliable and safe service.

A focus on Priority Corridors will: benefit the most riders in the shortest time frame; improve customer service, reliability, quality and performance; build transit markets; and, influence development patterns. A defined plan will also facilitate fleet acquisition and addressing garage capacity issues by establishing a time frame for performance.

The service zone described by the 24 corridors currently encompasses nearly 750,000 households with 1.8 million residents and 1.6 million jobs. By 2015, this market is anticipated to grow by 14%. The proposal includes 246 line miles of service and will provide capacity to serve an additional 10 million riders per year.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Findings of the Bus Network Evaluation concluded that the additional buses are justified, based on the currently planned service enhancements. Also, the Bus Network Evaluation provided an opportunity to review, update and re-evaluate implementation of recommendations from the Regional Bus Study. The final report addressed recommendations concerning the regional service plan, vehicle and fleet requirements and new service branding strategies.

The Metrobus Revenue Vehicle Fleet Management Plan, which was approved by the Board in April 2007, is the formal document memorializing this information to provide planning for future Metrobus vehicle and facility needs, taking into consideration current and future ridership demand, proposed service expansion projects, scheduled and unscheduled maintenance, and Metrobus renovation program. The Federal Transit Administration (FTA) requires that WMATA adopt and keep current a Metrobus Revenue Vehicle Fleet Management Plan.

Priority Corridor Definition

The Regional Bus Study Final Operating Plan included recommendations for: a) improving existing routes; b) implementing new routes for changing markets; and, c) creating new high performance services. The recommendations for high performance services included defining new "priority corridor" and "express bus" service projects for development as new service products within the "family of services" concept.

Premium "express bus" services typically serve long distance suburban commuter travel markets and destinations where significant demand exists and travel time via existing transit is considered to be non-competitive with alternatives. Suburban operators such as PRTC Omni Ride, MTA Commuter Bus and Loudoun County Transit generally operate these services and it is envisioned that WMATA will operate express services only within existing corridors. Premium "priority corridor" services enhance the performance and customer experience along major "urban" corridors by taking an integrated approach to coordinating service, vehicles, bus stops and facilities, service management, customer information systems, traffic operations, safety and incident response.

The term "Rapid Bus" was used in the Regional Bus Study synonymously with "Bus Rapid Transit" (BRT). Subsequent to the study, these definitions have evolved within the industry leading to a differentiation of terms. The term BRT now reflects a desired end-state goal that is more reliant on use of exclusive or highly-controlled bus lanes and exclusive rights of way over a majority of the route and that has achieved a high degree of deployment of integrated operations, features and facilities to guarantee a high level of speed, safety, reliability and quality customer experience.

18. Fourteenth Street: 52 53 54
19. Colesville Rd./ Columbia Pike – MD US 29: Z2 Z6 Z8Z Z9,29 Z11,13
20. Anacostia – Congress Heights: A2-8 A42-48
21. Georgia Avenue (Md): Y5,7,8,9
22. North Capitol Street: 80
23. Rhode Island Avenue (DC): G8
24. Baltimore Ave. (Laurel to Rhode Island Ave.): 81 82 83 86 87 88 89 89M

Additional Long-Term Projects

25. M Street SW/SE - Minnesota Ave: V7,8,9
26. Md 450/Annapolis Road (New Carrollton to Rhode Island Ave.): T18
27. Shirley Highway: 7 8 17 18 21 22 25
28. Michigan Ave./Columbia Road/Connecticut Ave.: H 1,2,3,4
29. Military Road NW: E2 E3 E4

Board Considerations

Selection of funding strategies and frequency of review and approval is a key issue for the Board to provide guidance. From that direction staff can present plans for review and approval consistent with Board schedules and desire for the pace of implementation. The documentation of recommended projects in local plans will require Board engagement. A slate of action items will follow, prime of which will include acquisition of up to 135 40-foot long coaches to expand the fleet to accommodate new services and current service running time and capacity adjustments.

FUNDING IMPACT

There is no funding impact for this information item.

NEXT STEPS

This is an information item only. The next step in the process is to review the proposal with the RAC, JCC and the public. A final Priority Corridor Service Development Program will be prepared reflecting stakeholder and public comments. Subsequent Action Items will be presented to the Board to accept Bus Network Findings, fund the planning processes, implement bus service recommendations, approve partnering agreements and initiate capital projects.

- Add Cost/Benefit pg.
- may remove large guy pg.

Metrobus
Priority Corridor Network

Presented to the Board of Directors:

Planning, Development and Real Estate Committee

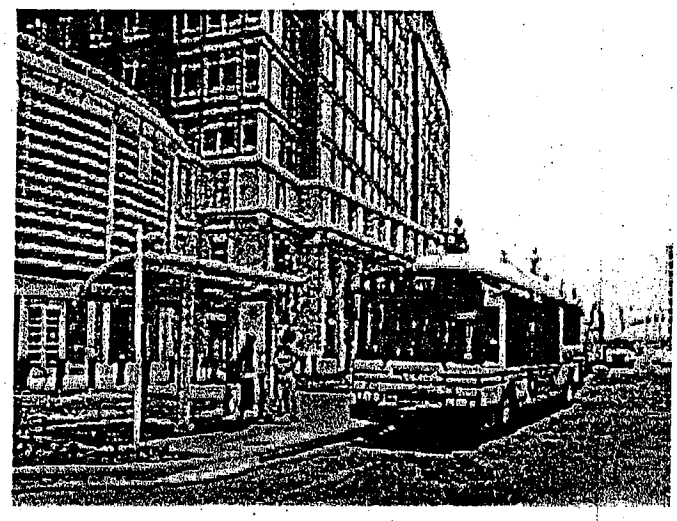
April 24, 2008 ~~[Draft 14 Mar 08]~~

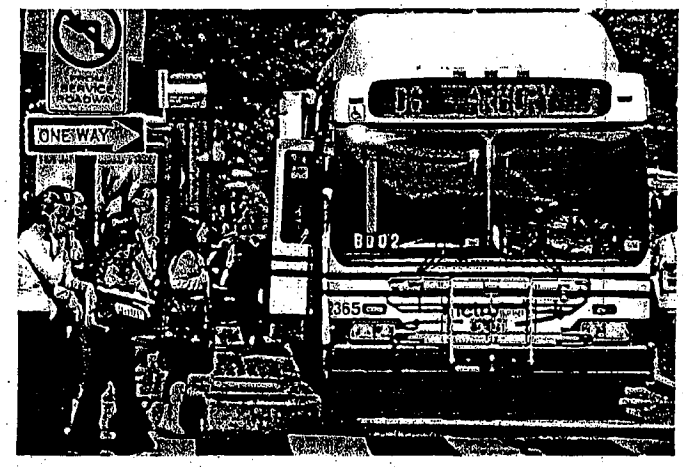
FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Purpose of Presentation

- Present a proposal for a regional network of priority corridors to provide improved transit services impacting half of Metrobus ridership
- Dialogue with Board about related policy considerations
- Describe a plan for linking actions of Board, jurisdictions and Staff to achieve implementation





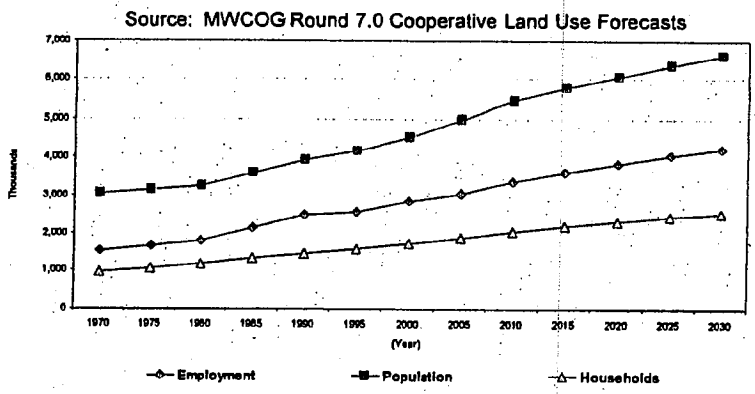
WMATA-INV 004495

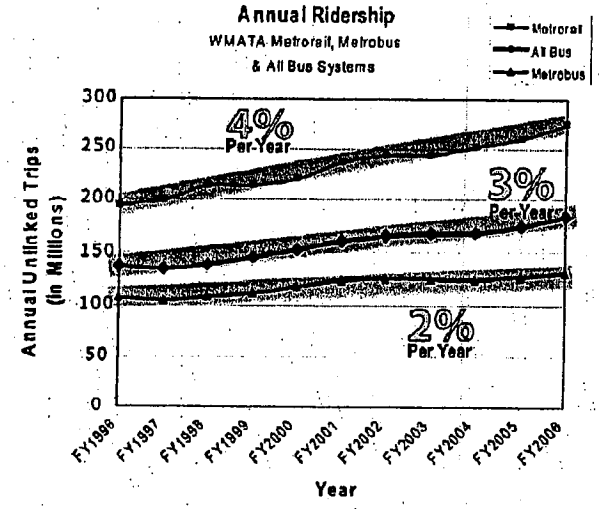
FOIA CONFIDENTIAL TREATMENT REQUESTED

Regional Growth and the Need for Improved Bus Services

- Between 2005 and 2030 WMATA service area will grow:
  - Jobs: 40%
  - Population: 23%
- Bus services have experienced continued ridership increases and are challenged to address:
  - Crowding
  - Slowing travel speeds
  - Route and schedule adherence
  - Customer expectations
- Given continued need to grow transit ridership, short-term strategies are limited:
  - Manage current bus and rail system to maximize efficiency
  - Deploy additional vehicles
  - Expand bus network to serve new and growing markets

Historic and Forecast Regional Growth



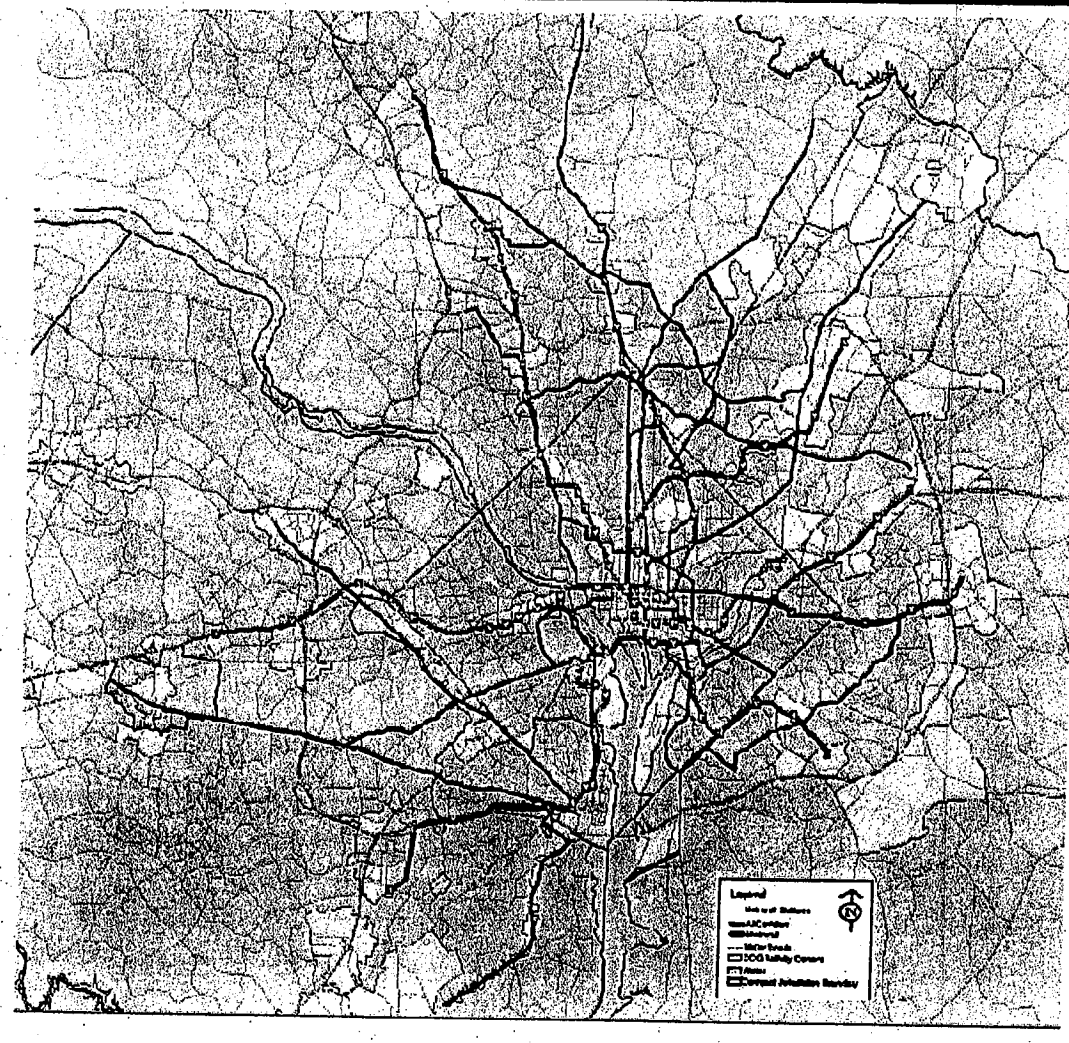


WMATA-INV 004496

FOIA CONFIDENTIAL TREATMENT REQUESTED

Priority Corridor Network - Proposed

- Network of 24 corridors
- High ridership arterial services (half of system)
- Candidates for multiple types of services
- Selected by
  - Performance
  - Ridership
  - Land use
  - Service levels
  - Jurisdictional support
- 6 Year Schedule



WMATA-INV 004497

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Characteristics of Priority Bus Corridors

- Metrobus has 171 Lines with daily ridership of 450,000
- PCN represents 14% of lines (50% of Metrobus ridership)
- Recommended Priority Corridor Plans serve:
  - 220,000 current daily riders
  - 70 million annual riders
  - 246 line miles of service
  - Include
    - Local Metrobus
    - Express Metrobus
    - MetroExtra (Rapid Bus)
    - Neighborhood Shuttles
  - Proposals add 10 million riders annually (+14%)

Priority Corridor Network Service Zone Characteristics

	2005	2015	Net Change
LAND AREA (sq mi)	330.0	330.0	
Households	733,000	835,000	14%
Population	1,782,000	1,988,000	12%
Employment	1,609,000	1,827,000	14%

Priority Corridor Network Service Characteristics

	Average
Weekday Passengers	9,174
Percent Weekend/Holiday Riders	18%
Riders per Revenue Hour	54.7
Priders per Revenue Mile	4.5
Cordon Passenger Percent	8.0%
Cordon Vehicle Percent	0.7%
Average Passenger Trip Time (Min)	42
Average Scheduled Bus Speed	12.1
Average Line Trip Length	9.4
Daily Passenger per Line Mile	899
Rail to Bus Transfers	6%
Bus to Bus Transfers	32%

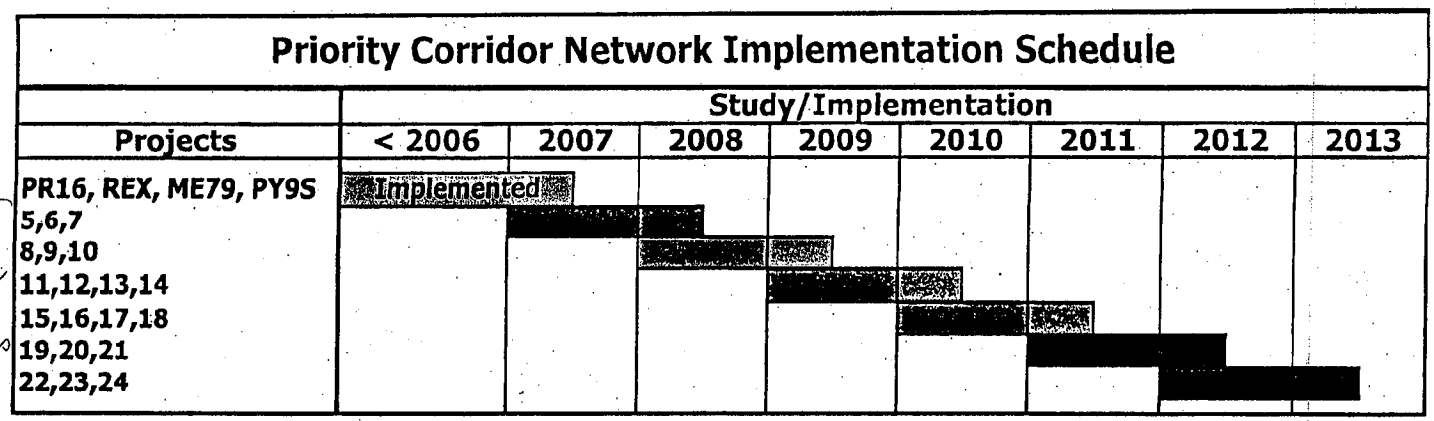
WMATA-INV 004498

FOIA CONFIDENTIAL TREATMENT REQUESTED

Priority Corridor Implementation Plan

Priority Corridor Network Implementation Schedule

Projects	Study/Implementation < 2006	2007	2008	2009	2010	2011	2012	2013
PR16, REX, ME79, PY9S	Implemented							
5,6,7								
8,9,10								
11,12,13,14								
15,16,17,18								
19,20,21								
22,23,24								



See p15 for more

Projected Costs	
Operating	
Service	$ 19,500,000
Operations	$ 5,500,000
Total Operating	$ 25,000,000
Capital	
Runningway/Identity	$ 25,900,000
Transit Center/Facilities	$ 27,000,000
Exclusive ROW	$ 43,000,000
Park and Ride	$ 36,800,000
Technology/Systems	$ 67,000,000
Garage/Storage	$ 43,000,000
Total Capital	$ 242,700,000

Expand West Ox, expand DC Village

- Implementation requires stakeholder partnerships and staffing
- Studies define project resource requirements
- 135 buses $83.5 million

bought 50, no money for rest

@ See Appendix, p15 for full list

WMATA-INV 004499

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Staff Next Steps

- Presentation to RAC/ Public Outreach (TPB, CAC, TACs)
- Implementation planning with jurisdictions/DOTs
- CY 2008 Service implementation projects Include:
  - Wisconsin/Pennsylvania 31 32 34 36 37 39 M5 M6
  - University Blvd /East West Highway J4 midday service predecessor to Purple Line
  - National Harbor NH1
  - Crystal City Potomac Yard 9S
- CY 2008 Corridor Plan Studies:
  - Veirs Mill Road: Q2 Line
  - Sixteenth Street: S1,S2,S4 (3QFY09 implementation given buses, storage and funding)
  - Leesburg Pike: 28A,B 28F,G 28T
- Integrate strategies in Metrobus Business Plan
- Acquire expansion buses/manage garage allocation

WMATA-INV 004500

FOIA CONFIDENTIAL TREATMENT REQUESTED

Priority Corridor Network – Recommended

	Corridor Description	Line/Route Description	Status	State	Study Year	Average Weekday Ridership	Annual Platform Hours
1	Columbia Pike (Pike Ride)	16ABDEFJ 16GHKW 16L 16Y	Implemented	V	2003	12,469	99,473
2	Richmond Highway Express (REX)	REX	Implemented	V	2004	3,305	33,783
3	Georgia Ave./7th Street	70 71 79	Implemented	D	2006	15,377	99,509
4	Crystal City-Potomac Yard	9A 9E 9S	Implemented	V	2006	2,708	33,364
5	University Blvd / East-West Highway	J1 J2 J3 J4	Studied	M	2007	7,709	67,967
6	Southern Ave. Metro - National Harbor	NH-1	Begins Mar-08	M	2007	*New*	*New*
7	Wisconsin Ave./Pennsylvania Ave.	30 32 34 35 36	Studied	D	2007	18,664	162,032
8	Sixteenth Street	S1 S2 S4	Recommended	D	2008	14,594	111,857
9	Veirs Mill Road	Q2	Recommended	M	2008	10,859	75,425
10	Leesburg Pike	28AB 28FG 28T	Recommended	V	2008	6,230	52,486
11	New Hampshire Avenue	K6	Recommended	M	2009	6,637	40,536
12	H Street / Benning Road	X2	Recommended	D	2009	15,068	65,304
13	Eastover - Addison Road Metro	P12	Recommended	M	2009	5,632	44,645
14	Little River Turnpike/Duke Street	29KN 29CEGHX	Recommended	V	2009	3,243	40,792
15	East-West Highway (Prince Georges)	F4 F6	Recommended	M	2010	7,847	52,040
16	Greenbelt-Twinbrook	C2 C4	Recommended	M	2010	13,614	99,690
17	Mass Ave/ U St./ Florida Ave./ 8th St./ MLK Ave.	90 92 93	Recommended	D	2010	15,604	106,401
18	Fourteenth Street	52 53 54	Recommended	D	2010	14,061	98,171
19	Colesville Rd./ Columbia Pike - MD US 29	Z2 Z6 Z8 Z9,29 Z11,13	Recommended	M	2011	9,844	97,062
20	Anacostia-Congress Heights	A2-8, A42-48	Recommended	D	2011	11,242	77,530
21	Georgia Ave. (MD)	Y5 Y7 Y8 Y9	Recommended	M	2011	7,625	57,633
22	North Capitol Street	80	Recommended	D	2012	8,515	60,808
23	Rhode Island Avenue	G8	Recommended	D	2012	3,923	34,182
24	Rhode Island Avenue Metro to Laurel	81 82 83 86 87 88 89 89M	Studied	M	2012	5,407	57,509
	Total Priority Corridor Network					220,177	1,668,199

WMATA-INV 004501

FOIA CONFIDENTIAL TREATMENT REQUESTED

Regional Bus Study and Bus Network Evaluation Criteria

Line Performance Evaluation Criteria

- Productivity
  - Passengers per revenue-hour and/or revenue-mile
  - Different thresholds by line class
  - Different thresholds for peak and off-peak periods
- Travel Time and Reliability
  - Schedule adherence - % of trips "on-time" at time points
  - Maintenance of headways for frequent routes
  - Match of scheduled and actual trip time
- Duplication
  - Route overlap where no functional difference
- Crowding
  - Load factor at peak load point
- Frequency Guidelines
- Complaints

WMATA-INV 004502

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Bus Network Evaluation (2006)
Metrobus Fleet Requirements

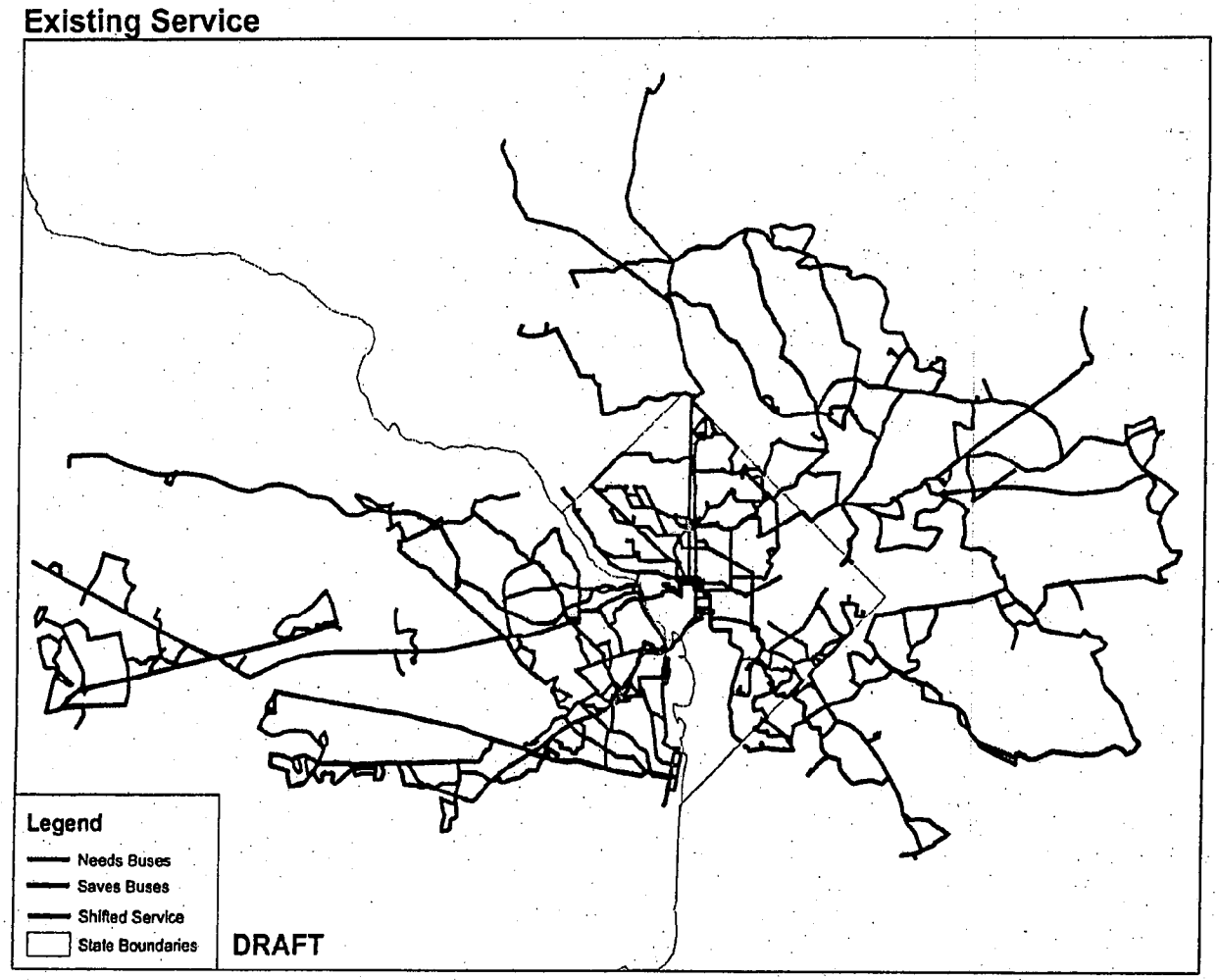
Jurisdiction	Current Bus Assignments	Added Buses (2007 – 2011)	Total Buses (2011)	Added Annual Operating Cost (000)	Added Annual Riders (000)	Buses Shifted to Local Operators
District	663	95	758	$33,365	5,490	0
Virginia	385	53	438	$16,920	7,294	23
Maryland	454	37	491	$13,654	3,340	11
Total	1502	185	1687	$63,939	16,124	34

WMATA-INV 004503

FOIA CONFIDENTIAL TREATMENT REQUESTED

Bus Network Evaluation (2006)
Existing Service Needs, Savings and Costs

- Adds Buses
  - Increase frequency and reduce crowding
  - Address run time and reliability
  - Route extensions for improved connections
- Saves Buses
  - Eliminate unproductive services
  - Eliminate duplication/ inefficiency through restructuring
  - Shift service to local jurisdiction



WMATA-INV 004504

Subsequent Agenda
Planning, Development and Real Estate Committee

FOIA CONFIEDENTIAL TREATMENT REQUESTED

2/29/2008

PLJD Board of Directors Items
April 2008

Committee/ Board	Action/ Information	Ownership			Planning, Development, and Real Estate Committee & Board															
	Type	Title	Office	Owner	PD&RE CMTE & Admin Items Pre-brief for AGM/PLJD	PD&RE Items Materials to AGM OPRS	PD&RE Cmte Pre-brief for AGM OPRS	Draft All Cmte & Admin Items to SECT	GM All Cmte & Admin Items Briefing	Final All Cmte Materials (1 copy) to SECT for Proofing	All Cmte Materials (1 copy) to SECT for GM Proofing	PD&RE Cmte & Board Materials (20 copies) to SECT	GM Board Final Review	PD&RE Cmte & Board Mailout Materials (17 copies) to SECT	SECT Mail-out to PD&RE Cmte & Board	PD&RE Cmte Mtg	Board Meeting	MEAD	Owner
PD&RE	Action	Florida Avenue Developer Selection	SAAM	Roz Doggett	3/11	3/18	3/18	3/20/08 1500	3/24/08 ?	4/1/08 1700	4/3/08 1200	4/10/08 1400	4/14/08 ?	4/18/08 1000	4/18/08 1700	4/24/08 1000	4/24/08 1200	?	Roz Doggett
PD&RE	Information	Bus Priority Corridor Plan	OPAS	Jim Hughes		?	?	3/20/08 1500	3/24/08 ?	4/1/08 1700	4/3/08 1200	4/10/08 1400	4/14/08 ?	4/18/08 1000	4/18/08 1700	4/24/08 1000	4/24/08 1200	?	Jim Hughes

WMATA-INV 004506

BANNEKER VENTURES, LLC

Working Copy

December 14, 2007

BY HAND

To

Joel R. Washington, Director
Station Area Planning and Asset Management
Washington Metropolitan Transit Authority
600 Fifth Street, NW
Washington, DC 20001

RE: Clarification from Response to Shaw – Howard Florida Avenue Joint Development Solicitation

Dear Mr. Washington:

Thank you for your letter dated December 4, 2007 regarding items in our team's response to the Joint Development Solicitation for the above-referenced site. We are extremely excited about the possibility of partnering with the Washington Metropolitan Area Transit Authority ("WMATA") to develop this key site along the Florida Avenue/U Street corridor.

Below, please find our responses to the issues that you raised in your letter. We hope that these answers, along with our presentation on December 17th will demonstrate our capability and commitment to developing these key parcels.

Technical Information

Within the schedule you presented, please indicate the outside, firm date, by which a lease would be executed? March 6, 2009 how long

What, if any, zoning approvals or variances will you be seeking for Parcels 1 or 3? A zoning variance (for parking and loading) would be sought for Parcel 1. A zoning variance (for parking) would be sought for Parcel 2. No variance will be sought for Parcel 3.

700 12th Street, NW • Suite 700 • Washington, D.C. 20005 • (202) 667-4110
814 Thayer Avenue • Suite 300 • Silver Spring, Maryland 20910 • (301) 565-4980
www.bannekerventures.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Please explain your schedule more fully. A detailed schedule is attached which includes time for historic preservation review, zoning review, and building permit approvals.

Please provide an outside date for stabilization. October 29, 2010

Assess the market for rental apartments in the area. According to the most recent (Third Quarter 2007) Delta Associates Mid-Atlantic Market Report, the "Washington metro area remains healthy despite softening conditions. Unemployment remains one of the lowest in the nation [3.3% as of July 2007] and jobs continue to expand at an above-average pace." According to the Report, the effective rent per square foot (as of September 2007) for Class A rental high-rise apartments is $2.86 with the average effective rent at $2,447 per unit, with a 1.2% concession. Stabilized vacancies remain at 1.3% and overall vacancies are at 4.1%. The monthly absorption pace per project for the most recently delivered market-rate projects are at 5 months; our project has 7 months in the schedule which provides some cushion to the market.

Delta reports that "[a]lthough the [apartment] pipeline has grown significantly in response to the recent robust performance of the apartment market and as a result of developers reprogramming condo projects in light of the slowing condominium market." The "District's 36-month pipeline of projects has grown to 6,353 units as of September 2007, a large jump from the previous quarter. Despite this uptick in the pipeline, the District currently retains the healthiest supply-demand balance in the region. The report further states that "[v]acancies are extremely low – up to 1.3% from a paltry 0.8% one year ago – and rent growth is the strongest in the region at 6.5% per annum. Additional development of exceptionally designed and well located projects would appear warranted. Since The Jazz @ Florida Avenue is exceptionally designed (according to the Office of Planning) and is well located (2 blocks from 2 Metro stations), we believe that a proposed rental project at this located is warranted.

Do you have prospective tenants for the Paul Robeson Theatrical Museum or themed restaurant? Yes. We have prospective tenants for the museum as evidenced by the letter of interest on the following pages. Moreover, the Utopia Jazz Restaurant, a national restaurant based in Charlotte, NC and partially owned by NBA and former co-owner of the Washington Wizards Michael Jordan, a letter of interest of which is also attached.

Have you discussed with DDOT the proximity of the Parcel 2 garage entrance to Florida Avenue? We have met with DDOT and OP about the proximity of the garage entrance to Parcel 2 and they prefer that the alley between Parcels 1 and 2 be widened

to allow for the garage entrance to come off the alley. Our proposed design can certainly accommodate their preference.

Economic Information

WMATA expects escalation in the sale or rent amount from today's values if closing is delayed beyond a year. If closing is delayed beyond a year, we will be prepared to pay WMATA a 3% increase in the pre-development rent.

The pro forma rents do not seem to square with the schedule. Attached is a revised schedule that reconciles with the stabilization date of the pro-forma.

WMATA expects and receives participations in capital events and in cash flow. Please provide your proposal. We will be prepared to pay WMATA 10% of the net proceeds upon the sale or revaluation of the project.

Provide evidence of the interest of MacFarlane Parnters in providing equity for this project. Attached please find letters of interests from MacFarlane Partners, D.C. Housing Finance Agency, The Bank of Georgetown, PNC Bank, BB&T Bank and Fidelity & Trust Bank.

Document the creditworthiness of the entire team. Banking references are enclosed as part of the letters of interests.

Please submit balance sheets. Financial statements for each of the developer's will be delivered to the WMATA staff at the presentation on Monday.

Thank you for the opportunity to be considered for your development partner. We look forward to further expounding upon our capabilities during the oral presentation on Monday, December 17th at 10:30 am at your headquarters.

Sincerely,

Omar Karim

Omar A. Karim

Letter of Interests from Prospective Retail Tenants

3030 NEBRASKA AVENUE | PENTHOUSE | SANTA MONICA, CA 90404 | TEL: 310 453 1400 | FAX: 310 453 6760

HIDDEN
BEACH
RECORDINGS

July 15, 2007

Mr. Omar Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, D.C. 20005

Re: The Jazz@ Florida Avenue Project/ The Utopia Jazz Restaurant & Lounge

Omar:

I am writing this letter to express my interest in trying to open a live jazz restaurant as apart of the Jazz@ Florida Avenue Project. Being a co-founder of the music label Hidden Beach Recordings which is home of artists like Jill Scott, Mike Phillips, and Kindred the Family Soul, I could not think of a way better way to come back and thank the Washington, D.C. community for their support for our label and our artists than to put this live music venue in the nation's capitol.

I am currently in the process of opening a similar restaurant in Charlotte, N.C. called Utopia, which is due to open in September 2007 with two partners named Kennedy Howard and Juvenile Ogbuneke. Kennedy and Juvenile are currently owners of a restaurant in Charlotte. N.C. called The Jazz Café, which opened May 29, 2005. The Jazz Café has had shows with national recording artists such as Mike Phillips, D.C. native Marcus Johnson, Marion Meadows, Pieces of a Dream, Ronnie Laws, Walter Beasley, D.C. natives Spur of the Moment, and Hidden Beach Recording artist Jeff Bradshaw just to name a few.

Our interest in being apart of this exciting new venture is great and I would definitely like to continue dialog with you to see if we can make this a reality. Please let me know if you have any questions and I can be reached at 310-489-3122.

Best Regards,

Charles Whitfield
Hidden Beach Recordings
Santa Monica, Ca.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

HANDSHAKE
PRODUCTIONS

To: Omar Karim, Banneker Ventures, LLC
From: Bryant "Preacher" Moss, Handshake Productions
Re: Letter of Interest for Café Space in The "Jazz@ Florida Avenue"

Mr. Omar Karim,

This letter is to inform you of Handshake Production LLC interest in becoming a tenant for the proposed café at The "Jazz& Florida Avenue."

My organizational team has a combined forty years of entertainment, and event management experience. We have experience in cultural programming, diversity programming, and event marketing. Furthermore, our organization has extensive experience in developing branded content, and marketing.

Our goals for the space above mentioned is to develop it as a multi-night establishment with a result defined as being a "community project." We intend on using an integrated model of 1) community artistic need, 2) balanced project management, 3) technology, and 4) a strong marketing plan. We wish to offer several options such as cross-cultural, and cross-community events. As well it is our hope to have comedy, as the anchor program in it's initial start up stages. We believe that we can leverage our entertainment networks to deliver high quality, affordable, "community relevant" programming to the Washington Metropolitan Area.

Our organizational and concept development team are:

Bryant "Preacher" Mr. Moss- Moss is the current CEO of the internationally acclaimed, "Allah Made Me Funny" Comedy Tour. He has produced numerous multi-media projects, and also produced the upcoming feature film, "Allah Made Me Funny-Live in Concert." He has over twenty-three years in various aspects of entertainment, brand development, and project management.

Azhar Usman- Mr. Usman is an equity partner in "Allah Made Me Funny" The Official Muslim Comedy Tour, and a practicing lawyer. He serves as the contract and negotiations lead for new product, and project development. As well, he is the Creative Director for Handshake Productions.

John Xeras- Mr. Xeras has over twenty years in the restaurant and entertainment

business. He has owned and managed two Washington area nightclubs. He is still a managing partner in the IMPROV comedy club, and the Riot Act Comedy club. He also has over twenty years of brand content development, and event management. He is also the CEO of Riot Act Entertainment.

In closing we look forward to hear from regarding this opportunity.

B. "Preacher" Moss, Handshake Productions
240.432.7133

Letter of Interests from Financing Partners

MACFARLANE PARTNERS

December 13, 2007

Mr. Omar Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005

Re: The Jazz @ Florida Avenue RFP

Dear Omar:

MacFarlane Partners is pleased to continue working with you and to join, as your investor/equity partner, the team led by your firm ("Banneker") in submitting a final plan to WMATA to develop The Jazz @ Florida Avenue in response to the WMATA Request for Proposal that was submitted on May 31, 2007. Having looked at other projects with you, we recognize Banneker as a leading minority-owned developer in the Washington, D.C., region, and believe that our financial strength can enhance your team's development capability. We also recognize the strong participation of another leading Washington, D.C., minority-owned developer – District Development Group.

We have reviewed your most recent proposal for the development of The Jazz @ Florida Avenue mixed-use project and believe your development plan to be qualitatively sound and attractive. Based on our discussions and negotiations, MacFarlane Partners will provide Banneker with the required equity for pre-development and development activities, including land acquisition. Based on the current development plan, the team expects the total development costs to be approximately $35 million, which will require approximately $8 million of equity. Our investment will be made on the terms upon which the team has previously agreed. These terms are consistent with structures we have utilized with other local developers in our most recent ventures.

MacFarlane Partners is a minority-owned real estate investment management firm that invests primarily in development and redevelopment projects, such as The Jazz @ Florida Avenue, in urban areas nationwide. The firm's investments to date are helping to develop, redevelop or reposition $19 billion in urban properties, encompassing 20 million square feet of commercial space and 26,000 multifamily housing units in Washington, D.C.; New York City; Los Angeles; Orange County; and the San Francisco Bay Area. We maintain several offices around the country, including one in Washington, D.C.

Having invested in urban, mixed-use development projects – sometimes serving as developers ourselves -- we believe we have the requisite experience and skill to assist you and the rest of the team in developing The Jazz @ Florida Avenue that is successful for both WMATA and District residents. We specialize in complex projects that require creative financing and innovative structuring. We also are accustomed to working with our development partners and local government agencies to form public/private partnerships, as well as resolve the regulatory and environmental issues that urban-infill projects typically encounter.

1155 Connecticut Avenue, NW 3rd Floor Washington, DC 20036 Phone 202.572.0700 Fax 202.572.0699

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Highlighted below are a few of the projects in which we have invested.

- **JBG Urban**, a joint venture with The JBG Companies and Morgan Stanley Real Estate that will develop and redevelop 93 assets on 42 sites located throughout the Washington, D.C., metropolitan area. The assets – which are in various stages of entitlement, planning, development or renovation – range from completed properties slated for renovation or demolition to undeveloped urban-infill sites. A majority of the sites are adjacent to or near existing and proposed transit stations along the area's Metro light-rail system; 25 sites are located in northern Virginia, 13 are in suburban Maryland, and four are within the District of Columbia. When fully developed, the portfolio will total eight million square feet of office space, 1.9 million square feet of retail space; 13,400 multifamily housing units; and 2,500 hotel rooms.

- **The Yards**, a mixed-use redevelopment project planned by Forest City Washington for the 44-acre Southeast Federal Center, which once was an annex to the Washington Navy Yard on the Anacostia River in Washington, D.C. The proposed uses envisioned for the project include 1.8 million square feet of office space, 2,700 residential units, destination and neighborhood serving retail space and a large riverside park. Development began in late 2007.

- **Half Street**, a mixed-use project that is being developed in multiple phases in Southeast Washington, D.C., immediately north of the new ballpark for the Washington Nationals Major League Baseball team. The first phase of the project, which began construction in January 2007, will consist of 260,000 square feet of office space, 328 for-sale condominiums, 50,000 square feet of retail space, and a 200-room boutique hotel in four adjacent buildings occupying the entire city block on the eastern side of Half Street SE, between M Street SE and N Street SE. Future phases will be built on adjacent blocks to the west and north of the first phase and are likely to include a mix of office, retail and multifamily residential space.

- **Solea**, a six-story residential mid-rise building located in the District's Columbia Heights neighborhood that is being developed in partnership with JLC and NCRC. With construction underway, Solea will include 55 for-sale condominiums, seven live/work units and 4,700 square feet of retail space when completed.

- **Bay Street Emeryville**, a mixed-use "urban village" developed on a former industrial site near the eastern approach to the San Francisco-Oakland Bay Bridge in Emeryville, Calif., that included a 365,000-square-foot lifestyle retail center, with 284 rental apartments (20% of which are designated for low-income residents) and 95 town homes on three to six floors above the retail stores. The retail component was completed in 2002 and was named "Best New Retail Development of the Year" in April 2003 by the *San Francisco Business Times*. The residential units were completed in 2006 and garnered a Market-Rate Residential Real Estate Deal of the Year award in March 2007 from the *San Francisco Business Times*.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

- **Wilshire Vermont Station,** a mixed-use "transit village" that was developed atop an existing underground-rail transit station, approximately three miles west of downtown Los Angeles. Completed this past August, the property consists of two connected seven-story buildings with 449 apartment units (20% of which will be designated for low-income residents) and 36,000 square feet of street-level retail space that are configured around a public plaza and entrance to the Wilshire/Vermont Metro Red Line subway station.

- **NoMa West,** three mid-rise residential buildings (five to six stories in height) with approximately 500 rental apartments that will be developed on a four-acre, infill site in the emerging North of Massachusetts Avenue ("NoMa") neighborhood of Washington, D.C. Construction is expected to begin in the fall of 2008.

- **Metropolitan Lofts,** an eight-story apartment community that was completed in the summer of 2006 on a former commercial/industrial site near the Staples Center in downtown Los Angeles. It consists of 264 apartment units (20% of which are designated for low-income residents), 11,000 square feet of ground-floor retail space and an attached parking structure. The property, which is currently 97% leased and 96% occupied, is operated on a long-term ground lease from the City of Los Angeles Redevelopment Agency.

Founded in 1987, MacFarlane Partners has provided investment management services across a broad range of real estate strategies for institutional investors over the past 20 years, including the California Public Employees' Retirement System ("CalPERS"), the Teacher Retirement System of Texas, and the defined-benefit pension plans of AT&T and General Motors Corporation.

As managing member of an urban real estate joint venture with the CalPERS, the nation's largest public pension plan with $255 billion in assets, we have investment discretion over $1.45 billion in equity capital for investment in urban development and redevelopment projects in major cities throughout the U.S. We also manage a private institutional fund targeting urban property markets that was formed in 2006 and has an equity capitalization of $1.01 billion.

Both the CalPERS' venture and the urban investment fund have revolving credit facilities; the CalPERS' venture has a debt facility with Sumitomo Bank that currently totals $600 million, while the private fund has a debt facility with Bank of America that can be as large as 90% of the fund's eligible equity.

MacFarlane Partners strongly supports your proposal and is pleased to continue to be a part of Banneker's team for this innovative and worthwhile project for the citizens of Washington, D.C.

Sincerely,

Bradford H. Dockser
Principal, Investments

FOIA CONFIEDENTIAL TREATMENT REQUESTED

David H. Rosenthal
***Interim* Chief Executive Officer**

Ball Street Ventures, LLC
1000 Wisconsin Avenue, NW
Suite G-100
Washington, D.C. 20007

202.625-2440 direct dial
202.625-2360 facsimile
DRosenthal@ballstreetfund.com

December 14, 2007

Joel R. Washington
Director
Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

RE: **Letter of Interest – The Jazz @ Florida Avenue**

Dear Mr. Washington:

We are pleased to provide this Letter of Interest to the Banneker Ventures, LLC, District Development Group, and Donatelli Development team in response to a Washington Metropolitan Area Transit Authority Request for Proposal to develop three parcels on the 700 and 800 blocks of Florida Avenue, NW, Washington, D.C. We recognize this team as a leading developer in the region and are excited to partner with you to build an exceptionally-designed, transit-oriented, mixed-use housing, and retail community located on these key Florida Avenue/U Street corridor sites.

As you may be aware, Ball Street Fund (Ball Street) was founded by Brian Davis and Christian Laettner and is headquartered in Washington, D.C. Ball Street is a vertically-integrated development and investment company focused on mixed-use developments located in strategically-targeted, urban communities throughout the United States. The success of Ball Street's flagship development in Durham, North Carolina, West Village (http://www.westvillageapts.com/), demonstrates the strength and success of our vision. Our vision is based primarily on creating population and service density within an underserved, urban locale; ensuring the creation of an energetic, vibrant, integrated community benefitting many constituents, and; building a sustainable, flexible development with an eye toward future generation's needs, the development's economic viability, sensitivity to the natural environment, and preservation/conservation of natural resources.

We have reviewed the proposed plans for The Jazz @ Florida Avenue, and believe it to be both financially feasible and the best use for this location. As such, we are energized about the possibility of working with the Banneker/District Development/Donatelli Development team should this group be selected as WMATA's development partner on this site.

Although we have not finalized a term sheet, based on our preliminary review and discussions, Ball Street would provide Banneker, District Development and Donatelli Development with 100% of the equity requirements necessary to complete the development, or approximately $8.0MM, based on the current budget and financial projections.

Ball Street is extremely energized about this letter of interest and is pleased to be part of this very capable team. We look forward to building a healthy, prosperous and multi-faceted relationship by partnering on this particular opportunity.

Very truly yours,

David H. Rosenthal

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BANK OF GEORGETOWN

CORPORATE OFFICES
1054 31st Street, NW
Suite 18
Washington, DC 20007
Phone 202.355.1200
Fax 202.355.1201
bankofgeorgetown.com

GEORGETOWN
1001 Wisconsin Ave., NW
Washington, DC 20007

FRIENDSHIP HEIGHTS
5236 44th Street, NW
Washington, DC 20015

ARLINGTON/COURTHOUSE
2300 Wilson Blvd.
Arlington, VA 22201

CONNECTICUT AVENUE
1101 Connecticut Ave., NW
Washington, DC 20036

has financed Donatelli Line of Credit $3M for construction

December 13, 2007

participating lender

Mr. Joel R. Washington
Director Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

Subject: Letter of Interest – The Jazz @ Florida Avenue

Dear Mr. Washington:

good deposit relationship followed him from Industrial Bank

low 6 figure average

We are pleased to provide this letter of interest to the Banneker Ventures, District Development Group and Donatelli Development-led team in response to a Washington Metropolitan Area Transit Authority Joint Development Solicitation to develop three parcels on the 700 and 800 blocks of Florida Avenue, NW, Washington, DC. We recognize this team as a leading developer in the region and are excited about the possibility of partnering with you to build an incredibly designed, transit oriented mixed-use housing and retail project on these key Florida Avenue/U Street corridor sites.

Jeff wants to finance

We have worked with both Omar A. Karim and Chris Donatelli and the two firms of which they are the principals of and we are pleased to have the opportunity to work with them on The Jazz.

We have reviewed the proposed plans for the project and look forward to working with this team., should it be selected, to develop this key parcel along the Florida Avenue/U Street corridor.

As you may know, The Bank of Georgetown is a District of Columbia Chartered Bank with four branch locations.

The Bank of Georgetown is very pleased to provide this letter of reference and interest for the Banneker, District Development, and Donatelli led project.

Sincerely,

Jeffrey A. Banks

Jeffrey A. Banks
Managing Director, Business Development
The Bank of Georgetown

in-house lending limit = $4.2
sweet spot = $3M

Has Partic. with Washington 1st Eagle Industrial Columbia

they are part of a Collective Banking group
group – BOA is a lender/partner
group of over 200 churches

Headed Bristry & Poets

District of Columbia Housing Finance Agency
815 Florida Avenue, NW Washington, DC 20001-3017

December 13, 2007

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005

Re: Letter of Interest as part of WMATA Joint Development Solicitation
Development of three parcels on Florida Avenue, NW
Tax Exempt Bond and Low Income Housing Tax Credit Financing

Dear Mr. Karim:

The District of Columbia Housing Finance Agency ("DCHFA" or the "Agency") has reviewed your response to the Washington Metropolitan Transit Authority Joint Development Solicitation (the "Proposal Response") to redevelop the above referenced parcels (the "Project") in the Shaw neighborhood of Washington, DC (the "District").

The Agency has a strong interest in participating in the financing of the redevelopment of over 18,000 square feet of currently vacant parcels. Your proposal to develop the site into a quality mixed-use residential and retail development (aptly called The Jazz @ Florida Avenue) is consistent with the Agency's strategic objective of encouraging the development of affordable housing in vibrant mixed income and mixed-use developments. Moreover, with the proximity of the Project located directly across the street from the Agency, we are enthusiastic to partner with you to develop this site.

According to the Proposal Response, which appears to be consistent with the requirements of your Joint Development Solicitation, your proposal is as follows:

- Redevelop the site, in a mixed-use platform, into 103 high quality units of mixed-income rental housing which will be built over 11,700 square feet of ground floor retail space.

- Make 20% of the units affordable to individuals or families who earn up to 50% of the area median income (AMI).

- Partner with District Development Group and Donatelli Development, both respected developers in the redevelopment of the site.

- Include neighborhood serving retail uses including cultural and arts space.

Phone: 202-777-1600 **Fax:** 202-986-6705 **www.dchfa.org**

FOIA CONFIEDENTIAL TREATMENT REQUESTED

- Finance the $36 million development with an allocation of tax exempt bonds, equity from the sale of 4% low income housing tax credits (LIHTCs), institutional equity and possibly secondary permanent financing from the District of Columbia Department of Housing and Community Development (DHCD).

Although this letter does not represent a financing commitment from DCHFA, it does represent the Agency's strong interest in financing the subject project. Based on our current and projected bond volume cap for multifamily housing, DCHFA will be able to allocate tax exempt and/or taxable bonds and 4% LIHTCs to the Project. The final allocation of bond volume cap and low income housing tax credits will depend on the final build out, tenant mix and the resultant eligible basis of the Project.

We eagerly await your submission of a formal application for financing and are looking forward to working with you to bring this much needed and exciting project to fruition.

Sincerely,

Anthony L. Waddell
Director, Public Finance

cc: Mr. Harry D. Sewell
Mr. Cedric M. Brown
General Counsel's Office
LOI File

FOIA CONFIEDENTIAL TREATMENT REQUESTED

835 4460
202 ~~434~~ ~~4536~~

PNC
REAL ESTATE FINANCE

a) no business ~~Nothing~~ with any of the group in recent past

b) prelim. meeting - familiar w/ apts + area

c) Whoever wins - rental apts = home run in this neighb

d) need to assess ability + financial strength once ~~the~~ a decision is made

December 13, 2007

Mr. Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700]
Washington, DC 20005

Re: The Jazz @ Florida Avenue

Dear Omar,

We understand that your development team, including Banneker Ventures, District Development Group and Donatelli Development Inc. are responding to a Request for Proposals for the development of three parcels of land located on Florida Avenue, between 7th and 9th Streets, NW. I have reviewed the preliminary information provided on the proposed development, The Jazz @ Florida Avenue, which will be developed to include 103 rental apartments and 13,000 SF of retail space.

PNC Bank believes that the development of this project will be a boost to the redevelopment of the U Street Corridor and we look forward to working with you to try to provide construction financing on this exciting project.

PNC Bank typically provides construction loans up to 80% loan to cost, subject to a maximum 75% LTV based on the appraised value and a minimum 1.30X DSC based on the projected stabilized operations. Construction loan rates will typically be in the range of 1.75% - 2.75% above LIBOR.

This letter is not a commitment or an offer to lend and does not create any obligation on the part of PNC. PNC will not be deemed to extend any commitment unless and until the transaction is approved by PNC and a formal Commitment Letter is issued.

Should your team be the successful bidder, PNC looks forward to further discussing the financing of this project.

Sincerely,

Casey Brill
Vice President

Member of The PNC Financial Services Group
1601 K Street NW Washington DC 20006

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004523

HSBC

December 12, 2007

called back
several weeks later
3rd week of Jan
wants to be
involved
Knows both
teams

Omar Karim
Danneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005

RE: Financing Interest Letter in connection with The Jazz @ Florida Avenue

To Whom It May Concern in the Washington DC District Government:

HSBC Real Estate Finance has followed with great interest the proposals surrounding the sites located on Florida Avenue on 7th and 8th streets. HSBC has both the ability to deliver the required financing and a strong interest in providing the financing required to bring this highly visible project to fruition. We have a high regard for the development team that has been put in place to execute on The Jazz @ Florida Avenue and would go so far as to indicate to you that under the proper circumstances it is a project that we would consider financing without financial recourse, with the understanding that the completion guaranty and other factors would have to be in place for our bank to proceed on that basis.

Although this is not a commitment to lend on the proposed project, which commitment would require the necessary internal approvals at HSBC, we look forward to continuing to work on the financing mandate.

Should any of you have questions relative to either HSBC or its interest in financing this project, please do not hesitate to call me at 202 496-8752.

Sincerely:

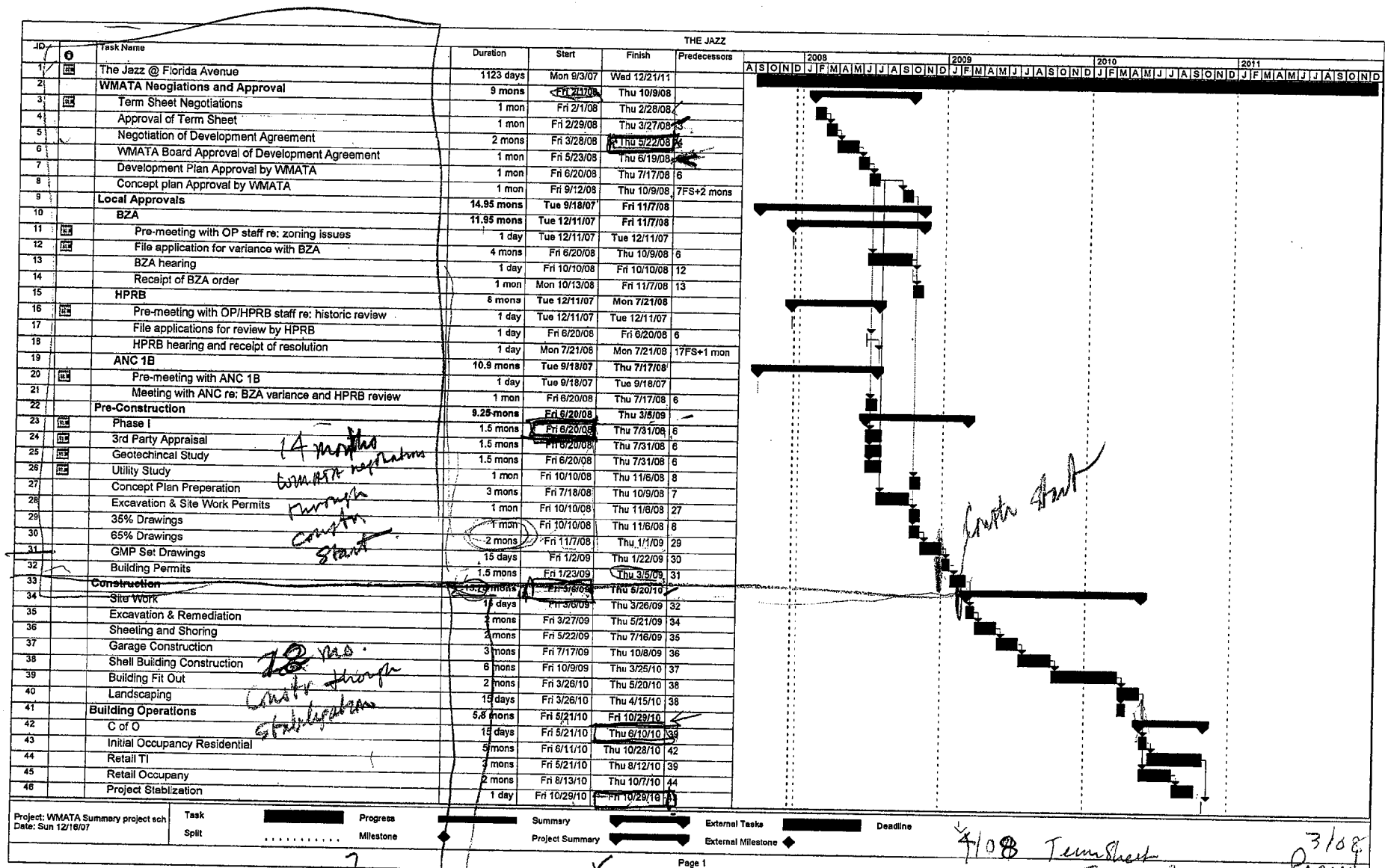
Antonio F. Marquez
Senior Vice President
DC Real Estate Finance

HSBC Bank USA, National Association
Real Estate Finance, 1130 Connecticut Avenue, NW, Suite 1201, Washington, DC 20036

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Updated Project Schedule

FOIA CONFIDENTIAL TREATMENT REQUESTED



ID	Task Name	Duration	Start	Finish	Predecessors
1	The Jazz @ Florida Avenue	1123 days	Mon 9/3/07	Wed 12/21/11	
2	WMATA Negotiations and Approval	9 mons	Fri 2/1/08	Thu 10/9/08	
3	Term Sheet Negotiations	1 mon	Fri 2/1/08	Thu 2/28/08	
4	Approval of Term Sheet	1 mon	Fri 2/29/08	Thu 3/27/08	3
5	Negotiation of Development Agreement	2 mons	Fri 3/28/08	Thu 5/22/08	4
6	WMATA Board Approval of Development Agreement	1 mon	Fri 5/23/08	Thu 6/19/08	5
7	Development Plan Approval by WMATA	1 mon	Fri 6/20/08	Thu 7/17/08	6
8	Concept plan Approval by WMATA	1 mon	Fri 9/12/08	Thu 10/9/08	7FS+2 mons
9	Local Approvals	14.95 mons	Tue 9/18/07	Fri 11/7/08	
10	BZA	11.95 mons	Tue 12/11/07	Fri 11/7/08	
11	Pre-meeting with OP staff re: zoning issues	1 day	Tue 12/11/07	Tue 12/11/07	
12	File application for variance with BZA	4 mons	Fri 6/20/08	Thu 10/9/08	6
13	BZA hearing	1 day	Fri 10/10/08	Fri 10/10/08	12
14	Receipt of BZA order	1 mon	Mon 10/13/08	Fri 11/7/08	13
15	HPRB	8 mons	Tue 12/11/07	Mon 7/21/08	
16	Pre-meeting with OP/HPRB staff re: historic review	1 day	Tue 12/11/07	Tue 12/11/07	
17	File applications for review by HPRB	1 day	Fri 6/20/08	Fri 6/20/08	6
18	HPRB hearing and receipt of resolution	1 day	Mon 7/21/08	Mon 7/21/08	17FS+1 mon
19	ANC 1B	10.9 mons	Tue 9/18/07	Thu 7/17/08	
20	Pre-meeting with ANC 1B	1 day	Tue 9/18/07	Tue 9/18/07	
21	Meeting with ANC re: BZA variance and HPRB review	1 mon	Fri 6/20/08	Thu 7/17/08	6
22	Pre-Construction	9.25 mons	Fri 6/20/08	Thu 3/5/09	
23	Phase I	1.5 mons	Fri 6/20/08	Thu 7/31/08	6
24	3rd Party Appraisal	1.5 mons	Fri 6/20/08	Thu 7/31/08	6
25	Geotechincal Study	1.5 mons	Fri 6/20/08	Thu 7/31/08	6
26	Utility Study	1 mon	Fri 10/10/08	Thu 11/6/08	8
27	Concept Plan Preperation	3 mons	Fri 7/18/08	Thu 10/9/08	7
28	Excavation & Site Work Permits	1 mon	Fri 10/10/08	Thu 11/6/08	27
29	35% Drawings	1 mon	Fri 10/10/08	Thu 11/6/08	8
30	65% Drawings	2 mons	Fri 11/7/08	Thu 1/1/09	29
31	GMP Set Drawings	15 days	Fri 1/2/09	Thu 1/22/09	30
32	Building Permits	1.5 mons	Fri 1/23/09	Thu 3/5/09	31
33	Construction	13.13 mons	Fri 3/6/09	Thu 5/20/10	
34	Site Work	15 days	Fri 3/6/09	Thu 3/26/09	32
35	Excavation & Remediation	2 mons	Fri 3/27/09	Thu 5/21/09	34
36	Sheeting and Shoring	2 mons	Fri 5/22/09	Thu 7/16/09	35
37	Garage Construction	3 mons	Fri 7/17/09	Thu 10/8/09	36
38	Shell Building Construction	6 mons	Fri 10/9/09	Thu 3/25/10	37
39	Building Fit Out	2 mons	Fri 3/26/10	Thu 5/20/10	38
40	Landscaping	15 days	Fri 3/26/10	Thu 4/15/10	38
41	Building Operations	5.8 mons	Fri 5/21/10	Fri 10/29/10	
42	C of O	15 days	Fri 5/21/10	Thu 6/10/10	39
43	Initial Occupancy Residential	5 mons	Fri 6/11/10	Thu 10/28/10	42
44	Retail TI	3 mons	Fri 5/21/10	Thu 8/12/10	39
45	Retail Occupany	2 mons	Fri 8/13/10	Thu 10/7/10	44
46	Project Stablization	1 day	Fri 10/29/10	Fri 10/29/10	45

14 months negotiations WMATA through construction start.

18 mo. Constr through stabilization

Constr start 3/6/09 — 10/29/10 Stabilization — 18 months.

4/08 Term Sheet — 3/08 Term Sheet — 9/08 — 9 months

6/08 Agreement

3/09 Bldg Permits

6/10 Initial Occ.

10/10 Stabilization

WMATA-INV 004526

Updated Project Pro Forma

FOIA CONFIEDENTIAL TREATMENT REQUESTED

THE JAZZ

ID	Task Name	Duration	Start	Finish	Predecessors
1	The Jazz @ Florida Avenue	1123 days	Mon 9/3/07	Wed 12/21/11	
2	**WMATA Negiations and Approval**	9 mons	Fri 2/1/08	Thu 10/9/08	
3	Term Sheet Negotiations	1 mon	Fri 2/1/08	Thu 2/28/08	
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10	**BZA**	11.95 mons	Tue 12/11/07	Fri 11/7/08	
11	Pre-meeting with OP staff re: zoning issues	1 day	Tue 12/11/07	Tue 12/11/07	
12	File application for variance with BZA	4 mons	Fri 6/20/08	Thu 10/9/08	6
13	BZA hearing	1 day	Fri 10/10/08	Fri 10/10/08	12
14	Receipt of BZA order	1 mon	Mon 10/13/08	Fri 11/7/08	13
15	**HPRB**	8 mons	Tue 12/11/07	Mon 7/21/08	
16	Pre-meeting with OP/HPRB staff re: historic review	1 day	Tue 12/11/07	Tue 12/11/07	
17	File applications for review by HPRB	1 day	Fri 6/20/08	Fri 6/20/08	6
18	HPRB hearing and receipt of resolution	1 day	Mon 7/21/08	Mon 7/21/08	17FS+1 mon
19	**ANC 1B**	10.9 mons	Tue 9/18/07	Thu 7/17/08	
20	Pre-meeting with ANC 1B	1 day	Tue 9/18/07	Tue 9/18/07	
21	Meeting with ANC re: BZA variance and HPRB review	1 mon	Fri 6/20/08	Thu 7/17/08	6
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31	GMP Set Drawings	15 days	Fri 1/2/09	Thu 1/22/09	30
32	Building Permits	1.5 mons	Fri 1/23/09	Thu 3/5/09	31
33	**Lease execution with WMATA**	1 day	Fri 3/6/09	Fri 3/6/09	32
34	**Construction**	15.75 mons	Mon 3/9/09	Fri 5/21/10	
35	Site Work	15 days	Mon 3/9/09	Fri 3/27/09	33
36	Excavation & Remediation	2 mons	Mon 3/30/09	Fri 5/22/09	35
37	Sheeting and Shoring	2 mons	Mon 5/25/09	Fri 7/17/09	36
38	Garage Construction	3 mons	Mon 7/20/09	Fri 10/9/09	37
39	Shell Building Construction	6 mons	Mon 10/12/09	Fri 3/26/10	38
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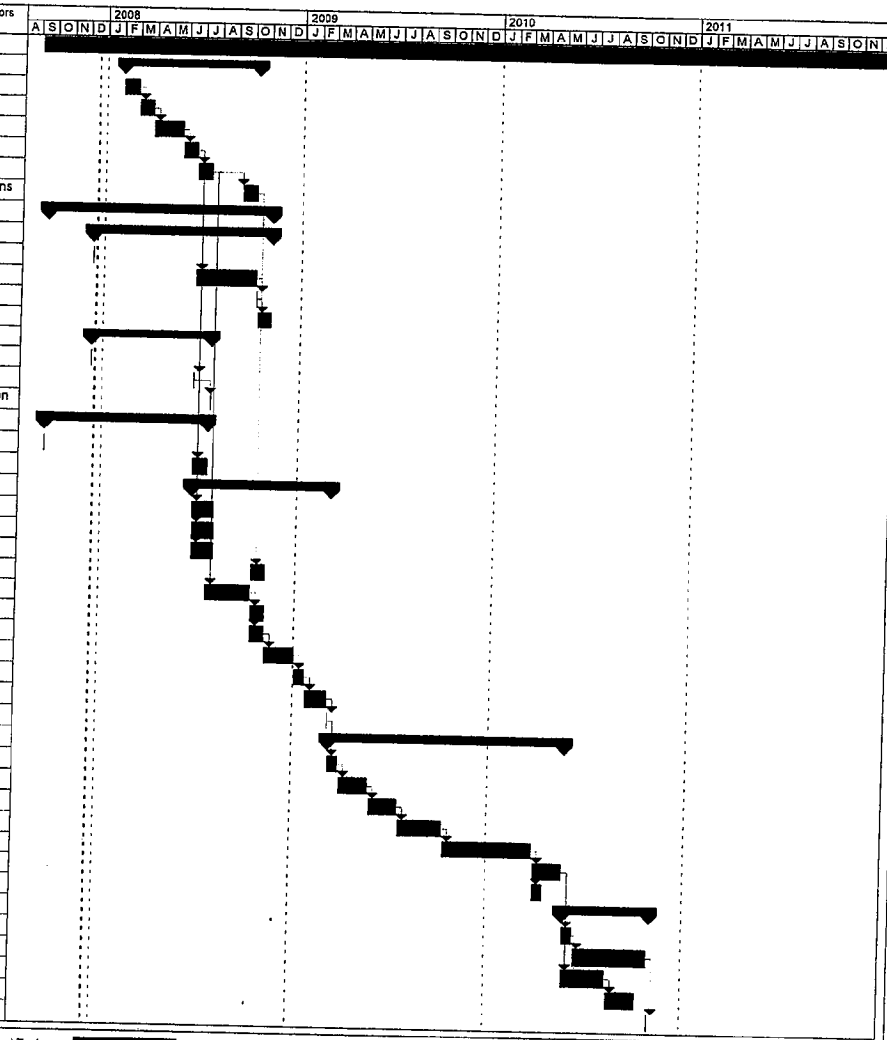
43	C of O	15 days	Mon 5/24/10	Fri 6/11/10	40
44	Initial Occupancy Residential/Stabilization	5 mons	Mon 6/14/10	Fri 10/29/10	43
45	Retail TI	3 mons	Mon 5/24/10	Fri 8/13/10	40
46	Retail Occupany/Stabilization	2 mons	Mon 8/16/10	Fri 10/8/10	45
47	Project Stablization	1 day	Mon 11/1/10	Mon 11/1/10	44



Project: WMATA Summary project sch
Date: Mon 12/17/07

Task | Split | Progress | Milestone | Summary | Project Summary | External Tasks | External Milestone | Deadline

Page 1

WMATA-INV 004528

Financial Statements

BANNEKER VENTURES, LLC

FINANCIAL STATEMENTS

AS OF NOVEMBER 30, 2007

BANNEKER VENTURES, LLC
FINANCIAL STATEMENTS
AS OF NOVEMBER 30, 2007

TABLE OF CONTENTS

FINANCIAL STATEMENTS:	Page
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INCOME STATEMENT	2
STATEMENT OF CASHFLOWS	3

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BANNEKER VENTURES,LLC
BALANCE SHEET
AS OF NOVEMBER 30, 2007

ASSETS	
CURRENT ASSETS	
Cash	$ 24,437
Due from Affiliates	17,001
Loan to Other	2,000
Total Current Assets	43,438
PROPERTY AND EQUIPMENT	
Total Property and Equipment	37,646
Accumulated Depreciation	(2,000)
Property and Equipment, net	35,646
OTHER ASSETS	
Investments in 814 Thayer, LLC	351,000
Total Other Assets	351,000
TOTAL ASSETS	430,084
LIABILITIES AND MEMBERS' EQUITY	
MEMBERS' EQUITY	
Members' Equity	430,084
Total Members' Equity	430,084
TOTAL LIABILITIES AND MEMBERS' EQUITY	$ 430,084

BANNEKER VENTURES, LLC
STATEMENT OF INCOME
AS OF NOVEMBER 30, 2007

REVENUE	
Fees - 814 Thayer	$ 173,440
Fees - Park Morton	252,386
Fees - Walker Jones	30,322
Other Revenue	8,019
Interest	37
Total Revenue	464,204
EXPENSES	
Salaries, wages & related taxes	$ 188,855
Automobile	3,279
Bank Service	1,029
Contributions	7,925
Dues and Subscriptions	1,997
Licenses and Permits	260
Miscellaneous	6,648
Postage and Delivery	416
Printing and Reproduction	347
Legal Fees	1,807
Consulting	147,311
Architect Fees	86,303
Meals and Entertainment	2,187
Office, General and Administrative	8,250
Repairs	5,394
Telephone	3,776
Travel	7,856
Utilities	2,621
Total Expenses	476,261
NET INCOME (LOSS)	(12,057)
Accumulated deficit, at January 1	(15,147)
Accumulated deficit, at November 30	$ (27,204)

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BANNEKER VENTURES, LLC
STATEMENT OF CASH FLOWS
AS OF NOVEMBER 30, 2007

CASHFLOWS FROM OPERATING ACTIVITIES:	
NET INCOME/(LOSS)	$ (12,057)
Adjustments To Reconcile Net Income/(Loss) To Net Cash From Operations:	
Loan to Other	(2,000)
NET CASH FROM OPERATING ACTIVITIES	(14,057)
CASHFLOWS FROM INVESTING ACTIVITIES:	
Purchase of Property, Plant, & Equipment	(5,276)
CASHFLOWS FROM FINANCING ACTIVITIES:	
Distributions to members'	(63,750)
Contributions by members'	96,000
NET CASH FROM FINANCING ACTIVITIES	32,250
Net (Decrease) Increase in Cash	12,917
Cash Balance at January 1, 2007	11,520
Cash Balance at November 30, 2007	$ 24,437

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BANNEKER VENTURES, LLC
STATEMENT OF MEMBERS' EQUITY
AS OF NOVEMBER 30, 2007

BEGINNING MEMBERS EQUITY	$ 174,488	$ 235,403	$ 409,891
	Omar A. Karim	*Warren C. Williams*	Total
Share of Net Income	(6,029)	(6,028)	(12,057)
Contribution	96,000	-	96,000
Withdrawals	-	(63,750)	(63,750)
ENDING MEMBERS' EQUITY (DEFICIT)	$ 264,460	$ 165,625	$ 430,084

Updated Project Pro Forma

Omar A. Karim

Principal

Mr. Karim co-leads the daily operations and manages all Banneker projects. As founding principal, he guides the firm through the implementation of its 10-year $1 billion development plan.

With more than 10 years of experience providing real estate, legal and financial guidance to a variety of organizations, Mr. Karim brings a depth of knowledge to the firm.

Prior to co-founding Banneker, Mr. Karim served as Project Manager and General Counsel with Bundy Development Corporation where he oversaw $25 million in infill residential development projects in the urban core of Washington, D.C. He also served as the firm's representative on two of the largest on-going mixed-use development projects in Washington, D.C., collectively valued at over $1.1 billion.

Prior to joining BDC, Mr. Karim served as a corporate attorney with Kramer Levin Naftalis & Frankel LLP, a 300-attorney law firm, where he counseled public and private investment companies on a range of legal and regulatory matters.

Prior to joining Kramer Levin, Mr. Karim worked with the District of Columbia's Office of The Corporation Counsel where he focused on real property tax appeals issues as well as revenue bond issues related to financing of projects for the University of the District of Columbia.

Mr. Karim is active with several organizations, including the Urban Land Institute, International Conference of Shopping Centers, American Planning Association, National Development Council, and African American Real Estate Professionals of Washington, D.C. Most recently, Mr. Karim served on the Transition Teams for District of Columbia Mayor Adrian M. Fenty and Montgomery County Executive Isiah Leggett. He currently serves on the Board of Directors of the Washington Area Community Investment Fund, a community development financial institution which provides loans to local businesses to develop and preserve affordable housing. He is a former member of the Board of Trustees of Howard University, serving alongside such notables as Richard D. Parsons, Colin L. Powell, Frank Savage, Jack F. Kemp, and Earl G. Graves, Sr.

Mr. Karim received J.D. and B.S. in Mechanical Engineering degrees from Howard University.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Harold L. Collins

Principal

Mr. Collins co-leads the development activity and daily operations of the firm. He is also responsible for the financial affairs of the company.

He has over 20 years of experience in the real estate industry, 16 of which were spent with Fannie Mae in various management positions. Most recently, Mr. Collins was an Acquisitions Manager with Fannie Mae's equity real estate arm, the American Communities Fund (ACF). While at the ACF, he was responsible for the successful placement of over $100 million in equity financing in residential (for sale and rental) and retail projects throughout the United States. His responsibilities included site selection, negotiation of legal and financing documents, development of project economics and overall development management. Each of the projects that Mr. Collins financed exceeded return expectations and were completed within budget.

Prior to his position with ACF, Mr. Collins held various positions at Fannie Mae including Mortgage-Backed Securities, Corporate Finance and Marketing.

Mr. Collins has also worked as an Electrical Engineer designing and managing the installation of electrical systems for industrial and office applications. His responsibilities included cost estimating, managing installation crews and overall project management.

He is currently a member of the Board of Directors of Evergreen School, an independent school dedicated to the Montessori philosophy of teaching.

Mr. Collins holds a MBA in Finance from the University of Chicago and a B.S. in Electrical Engineering from Carnegie Mellon University.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Warren C. Williams, Jr

Principal

Mr. Williams oversees all land acquisitions for the firm while helping to guide the firm through the implementation of its $1 billion development goal. A native of Washington, DC, Mr. Williams grew up working in several local family-owned and operated businesses which allows him to leverage this experience for Banneker.

Prior to joining Banneker as a Principal, Mr. Williams was responsible for helping Washington, DC transform its neighborhoods through the development of two of the most recognized residential projects in the heart of the urban core of Washington: The Warrenton West, a 24,000 square foot upscale residential condominium project in the 16th Street Heights neighborhood, and The Warrenton, a 12,000 square foot market rate residential condominium project in the Brookland neighborhood. Each of these projects have been recognized by the Washington real estate community as "jewels" of their neighborhoods, literally transforming perceptions and exceeding expectations.

Mr. Williams received a Bachelor's degree from Drexel University. After a brief stint with Wilmer Cutler & Pickering LLP, he began his real estate career as a property manager with his family-owned firm, Williams Management. His experience managing his family's portfolio of properties, led him to leverage this portfolio and turn them into "jewels" within the urban core of Washington. During this period, Mr. Williams was able to create numerous strategic partnerships with financial, architectural, and construction institutions which have been invaluable to the success of the firms that he has been involved with, most recently Banneker.

Mr. Williams is a member of the District of Columbia Building Industry Association, Urban Land Institute and African American Real Estate Professionals of Washington, DC.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BANNEKER VENTURES, LLC

January 30, 2008

BY HAND

Rosalyn Doggett
Washington Metropolitan Transit Authority
600 Fifth Street, NW
Washington, DC 20001

RE: Shaw – Howard Florida Avenue Joint Development Solicitation

Dear Ms. Doggett:

As we discussed, attached please find the site plan board that we discussed with you and your team during the interview last month. Moreover, during this interview, you all asked when would WMATA receive its share of cash flow or profit from the project. As a development partner, WMATA would receive its share along with the other developers after a reasonable preferred return is paid to the equity investors (principally MacFarlane Partners). As we begin negotiating a term sheet with WMATA, we will know the exact return that will be. However, based on our negotiations to date with MacFarlane, it looks like the return would be 12%; I personally spoke with Victor MacFarlane, principal owner of MacFarlane Partners yesterday and he is very excited about the possibility of working with WMATA and the rest of the development team to build a breathtaking asset on these key parcels. Following payment of the preferred return, the development partners (including WMATA) would begin sharing in the share of cash flow and/or profit. We believe that with the guaranteed annual lease payment, coupled with this share in cash flow and/or profit, WMATA would best benefit from a partnership with our team.

Additionally, we expect to receive a letter from Howard University whereby we would enter into a MOU to be the developer of the CVS site adjacent to the WMATA-owned Shaw-Howard/Florida Avenue site. We expect the letter from Howard to come any moment; as soon as we receive it, we will have it couriered to you. We wanted to immediately inform you of this development as it may impact your consideration in making a final selection of an offeror that best suits your site. Please find an enclosed letter from Metropolis regarding their coming on as our development partner for the project. Also, please find three copies of updated site plans prepared by Torti Gallas. One of the scenarios shows the project being developed separately (CVS/Howard site and WMATA sites); the second scenario shows the project being developed together.

700 12th Street, NW • Suite 700 • Washington, D.C. 20005 • (202) 667-4110
814 Thayer Avenue • Suite 300 • Silver Spring, Maryland 20910 • (301) 565-4980
www.bannekerventures.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED

The adjacent parcel owned by Howard and currently improved by a CVS, represents an important opportunity for WMATA to maximize density at this key intersection, and increasing WMATA ridership because of the proposed use on the site (a 140 room hotel), all while working with one development team to ensure the best project for these key parcels. Please also find attached 3 copies of the updated program incorporating the Howard-owned site. We would be happy to meet with you and your staff to discuss our plans for this site in more detail, the opportunities it presents for the WMATA-owned Shaw-Howard/Florida Avenue site, and to answer any remaining questions you may have about our proposal.

Thank you for your time and continued consideration. Please call me at (202) 667-4110 (office) or (301) 523-1810 (cell) with any questions.

Sincerely,

Omar A. Karim

Attachments

Washington Metropolitan Area Transit Authority
Office of Property Development and Management

Meeting: FLORIDA AVE. Banneker Presentation

Date: 12/17/07 1pm

	Name	Office/Organization	Office Phone Email Address
1.	Omar Karim Phinis Jones	DDG	PhinisJones@Comcast.Net
2.	Joshua Kern	DDG	joshuakern@districtdevelopmentgroup.com
3.	Sherief Elfar	Torti Gallas ARCH	301 588 4800 selfar@Tortigallas.com
4.	Stephanie ~~Elfar~~ Farrel	TORTI Gallas	301 588 4800
5.	Sharon Haung	TORTI Gallas	301 588 4800
6.	Brian O'Looney	TORTI Gallas	301 588 4800
7.	Chip Glasgow	Holland & Knight	202-419-2460 norman.glasgowjr@hklaw.com
8.	Zuhawah Zuhairah Scott	MacFarlane Partners	202-512-0697 ZScott@macfarlanepartners.com
9.	BRIAN O'LOONEY	TORTI GALLAS & PART.	301-588-4800 boolooney@tortigallas.com
10.	Joel R. Washington	WMATA/SAAM	202-962-9600 jrwashington@WMATA.com
11.	Tim Clinton	Ball Street Fund	(202) 625-2470 tclinton@ballstreetfund.com
12.	Brian Davis	Ball Street Fund	(202) 625-2255 bdavis@ballstreetfund.com
13.	Roger Roman	Banneker Ventures, LLC	202-667-4110 roger@bannekerventures.com
14.	Roslyn Doggett	WMATA/SAAM	202 962 2208 rdoggett@wmata.com
15.	Tariq Bushney	WMATA/JDAC	(202)962-2043 tbushney@WMATA.com

T:\Harrison\LAND meeting sign-in.wpd

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority
Office of Property Development and Management

Meeting: Florida Ave Brownfield Presentation

Date: 12/7/07

Name	Office/Organization	Office Phone Email Address
1. John Magarelli	WMATA/BAM	202-962-1357 jmagarelli@wmata.com
2. MARC BIONDI	WMATA/COUN	202 962 1011 MEBIONDI@WMATA.COM
3. Eric Smart	Bolan Smart Associates	202 776-7740 eric.smart@bolansmart.com
4. DERRICK WOODY	OFFICE OF DM NEIL O. ALBERT	2/727.2981 derrick.woody@dc.gov
5.		
6.		
7.		
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15.		

T:\Harrison\LAND meeting sign-in.wpd

URBAN PROPERTIES

Urban Properties

Urban properties in which MacFarlane Partners invests include neighborhood-serving retail and affordable housing in inner cities, luxury residential and mixed-use high rises in upscale infill locations, transit-oriented developments along commuter corridors, and master-planned communities that promote "smart-growth" development in the suburbs.

Representative urban investments:

15 CENTRAL PARK WEST | New York City

1100 WILSHIRE | Los Angeles

BAY STREET EMERYVILLE | Emeryville, California

LADERA CENTER | Los Angeles

LAKE @ WALNUT | Pasadena, California

MERIDIAN LUXURY APARTMENTS | San Bruno, California

METROPOLITAN LOFTS | Los Angeles

TIME WARNER CENTER | New York City

TRIBECA GREEN | New York City

UPTOWN PHASE I | Oakland

WILSHIRE VERMONT STATION | Los Angeles

To successfully execute its urban investment strategy and ensure that the properties in which it invests achieve their investment objectives, MacFarlane Partners:

- **Targets** markets with high population densities, supply constraints, steady property demand and strong investor interest;
- **Sources** investments through strategic partnerships with leading developers or by developing properties itself;
- **Negotiates** public/private partnerships with local governments to improve project feasibility; and
- **Maintains** a positive spread between project cost and property values once they are built and stabilized.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004544

ABOUT US

About Us

For the past 20 years, MacFarlane Partners has provided investment management services for institutional investors across a broad range of real estate investment strategies, helping them achieve returns that have exceeded all relevant performance benchmarks.

Founded in 1987, the firm has successfully developed, acquired, renovated, managed and sold real estate assets through multiple real estate cycles on behalf of some of the largest pension plans and institutions in the United States.

Recognized as a pioneer of the urban investment concept among institutional real estate managers, MacFarlane Partners has invested for the past 12 years in real estate development, redevelopment and repositioning projects in urban and high-density suburban areas.

A preferred capital provider for urban real estate projects in markets nationwide, the firm is well-versed in the complexities of the urban marketplace and has a proven ability to identify emerging opportunities, execute on complex transactions, and shepherd real estate projects through to stabilization and disposition. It forms joint ventures with leading urban real estate developers as well as develops properties directly.

MacFarlane Partners' Urban Investments
Urban Real Estate Investment Criteria

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004545

IN THE NEWS

In the News

6 Dec 07	MacFarlane Partners Closes Urban Real Estate Fund II; New Commingled Fund Has Fully Committed $1.0 Billion Raised for Investment
20 Aug 07	MacFarlane Partners & The JBG Companies Form Landmark Venture to Develop $10 Billion of Properties in Washington, D.C., Metropolitan Area
6 Jun 07	Lynch/NCRC/MacFarlane Venture Breaks Ground on Solea, D.C.'s First Professional Live/Work Condominium Project
1 Jun 07	L.A. LIVE Welcomes New Cornerstone of Emerging Vibrant Downtown District; Major Financial Investor in Hotel Also Announced
8 May 07	SNK Realty and MacFarlane Partners Form Joint Venture to Develop Phase III of The Crossing|San Bruno
7 May 07	MacFarlane Partners and Monument Realty Form Venture to Develop Half Street Mixed-Use Project in Washington, D.C., Ballpark District
25 Apr 07	Lynch/NCRC/ MacFarlane Venture Closes on Solea, D.C.'s First Professional Live/Work Condominium Project at the Gateway to Columbia Heights
18 Dec 06	Greg Vilkin to Join MacFarlane Partners as Managing Principal and President; President of Forest City Residential West and Forest City Stapleton to Lead MacFarlane Partners' Urban and Housing Businesses
31 Oct 06	Dana Bryson Joins MacFarlane Partners as Vice President in Firm's New Washington, D.C., Office; Former Top Advisor for D.C. City Administrator to Help Manage Firm's Initiatives in the Capital Region
17 Oct 06	Brad Dockser Joins MacFarlane Partners as Principal in Firm's New Washington, D.C., Office; Former Western Development Executive to Oversee Urban Investments in Region

First Previous [1] 2 3 4 Next Last

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004546

IN THE NEWS

In the News

17 Oct 06	Peter Houghton Joins MacFarlane Partners as Firm Opens Office in Los Angeles; Former VP of Canyon-Johnson Urban Funds to Oversee Firm's Urban Investments in Southern California
10 Jul 06	Linda Greene Joins MacFarlane Partners as Firm Opens Office in Washington D.C.; Will Oversee Community Affairs and Public Relations for D.C. Investments
16 May 06	Rosie Rios Joins MacFarlane Partners as Managing Director, Investments
19 Apr 06	Victor MacFarlane Receives Prestigious Inner-City Leadership Award
20 Mar 06	MacFarlane Partners, Regis Homes and TMG Partners Sell Paragon Apartments to Archstone-Smith; Sale of Phase II of The Crossing|San Bruno
15 Mar 06	MacFarlane Partners to Team With Forest City on "Uptown" Development in Oakland; Largest Project to Date in Downtown Housing Initiative
13 Mar 06	Chris Corpuz Joins MacFarlane Partners as Principal, Strategic Initiatives; Will Identify, Develop, and Launch New Investment Initiatives
20 Dec 05	MacFarlane Partners, Regis Homes and TMG Partners Sell Meridian Luxury Apartments to Archstone-Smith; Proves Urban Infill Success
22 Nov 05	MacFarlane Partners and The Moinian Group to Develop 1.5-Million-Square-Foot Mixed-Use Project on West 42nd Street in New York City
7 Nov 05	MacFarlane Partners Donates $1 Million for Martin Luther King Memorial

First Previous 1 [2] 3 4 Next Last

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004547

IN THE NEWS

In the News

13 Jul 05	Tom Klugherz Joins MacFarlane Partners as Principal & Chief Operating Officer; Will Oversee Firm's Urban Real Estate Investment Program
7 Jun 05	Jeff Mills Joins MacFarlane Partners as Senior Vice President, Asset Management; Will Manage the Firm's Completed Properties
9 May 05	MacFarlane Partners in Venture to Develop RiverPark Apartments in Planned, Smart Growth Community in Oxnard, California
12 Apr 05	MacFarlane Partners, Regis Homes and TMG Partners to Develop Paragon Apartments as Phase II of The Crossing|San Bruno
22 Mar 05	MacFarlane Partners Completes Acquisition of Equity Interest in Time Warner Center Retail & Parking
8 Mar 05	MacFarlane Partners & Forest City Residential to Transform Former Getty Oil Headquarters in Los Angeles Office-to-Residential Project
16 Dec 04	MacFarlane Partners Hires Jennifer Glover as Vice President, Portfolio Operations; Will Oversee Investment Risk Management Function
22 Nov 04	MacFarlane Partners Closes Two Condominium Deals in Southern California; Teams with Standard Pacific in Two Development Ventures
4 Nov 04	MacFarlane Partners Sells Retail Interest in Bay Street Emeryville to Madison Marquette; Retains an Interest in the Urban Village's Residential Units
17 Aug 04	MacFarlane Partners and Urban Partners to Jointly Develop Transit Village in Los Angeles; Mixed-Use Project to Transform Koreatown Metro Station

First Previous 1 2 [3] 4 Next Last

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004548

IN THE NEWS

In the News

26 Jul 04	MacFarlane Partners, Forest City Residential, RAD Management & TMG Partners Team Up to Convert L.A. Office Tower to Condominiums
10 Mar 04	MacFarlane Partners Hires Sylvia Melikian as Principal; Will Oversee Portfolio Management, Operations
28 Jan 04	MacFarlane Partners Adds Two Investment Principals; Appelbaum & Knorpp to Oversee Investment and Development Activity in Two Regions
7 Jan 04	MacFarlane Partners Closes Multifamily Deals in Los Angeles and New York City; Teams with The Related Companies in Two Development Ventures
3 Nov 03	MacFarlane Partners Completes Sale of Hollywest Promenade; Firm Developed Hollywood Mixed-Use Property
17 Feb 03	MacFarlane Partners' Venture Invests in Met Lofts, a $58.8 Million Residential Development in Downtown Los Angeles
3 Feb 03	MacFarlane Partners Venture to Become a Significant Partner in New York's AOL Time Warner Center - New York City's Newest Landmark

First Previous 1 2 3 [4] Next Last

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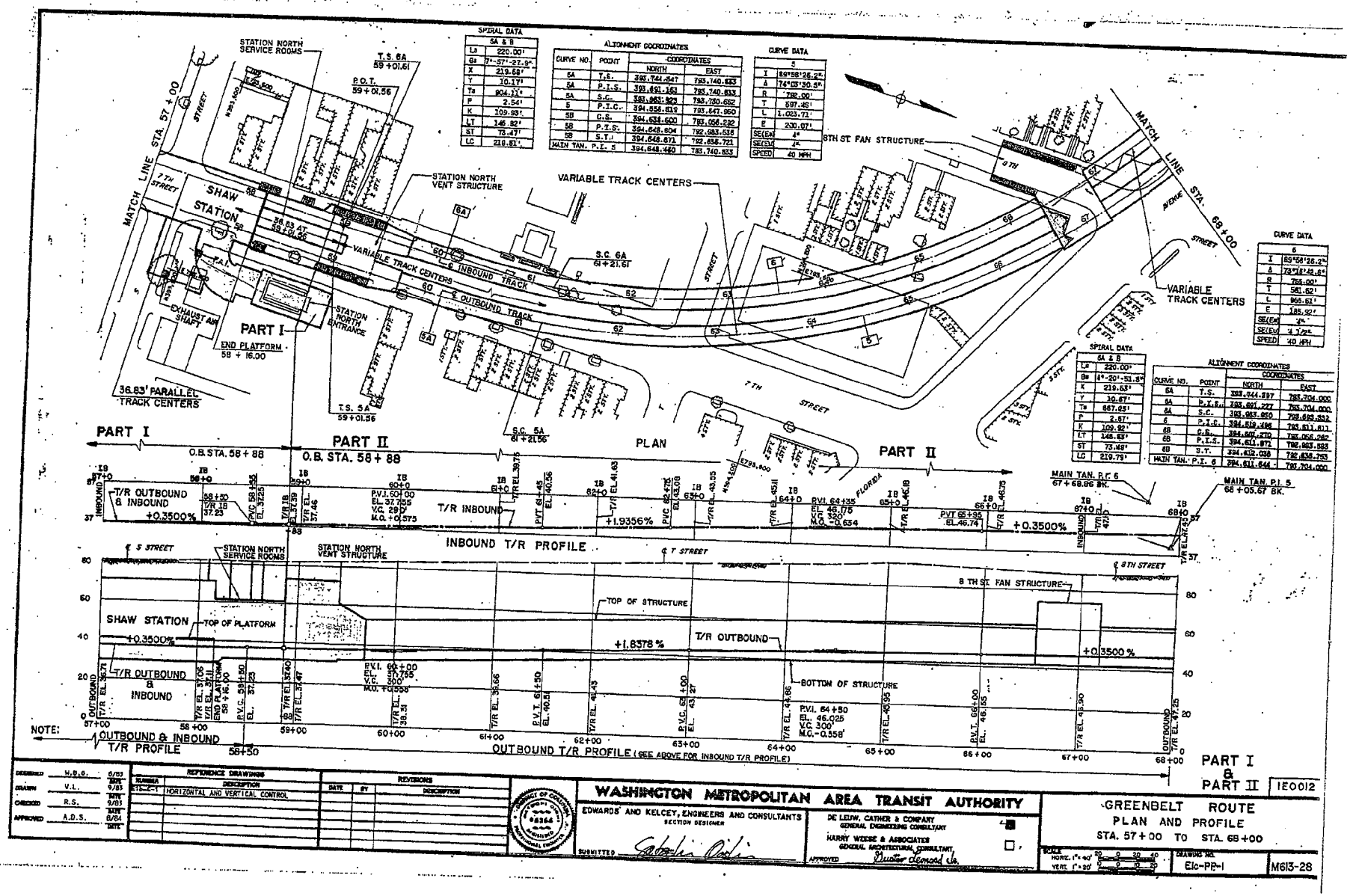
FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004549

FOIA CONFIDENTIAL TREATMENT REQUESTED



WMATA-INV 004550

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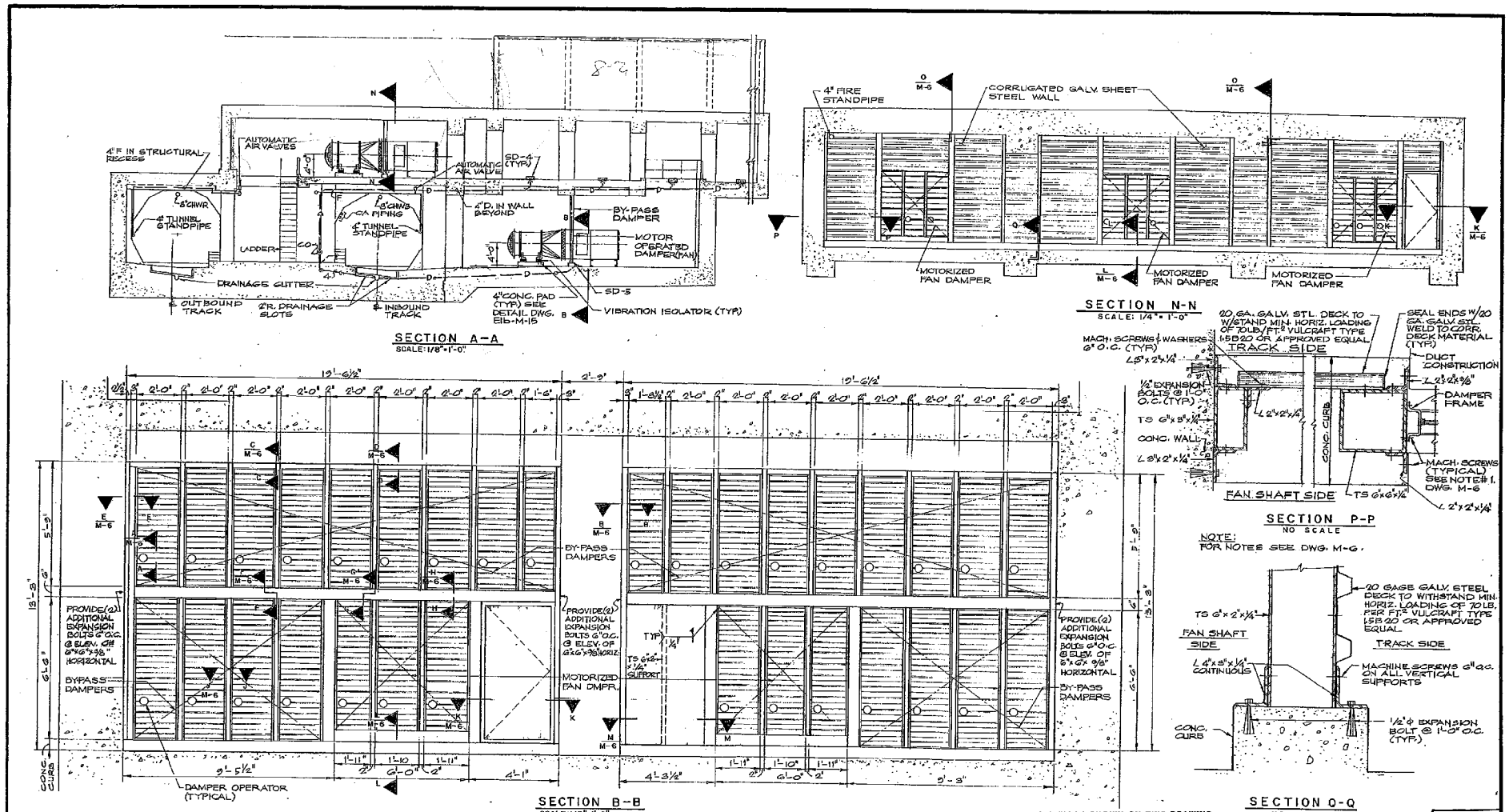


ALL WORK SHOWN ON THIS DRAWING IS TO BE DONE IN PART 2.

IE0012

DESIGNED	R. STAMM	9/3/84 DATE
DRAWN	W. PAREDES	9/10/84 DATE
CHECKED	J. R. JENAL	9/17/84 DATE
APPROVED	J. R. JENAL	9/24/84 DATE

REFERENCE DRAWINGS

NUMBER	DESCRIPTION
M-6	DAMPER DETAILS - FAN STRUCTURE
E16-M-15	SENT. SERV. RMS. HVAC PLAN & DETAILS

REVISIONS

DATE	BY	DESCRIPTION

DISTRICT OF COLUMBIA — JOSEPH RAYMOND JENAL — 6456 — REGISTERED PROFESSIONAL ENGINEER

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

EDWARDS AND KELCEY, ENGINEERS AND CONSULTANTS
SECTION DESIGNER
BOGEN JENAL ENGINEERS P C
MECHANICAL AND ELECTRICAL ENGINEERS
SUBMITTED [signature]

DE LEUW, CATHER & COMPANY
GENERAL ENGINEERING CONSULTANT
HARRY WEESE & ASSOCIATES
GENERAL ARCHITECTURAL CONSULTANT
APPROVED Gustav Leonard Jr.

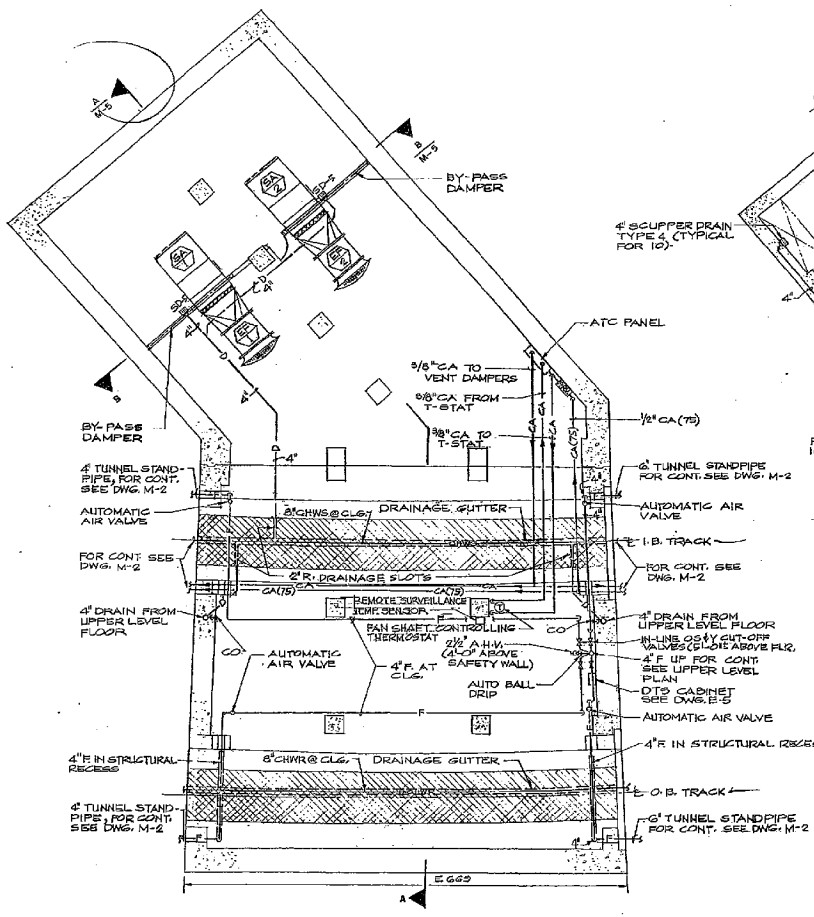
GREENBELT ROUTE
FAN STRUCTURE
SECTIONS

SCALE: AS NOTED
DRAWING NO. E1c-M-5
M613-483

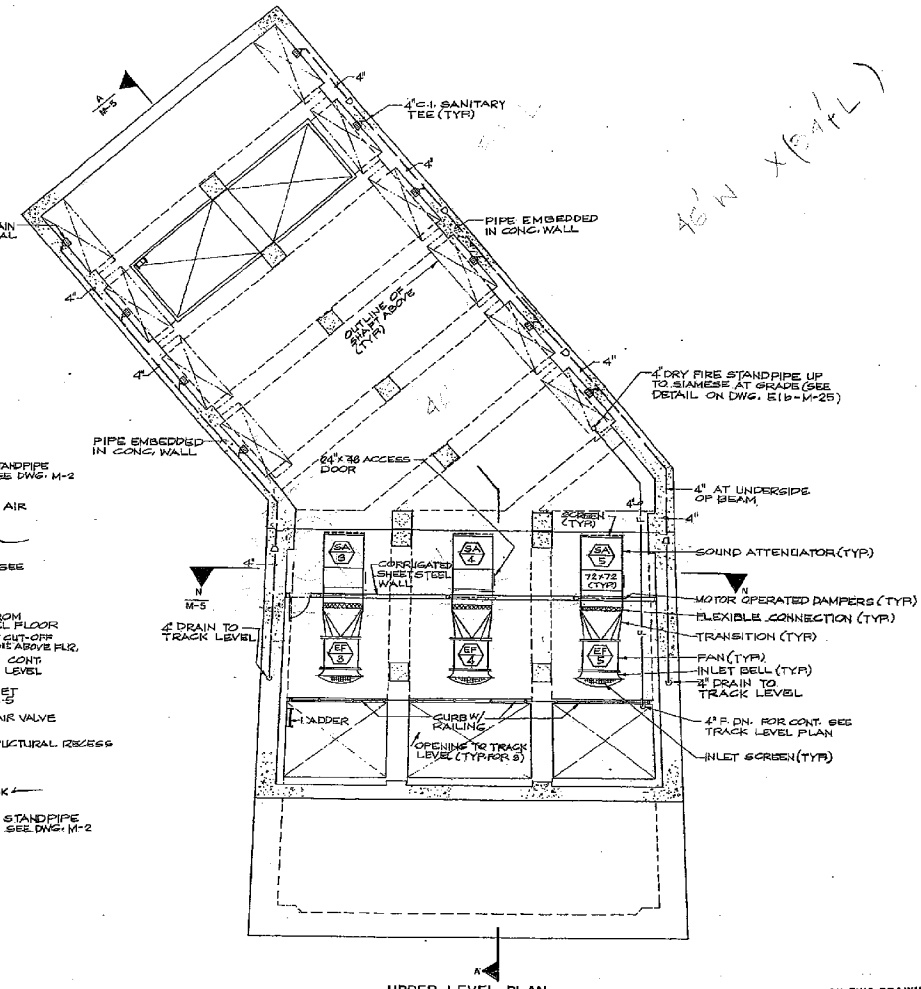
"WMAT045255"

WMATA-INV 004551

FOIA CONFIEDENTIAL TREATMENT REQUESTED



TRACK LEVEL PLAN



UPPER LEVEL PLAN

ALL WORK SHOWN ON THIS DRAWING IS TO BE DONE IN PART 2.

IE0012

DESIGNED	W. PAREDES R. STAMM	9/3/84 DATE
DRAWN	W. PAREDES	9/10/84 DATE
CHECKED	J. R. JENAL	9/17/84 DATE
APPROVED	J. R. JENAL	9/24/84 DATE

REFERENCE DRAWINGS	
NUMBER	DESCRIPTION
M-2	MECH. PLAN & PROFILE STA. 66+00 TO STA. 73+95
M-5	FAN STRUCTURE SECTIONS
E-5	NORTH FAN STRUCTURE

REVISIONS		
DATE	BY	DESCRIPTION

DISTRICT OF COLUMBIA JOSEPH RAYMOND JENAL 6456 REGISTERED PROFESSIONAL ENGINEER

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

EDWARDS AND KELCEY, ENGINEERS AND CONSULTANTS
SECTION DESIGNER
BOGEN JENAL ENGINEERS P.C.
MECHANICAL AND ELECTRICAL ENGINEERS
SUBMITTED [signature]

DE LEUW, CATHER & COMPANY
GENERAL ENGINEERING CONSULTANT
HARRY WEESE & ASSOCIATES
GENERAL ARCHITECTURAL CONSULTANT
APPROVED Gustav Leonard Jr.

GREENBELT ROUTE
FAN STRUCTURE
PLAN & DETAILS

SCALE 1/8" = 1'-0" 10 2 4 6 8 10

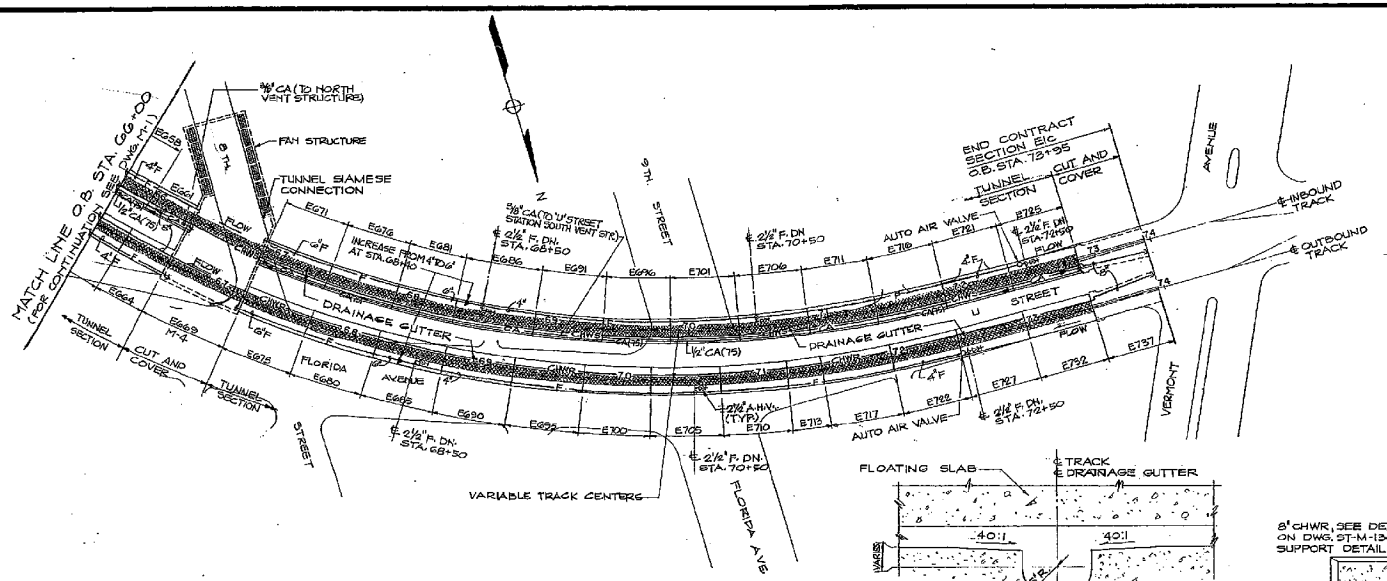
DRAWING NO. E1c-M-4

M613-482

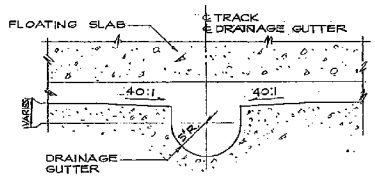
"WMAT045254"

WMATA-INV 004552

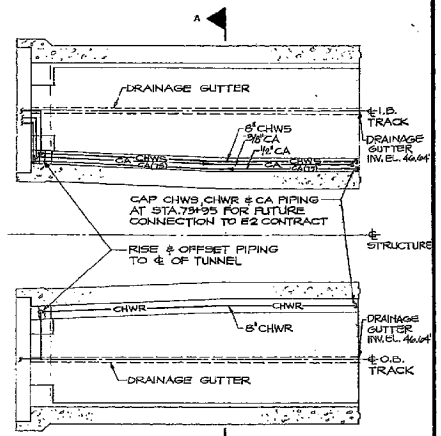
FOIA CONFIDENTIAL TREATMENT REQUESTED



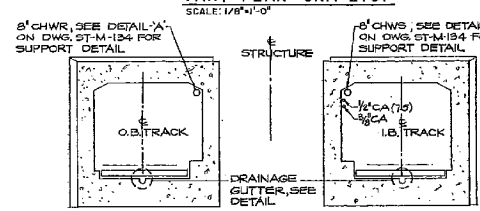
PLAN
SCALE: 1"=40'



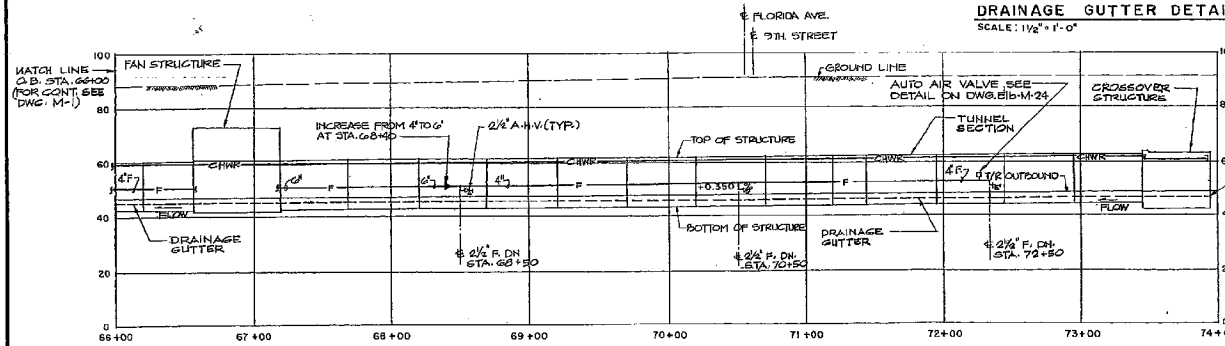
DRAINAGE GUTTER DETAIL
SCALE: 1½" = 1'-0"



PART PLAN - UNIT E737
SCALE: 1/8"=1'-0"



SECTION A-A
SCALE: 1/8"=1'-0"



PROFILE - OUTBOUND TRACK
SCALES: HOR. 1"=40', VERT. 1"=20'

NOTES:
1. FOR SYMBOLS AND ABBREVIATIONS SEE DWG. ST-M-85.
2. HATCHED AREAS INDICATE FLOATING SLAB.

ALL WORK SHOWN ON THIS DRAWING IS TO BE DONE IN PART 2.

IE0012

DESIGNED	R. STAMM W. PAREDES	9/3/84
DRAWN	D. REYNOLDS	9/10/84
CHECKED	J. R. JENAL	9/17/84
APPROVED	J. R. JENAL	9/24/84

REFERENCE DRAWINGS	
NUMBER	DESCRIPTION
M-1	MECH. PLAN & PROFILE STA. 58+88 TO STA. 66+00
E1B-M-24	FIRE PROTECTION DETAILS SHEET NO. 1
ST-M-134	CHILLED WATER PIPE HANGER DETAILS-OUTDOOR

REVISIONS		
DATE	BY	DESCRIPTION

DISTRICT OF COLUMBIA — THEIRN RAYMOND TEHG — 6458 — REGISTERED PROFESSIONAL ENGINEER

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

EDWARDS AND KELCEY, ENGINEERS AND CONSULTANTS
SECTION DESIGNER
BOGEN JENAL ENGINEERS P.C.
MECHANICAL AND ELECTRICAL ENGINEERS
SUBMITTED J. R. Jenal

DE LEUW, CATHER & COMPANY
GENERAL ENGINEERING CONSULTANT
HARRY WEESE & ASSOCIATES
GENERAL ARCHITECTURAL CONSULTANT
APPROVED Gustav Eberard Jr.

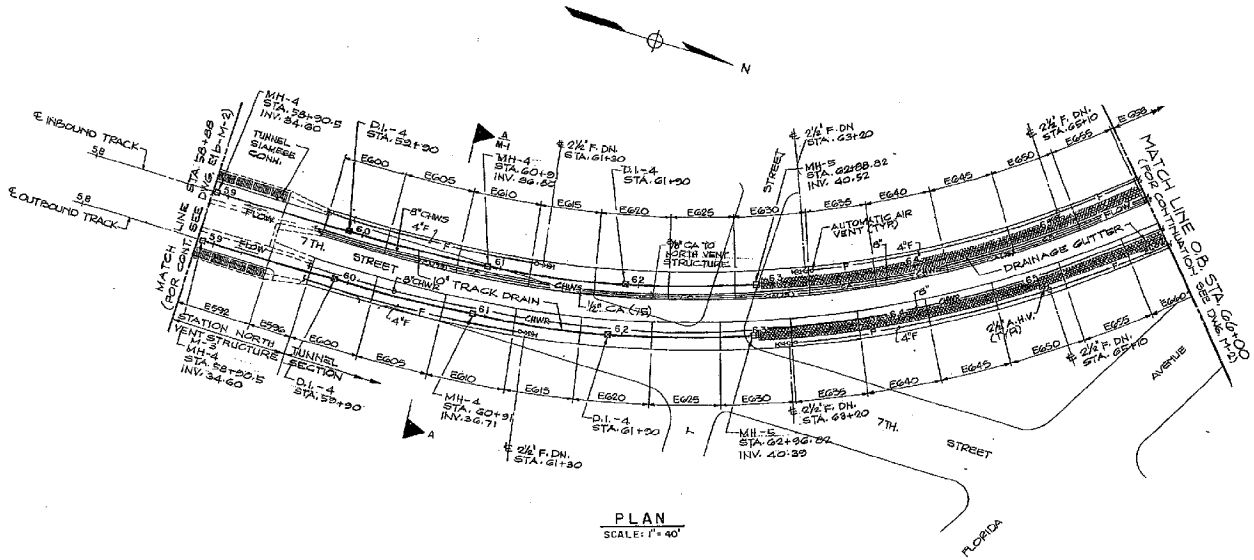
GREENBELT ROUTE
MECHANICAL PLAN & PROFILE
STA. 66+00 TO STA. 73+95

SCALE	DRAWING NO.	
AS NOTED	E1C-M-2	M613-480

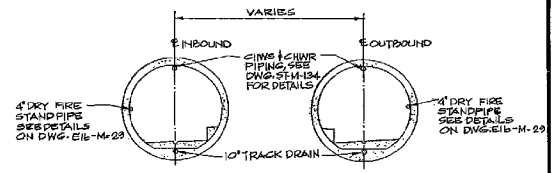
"WMATA045252"

WMATA-INV 004553

FOIA CONFIDENTIAL TREATMENT REQUESTED

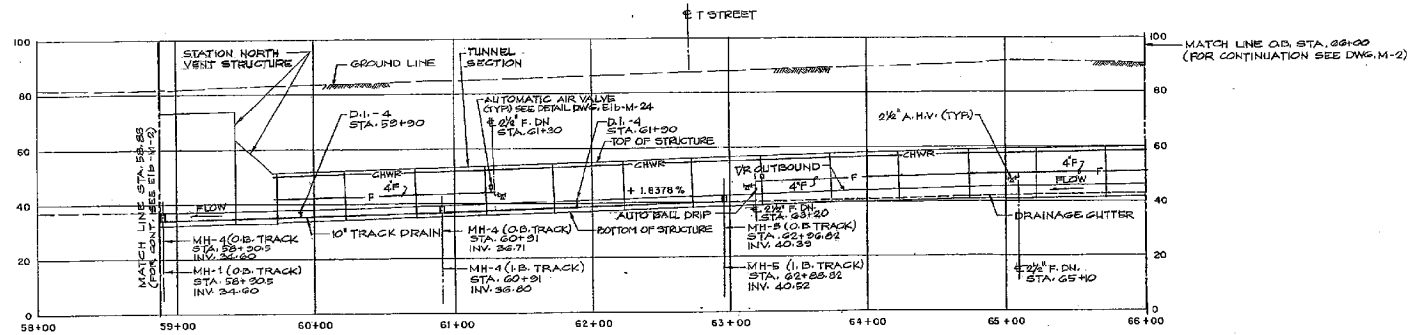


PLAN
SCALE: 1" = 40'



SECTION A-A
NOT TO SCALE

NOTES:
1. FOR SYMBOLS AND ABBREVIATIONS SEE DWG. ST-M-85.
2. HATCHED AREAS INDICATE FLOATING SLAB.
3. CROSS REFERENCING ON DRAWINGS REFERS SPECIFICALLY TO THAT SAME SECTION UNLESS OTHERWISE NOTED.
   EXAMPLES:
   REFERENCE ON DWG. E1b-M-1 TO M-25 IS TO E1b-M-25.
   REFERENCE ON DWG. E1c-M-2 TO M-6 IS TO E1c-M-6.



PROFILE - OUTBOUND TRACK
SCALES: HOR. 1" = 40', VERT. 1" = 20'
(INBOUND TRACK MANHOLE LOCATIONS & INVERTS AS NOTED)

ALL WORK SHOWN ON THIS DRAWING IS TO BE DONE IN PART 2.

IE0012

DESIGNED	R. STAMM W. PAREDES	9/3/84 DATE
DRAWN	W. PAREDES D. REYNOLDS	9/10/84 DATE
CHECKED	J.R. JENAL	9/17/84 DATE
APPROVED	J.R. JENAL	9/24/84 DATE

REFERENCE DRAWINGS	
NUMBER	DESCRIPTION
E1b-M-2	MECH. PLAN & PROFILE STA. 52+00 TO STA. 58+88
M-2	MECH. PLAN & PROFILE STA. 66+00 TO STA. 72+75
E1b-M-29	FIRE PROTECTION DETAILS SHEET NO. 3
ST-M-134	CHILLED WATER PIPE HANGER - CIRCULAR TUNNEL
E1b-M-28	DRAINAGE - TYPICAL DETAILS SHEET NO. 5

REVISIONS		
DATE	BY	DESCRIPTION

DISTRICT OF COLUMBIA — 6456 — REGISTERED PROFESSIONAL ENGINEER

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

EDWARDS AND KELCEY, ENGINEERS AND CONSULTANTS
SECTION DESIGNER
BOGEN JENAL ENGINEERS P.C.
MECHANICAL AND ELECTRICAL ENGINEERS

SUBMITTED

DE LEUW, CATHER & COMPANY
GENERAL ENGINEERING CONSULTANT

HARRY WEESE & ASSOCIATES
GENERAL ARCHITECTURAL CONSULTANT

APPROVED Hector Lemard Jr.

GREENBELT ROUTE
MECHANICAL PLAN & PROFILE
STA. 58+88 TO STA. 66+00

SCALE HORIZ 1" = 40' VERT 1" = 20'

DRAWING NO. E1c-M-1

M6I3-479

"WMAT045251"

WMATA-INV 004554

DESIGNED N/A DATE
DRAWN N/A DATE
CHECKED N/A DATE
APPROVED N/A DATE

REFERENCE DRAWINGS

NUMBER	DESCRIPTION
	WMATA SURVEY REQUEST: N/A
	FIELD SURVEY DATE: N/A

REVISIONS

DATE	BY	DESCRIPTION

metro

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SUBMITTED BY

APPROVED

SYSTEMWIDE UTILITY OUTGRANTS
GREENBELT ROUTE
SECTION E1 – STA 54+00 TO STA 64+00

SCALE 0 50 100

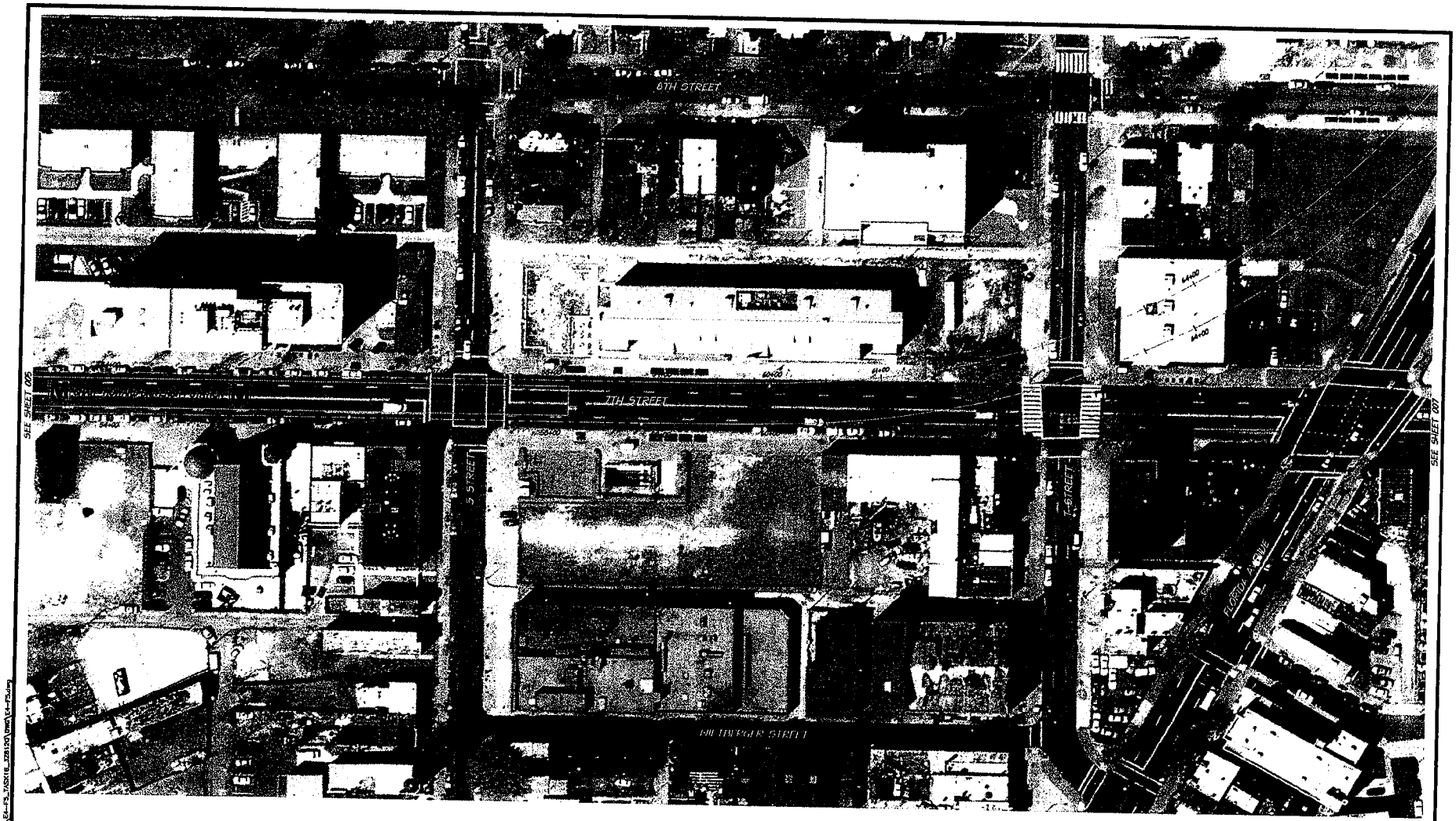
DRAWING NO. E01_54+00-64+00

CONTRACT NO. 3Z8120-016

SHEET 006

PLOT DATE: 10/31/03
PROJECT PATH: G:\PROJECTS\C4-F3_TASK16_3Z8120\DWG\E4-F3.dwg

FOIA CONFIEDENTIAL TREATMENT REQUESTED



DESIGNED	N/A	N/A DATE
DRAWN	N/A	N/A DATE
CHECKED	N/A	N/A DATE
APPROVED	N/A	N/A DATE

REFERENCE DRAWINGS	
NUMBER	DESCRIPTION
	WMATA SURVEY REQUEST: N/A
	FIELD SURVEY DATE: N/A

REVISIONS		
DATE	BY	DESCRIPTION

metro

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SUBMITTED BY VIKA

APPROVED

CONTRACT NO. 3Z812Q-016

SYSTEMWIDE UTILITY OUTGRANTS

GREENBELT ROUTE

SECTION E1 – STA 54+00 TO STA 64+00

SCALE

DRAWING NO. E01_54+00-64+00

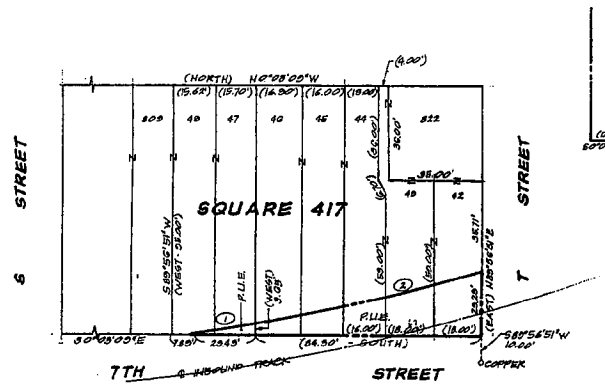
SHEET 006

E01_ 054+00-64+00_ SHT006 on N drive

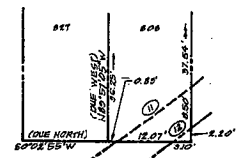
PLOT DATE: 10/31/03
PROJECT PATH: C:\PROJECTS\E4-F3_TASK16_3Z812Q\DWG\E4-F3.dwg

FOIA CONFIEDENTIAL TREATMENT REQUESTED

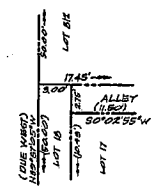
FOIA CONFIDENTIAL TREATMENT REQUESTED



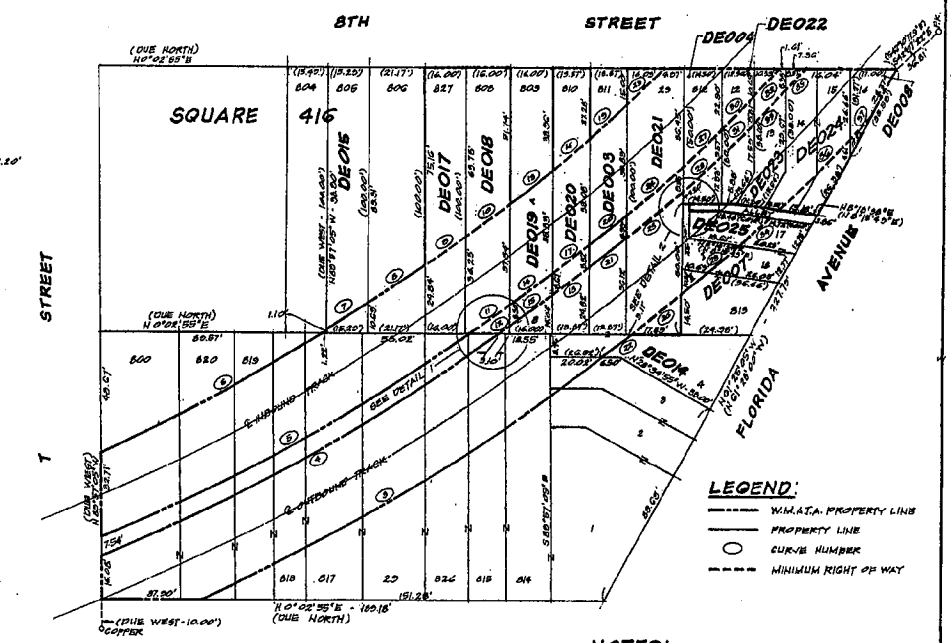
DETAIL "A"
SCALE: 1" = 30'



DETAIL 1
NOT TO SCALE



DETAIL 2
NOT TO SCALE



DETAIL "B"
SCALE: 1" = 30'

LEGEND:

- W.M.A.T.A. PROPERTY LINE
- PROPERTY LINE
- CURVE NUMBER
- MINIMUM RIGHT OF WAY

NOTES:

1. COORDINATES ARE BASED ON THE PROJECT COORDINATE SYSTEM REFERENCED TO 1974 N.G.S. POSITIONS.
2. ELEVATIONS SHOWN ARE BASED ON U.S.G.S. & G.S. MEAN SEA LEVEL DATUM, 1929 GENERAL ADJUSTMENT.
3. BEARINGS AND DISTANCES IN PARENTHESES ARE TAKEN FROM DC. SURVEY RECORDS.

W.M.A.T.A. PROPERTY DESCRIPTION

W.M.A.T.A. PARCEL NO.	CERTIFICATION NUMBER	CONDEMNATION RECORD	PERMIT/LEASE NUMBER	AREA IN S.F.	INTEREST ACQUIRED	GRANTOR	LIBER	FOLIO	ELEVATION UPPER	ELEVATION LOWER	ESTATE CERT.	CHANGES
DE005		C.A. 124 W.T. 4611		1987		AARON RISKIN ET. AL.						
DE007		C.A. 124 W.T. 4611		814		AARON RISKIN ET. AL.						
				484								
DE014		C.A. 124 W.T. 4611				AARON RISKIN ET. AL.						
DE025		C.A. 124 W.T. 4611		504		AARON RISKIN ET. AL.						
DE004				725	FEE	ELLA HACKNEY	DEED OF WATER RETURN, #19755				P.U.E.	
DE013				266	FEE	ALLIE JONES, SARAH PETERSON AND A.W. WILLIAMSON	DIST. NO. 14255				P.U.E.	
DE021				1944	FEE		DATED 9/8/15				P.U.E.	
DE015				60	P.U.E.	ARTHUR WILLIAMS AND CAROLINE WILLIAMS	DEED NO. 12826					
DE017				1620	FEE	CAROLINE WILLIAMS AND ARTHUR WILLIAMS	DEED NO. 12826				P.U.E.	
DE016				928	FEE	ALICE PEE HIGH AND JEROME J. PARKS	DEED NO. 12826				P.U.E.	
DE010		C.A. 124 W.T. 4611		607 & 120	P.U.E. R.U.E.	JEROME J. PARKS						
DE028					FEE	HARTFORD WALKER AND ELIZABETH BEALE	DEED OF TRUST				P.U.E.	
DE022					FEE	SHARKEY STEWART	DEED OF TRUST				P.U.E.	
				3596	P.U.E.	DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY						(PART OF LOTS 14, 15, 31, 29, 28, 27, 26, 25, 24, 23, 22 & 21)
				367	P.U.E.	H.A. CARPENTER						
DE029					FEE	BERTHA JACKSON	DEED OF TRUST		71.5		P.U.E.	
DE024					FEE	CARY GARNER, INC.			71.5		P.U.E.	(UNMEASURABLE INST. IM.)
				1062	R.U.E.	MARY BARNES			C7.0			(PART LOT 42-46 SQ. 417)
				41	P.U.E.	DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY			C7.0			(PART LOT 42 & 43, SQ. 417)

EXISTING W.M.A.T.A.

CURVE DATA				
CURVE NO	ARC	RADIUS	CHORD	CHD. BEARING
22	19.70'	807.00'	19.70'	S1°37'11"E (S1°37'11"E)
23	81.95'	740.00'	81.95'	S4°44'39"E (S4°44'39"E)
24	27.93'	770.00'	27.93'	S5°41'11"E (S5°41'11"E)
25	21.76'	777.00'	21.76'	S6°42'52"E (S6°42'52"E)
26	28.01'	807.00'	28.01'	S6°42'52"E (S6°42'52"E)
27	19.88'	777.00'	19.88'	S7°55'26"E (S7°55'26"E)
28	19.70'	777.00'	19.70'	S8°55'40"E (S8°55'40"E)
29	20.82'	807.00'	20.84'	S8°57'06"E (S8°57'06"E)
30	17.91'	770.00'	17.91'	S9°44'37"E (S9°44'37"E)
31	17.84'	777.00'	17.89'	S10°39'47"E (S10°39'47"E)
32	14.84'	770.00'	14.84'	S11°19'43"E (S11°19'43"E)
33	17.87'	777.00'	17.87'	S12°02'10"E (S12°02'10"E)
34	16.40'	807.00'	16.40'	S12°38'11"E (S12°38'11"E)
35	11.52'	777.00'	11.52'	S13°06'47"E (S13°06'47"E)
36	30.99'	807.00'	30.99'	S14°19'45"E (S14°19'45"E)
37	8.47'	807.00'	8.47'	S14°54'21"E (S14°54'21"E)

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

OWNERSHIP MAP

GREENBELT ROUTE
DETAILS

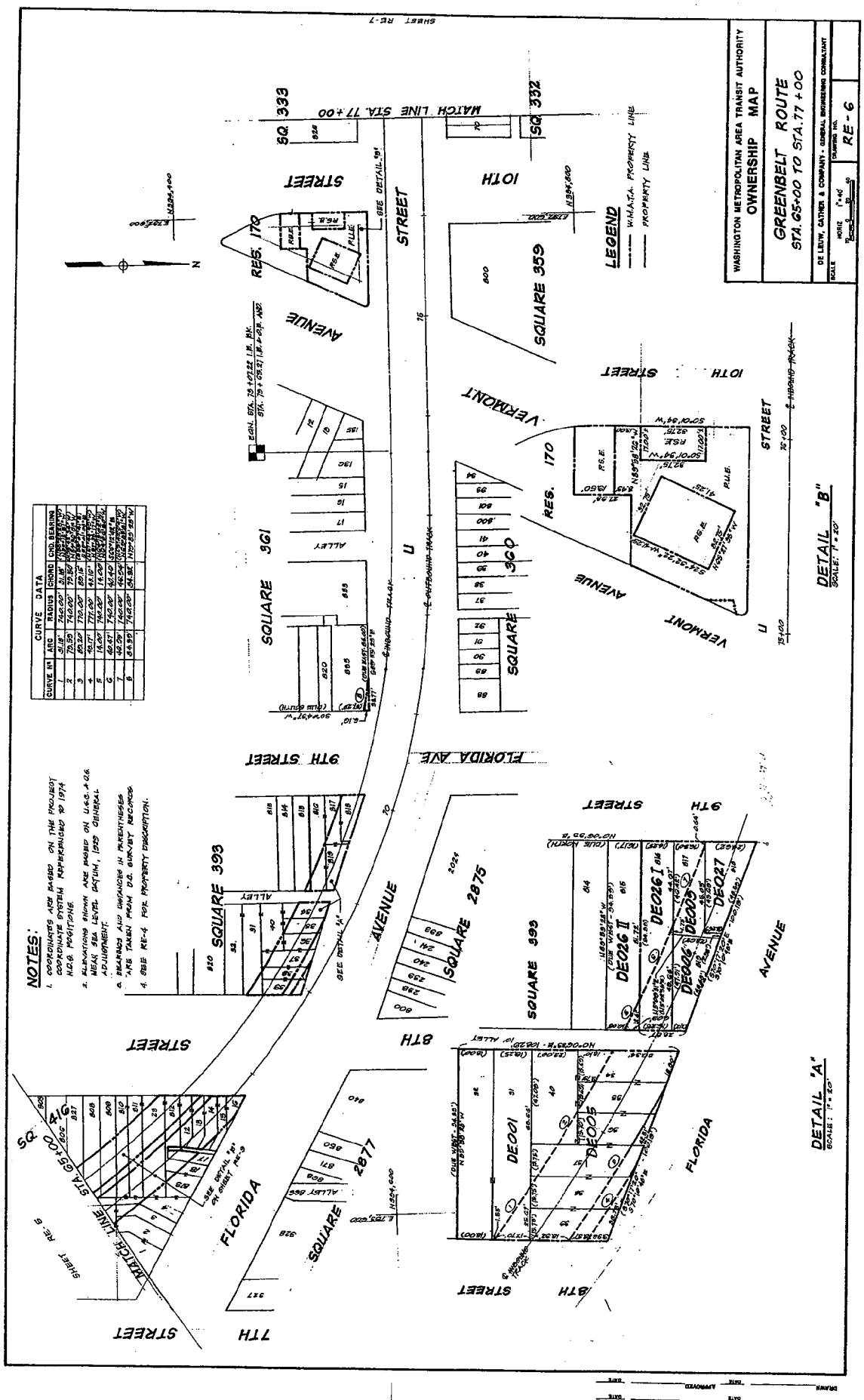
DE LEUW, CATHER & COMPANY - GENERAL ENGINEERING CONSULTANT

SCALE: AS SHOWN

DRAWING NO.: RE-9

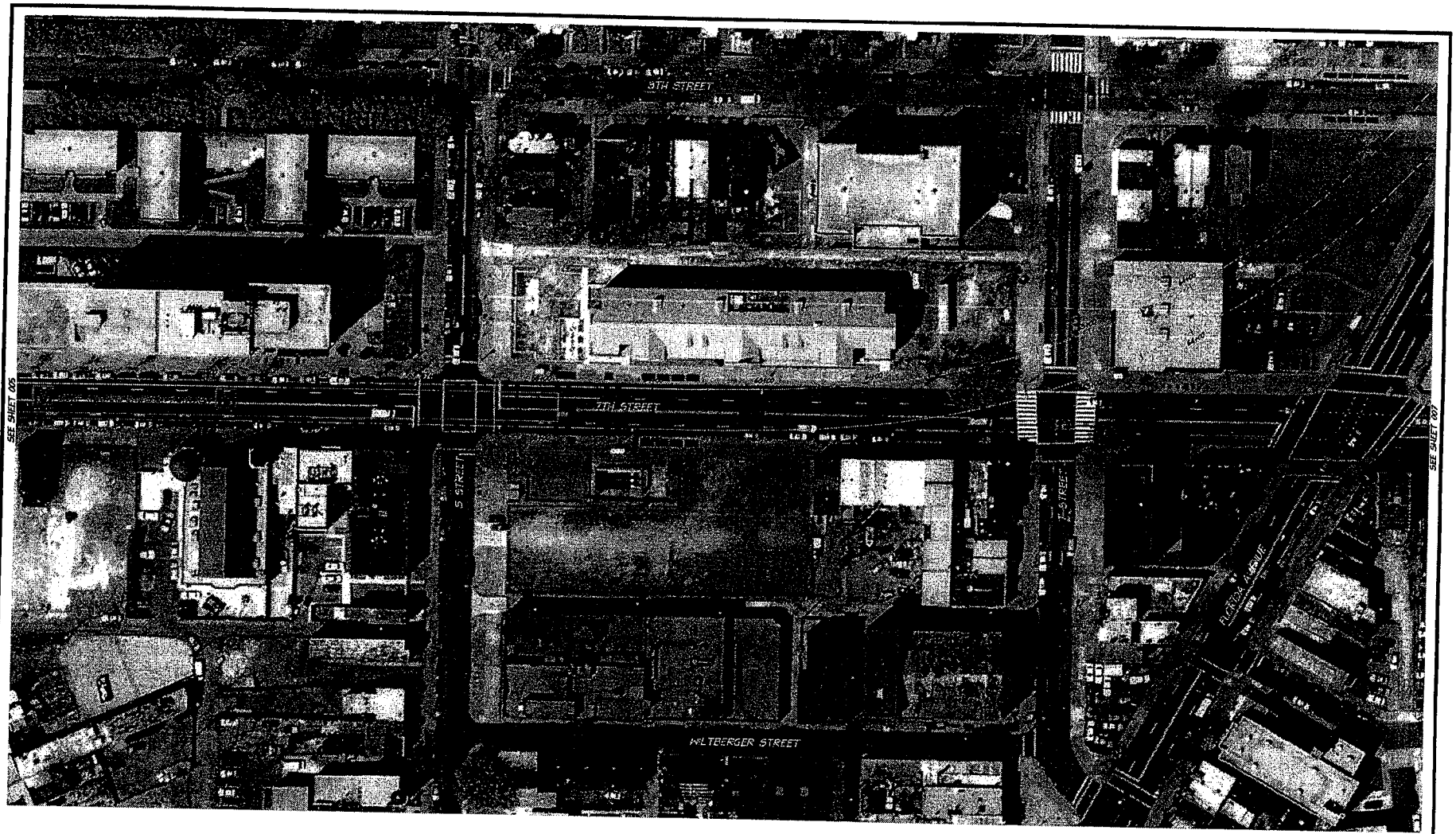
DESIGNED | DRAWN | CHECKED | APPROVED | DATE

WMATA-INV 004558



FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004559



PLOT DATE: 10/31/03
PROJECT PATH: C:\PROJECTS\E4-F5_TASK16_3Z8120\DWG\E4-F5.dwg

DESIGNED	N/A	N/A DATE
DRAWN	N/A	N/A DATE
CHECKED	N/A	N/A DATE
APPROVED	N/A	N/A DATE

REFERENCE DRAWINGS

NUMBER	DESCRIPTION
	WMATA SURVEY REQUEST: N/A
	FIELD SURVEY DATE: N/A

REVISIONS

DATE	BY	DESCRIPTION

metro

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SUBMITTED BY

VIKA

APPROVED

CONTRACT NO. 3Z812Q-016

SYSTEMWIDE UTILITY OUTGRANTS

GREENBELT ROUTE

SECTION E1 – STA 54+00 TO STA 64+00

SCALE 20 0 20 40

DRAWING NO. E01_54+00-64+00

SHEET 006

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FL Ave Bolan Smart → Financial Consultant →

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

1. Banneker (August 28, 2009) with 60 year ground lease (based on current verbal described proposed terms; non-capitalized base rent; spring 2009 proforama effective gross income projections; assuming $5.0M appraised land value)

Revenues

Option Fee		$100,000																	
Predevelopment Rent		$50,000	$65,000	$80,000	$80,000	$80,000													
Base Rent (at 95% ocp)	prepaid						$0												
	annual						$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000		$250,000
Total WMATA Base Rent		$150,000	$65,000	$80,000	$80,000	$80,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000		$250,000
Effective Gross Income	Banneker projected						$2,631,000												
	3.00% EGI growth BSA adjusted						$2,500,000	$2,575,000	$2,652,250	$2,731,818	$2,813,772	$2,898,185	$2,985,131	$3,074,685	$3,166,925	$3,261,933	$3,359,791		$12,335,312
	1.50% WMATA payment											$43,473	$44,777	$46,120	$47,504	$48,929	$50,397		$185,030
Total WMATA Base Rent With Percentage of EGI							$250,000	$250,000	$250,000	$250,000	$250,000	$293,473	$294,777	$296,120	$297,504	$298,929	$300,397		$435,030
WMATA Participation	12.50% of defined capital events																		
Implied Initial Land Value	$5,000,000 FY09 value																		
	3.00% annual compounded increase																		
Terminal Value	$28,600,015 on land only																		$28,600,015
Cash Flow		$150,000	$65,000	$80,000	$80,000	$80,000	$250,000	$250,000	$250,000	$250,000	$250,000	$293,473	$294,777	$296,120	$297,504	$298,929	$300,397		$435,030
Cash Flow w/ residual		$150,000	$65,000	$80,000	$80,000	$80,000	$250,000	$250,000	$250,000	$250,000	$250,000	$293,473	$294,777	$296,120	$297,504	$298,929	$300,397		$29,035,045

NPV						
	Base Rent	5.73% discount rate	$3,743,123	6.80% discount rate	$3,158,180	
	With Residual	5.73% discount rate	$4,753,474	6.80% discount rate	$3,710,373	
	With EGI and Res	5.73% discount rate	$5,419,021	6.80% discount rate	$4,206,086	
	With Participation		not considered			

2. Banneker (August 28, 2009) with 60 year ground lease ($250,000 base rent prepaid discounted at 7%. Note if solely capitalized at 7% without regard for limited lease term the prepaid rent would total $3,572,500)

Revenues

Option Fee		$100,000																	
Predevelopment Rent		$50,000	$65,000	$80,000	$80,000	$80,000													
Base Rent (at 95% ocp)	prepaid						$3,065,636												
	annual						$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$0
Total WMATA Base Rent		$150,000	$65,000	$80,000	$80,000	$80,000	$3,065,636	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$0
Effective Gross Income	Banneker projected						$2,631,000												
	3.00% EGI growth BSA adjusted						$2,500,000	$2,575,000	$2,652,250	$2,731,818	$2,813,772	$2,898,185	$2,985,131	$3,074,685	$3,166,925	$3,261,933	$3,359,791		$12,335,312
	1.50% WMATA payment											$43,473	$44,777	$46,120	$47,504	$48,929	$50,397		$185,030
Total WMATA Base Rent With Percentage of EGI							$3,065,636	$0	$0	$0	$0	$43,473	$44,777	$46,120	$47,504	$48,929	$50,397		$185,030
WMATA Participation	12.50% of defined capital events																		
Implied Initial Land Value	$5,000,000 FY09 value																		
	3.00% annual compounded increase																		
Terminal Value	$28,600,015 on land only																		$28,600,015
Cash Flow		$150,000	$65,000	$80,000	$80,000	$80,000	$3,065,636	$0	$0	$0	$0	$43,473	$44,777	$46,120	$47,504	$48,929	$50,397		$185,030
Cash Flow w/ residual		$150,000	$65,000	$80,000	$80,000	$80,000	$3,065,636	$0	$0	$0	$0	$43,473	$44,777	$46,120	$47,504	$48,929	$50,397		$28,785,045

NPV						
	Base Rent	5.73% discount rate	$2,734,966	6.80% discount rate	$2,614,459	
	With Residual	5.73% discount rate	$3,745,317	6.80% discount rate	$3,166,652	
	With EGI and Res	5.73% discount rate	$4,410,863	6.80% discount rate	$3,662,365	
	With Participation		not considered			

WMATA-INV 004563

5/27/09

$380

$1.4M is difference between $380 +

$250,000 = 5% year
1½% EGI better in inflationary

BSA Table 1 (May 27/09)

Florida Avenue / Shaw - Proposals (60 year Term)

		July	1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	[redacted]	60 2068
Banneker (May 26, 2009 illustrative) with 60 year ground lease															
Revenues															
Option Fee			$100,000												
Predevelopment Rent			$50,000	$57,500	$72,500	$80,000	$40,000								
Base Rent (at 95% ocp)	prepaid				$800,000										
	annual						$125,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000		$250,000
Total WMATA Base Rent			$150,000	$57,500	$872,500	$80,000	$165,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000		$250,000
Effective Gross Income	Banneker projected							$2,831,000							
	3.00% EGI growth BSA adjusted							$2,500,000	$2,575,000	$2,652,250	$2,731,818	$2,813,772	$2,898,185		$12,335,312
	1.50% WMATA payment							$37,500	$38,625	$39,784	$40,977	$42,207	$43,473		$185,030
Total WMATA Base Rent With Percentage of EGI								$287,500	$288,625	$289,784	$290,977	$292,207	$293,473		$435,030
WMATA Participation	10.00% of defined capital events														
Implied Initial Land Value	$5,088,000 2009 value estimate (OME)														
	3.00% annual compounded increase														
Terminal Value	$29,103,375 on land only														$29,103,375
Cash Flow			$150,000	$57,500	$872,500	$80,000	$165,000	$287,500	$288,625	$289,784	$290,977	$292,207	$293,473		$435,030
Cash Flow w/ residual			$150,000	$57,500	$872,500	$80,000	$165,000	$287,500	$288,625	$289,784	$290,977	$292,207	$293,473		$29,538,405
NPV Base Rent	5.73% discount rate		$4,512,977												
With Residual	5.73% discount rate		$5,600,022												
With EGI	5.73% discount rate		$6,438,472												
With Participation			not considered												

one time payment

+ 250 = $300,000

Rent is 5% of Implied Initial Land Value
Do I change term sheet which was 7% x $7.5M?

I want 5% or market whichever is greater [or 7%]

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Land Value = $55 (versus $57 in 8/07 appraisal)

land sf	28,892sf		
4.5FAR sf	130,174sf		
$57.50FARs sf Integra			$7,500,000
$55FAR sf	Harps	($349,175)	$7,150,825
Extra Constr. Cost		($1,967,000)	$5,183,825
limited sf	118,457	($635,635)	$4,548,190
IZ sf rqt.	8,782sf	($483,010)	$4,065,180
50% bonus density			
IZ rent coverage		($219,550)	not incl.
TOTAL w/o line 16			$4,065,180
HARPS	total/w16	($219,550)	$3,845,630
20% aff.	(Nat)		
.8x$6,239,255			$4,991,425

8/20/2009

FOIA CONFIDENTIAL TREATMENT REQUESTED

1/7/08

BSA Table 1
Florida Avenue / Shaw - Mid December 2007 Proposals

			1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	11 2018	12 2019	13 2020	14 2021	15 2022		60 2067
Banneker / District - lease																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent			$60,000	$100,000	$100,000														
Offeror Land Valuation																			
Base Rent	3.00%	fixed annaul escalations				$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$2,617,307
Other Base Rent Adjustment		not applicable																	
Total Gross Revenue			$160,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$2,617,307
WMATA Participation	10.00%	of defined capital events																	
Implied Initial Land Value	$7,947,280	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ residual			$160,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$48,075,772
NPV																			
Base Rent	5.73%	discount rate	$12,338,401																
With Residual	5.73%	discount rate	$14,036,328	X															

5.9% discount rate

Moodie Turay / Clark - lease (Option One: illustrative without alley closing, assumed 130,000 FAR with initial value held at $65 / FAR)

Revenues																			
Option Fee			$100,000																
Predevelopment Rent	$10,000	per month	$90,000	$120,000	$120,000	$120,000													
Offeror Land Valuation	2.00%	pre stabilization escalator	$8,460,000	$8,619,000	$8,791,380	$8,967,208	$9,146,552												
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$0	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724		$731,724
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$281,153		$2,476,086
Total Gross Revenue			$190,000	$120,000	$120,000	$120,000	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$1,012,877		$3,207,810
WMATA Participation	5.00%	of defined capital events																	
Implied Initial Land Value	$0	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ Residual			$190,000	$120,000	$120,000	$120,000	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$1,012,877		$48,666,275
NPV																			
Base Rent	5.73%	discount rate	$10,161,978																
With Residual	5.73%	discount rate	$11,767,887	X															
With Base Rent Escal	9.00%	disc rate on escalation	$13,574,499	(illustrative)															
With Base Rent Escal	5.73%	disc rate on escalation	$16,966,012	(illustrative)															

Moodie Turay / Clark - lease (Option Two: illustrative without alley closing, assumed 130,000 FAR with initial value held at $61.50 / FAR)

Revenues																			
Option Fee			$100,000																
Predevelopment Rent	$10,000	per month	$90,000	$120,000	$120,000	$120,000													
Offeror Land Valuation	3.00%	pre stabilization escalator	$7,995,000	$8,234,850	$8,481,896	$8,736,352	$8,998,443												
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$0	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875		$719,875
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$276,601		$2,435,991
Total Gross Revenue			$190,000	$120,000	$120,000	$120,000	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$996,476		$3,155,866
WMATA Participation	5.00%	of defined capital events																	
Implied Initial Land Value	$0	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ Residual			$190,000	$120,000	$120,000	$120,000	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$996,476		$48,614,332
NPV																			
Base Rent	5.73%	discount rate	$10,003,812																
With Residual	5.73%	discount rate	$11,609,720																
With Base Rent Escal	9.00%	disc rate on escalation	$13,387,078	(illustrative)															
With Base Rent Escal	5.73%	disc rate on escalation	$16,723,673	(illustrative)															

WMATA-INV 004566

FOIA CONFIDENTIAL TREATMENT REQUESTED

1/7/08

BSA Table 1
Florida Avenue / Shaw - Mid December 2007 Proposals

			1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	11 2018	12 2019	13 2020	14 2021	15 2022		60 2067
Banneker / District - lease																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent			$80,000	$100,000	$100,000														
Offeror Land Valuation																			
Base Rent	3.00%	fixed annual escalations				$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$2,617,307
Other Base Rent Adjustment		not applicable																	
Total Gross Revenue			$180,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$2,617,307
WMATA Participation	10.00%	of defined capital events																	
Implied Initial Land Value	$7,847,280	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ residual			$180,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$48,075,772
NPV																			
Base Rent	5.73%	discount rate	$12,338,401																
With Residual	5.73%	discount rate	$14,036,328																

Moodie Turay / Clark - lease (Option One: Illustrative without alley closing, assumed 130,000 FAR with initial value held at $65 / FAR)																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent	$10,000	per month	$80,000	$120,000	$120,000	$120,000													
Offeror Land Valuation	2.00%	pre stabilization escalator	$8,450,000	$8,619,000	$8,791,380	$8,967,208	$9,146,552												
Base Rent	5.00%	of offeror land valuation	$0	$0	$0	$0	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724		$731,724
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$281,153		$2,476,086
Total Gross Revenue			$180,000	$120,000	$120,000	$120,000	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$1,012,877		$3,207,810
WMATA Participation	5.00%	of defined capital events																	
Implied Initial Land Value	$0	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ Residual			$180,000	$120,000	$120,000	$120,000	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$1,012,877		$48,666,275
NPV																			
Base Rent	5.73%	discount rate	$10,161,976																
With Residual	5.73%	discount rate	$11,767,887																
With Base Rent Escal	9.00%	disc rate on escalation	$13,574,499	(Illustrative)															
With Base Rent Escal	5.73%	disc rate on escalation	$16,966,012	(Illustrative)															

Moodie Turay / Clark - lease (Option Two: Illustrative without alley closing, assumed 130,000 FAR with initial value held at $61.50 / FAR)																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent	$10,000	per month	$80,000	$120,000	$120,000	$120,000													
Offeror Land Valuation	3.00%	pre stabilization escalator	$7,995,000	$8,234,850	$8,481,896	$8,736,352	$8,998,443												
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$0	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875		$719,875
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$278,601		$2,435,991
Total Gross Revenue			$180,000	$120,000	$120,000	$120,000	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$998,476		$3,155,866
WMATA Participation	5.00%	of defined capital events																	
Implied Initial Land Value	$0	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ Residual			$180,000	$120,000	$120,000	$120,000	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$998,476		$48,614,332
NPV																			
Base Rent	5.73%	discount rate	$10,003,812																
With Residual	5.73%	discount rate	$11,589,720																
With Base Rent Escal	9.00%	disc rate on escalation	$13,367,978	(Illustrative)															
With Base Rent Escal	5.73%	disc rate on escalation	$16,723,573	(Illustrative)															

WMATA-INV 004567

BSA
12/20/07

BSA Table 2
Florida Avenue / Shaw - December 2007 Proposals

		1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	60 2068
Lakritz Adler - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent																	
Offeror Land Valuation				$4,890,000													
Base Rent	1.80% fixed annaul escalations					$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$595,559
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$100,000	$0	$0	$0	$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$595,559
WMATA Participation	0.00% not offered																
Implied Initial Land Value	$7,947,280 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$100,000	$0	$0	$0	$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$46,054,025
NPV																	
Base Rent	5.73% discount rate	-$4,330,076															
With Residual	5.73% discount rate	$8,028,003															

Banneker / District - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent		$60,000	$100,000														
Offeror Land Valuation																	
Base Rent	3.00% fixed annaul escalations			$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,826
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,826
WMATA Participation	10.00% of defined capital events																
Implied Initial Land Value	$7,947,280 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$48,154,291
NPV																	
Base Rent	5.73% discount rate	$13,037,046															
With Residual	5.73% discount rate	$14,734,873															

Moodie Turay / Clark - lease(illustrative without alley closing, assumed 127,000 FAR with initial value held at $65 / FAR)																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent	$10,000 per month	$90,000	$120,000	$120,000													
Offeror Land Valuation	2.00% pre stallization escalator	$8,255,000	$8,420,100	$8,588,502	$8,760,272												
Base Rent	8.00% of offeror land valuation	$0	$0	$0	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822
Base Rent Adjustment	3.00% 10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$241,024	$241,024	$2,371,515
Total Gross Revenue		$190,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$3,072,337
WMATA Participation	5.00% of defined capital events																
Implied Initial Land Value	$0 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual		$190,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$48,530,802
NPV																	
Base Rent	5.73% discount rate	$10,310,276															
With Residual	5.73% discount rate	$11,916,185															
With Base Rent Escal	9.00% disc rate on escalation	$13,867,933	(illustrative)														
With Base Rent Escal	5.73% disc rate on escalation	$16,916,124	(illustrative)														

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 004568

FOIA CONFIDENTIAL TREATMENT REQUESTED

BSA
12/20/07

BSA Table 2
Florida Avenue / Shaw - December 2007 Proposals

		1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	60 2068
Lakritz Adler - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent																	
Offeror Land Valuation				$4,890,000													
Base Rent	1.60% fixed annaul escalations					$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$595,559
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$100,000	$0	$0	$0	$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$595,559
WMATA Participation	0.00% not offered																
Implied Initial Land Value	$7,947,280 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$100,000	$0	$0	$0	$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$46,054,025
NPV																	
Base Rent	5.73% discount rate	-$4,330,076															
With Residual	5.73% discount rate	$8,026,003															
Banneker / District - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent		$60,000	$100,000														
Offeror Land Valuation																	
Base Rent	3.00% fixed annaul escalations			$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,828
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,828
WMATA Participation	10.00% of defined capital events																
Implied Initial Land Value	$7,947,280 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$48,154,291
NPV																	
Base Rent	5.73% discount rate	$13,037,046															
With Residual	5.73% discount rate	$14,734,973															
Moodie Turay / Clark - lease	(illustrative without alley closing, assumed 127,000 FAR with initial value held at $65 / FAR)																
Revenues																	
Option Fee		$100,000															
Predevelopment Rent	$10,000 per month	$90,000	$120,000	$120,000													
Offeror Land Valuation	2.00% pre stallization escalator	$8,255,000	$8,420,100	$8,588,502	$8,760,272												
Base Rent	6.00% of offeror land valuation	$0	$0	$0	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822
Base Rent Adjustment	3.00% 10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$241,024	$241,024	$2,371,515
Total Gross Revenue		$190,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$3,072,337
WMATA Participation	5.00% of defined capital events																
Implied Initial Land Value	$0 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual		$190,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$48,530,802
NPV																	
Base Rent	5.73% discount rate	$10,310,276															
With Residual	5.73% discount rate	$11,916,185															
With Base Rent Escal	0.00% disc rate on escalation	$13,667,933 (illustrative)															
With Base Rent Escal	5.73% disc rate on escalation	$16,916,124 (illustrative)															

WMATA-INV 004569

From: "Woody, Derrick (EOM)" <derrick.woody@dc.gov>
To: "Rosalyn Doggett" <rdoggett@wmata.com>
Date: 12/19/2007 12:43:33 PM
Subject: Today's Adler Interview

Hey Ros:

I wanted to be at the 2 PM today, but I was asked earlier today to be in a meeting with DM Albert about another pressing, hi-profile project. (Can't wait until tomorrow is over! LOL ...) The meeting starts at 2 pm so I will have to skip today's interview.

Please extend my apologies to your team and the Adler team for this, but let them know that the District remains VERY interested in the redevelopment of these parcels and want to see the redevelopment happen as soon as possible after a developer is selected.

The District has met with Josh and Rob before and would strongly encourage office and hotel development above exciting retail on the parcels, but need to feel more confident that if selected, THEY WILL DO what they are stating now. Convince us they can follow through and finish this project if selected!

Their design needs a LOT of rethinking for this urban site. At present the drawings are reminiscent of an office park along an expressway. The retail ground level needs to be extremely prominent, pedestrian friendly and inviting in terms of appearance and tenancy.

Derrick Lanardo Woody

Coordinator - Great Streets Initiative

Office of the Deputy Mayor for

Planning & Economic Development

1350 Pennsylvania Avenue NW

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EMAIL: derrick.woody@dc.gov <mailto:derrick.woody@dc.gov>

More information: www.greatstreets.dc.gov

or www.dcbiz.dc.gov <http://www.dcbiz.dc.gov>

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CC: "Gardner, Geraldine (OP)" <geraldine.gardner@dc.gov>

From: <eric.smart@bolansmart.com>
To: "Rosalyn Doggett" <rdoggett@wmata.com>
Date: 5/8/2008 8:17:13 AM
Subject: Re: Florida at nine percent

As a follow up note it is of course no magic that employing a discount rate in the range of 8.0% will generally equate to the appraised valuation for two reasons. First, it approximates the gradually escalated WMATA ground lease payrate, and second, but generally much more obscure, is that the appraisal itself is based on private market measures of valuation, themselves heavily influenced by blended costs of debt and equity financing in the 8.0% range for well anchored and developable property.

On Wed, 07 May 2008 2:32:47 -0500 (EST), "Rosalyn Doggett" <rdoggett@wmata.com> wrote:
> A linguist as well as mathematician! This npv does not meet the appraisal
> at 9% discount. I guess that it is because substantive rents start only at
> stabilization. Instructive.
>
> >>> <eric.smart@bolansmart.com> 5/7/2008 3:07 PM >>>
> Ici pour vous (which is pretty much the limit of my crude french).
>
>
> On Wed, 07 May 2008 12:47:36 -0500 (EST), "Rosalyn Doggett"
> <rdoggett@wmata.com> wrote:
> > Thanks, Eric. Actually, the new value is without residual is about the
> same
> > as the latest appraisal.
> >
> > When you get a chance can you run Florida Ave Banneker at 9%? Merci.
> >
> > >>> <eric.smart@bolansmart.com> 5/7/2008 1:40 PM >>>
> > Roz - Till the numbers may change, here is the Navy Chiller site cash
> > flow analysis using a WMATA 9.0% discount rate. As expected, produces a
> > lower present value than the appraised value. Eric
> > --
> > Eric Smart, Bolan Smart Associates, Inc.
> > 1250 24th Street, NW, Suite 300, Washington, DC 20037
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> > www.bolansmart.com
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www.bolansmart.com

From: Rosalyn Doggett
To: eric.smart@bolansmart.com
Subject: Re: Florida Ave npv

thanks
that is what we thought but wanted to check on

>>> <eric.smart@bolansmart.com> 4/29/2008 4:49 PM >>>
Roz

With a ground rent established at over 6.5% of the appraised value, plus 3.0% annual increases, the effective yield on the current appraised value keeps increasing over time, gradually growing to upwards of 35% of current appraised value by year 60 of the ground lease. Discounting this growing income stream at anything less than the combination of the yield rate plus the escalations will result in a higher NPV than the appraised value. This is why the ability of WMATA to leverage its cost of funds vs the private sector's discounts can be very advantageous, attributed both to setting an appraised current value predicated on private sector blended financing costs and the ability for WMATA to essentially keep the spead between its cost of funds and the private sector's alternative costs of term financing. While adding a residual value after 60 years is provides an additional kicker, the bulk of the difference relates to the spread between the escalating ground lease yield rate and WMATA's discount rate.

Eric

On Mon, 28 Apr 2008 2:04:32 -0500 (EST), "Rosalyn Doggett" <rdoggett@wmata.com> wrote:
> I had a question about how the NPV ($14M with residual) could be so far above
> the current estimate of land value ($7.5M). Can you help me out on this one?
> Thanks.
>
>
>
--
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FOIA CONFIEDENTIAL TREATMENT REQUESTED

BSA Table 1
Florida Avenue / Shaw - Proposal Comparisons

			1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	11 2018	12 2019	13 2020	14 2021	15 2022		60 2067
Bannekar / District - lease (mid December 2007)																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent			$60,000	$100,000	$100,000														
Offeror Land Valuation																			
Base Rent	3.000%	fixed annual escalations				$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$2,617,307
Other Base Rent Adjustment		not applicable																	
Total Gross Revenue			$160,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$2,617,307
WMATA Participation	10.00%	of defined capital events																	
Implied Initial Land Value	$7,947,280	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ residual			$160,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$48,075,772
NPV																			
Base Rent	9.00%	discount rate	$6,496,787																
With Residual	9.00%	discount rate	$6,778,279																

Bannekar / District - lease (March 2008)																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent			$60,000	[redacted]															
Offeror Land Valuation																			
Base Rent	[redacted]	unpaid year 4, then escalated @ 1.03% to next year																	
	[redacted]	fixed annual escalations years 6 to 14					[redacted]	$605,256	$613,215	$621,279	$629,449	$637,726	$646,112	$654,608	$663,216	$671,938			$2,617,226
	3.000%	fixed annual escalations years 15+															$692,096		
Other Base Rent Adjustment		not applicable																	
Total Gross Revenue			$160,000	$100,000	$115,000	$130,000	$597,400	$605,256	$613,215	$621,279	$629,449	$637,726	$646,112	$654,608	$663,216	$671,938	$692,096		$2,617,226
WMATA Participation	10.00%	of defined capital events																	
Implied Initial Land Value	$0	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ residual			$160,000	$100,000	$115,000	$130,000	$597,400	$605,256	$613,215	$621,279	$629,449	$637,726	$646,112	$654,608	$663,216	$671,938	$692,096		$48,075,692
NPV																			
Base Rent	9.00%	discount rate	$6,473,544																
With Residual	9.00%	discount rate	$6,755,026																

WMATA-INV 004575

From: <eric.smart@bolansmart.com>
To: <rdoggett@wmata.com>
Date: 1/7/2008 2:47:14 PM
Subject: revised Florida

Roz

Per your phone message the changes include:

1) beginning 2008

2) 130,000 sf assumed for Turay

3) base rent commencements pushed back a year (beginning Jan of calendar year)

Eric
--
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FOIA CONFIDENTIAL TREATMENT REQUESTED

BSA Table 1
Florida Avenue / Shaw - Mid December 2007 Proposals

			1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	11 2018	12 2019	13 2020	14 2021	15 2022		60 2067
Banneker / District - lease																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent			$90,000	$100,000	$100,000														
Offeror Land Valuation																			
Base Rent	3.00%	fixed annual escalations				$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$2,617,307
Other Base Rent Adjustment		not applicable																	
Total Gross Revenue			$160,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$2,617,307
WMATA Participation	10.00%	of defined capital events																	
Implied Initial Land Value	$7,947,280	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ residual			$160,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$48,075,772
NPV																			
Base Rent	5.73%	discount rate	$12,338,401																
With Residual	5.73%	discount rate	$14,039,328																

Moodie Turay / Clark - lease (Option One: illustrative without alley closing, assumed 130,000 FAR with initial value held at $65 / FAR)

Revenues																			
Option Fee			$100,000																
Predevelopment Rent	$10,000	per month	$90,000	$120,000	$120,000	$120,000													
Offeror Land Valuation	2.00%	pre stabilization escalator	$8,450,000	$8,619,000	$8,791,380	$8,967,208	$9,146,552												
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$0	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724		$731,724
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$281,153		$2,476,086
Total Gross Revenue			$190,000	$120,000	$120,000	$120,000	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$1,012,877		$3,207,810
WMATA Participation	5.00%	of defined capital events																	
Implied Initial Land Value	$0	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ Residual			$190,000	$120,000	$120,000	$120,000	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$1,012,877		$48,666,275
NPV																			
Base Rent	5.73%	discount rate	$10,161,978																
With Residual	5.73%	discount rate	$11,767,887																
With Base Rent Escal	9.00%	disc rate on escalation	$13,574,499	(illustrative)															
With Base Rent Escal	5.73%	disc rate on escalation	$16,966,012	(illustrative)															

Moodie Turay / Clark - lease (Option Two: illustrative without alley closing, assumed 130,000 FAR with initial value held at $61.50 / FAR)

Revenues																			
Option Fee			$100,000																
Predevelopment Rent	$10,000	per month	$90,000	$120,000	$120,000	$120,000													
Offeror Land Valuation	3.00%	pre stabilization escalator	$7,995,000	$8,234,850	$8,481,896	$8,736,352	$8,998,443												
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$0	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875		$719,875
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$278,601		$2,435,991
Total Gross Revenue			$190,000	$120,000	$120,000	$120,000	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$998,476		$3,155,866
WMATA Participation	5.00%	of defined capital events																	
Implied Initial Land Value	$0	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ Residual			$190,000	$120,000	$120,000	$120,000	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$998,476		$48,614,332
NPV																			
Base Rent	5.73%	discount rate	$10,003,812																
With Residual	5.73%	discount rate	$11,609,720																
With Base Rent Escal	9.00%	disc rate on escalation	$13,387,078	(illustrative)															
With Base Rent Escal	5.73%	disc rate on escalation	$16,723,673	(illustrative)															

WMATA-INV 004577

FOIA CONFIDENTIAL TREATMENT REQUESTED

(1) Start in 2008?
(2) Give Moodie 130,000 SF
(3) More payments to next year
move all back one year
ERIC STARKS 776 7740
1/4/18

BSA Table 1
Florida Avenue / Shaw - Mid December 2007 Proposals

		1 2008	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	60 2068
Banneker / District - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent	$8.2 million	$60,000	$100,000														
Offeror Land Valuation																	
Base Rent	3.00% fixed annaul escalations			$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,826
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,826
WMATA Participation	10.00% of defined capital events																
Implied Initial Land Value	~~$7,947,786 FY08 assessed values~~ NO																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$48,154,291
NPV																	
Base Rent	5.73% discount rate	$13,037,048															
With Residual	5.73% discount rate	$14,734,973															

Moodie Turay / Clark - lease (Option One: illustrative without alley closing, assumed 127,000 FAR with initial value held at $65 / FAR)

Revenues																	
Option Fee		$100,000															
Predevelopment Rent	$10,000 per month	$90,000	$120,000	$120,000													
Offeror Land Valuation	2.00% pre stallization escalator	$8,255,000	$8,420,100	$8,588,502	$8,760,272												
Base Rent	8.00% of offeror land valuation	$0	$0	$0	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822
Base Rent Adjustment	3.00% 10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$241,024	$241,024	$2,371,515
Total Gross Revenue		$190,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$3,072,337
WMATA Participation	5.00% of defined capital events																
Implied Initial Land Value	$0 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual		$190,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$48,530,802
NPV																	
Base Rent	5.73% discount rate	$10,310,276															
With Residual	5.73% discount rate	$11,916,185															
With Base Rent Escal	9.00% disc rate on escalation	$13,567,933 (illustrative)															
With Base Rent Escal	5.73% disc rate on escalation	$16,916,124 (illustrative)															

Moodie Turay / Clark - lease (Option Two: illustrative without alley closing, assumed 127,000 FAR with initial value held at $61.50 / FAR)

Revenues																	
Option Fee		$100,000															
Predevelopment Rent	$10,000 per month	$90,000	$120,000	$120,000													
Offeror Land Valuation	3.00% pre stallization escalator	$7,810,500	$8,044,815	$8,286,159	$8,534,744												
Base Rent	8.00% of offeror land valuation	$0	$0	$0	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780
Base Rent Adjustment	3.00% 10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$234,819	$234,819	$2,310,462
Total Gross Revenue		$190,000	$120,000	$120,000	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$917,599	$917,599	$2,993,241
WMATA Participation	5.00% of defined capital events																
Implied Initial Land Value	$0 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual		$190,000	$120,000	$120,000	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$917,599	$917,599	$48,451,707
NPV																	
Base Rent	5.73% discount rate	$10,054,995															
With Residual	5.73% discount rate	$11,660,904															
With Base Rent Escal	9.00% disc rate on escalation	$13,367,555 (illustrative)															
With Base Rent Escal	5.73% disc rate on escalation	$16,532,123 (illustrative)															

WMATA-INV 004578

FOIA CONFIEDENTIAL TREATMENT REQUESTED

301 523 1810

1/4/08

BSA Table 2
Florida Avenue / Shaw - December 2007 Proposals

		1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	60 2068
Lakritz Adler - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent																	
Offeror Land Valuation				$4,890,000													
Base Rent	1.80% fixed annaul escalations					$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$595,559
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$100,000	$0	$0	$0	$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$595,559
WMATA Participation	0.00% not offered																
Implied Initial Land Value	$7,947,280 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$100,000	$0	$0	$0	$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$46,054,025
NPV																	
Base Rent	5.73% discount rate	$4,330,076															
With Residual	5.73% discount rate	$6,028,003															

Banneker / District - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent		$60,000	$100,000														
Offeror Land Valuation																	
Base Rent	3.00% fixed annaul escalations			$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,826
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,826
WMATA Participation	10.00% of defined capital events																
Implied Initial Land Value	$7,947,280 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$48,154,291
NPV																	
Base Rent	5.73% discount rate	$13,037,046															
With Residual	5.73% discount rate	$14,734,973															

Moodie Turay / Clark - lease(illustrative without alley closing, assumed 127,000 FAR with initial value held at $65 / FAR)																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent	$10,000 per month	$90,000	$120,000	$120,000													
Offeror Land Valuation	2.00% pre stallization escalator	$8,255,000	$8,420,100	$8,588,502	$8,760,272												
Base Rent	8.00% of offeror land valuation	$0	$0	$0	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822
Base Rent Adjustment	3.00% 10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$241,024	$241,024	$2,371,515
Total Gross Revenue		$190,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$3,072,337
WMATA Participation	5.00% of defined capital events																
Implied Initial Land Value	$0 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual		$190,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$48,530,802
NPV																	
Base Rent	5.73% discount rate	$10,310,276															
With Residual	5.73% discount rate	$11,916,185															
With Base Rent Escal	9.00% disc rate on escalation	$13,887,933	(illustrative)														
With Base Rent Escal	5.73% disc rate on escalation	$15,916,124	(illustrative)														

WMATA-INV 004579

From: <eric.smart@bolansmart.com>
To: <rdoggett@wmata.com>
Date: 1/7/2008 2:47:14 PM
Subject: revised Florida

Roz

Per your phone message the changes include:

1) beginning 2008

2) 130,000 sf assumed for Turay

3) base rent commencements pushed back a year (beginning Jan of calendar year)

Eric
--
Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037
202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com

FOIA CONFIDENTIAL TREATMENT REQUESTED

1/4/08

BSA Table 1
Florida Avenue / Shaw - Mid December 2007 Proposals

		1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	60 2068
Banneker / District - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent		$80,000	$100,000														
Offeror Land Valuation																	
Base Rent	3.00% fixed annual escalations			$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,826
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$180,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,826
WMATA Participation	10.00% of defined capital events																
Implied Initial Land Value	$7,847,280 FY08 assessed values																
Terminal Value	3.00% annual compounded increase $45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$180,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$48,154,291
NPV																	
Base Rent	5.73% discount rate	$13,037,046															
With Residual	5.73% discount rate	$14,734,973															

Moodie Turay / Clark - lease(Option One: Illustrative without alley closing, assumed 127,000 FAR with initial value held at $65 / FAR)

Revenues																	
Option Fee		$100,000															
Predevelopment Rent	$10,000 per month	$80,000	$120,000	$120,000													
Offeror Land Valuation	2.00% pre stabilization escalator	$8,255,000	$8,420,100	$8,588,502	$8,760,272												
Base Rent	8.00% of offeror land valuation	$0	$0	$0	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822
Base Rent Adjustment	3.00% 10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$241,024	$241,024	$2,371,515
Total Gross Revenue		$180,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$3,072,337
WMATA Participation	5.00% of defined capital events																
Implied Initial Land Value	$0 FY08 assessed values																
Terminal Value	3.00% annual compounded increase $45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual		$180,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$48,530,802
NPV																	
Base Rent	5.73% discount rate	$10,310,278															
With Residual	5.73% discount rate	$11,916,185															
With Base Rent Escal	9.00% disc rate on escalation	$13,667,933 (Illustrative)															
With Base Rent Escal	5.73% disc rate on escalation	$16,916,124 (Illustrative)															

Moodie Turay / Clark - lease(Option Two: Illustrative without alley closing, assumed 127,000 FAR with initial value held at $61.50 / FAR)

Revenues																	
Option Fee		$100,000															
Predevelopment Rent	$10,000 per month	$90,000	$120,000	$120,000													
Offeror Land Valuation	3.00% pre stabilization escalator	$7,810,500	$8,044,815	$8,286,159	$8,534,744												
Base Rent	8.00% of offeror land valuation	$0	$0	$0	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780
Base Rent Adjustment	3.00% 10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$234,819	$234,819	$2,310,462
Total Gross Revenue		$190,000	$120,000	$120,000	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$917,599	$917,599	$2,993,241
WMATA Participation	5.00% of defined capital events																
Implied Initial Land Value	$0 FY08 assessed values																
Terminal Value	3.00% annual compounded increase $45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual		$190,000	$120,000	$120,000	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$682,780	$917,599	$917,599	$48,451,707
NPV																	
Base Rent	5.73% discount rate	$10,054,995															
With Residual	5.73% discount rate	$11,660,904															
With Base Rent Escal	9.00% disc rate on escalation	$13,387,555 (Illustrative)															
With Base Rent Escal	5.73% disc rate on escalation	$16,532,123 (Illustrative)															

WMATA-INV 004581

FOIA CONFIDENTIAL TREATMENT REQUESTED

1/4/08

BSA Table 2
Florida Avenue / Shaw - December 2007 Proposals

		1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	60 2068
Lakritz Adler - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent																	
Offeror Land Valuation				$4,890,000													
Base Rent	1.80% fixed annual escalations					$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$595,559
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$100,000	$0	$0	$0	$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$595,559
WMATA Participation	0.00% not offered																
Implied Initial Land Value	$7,847,280 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,486 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,486
Cash Flow w/ residual		$100,000	$0	$0	$0	$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$46,054,025
NPV																	
Base Rent	5.73% discount rate	$4,330,076															
With Residual	5.73% discount rate	$8,028,003															
Banneker / District - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent		$60,000	$100,000														
Offeror Land Valuation																	
Base Rent	3.00% fixed annual escalations			$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,895,828
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,895,828
WMATA Participation	10.00% of defined capital events																
Implied Initial Land Value	$7,847,280 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,486 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,486
Cash Flow w/ residual		$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$48,154,291
NPV																	
Base Rent	5.73% discount rate	$13,037,046															
With Residual	5.73% discount rate	$14,734,973															
Moodie Turay / Clark - lease(illustrative without alley closing, assumed 127,000 FAR with initial value held at $65 / FAR)																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent	$10,000 per month	$90,000	$120,000	$120,000													
Offeror Land Valuation	2.00% pre stabilization escalator	$8,255,000	$8,420,100	$8,588,502	$8,760,272												
Base Rent	8.00% of offeror land valuation	$0	$0	$0	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822
Base Rent Adjustment	3.00% 10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$241,024	$241,024	$2,371,515
Total Gross Revenue		$190,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$3,072,337
WMATA Participation	5.00% of defined capital events																
Implied Initial Land Value	$0 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,486 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,486
Cash Flow w/ Residual		$190,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$48,530,802
NPV																	
Base Rent	5.73% discount rate	$10,310,276															
With Residual	5.73% discount rate	$11,616,185															
With Base Rent Escal	9.00% disc rate on escalation	$13,667,633 (Illustrative)															
With Base Rent Escal	5.73% disc rate on escalation	$16,816,124 (Illustrative)															

WMATA-INV 004582

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BSA 12/20/07

BSA Table 2
Florida Avenue / Shaw - December 2007 Proposals

		1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	60 2068
Lakritz Adler - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent																	
Offeror Land Valuation				$4,690,000													
Base Rent	1.80% fixed annaul escalations					$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$585,559
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$100,000	$0	$0	$0	$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$585,559
WMATA Participation	0.00% not offered																
Implied Initial Land Value	$7,947,280 FY08 assessed values																
Terminal Value	3.00% annual compounded increase $45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$100,000	$0	$0	$0	$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$46,054,025
NPV																	
Base Rent	5.73% discount rate	$4,330,076															
With Residual	5.73% discount rate	$6,028,003															
Banneker / District - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent		$60,000	$100,000														
Offeror Land Valuation																	
Base Rent	3.00% fixed annaul escalations			$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,826
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,826
WMATA Participation	10.00% of defined capital events																
Implied Initial Land Value	$7,947,280 FY08 assessed values																
Terminal Value	3.00% annual compounded increase $45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$48,154,291
NPV																	
Base Rent	5.73% discount rate	$13,037,046															
With Residual	5.73% discount rate	$14,734,973															
Moddie Turay / Clark - lease (illustrative without alley closing, assumed 127,000 FAR with initial value held at $65 / FAR)																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent	$10,000 per month	$80,000	$120,000	$120,000													
Offeror Land Valuation	2.00% pre stabilization escalator	$8,255,000	$8,420,100	$8,588,502	$8,760,272												
Base Rent	8.00% of offeror land valuation	$0	$0	$0	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822
Base Rent Adjustment	3.00% 10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$241,024	$241,024	$2,371,515
Total Gross Revenue		$180,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$3,072,337
WMATA Participation	5.00% of defined capital events																
Implied Initial Land Value	$0 FY08 assessed values																
Terminal Value	3.00% annual compounded increase $45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual		$180,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$48,530,802
NPV																	
Base Rent	5.73% discount rate	$10,319,276															
With Residual	5.73% discount rate	$11,916,185															
With Base Rent Escal	8.00% disc rate on escalation	$13,667,933 (illustrative)															
With Base Rent Escal	5.73% disc rate on escalation	$16,916,124 (illustrative)															

WMATA-INV 004583

From: <eric.smart@bolansmart.com>
To: <rdoggett@wmata.com>
Date: 1/4/2008 2:40:25 PM
Subject: Fwd: Re: Moddie Turay

Roz

Here is Turay cash flow with Option Two added to our summary of new numbers and notes we sent your way back around Dec 20.

Concerning your comparison summary from yesterday:

1) would query how to handle project data that includes non-WMATA land since obviously makes project look bigger than really is on a comparative basis.

2) from most recent letters we can't see where Turay base rent is increasing at a fixed amount after stabilization (only between now and stabilization), relying instead on 10 year periodic revisits.

Eric

-- Forwarded message from eric.smart@bolansmart.com
--
Roz

All we have done to now is adjust the MT square footage down to presumed achievable FAR without the alley and held their offered $65 per FAR land value constant (which do not think is likely due to negative impacts on scale and simplicity of project if needs to be split into two components). Attached is a slightly tightened cash flow illustration of the current offers along with the following notes.

Banneker / District

1) Retail / arts / rental residential uses, totaling 127,600 FAR @ 4.5

2) Outside rent commencement date before Jan 2011. Presume this assumes a lease execution by March 2009. Any reason why WMATA could be held responsible for delaying the lease execution date?

4) We have not valued their added 10.0% participation in defined capital events.

5) Wonder how Banneker might respond if told base rent was on low side?

Moddie Turay

1) Their alley closing proposal totals 132,475 WMATA FAR @ 4.5. To properly value their offer net of alley closing we need hard numbers from the bidder, covering actual FAR and pricing per FAR, if impacted. For illustration purposes we have used 127,000 WMATA FAR net of alley, which approximates a 4.5 FAR of our understood WMATA land area.

2) Their Dec 19 letter refers to the alley closing scenario as æ¾±y-rightâ€ . Wonder about this?

3) They still propose adjusting fair market value after stabilization every ten years per appraiser method. Might ask them to fix rate plus re-look based on proposed ten year periodic revaluation.

4) We have valued cash flow assuming their outside first tier stabilization date of December 2012. They could go longer out than that with proposed graduated increases in predevelopment rent.

5) We have not valued their added 5.0% participation in defined capital events (half of what Banneker has proposed).

6) Would note that if alley closing achieved, could be higher value to WMATA.

7) Question: What entity would be assigned ownership of closed alley interest? WMATA?

8) Of course curious about possible historic preservation issues regarding the extra Parcel 1 properties.

Eric

On Thu, 20 Dec 2007 9:37:10 -0500 (EST), "Rosalyn Doggett" <rdoggett@wmata.com> wrote:
> Yesterday you indicated you could refine your "worst case" assumptions on the
> information Moddie Turay provided at the Monday interview. Since I have no
> idea of your schedule, please let me know if that is something you can
> accomplish today, giving me also your assumptions. Thanks.
>
>
>
--
Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037
202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com

[attachment:FL Ave dec 07.pdf]

-- end forwarded message --

--

Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037
202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com

From: <pam.dubois@bolansmart.com>
To: "Rosalyn Doggett" <rdoggett@wmata.com>
Date: 10/17/2007 7:17:27 PM
Subject: Re: Fwd: Re: Shaw-Howard Proposals- Summary Information

Hi Roz,

Started to delve into the proposals today. We should be able to get you something next week. I'll update you Friday or Monday on our status.

Thanks,

Pam

P.S. Finally got paid for work in Jan and Feb! Also got a task order that includes Navy, Bethesda and more.

On Tue, 16 Oct 2007 8:47:16 -0500 (EST), "Rosalyn Doggett" <rdoggett@wmata.com> wrote:
> How long do you think you will need to do a preliminary evaluation of
> financial aspects- and issue?
>
> >>> Nat Bottigheimer 10/15/2007 9:52 PM >>>
> I see that two of these "require assemblage" to work. Does the Donatelli /
> Banneker proposal require assemblage, or does it assume assemblage because
> adjacent property is already controlled by the proposers?
>
> Are we able to evaluate values on the basis of the development that would
> take place on our property compared to on adjacent property?
>
> Can you, Roz and Joel, put together an evaluation table that snaps the key
> selection issues into focus?
>
> Proposed ~~price~~ value
> Consistency of proposed uses with zoning yes
> Risk of not achieving the proposed densities yes
> Strength of quals/ team
> Lease / sale keep better
> Percent of development value capturable by WMATA (for proposals that cross
> property boundaries)
> Support of proposed uses for transit needs same –
> need to do relationship –
> etc.
>
> How soon can we get a recommendation?
>
> Thanks,
>
> Nat
>
>

> >>> Rosalyn Doggett 10/15/07 2:13 PM >>>
> Attached are brief summaries of the three proposals and of the proposer
> teams. Both items are considered confidential.
>
> We have given the summary of the developer teams to Board members
> (information in the board packet) so that members may determine if they
have
> any conflicts of interest. Executive session.
>
> We have provided summaries as an information item in the Board
packet.
> Executive session. (For the Board in this case, we would probably only
want
> to include the total proposal, not parcel by parcel which is more of
interest
> to staff.)
>
> Please let me know if you require any additional information at this
time.
>
>
>
>
>

FOIA CONFIDENTIAL TREATMENT REQUESTED

BSA 1-11-08
RBD Review
1-2-08

BSA Table 1
Florida Avenue / Shaw - December 2007 Proposals

			2008	9	10	2011	2012	2013												
			1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023		60 2068
Lakritz Adler - lease																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent																			
Offeror Land Valuation																			
Base Rent	[redacted]	fixed annaul escalations			$4,890,000														
Other Base Rent Adjustment		not applicable					$223,253	$227,272	$231,382	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855		$595,559
Total Gross Revenue			$100,000	$0	$0	$0	$223,253	$227,272	$231,382	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855		$595,559
WMATA Participation	0.00%	not offered																	
Implied Initial Land Value	$7,947,280	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$0	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$0
Cash Flow w/ residual			$100,000	$0	$0	$0	$223,253	$227,272	$231,382	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855		$595,559
NPV																			
Base Rent	5.73%	discount rate	$4,330,076																
With Residual	5.73%	discount rate	$4,330,076																
Banneker / District - lease																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent			$60,000	$100,000	100,000														
Offeror Land Valuation																			
Base Rent	[redacted]	fixed annaul escalations			$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880		$2,695,826
Other Base Rent Adjustment		not applicable																	
Total Gross Revenue			$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880		$2,695,826
WMATA Participation	[redacted]																		
Implied Initial Land Value	$7,947,280	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$0	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$0
Cash Flow w/ residual			$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880		$2,695,826
NPV																			
Base Rent	5.73%	discount rate	$13,037,046																
With Residual	5.73%	discount rate	$13,037,046																
Moodie Turay / Clark - lease																			
Revenues																			
Option Fee			$190,000																
Predevelopment Rent	$10,000	per month	$90,000	$120,000	$120,000														
Offeror Land Valuation	2.00%	term rent escalator	[redacted]	$8,459,880	$8,629,078	$8,801,659													
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133		$704,133
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$242,163	$242,163		$2,382,719
Total Gross Revenue			$190,000	$120,000	$120,000	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$946,296	$946,296		$3,086,852
WMATA Participation	[redacted]	not offered																	
Implied Initial Land Value	$0	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$0	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$0
Cash Flow w/ Residual			$190,000	$120,000	$120,000	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$946,296	$946,296		$3,086,852
NPV																			
Base Rent	5.73%	discount rate	$10,357,123																
With Residual	5.73%	discount rate	$10,357,123																
With Base Rent Escal	9.00%	disc rate on escalation	$12,117,148	(illustrative)															
With Base Rent Escal	5.73%	disc rate on escalation	$15,380,684	(illustrative)															

too early pro forma shows 2013 outside date = 2013?

Pro Forma shows $716,000 in year 6

$500,000 ÷ 107 = $71,142

VS 400K in Pro Forma

high option fees & pre-dev rent from Clark - pay earlier

check historic context

WMATA-INV 004589

From: Rosalyn Doggett
To: pam.dubois@bolansmart.com
Date: 10/11/2007 4:12:08 PM
Subject: Re: Thanks! and FL Ave

Monday is fine. I will have copies ready.

>>> <pam.dubois@bolansmart.com> 10/11/2007 3:16 PM >>>
Roz,

Good to hear our feedback wasn't for not.

We have a meeting on the Hill at noon on Monday so we can stop by for a pick up on our way over. How does that sound?

FYI, we did get a check in the mail at our old address and its being forwarded to our new offices. We also updated our WMATA vendor information so that we are now registered at our new address, etc.

Progess...Thanks,

Pam

On Thu, 11 Oct 2007 2:07:40 -0500 (EST), "Rosalyn Doggett" <rdoggett@wmata.com> wrote:
> No, it was not too late. I laid out basis of my proposal, and I guess
> it was compelling enough that the AvalonBay rep said he wanted to think
> about it.
>
> On Oct 5, we received three proposals for Florida Ave:
> Banneker/District Development/Donatelli, LaKritzAdler and Moddie
> Turay/Clark Enterprises. If you are coming this way, I would like to
> give you copies. Otherwise, I will drop them off.
>
> >>> <pam.dubois@bolansmart.com> 10/11/2007 1:30 PM >>>
> Roz,
>
> Sorry but we didnÃ§â€ Å¡ read your note all the way through until today
> (re
> your meeting yesterday with developer). Nonetheless, we would confirm
> your blended 7.5% rate, albeit with likely resistance from your
> flippee.
> Our work with REITs like AvalonBay is that they claim to need in the
> range of 8.0%+ unleveraged return on cost at initial stabilization.
> They
> will probably argue that construction loans, if they had one, cost
> more
> than 150 basis points over an index, that debt/equity ratios have
> widened, and that equity costs have crept up, but you can counter as
> you
> have that your location is superior, and that your WMATA ground lease
> in
> effect is a financing tool that not only lowers the equity requirement
> relative to overall project value and debt service coverage but may
> also
> offer a favorable pre-development land carry.

>
> Perhaps somewhat helpful despite not being timely.
>
> Pam
>
>
> On Tue, 09 Oct 2007 10:42:52 -0500 (EST), "Rosalyn Doggett"
> <rdoggett@wmata.com> wrote:
> > on a slightly different note, I don't know if you all want to weigh
> in
> on
> > this (non-task order)
> >
> > We are negotiating an assignment of the Dunn Loring deal from
> Trammell
> Crow
> > Res. to AvalonBay.
> > TCR did all the approvals and now wants to "Flip" WMATA will get a
> good cut,
> > so it is ok with us since the flippee is a qualified firm
> >
> > AvalonBay wants to invest "all equity", in construction through
> permanent
> > financing
> >
> > I found today's session at ULI very helpful, confirmed what our
> appraiser
> > advised as to an allowable equity return before we partiicipate in
> future
> > Dunn Loring capital events.
> >
> > I am planning to propose 7.5% accross the board, a combination of
> 75%
> (not
> > highly leveraged) equity at 10.5% taking into account construction
> and
> lease
> > up risk but at a superior location and debt (basically permanent,
> not
> > construction) at 150+ - basis points over 10 year treasuries. I
> plan to
> > discuss with Gary, who was at ULI this a.m., this afternoon and
> meet
> with
> > developer tomorrow. Any thoughts?
> >
> > Of course, you are not obliged to respond!
> >
> > >>> <pam.dubois@bolansmart.com> 10/9/2007 11:15 AM >>>
> > Will do.
> >
> > On Tue, 09 Oct 2007 10:13:33 -0500 (EST), "Rosalyn Doggett"
> > <rdoggett@wmata.com> wrote:
> > > I hope so. Let me know, however, if there are glitches, and I
> will
> > follow

> > > up.
> > >
> > > >>> <pam.dubois@bolansmart.com> 10/5/2007 2:21 PM >>>
> > > Just got a call from Joel and David related to contracting and
> invoice
> > > matters. Hopefully this will be looked after now.
> > >
> > >
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>

CC: Joel R. Washington; Kasondra K. Johnston

From: <eric.smart@bolansmart.com>
To: "Rosalyn Doggett" <rdoggett@wmata.com>
Date: 12/20/2007 3:09:46 PM
Subject: Re: Moddie Turay

Roz

All we have done to now is adjust the MT square footage down to presumed achievable FAR without the alley and held their offered $65 per FAR land value constant (which do not think is likely due to negative impacts on scale and simplicity of project if needs to be split into two components). Attached is a slightly tightened cash flow illustration of the current offers along with the following notes.

Banneker / District

1) Retail / arts / rental residential uses, totaling 127,600 FAR @ 4.5

2) Outside rent commencement date before Jan 2011. Presume this assumes a lease execution by March 2009. Any reason why WMATA could be held responsible for delaying the lease execution date?

4) We have not valued their added 10.0% participation in defined capital events.

5) Wonder how Banneker might respond if told base rent was on low side?

Moddie Turay

1) Their alley closing proposal totals 132,475 WMATA FAR @ 4.5. To properly value their offer net of alley closing we need hard numbers from the bidder, covering actual FAR and pricing per FAR, if impacted. For illustration purposes we have used 127,000 WMATA FAR net of alley, which approximates a 4.5 FAR of our understood WMATA land area.

2) Their Dec 19 letter refers to the alley closing scenario as "by-right". Wonder about this?

3) They still propose adjusting fair market value after stabilization every ten years per appraiser method. Might ask them to fix rate plus re-look based on proposed ten year periodic revaluation.

4) We have valued cash flow assuming their outside first tier stabilization date of December 2012. They could go longer out than that with proposed graduated increases in predevelopment rent.

5) We have not valued their added 5.0% participation in defined capital events (half of what Banneker has proposed).

6) Would note that if alley closing achieved, could be higher value to WMATA.

7) Question: What entity would be assigned ownership of closed alley interest? WMATA?

8) Of course curious about possible historic preservation issues regarding the extra Parcel 1 properties.

Eric

On Thu, 20 Dec 2007 9:37:10 -0500 (EST), "Rosalyn Doggett" <rdoggett@wmata.com> wrote:
> Yesterday you indicated you could refine your "worst case" assumptions on the
> information Moddie Turay provided at the Monday interview. Since I have no
> idea of your schedule, please let me know if that is something you can
> accomplish today, giving me also your assumptions. Thanks.
>
>
>
--
Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037
202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com

11/07

Developer Selection should be 2008

BSA Table 2
Florida Avenue / Shaw - October 2007 Proposals

		1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	60 2068
Lakritz Adler - sale																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent																	
Purchase Price				$4,890,000													
Base Rent																	
Total Gross Revenue																	
WMATA Participation																	
Terminal Value																	
Cash Flow		$100,000	$0	$4,890,000													
NPV	5.73% discount rate	$4,574,339															
Lakritz Adler - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent																	
Offeror Land Valuation				$4,890,000													
Base Rent	20.00% 10-yr fixed escalations					$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$267,904	$555,525
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$100,000	$0	$0	$0	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$267,904	$555,525
WMATA Participation	0.00% not offered																
Implied Initial Land Value	$7,947,280 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$100,000	$0	$0	$0	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$267,904	$46,013,990
NPV																	
Base Rent	5.73% discount rate	$4,057,000															
With Residual	5.73% discount rate	$5,754,927															

N $7.5 M

Banneker / District / Donatelli - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent	Assumes Start up	$60,000	$100,000	$100,000													
Offeror Land Valuation																	
Base Rent	3.00% fixed annaul escalations				$500,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$2,541,074
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$160,000	$100,000	$100,000	$500,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$2,541,074
WMATA Participation	TBD																
Implied Initial Land Value	$7,947,280 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$160,000	$100,000	$100,000	$500,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$47,999,540
NPV																	
Base Rent	5.73% discount rate	$12,000,328															
With Residual	5.73% discount rate	$13,698,255															

2008

Developer shows $375k in 2011; Erec does not + 9 mo $375k in 2012, then increases 3% until month 39

Assumes developer selection in April?

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BSA Table 1
Florida Avenue / Shaw - October 2007 Proposals

			1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023		60 2068
Moodie Turay - sale																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent																			
Purchase Price			$6,496,200																
Base Rent																			
Total Gross Revenue			$6,596,200																
WMATA Participation		not applicable																	
Terminal Value		not applicable																	
Cash Flow			$6,596,200																
NPV	5.73%	discount rate	$6,596,200																
Moodie Turay - lease																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent	$10,000	per month	$90,000	$120,000	$120,000														
Offeror Land Valuation	2.50%	term rent escalator	$6,496,200	$6,658,605	$6,825,070	$6,995,697													
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656		$559,656
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$192,475	$192,475		$1,893,822
Total Gross Revenue			$190,000	$120,000	$120,000	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$752,131	$752,131		$2,453,478
WMATA Participation	0.00%	not offered																	
Implied Initial Land Value	$7,947,280	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ Residual			$190,000	$120,000	$120,000	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$752,131	$752,131		$47,911,944
NPV																			
Base Rent	5.73%	discount rate	$8,312,910																
With Residual	5.73%	discount rate	$9,918,818																
With Base Rent Escal	9.00%	disc rate on escalation	$11,317,713	(illustrative)															
With Base Rent Escal	5.73%	disc rate on escalation	$13,911,623	(illustrative)															

$9.5M

lease
D. Bus. Rel.
says $279,828/yr for 10 years =
& that is what the pro formal shows =

WMATA-INV 004596

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BSA Table 1
Florida Avenue / Shaw - October 2007 Proposals

			1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	60 2068
Moodie Turay - sale																		
Revenues																		
Option Fee			$100,000															
Predevelopment Rent																		
Purchase Price			$6,496,200															
Base Rent																		
Total Gross Revenue			$6,596,200															
WMATA Participation		not applicable																
Terminal Value		not applicable																
Cash Flow			$6,596,200															
NPV	5.73%	discount rate	$6,596,200															
Moodie Turay - lease																		
Revenues																		
Option Fee			$100,000															
Predevelopment Rent	$10,000	per month	$90,000	$120,000	$120,000													
Offeror Land Valuation	2.50%	term rent escalator	$6,496,200	$6,658,605	$6,825,070	$6,995,697												
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$192,475	$192,475	$1,893,822
Total Gross Revenue			$190,000	$120,000	$120,000	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$752,131	$752,131	$2,453,478
WMATA Participation	0.00%	not offered																
Implied Initial Land Value	$7,947,280	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual			$190,000	$120,000	$120,000	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$752,131	$752,131	$47,911,944
NPV																		
Base Rent	5.73%	discount rate	$8,312,910															
With Residual	5.73%	discount rate	$9,918,818															
With Base Rent Escal	9.00%	disc rate on escalation	$11,317,713	(illustrative)														
With Base Rent Escal	5.73%	disc rate on escalation	$13,911,623	(illustrative)														

WMATA-INV 004597

FOIA CONFIEDENTIAL TREATMENT REQUESTED

11/07

BSA Table 2
Florida Avenue / Shaw - October 2007 Proposals

		1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	60 2068
Lakritz Adler - sale																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent																	
Purchase Price				$4,890,000													
Base Rent																	
Total Gross Revenue																	
WMATA Participation																	
Terminal Value																	
Cash Flow		$100,000	$0	$4,890,000													
NPV	5.73% discount rate	$4,574,339															
Lakritz Adler - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent																	
Offeror Land Valuation				$4,890,000													
Base Rent	20.00% 10-yr fixed escalations					$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$267,904	$555,525
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$100,000	$0	$0	$0	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$267,904	$555,525
WMATA Participation	0.00% not offered																
Implied Initial Land Value	$7,947,280 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$100,000	$0	$0	$0	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$267,904	$46,013,990
NPV																	
Base Rent	5.73% discount rate	$4,057,000															
With Residual	5.73% discount rate	$5,754,927															
Banneker / District / Donatelli - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent		$80,000	$100,000	$100,000													
Offeror Land Valuation																	
Base Rent	3.00% fixed annaul escalations				$500,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$2,541,074
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$180,000	$100,000	$100,000	$500,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$2,541,074
WMATA Participation	TBD																
Implied Initial Land Value	$7,947,280 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$180,000	$100,000	$100,000	$500,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$47,999,540
NPV																	
Base Rent	5.73% discount rate	$12,000,328															
With Residual	5.73% discount rate	$13,698,255															

WMATA-INV 004598

Eric Smart 1.
10/07

LaKritz Adler is ~~wording~~ wordy but doesn't amount to anything

Circumvent DC tax law with 29 years

Moddie Turay / Banneker are remarkably close

- Hard to figure out whether the inclusion of a combo with the smaller site (Parcel 1) is of any benefit
  Doesn't enhance

*

Banneker is straightforward; they've left participation as a possibility
Go with them.

Moddie takes a similar base rent & jumps it up every 10 years. Banneker does it every year
* Eric discounted Moddie two ways
*

Banneker's threshhold for participation (or share of gross revenue / doesn't have to be earlier than 10 years

Remediation?
Eric to provide a basis for participation recommendations

From: <eric.smart@bolansmart.com>
To: <rdoggett@wmata.com>
Date: 10/26/2007 4:56:45 PM
Subject: Banneker participation at Florida

Roz – Thought we would digress into rational, some complicating factors, then get to a possible approach on ground rent participation per the standing October Banneker proposal.

In round numbers they say they have $36M in development costs net of the land value. Adding their $8M in suggested land value means the total project cost including the assumed land value would be $44M. If the $8M were then treated as percentage interest in the overall property cost it would represent approximately 18% of the total, meaning you could argue that the land value contribution should be recognized in some way or another for at least an 18% share in the project NOI.

Our suggestion is that if you already asked for 10%, with fill in the blanks, that you justify it in the following manner:

Base rent represents approximately 15% of stabilized cash flow before debt service and before ground rent deduct ($42K ground rent / ($240K per month + $42K ground rent = $282K net cash flow)). You would need another $10K per month to get up to 18%, but this 20% discount is probably an okay deduct for the leasing entity not actually owning the land.

Complicating factor affecting participation formula in the proposed lease is that the ground lease payout of 15% of NOI at the start is largely maintained over the first 15 years of the investment period under the proforma assumptions by adding a 3.0% annual escalator. Participation then can only fairly kick in when defined revenues are growing at greater than 3.0% (and could arguably be reduced when compounded escalations add up to less that 3.0%).

Suggest that since you have already asked for a 10% participation that you make it 10% of annual gross revenue that exceeds a compounded annual increase of 3% over proforma. This is well less than 18%, but allows for operating cost component, preferred equity returns and ground lease vs. ownership discounts to be offset. Participation in capital events could conceivably be justified at 18% of cumulative capital distribution proceeds over the return of the original equity of $9M plus some factor for equity yield. Since this is probably too complicated, and in some ways means WMATA benefits twice (off top on gross, then another piece on then reduced capital event potential), we would suggest applying a simple 10% participation in excess capital events proceeds above say $10M. Not that the numbers all add up, but if based on the usual "picked out of the air" principal, might well fly.

PS. The above outline assumes that the developer submitted proforma is reasonable and not overly weighted to favor the owner / equity components. We could delve into these aspects in more detail, but at a surface level of review we do not note any obvious slights of developer hand. Perhaps if your efforts to get some meaningful participation components are resisted strongly we could counter by scrubbing for proforma deficiencies.

--
Eric Smart, Bolan Smart Associates, Inc.

1250 24th Street, NW, Suite 300, Washington, DC 20037
202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com

CC: <pam.dubois@bolansmart.com>

Florida Avenue Proposals
Bolan Smart Associates
October 2007

Common Assumptions

1. 60-year analysis proxy for 60-year ground lease terms.
2. Bidding on all three parcels, assume as one transaction.
3. Nonrefundable $100K option fee from WMATA award to negotiate.
4. Minimum development requirements maximizing 4.5 Matter of Right FAR totaling 130,000+/- square feet.
5. WMATA discount rate of 5.73% is used for NPV calculations using FY09 as starting point.

Moddie Turay (see BSA Table 1)

1. Retail / rental residential uses, totaling 132,475 sf.
2. No evidence presented of market value.
3. 8.0% of fair market value at stabilization ($519,696) estimated Dec 2011, appraiser method adjusted every 10 years. Fair market value set at $50 / FAR from Oct. 2007, escalated annually at 2.5%. What is definition of "stabilization"? Will pay for additional FAR if achieved at par. No additional participation offered.
4. Pre-stabilization predevelopment rent of $120K / year, commencing at execution of Ground Lease (six months after execution of Dev Agreement).
5. Under fee sale, would pay $50 / FAR ($6,496,200) within six months of execution of Dev Agreement. Suggest open to purchase price escalation discussions, but no commitment.
6. Remediation Plan??? BSA does not understand.
7. Indicate control of land adjoining parcel 1.
8. Claim no contingencies other than "permits and approvals". (WMATA should affirm a minimum of by-right land value.)
9. Financial capability all Clark, as is most of real development experience.

Lakritz / Alder (see BSA Table 2)

1. Variety of possible (and alternate) uses.
2. Indicates control of land adjacent to parcel 2.
3. Why a 120-day study period after execution of Dev Agreement?

FOIA CONFIEDENTIAL TREATMENT REQUESTED

4. No predevelopment WMATA payments other than deposit.

5. Delivery Dec 2012 / rent commencement Jan 2013.

6. 29-year initial plus seven 10-year extensions. What happened to 60-year lease term requirement?

7. Does 29-year lease term with renewals effectively circumvent DC tax recordation law / intent / WMATA willingness to collaborate?

8. Base rent commences at COO for each building, not to exceed 60 months from "contract ratification"?

9. Total initial base rent $233,253 (4.77% tracked to 30-year US Treasuries) (with 2.0% escalation if developer delayed).

10. Base rent increase 20% every ten years.

11. Fee sale would occur 120-days after building permits issued, not to exceed 42 months from contract ratification, totaling $4,890,000 (with 3.0% escalation if developer delayed). Nothing for greater density.

12. WMATA has all remediation responsibilities.

Banneker / District / Donatelli (see BSA Table 2)

1. Retail / arts / rental residential uses, totaling 127,600 FAR @ 4.5.

2. Proposal does not include adjacent properties.

3. Predevelopment WMATA payments of $100,000 per year, increasing by 10% if developer delayed more than 12 months.

4. Developer would charge remediation cost against WMATA proceeds.

5. Delivery Dec 2011 / rent commencement Jan 2012.

6. Estimated land value (to what date) $8,200,000.

7. Total initial base rent $500,000, escalated at 3.0% per year.

8. Offer of upside participation but no specifics indicated.

Recommendations / Next Steps

1. TBD

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BSA Table 2
Florida Avenue / Shaw - October 2007 Proposals

			1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	60 2068
Lakritz Adler - sale																		
Revenues																		
Option Fee			$100,000															
Predevelopment Rent																		
Purchase Price					$4,890,000													
Base Rent																		
Total Gross Revenue																		
WMATA Participation																		
Terminal Value																		
Cash Flow			$100,000	$0	$4,890,000													
NPV	5.73%	discount rate	$4,574,339															
Lakritz Adler - lease																		
Revenues																		
Option Fee			$100,000															
Predevelopment Rent																		
Offeror Land Valuation					$4,890,000													
Base Rent	20.00%	10-yr fixed escalations					$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$267,904	$555,525
Other Base Rent Adjustment		not applicable																
Total Gross Revenue			$100,000	$0	$0	$0	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$267,904	$555,525
WMATA Participation	0.00%	not offered																
Implied Initial Land Value	$7,947,280	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual			$100,000	$0	$0	$0	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$267,904	$46,013,990
NPV																		
Base Rent	5.73%	discount rate	$4,057,000															
With Residual	5.73%	discount rate	$5,754,927															
Banneker / District / Donatelli - lease																		
Revenues																		
Option Fee			$100,000															
Predevelopment Rent			$60,000	$100,000	$100,000													
Offeror Land Valuation																		
Base Rent	3.00%	fixed annaul escalations				$500,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$2,541,074
Other Base Rent Adjustment		not applicable																
Total Gross Revenue			$160,000	$100,000	$100,000	$500,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$2,541,074
WMATA Participation		TBD																
Implied Initial Land Value	$7,947,280	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual			$160,000	$100,000	$100,000	$500,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$47,999,540
NPV																		
Base Rent	5.73%	discount rate	$12,000,328															
With Residual	5.73%	discount rate	$13,698,255															

WMATA-INV 004604

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BSA Table 1
Florida Avenue / Shaw - October 2007 Proposals

			1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023		60 2068
Moodie Turay - sale																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent																			
Purchase Price			$6,496,200																
Base Rent																			
Total Gross Revenue			$6,596,200																
WMATA Participation		not applicable																	
Terminal Value		not applicable																	
Cash Flow			$6,596,200																
NPV	5.73%	discount rate	$6,596,200																
Moodie Turay - lease																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent	$10,000	per month	$90,000	$120,000	$120,000														
Offeror Land Valuation	2.50%	term rent escalator	$6,496,200	$6,658,605	$6,825,070	$6,995,697													
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656		$559,656
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$192,475	$192,475		$1,893,822
Total Gross Revenue			$190,000	$120,000	$120,000	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$752,131	$752,131		$2,453,478
WMATA Participation	0.00%	not offered																	
Implied Initial Land Value	$7,947,280	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ Residual			$190,000	$120,000	$120,000	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$559,656	$752,131	$752,131		$47,911,944
NPV																			
Base Rent	5.73%	discount rate	$8,312,910																
With Residual	5.73%	discount rate	$9,918,818																
With Base Rent Escal	9.00%	disc rate on escalation	$11,317,713	(illustrative)															
With Base Rent Escal	5.73%	disc rate on escalation	$13,911,623	(illustrative)															

WMATA-INV 004605

FLORIDA AVE. TOEM SHEET

Jim Graham
Asst:

Emeka Moreme
Steve Strauss
Jamie Weinstein

Roz
Carol
Nat

~~6/24/08~~
6/24/08

1. Table no less than 60 days pending ....
inquiry into background - what + not is disclosable

2. Experience
Value of Land
Constr. Cost Estimate

3. Joel Washington informed "Banneker" a few days ago that they had "[illegible]" was inappropriate

a. Bill Rice
b. Marvel Bowser

4. Nat: what is standard for investigating the developer? beyond checking the tax situation
- Jim thinks we did not do enough background checking into the developer
- does Jim want me to look into the

5. Banneker Assets
a. 814 Thayer only, $430K assets

6 Metropolis must be in charge of construction management & decisions

7. Reappraise?

8 Do affordable housing?

9. • Land Value
• Inexperience of Principals } Can work in
• Concern re business ethics
?? • Construction Cost

Jim wants to know it can be financed. Tell us how you are going to finance

Lease
All Office Retail
(No hotel)

for 129,000 sf

	Bannerker	Lakritz / Adder	Moddie Tway
Land Cost	$ .5 M	11.8 ~~[illegible]~~ M 1	$ 1.5 M
Total Hard Costs	$ 27.8 M *	$35.9 M	$ 28.2 M
Site Work		$ ~~[illegible]~~	
Total Dev Cost	$35.6 M	~~[illegible]~~ ** 2	$ 43.6 M
	$275/sf =	$58.1 M	Total @ $338/sf.
	80% of Moddie Tway	$450/sf	

we added land costs in final negotiation

Using 165,000 sf =
$350/sf

* 135/sf. = everyone

1 Includes adjacent parcels, 15 years of cost ex. mortgage $40M costs
2

Navy Yard Chiller
$30,400 M
with land
but with chiller ds.
÷ 91,650 =
$332

33.2
11.8

Lakritz p 24 of proposal

1. 4,120 sf
2. 89,483
3. 72,000

165,603

From: "Diane Riser" <riser@metropolis-dc.com>
To: <rdoggett@wmata.com>
Date: 6/13/2008 10:00:15 AM
Subject: METROPOLIS FINANCIAL STATEMENT FOR WMATA

Ms. Doggett,

Please advise if you have any trouble opening the attachment.

Regards,

Diane M. Riser
Office Manager &
Executive Assistant to
Scott Pannick, President & CEO
Metropolis Development Company
1327 14th Street NW, Suite 200
Washington, DC 20005
202.588.5383 (d)
202.588.1344 (f)
riser@metropolis-dc.com
www.metropolis-dc.com

CC: "Merrick Malone" <malone@metropolis-dc.com>

4:15 PM
10/25/06
Accrual Basis

Metropolis Development Company
Balance Sheet Condensed

	Dec 31, 07	
ASSETS		
Current Assets		
BB&T Checking	25,000	
Total Current Assets		25,000
Fixed Assets		
Office Relocation Assets	83,000	
Furniture and Equipment	35,526	
Total Fixed Assets		118,526
Investment Projects		
Investment in Metropole[5]	11,819,000	
Investment in Mid City Corp[3]	523,721	
Investment in Uptown[4]	430,000	
Investment Whitman-Walker Clnc	75,000	
Total Investment Projects		12,847,721
Property Holdings		
B Retail[2]	1,850,000	
Sales Office[1]	1,975,000	
Total Property Holdings		3,825,000
TOTAL ASSETS		**16,816,248**
LIABILITIES & EQUITY		
Liabilities		
Accounts Payable	75,000	
Credit Line from BB&T	1,915,000	
Due to Chip Newell	825,630	
Total Liabilities		2,815,630
Equity		
Members Contribution	5,061,631	
Members Draw	-3,966,387	
Opening Bal Equity	1,157,279	
Unrealized Gains	13,084,404	
Retained Earnings	-1,336,309	
Net Income	0	
Total Equity		14,000,618
TOTAL LIABILITIES & EQUITY		**16,816,248**

1 - Sales office marked to market
2 - B retail marked to market
3 - Mid City value set to Mitchell Gold share for MDC
4 - Uptown value set to residual cash left in LLC
5 - Metropole value set to projected proceeds

FOIA CONFIEDENTIAL TREATMENT REQUESTED

metropolis
development company

January 28, 2008

Mr. Omar A. Karim
Banneker Ventures, LLC
700 12th Street NW Ste. 700
Washington, DC 20005

Dear Mr. Karim:

Metropolis Development Company ("Metropolis") welcomes the opportunity to serve as a Co-Developer with Howard University, Banneker Ventures and District Development Group to develop a mixed-use hotel, residential and retail project known as the Howard University Gateway Project on three WMATA parcels located in the Shaw/U Street District specifically on the South Side of Florida Avenue NW between 7th and 9th Streets NW. Metropolis has successfully developed WMATA parcels (LANGSTON LOFTS) at 14th and V Street and look forward to working with WMATA on this transaction.

The proposed Howard University Gateway Project provides an exciting development opportunity for our firm. Metropolis is the one of the most active residential and retail developers in the Uptown Arts Overlay with over 600,000 square feet valued at approximately $157 million delivered or under construction in the past 5 years.

Metropolis' core strengths are its ability to successfully execute complex real estate transactions in combination with unique design. The nature of constructing over Metro is familiar to Metropolis as we built successfully over Metro tunnels in our neighborhood-anchoring Langston Lofts project at 14th and V Streets; NW. Langston Lofts is an awarding winning mixed use residential/retail building that was built on top of the Metro Tunnel which included two air shafts. Throughout the Langston Project, Metropolis successfully closed an alley, removed oil contaminants and removed the cut and cover debris from the site. More importantly, Metropolis working closely with WMATA's an engineer successfully navigated its construction around the Metro Tunnels and is therefore extremely experienced with WMATA's requirements to protect its underground tunnel and its "zones of influence".

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Metropolis Development Company is a full service mixed use real estate development company focused on residential and retail projects in the Uptown Arts Overly market area.

Metropolis is a District Certified LSDBE and therefore fully committed to involving LSDBE participants and the community as major components of our project.

One of our objectives is to ensure, where possible, that District residents and District based LSDBEs and employees have an opportunity to benefit from our projects. Metropolis will continue to work closely and cooperatively with the District of Columbia Department of Employment Services and the Office of Local Business Development to maximize the participation, employment and contracting opportunities for District residents and businesses which surround its development.

In all of its mixed use development projects, Metropolis has demonstrated that it is imperative that the surrounding community of residents, churches, business and civic associations be considered as "partners" in the development process and must be integrated into all aspects of the process from planning/design to completion.

As a result of its previous mix-use developments in the area Metropolis has formed excellent relations with the members of the ANC in which the WMATA parcels are located. ANC's 1 and 2A as well as the Cardozo Shaw Neighborhood Association were all instrumental in the success of our development of Langston Lofts and our development of the new Duron site at 14th and Clifton. We sought and received their support for these developments which also required Historical Preservation Review Board and Board of Zoning Adjustments Approvals.

Metropolis has a demonstrated history of successful development and looks forward to working with your team on the Howard Gateway Project.

Sincerely,

Merrick T. Malone, Principal and Executive Vice President
Metropolis Development Company LLC.
1327 14th Street NW, Ste. 200
Washington, DC. 20005
(202) 588-1438

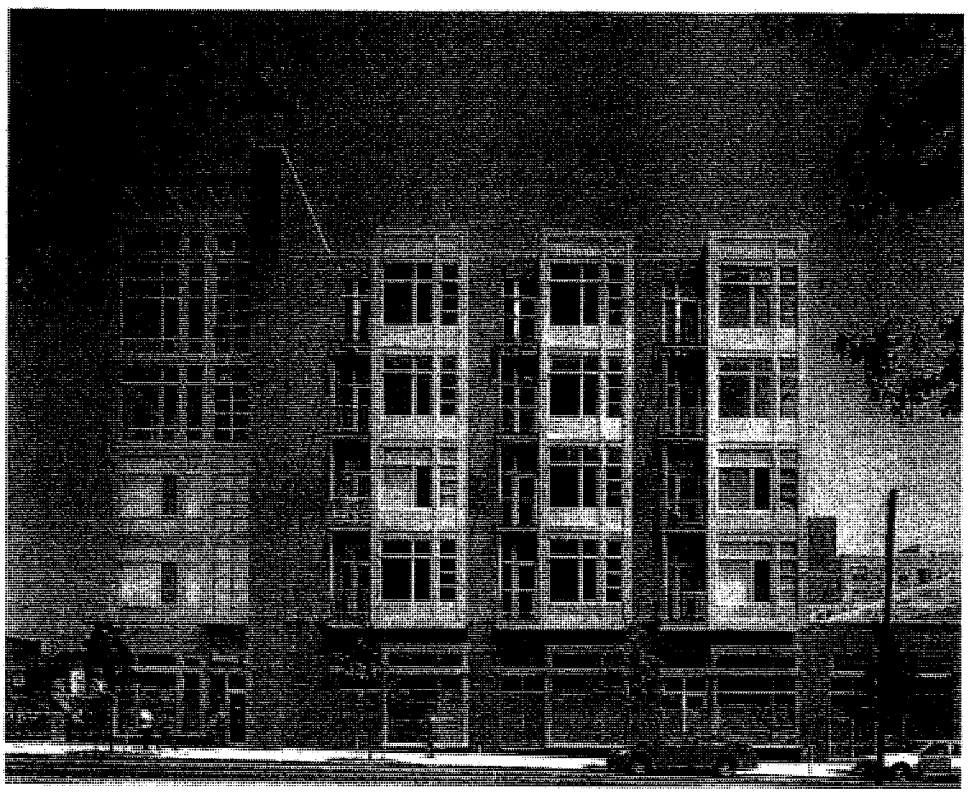
Metropolis Development Projects:

- **Langston Lofts**, a 101,647-square foot, 80-unit condominium at the southeast corner of 14th and V Streets, NW, with *Busboys and Poets*, a restaurant and bar/coffee house/bookstore/live performance venue on the ground floor.

  Winner of a 2006 Merit Award from Residential Architect magazine.

  Winner of a 2005 District of Columbia American Institute of Architects Award For Excellence.

  Finalist along with Busboys and Poets in the Best Community Impact category of the Washington Business Journal's Best Real Estate Deals contest for 2005.



Langston Lofts
1390 V Street NW
Washington, DC

Metropolis Development Company,
Developer

- Lofts 14, a 144,614 square foot, 83-unit condominium development at 14th and Church Streets, NW, with international retailer *Mitchell Gold* on the ground floor.

  Winner of the Delta Associates 2005 Mid-Atlantic Condominium of the Year.

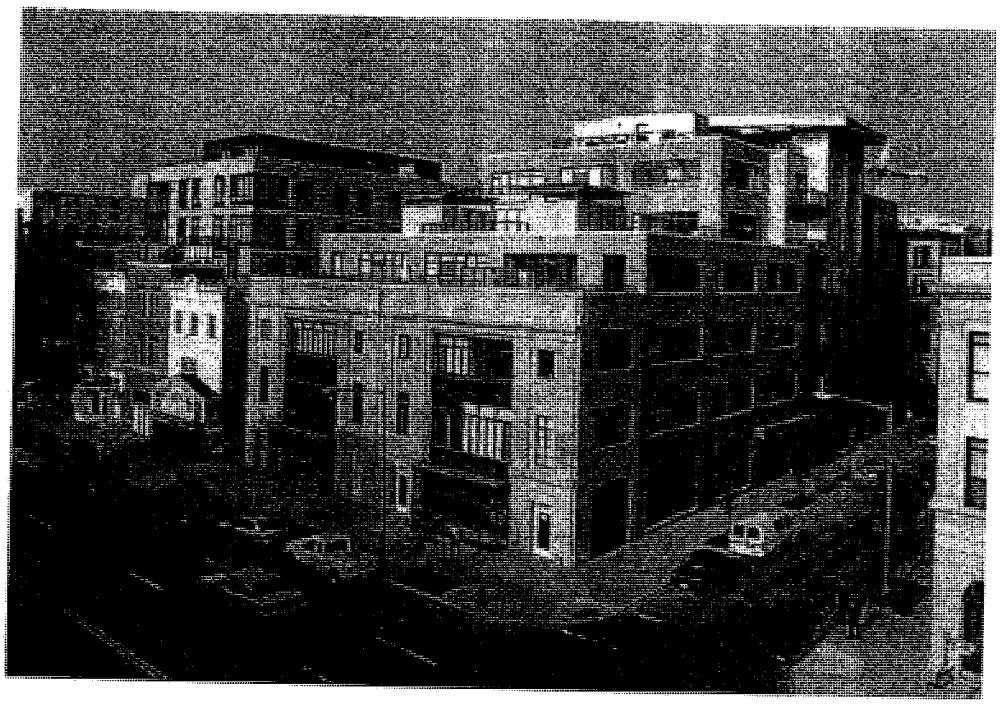
  Winner of the Delta Associates 2003 Best Adaptive Reuse Condominium Project in the Washington Area.

Lofts 14
1401 Church Street NW
Washington DC

Metropolis Development Company,
Developer

- Lofts 14 Two, a 71,310 square foot, 37-unit condominium development at 14th and Church Streets, NW. MDC is currently choosing retail tenants.

  Along with Lofts 14, Winner of the 2006 District of Columbia's Mayor's Award for Excellence in Historic Preservation for Excellence in New Construction.



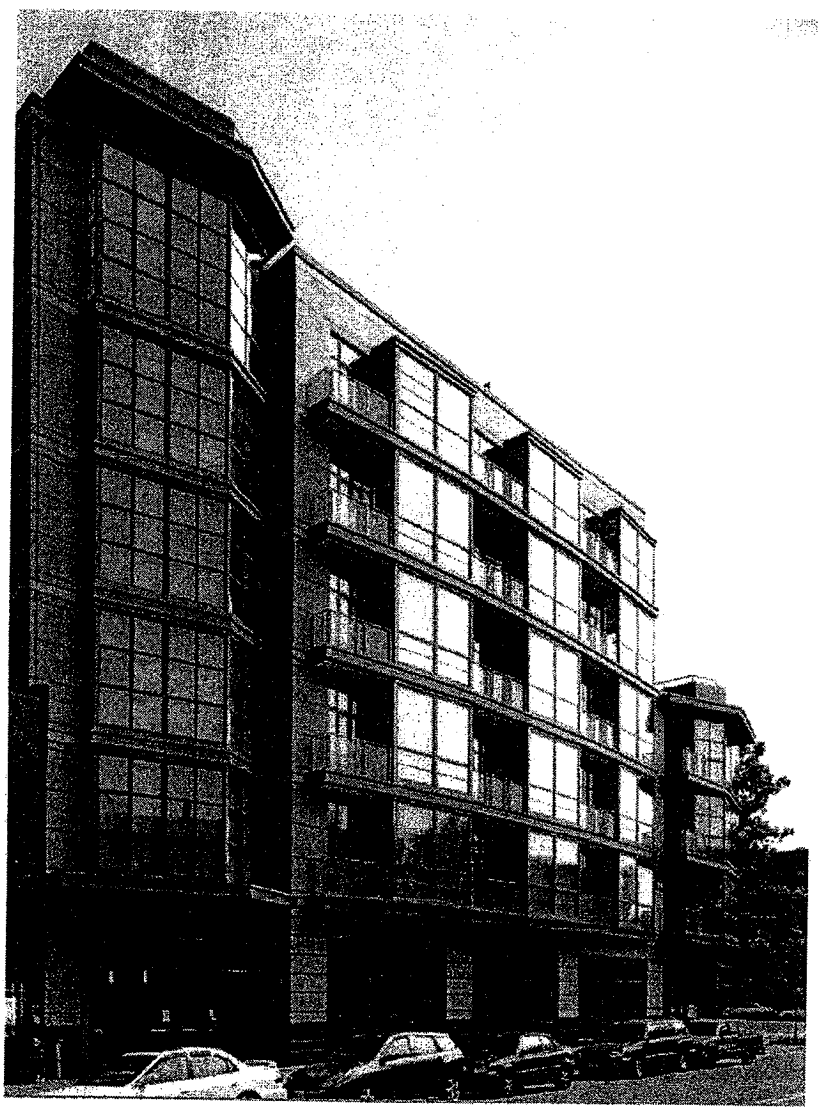
Lofts 14 Two

Metropolis Development Company, Developer

1400 Church Street, NW
Washington, DC 20005

- **Cooper Lewis Condominium**, a 58,530 square foot, 20-unit condominium development at 14th and P Streets, NW. The retail occupants will be PNC Bank and real estate broker The Hounshell Group.

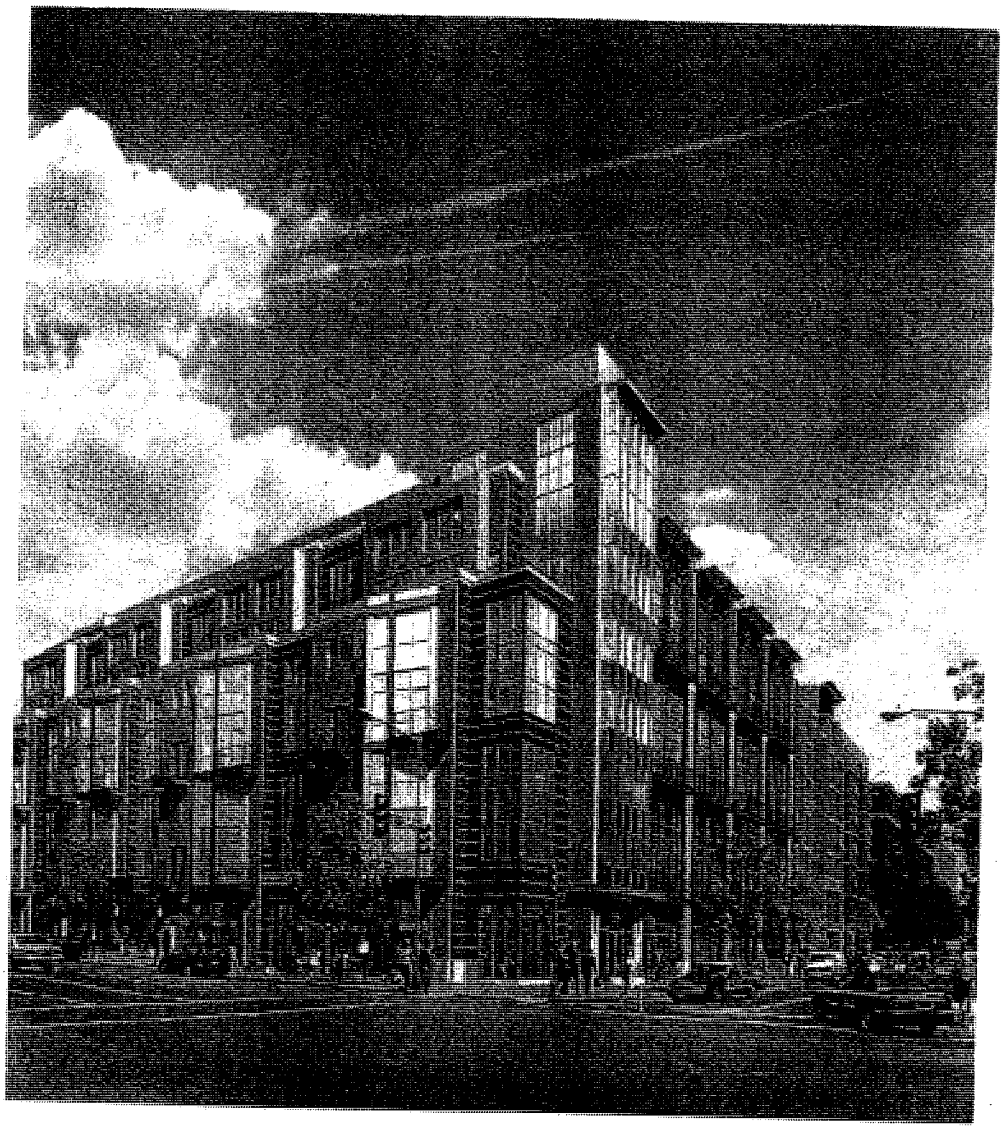
  Winner of the Delta Associates 2004 Best Adaptive Reuse Condominium Project in the Washington Area.



Cooper Lewis Condominium
1403 P Street, NW
Washington, DC 20005

Metropolis Development Company, Developer

- **The Metropole**, a 227,237 SF, 90-unit mixed-use condominium development at 15th and P Streets, NW, with 33,500 SF of retail and 71 public parking spaces. Currently under construction.



The Metropole
Company, Developer
1515 15th Street, NW
Washington, DC 20005

Metropolis Development

metropolis
development company

Key Principals

Scott Pannick, Principal and President, formed Metropolis in 1998 with the goal of revitalizing the new housing market in the District of Columbia. As of today Metropolis has 310 condominiums under development with more than 62,000 square feet of retail space. Before Metropolis, Scott was Executive Vice President, Director and Branch Manager of Julien J. Studley, Inc. in Washington, D.C. At Studley, Scott performed consulting, advisory work and fee development for institutional and corporate headquarters buildings in the District for 25 years. Scott's projects, which total seven million square feet, include Postal Square (1.2 million square feet), the Department of Transportation headquarters (1.35 million square feet), the American Red Cross headquarters (475,000 square feet) and the American College of Obstetricians and Gynecologists headquarters (50,000 square feet). Scott has an M.B.A. from Harvard Business School.

Merrick Malone, Principal and Executive Vice President, joined Metropolis in 1999 and brought with him a wealth of experience having worked both in public and private economic development as developer, consultant and high level public official in Washington and Detroit. Prior to joining Metropolis, Merrick was President of URBANCITYFOODS, a minority-owned restaurant development company which acquired and developed multiple restaurants in Baltimore, Washington, Detroit and Chicago. Prior to URBANCITYFOODS, Merrick was the Deputy Mayor of Economic Development and the Director of Housing and Community Development for the District of Columbia. In that position, Merrick led the District of Columbia to the successful completion of the MCI Sports Arena and assisted with the development of the $30 Million Black Entertainment Television (BET) Corporate Offices and Studio. During his tenure as Washington's Chief Economic Official, Merrick initiated and fostered public/private partnerships that financed the construction and renovation of over 4,500 residential units, four new childcare centers including the Mazique Parent Child Center; two major neighborhood retail centers, the Nehemiah neighborhood retail center and the Good Hope Marketplace and the restoration of the historic Lincoln Theatre at U Street. Merrick has a law degree from Georgetown University and is a real estate and transactional attorney.

Alex Shewchuk, Chief Financial Officer, has worked on four Metropolis projects, covering tax and financial reporting, budgeting, insurance, condominium document preparation, settlements, bookkeeping and transactions oversight. Alex attended The Wharton School, where he earned an M.B.A. and a Master's in International Relations. He has lived in Brazil, Japan, England, Spain, and Taiwan. He holds a B.A. in Economics from Yale University. He has also worked in management consulting with A.T. Kearney, and in systems programming with Morgan Stanley.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Contact Information

- Scott Pannick, Principal and President
  Tel (202) 588-1436
  Cell (202) 460-4150
  Fax (202) 588-1344
  pannick@metropolis-dc.com

- Merrick Malone, Principal and Executive Vice President
  Tel (202) 588-1438
  Cell (202) 437-6704
  Fax (202) 588-1977
  malone@metropolis-dc.com

- Alex Shewchuk, Chief Financial Officer
  Tel (202) 588-1870
  Cell (240) 353-7488
  Fax (202) 588-1977
  shewchuk@metropolis-dc.com

Written C 5/6/08

Marc - Did you

From: Rosalyn Doggett
To: Carol B. O'Keeffe; Nat Bottigheimer
Subject: Florida Avenue-- Board Requests

At the Board's Executive Session on April 24, a number of iterms were requested by the Board with respect to the Florida Avenue developer selection/term sheet process. As I understood them, they are:

1. Information on any background checks that were done on the teams, specifically money owed to the District of Columbia by an individual who is employed by Banneker Ventures.

2. Financial proposals for the projects from each proposer and, in fact, each proposal, presumably as updated during the course of requests for clarification from WMATA, in interviews and in updates from teams.

3. Financial statements for each team member, including individuals within firms.

4. The process and timing for including Metropolis as a member of the Banneker team after Donatelli dropped out.

(There was discussion of why the present value of the Banneker offer greatly exceeded the appraisal but no specific information was requested. There was also discussion of including a disclosure statement in future solicitations. Finally, there was a request for financial information on the proposal being recommended; this had been prepared but was not distributed).

On item 1 above, I have requested information from Banneker about the payment of money owed to the city and am told it will be sent today. On item 4 above, I can provide the letter requesting that Metropolis be included on the Banneker team.

However, I am seeking guidance on two issues.

Item 2. If we assemble packages on each proposal for each Board member, is there any information that should be withheld?

Item 3. The JDS requests financial statements for firms, and these were included in original proposals or supplements. Is it appropriate to ask each proposer for individuals' financial statements? I do not believe that those statements are germane to the selection process. I am also not sure under what circumstances such statements should be forwarded to Board members.

Pre-Brief Regna 5/28/08 **CC:** Joel R. Washington, Marc Biondi

(A) Roc supplies Carol reads

1. Assurance of financial responsibility of winning team
2. Legal review of record of decision making
3. "Coaching" or exparte communications

(b) Clean Hands Criteria

Jack Regna - pre-brief
5/28/09

Arial copoint
print from BAIS
in MEAD

~~+ C Street ad +~~

Show June 1 weekend

Executive Session ~~Agenda~~ through Committee in June
Public Session ~~June 2~~ July?
Board could vote in

1. (A) Give out proposals
Roc (B) Give out Decision Memo
(C) Summarize financial proposals - hand out, take back

2. Wed = ~~Board meeting~~ Pre brief with Mr. Catoe
Joel set of action options
June / July

3. Can do clean hands options
Self certification by developer
Don't owe taxes, have outstanding legal issues, etc.

4. Confidential Statement

WMATA Board
Exec Session re FL Ave
4/24/08

1. Put in procurement guidelines
language re business ethics or

2. What prior background check on teams (e.g. money owed)

3. Financials of project
as well as financials ~~on project~~ of
proposers

4. Disclosure statement
outstanding tax liens
outstanding

4. Why way above appraisal?

5. How & when we approved substitution of Metropolis

~~6.~~

Jim asked to see proposals ....

Carol 4/18/08

Carol

1. Better approach is to have
2. Direct his attention to
   might

Eric Smart on Dunn Lowry? pro formas

Omar 4), 7/08

1. This counsel, inclusive of DLA Piper, want us to request

   a) Drop Mr. Williams OR

   b) It appears that there is a problem & Clarify

"City is financing affordable project" at 804 Taylor

2. "To best of my knowledge" WMATA

Conversation with Omar Karim

4/7/08

Warren Williams = 804 Taylor
Williams
a family property going back many years rental
"is now being turned into affordable housing"
to his knowledge Through DHCD

Bannaker founded 4 years ago. Omar is 100% owner and managing member
Collins
Williams } partners on several deals with Omar

4/15/08

Suggested to Omar that he might want to drop Mr. Williams Think about it, & call me back

Roy, Joel, Nat

5/6/08

FLORIDA AVENUE

Send Carol & Nat an email
cc Marc, Joel

1.

2.

3.

4. Carol - can we give all proposals ~~[illegible]~~ to the Board

5. Financial info

MN AVE.

1. Release entire site

   a. Appraise Value of Site

      Inflate $700K x 5.5 %

      A

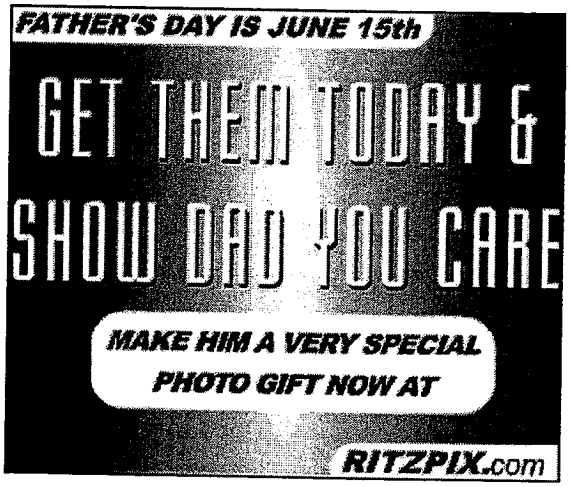
washingtonpost.com

City Backs Out of Deal With New Company

CFO Taking 'Second Look' at Contractor

By Yolanda Woodlee
Washington Post Staff Writer
Thursday, April 10, 2008; B04

Advertisement



At the D.C. chief financial officer's request, Mayor Adrian M. Fenty has withdrawn a proposal to award a lottery contract worth more than $120 million to a new company. D.C. Council members had questioned the background and gaming industry experience of the company's owners.

The revelation came yesterday as Chief Financial Officer Natwar M. Gandhi testified at a routine budget hearing before the council's Committee on Finance and Revenue.

"We are taking a second look," Gandhi said. Later, in an e-mail, he said the office needed more time to "review and respond to the questions raised by the committee."

Gandhi, however, defended the contract, saying it will save more than $6 million a year and is "the best technological solution for the District." He said the office might resubmit the contract after completing criminal and civil background reviews.

Gandhi and Fenty (D) recommended awarding the lottery contract to W2I, a joint venture between local company W2Tech, created nine months ago, and international gaming giant Intralot. Lottery Technology Enterprises and its partner, GTech, a national lottery services provider, have had the contract for almost 25 years and have filed a formal protest over the deal.

In a letter to the council, Fenty said the D.C. Lottery and Charitable Games Control Board would save about $5 million a year by awarding the contract to a company that could provide state-of-the-art technology to help boost lottery sales and offer more games. LTE, which has been paid $80 million since 2000, has been plagued by an aging network. Its contract expires in November 2009, but the city wants to end it early to save costs.

W2Tech, the parent of the W2I partnership, was created by Warren C. Williams Jr., a real estate developer recently criticized by tenants for allowing his property to deteriorate. Williams has denied tenants' allegations that he was attempting to force them to move out so he could convert their apartments into condominiums. He and his father also owned Club U, which the District closed in 2005 after a patron was fatally stabbed there.

The council was skeptical of the contract, which could grow from $11 million a year for six years to $120 million if a five-year extension is granted.

Questions about the proposal were raised for the second time this week when D.C. Council member Jim Graham (D-Ward 1) asked Gandhi about the status of the lottery contract. During Monday's committee hearing, several council members expressed concerns about the background of W2I's owners and

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004627

fairness and transparency in the bidding process.

Graham said yesterday that the city should "get our facts straight" before awarding the contract, which could have come before the council for a vote as early as Tuesday.

"I am asking you to withdraw this contract," Graham said yesterday.

Finance committee Chairman Jack Evans (D-Ward 2) told Graham the council and finance office, which oversees the lottery, had discussed dropping the proposal with Gandhi the previous day.

"Mr. Graham, we talked, remember," Evans said. "I actually made that request already."

Graham responded: "I was not aware a decision had been made."

In an interview after the meeting, Graham said he wanted to make sure the private discussion was stated publicly.

"I had known that the requests had been made," he said. "I wanted to hear it, on the public record, that this is in fact a withdrawn contract. If they come back with this, I want to see scrutiny."

The questions raised by some council members this week focused on the ownership of W2Tech and whether its partnership with Intralot, which is owned by a Greek conglomerate, constituted a bona fide joint venture. It appeared that Intralot was investing more money in the joint venture than its local partner, W2Tech.

Eric W. Payne, the contracting officer for the finance office, testified Monday that Janisha Richardson, a Ward 1 advisory neighborhood commissioner, was W2Tech's controller. City records indicate that Richardson is the company's principal owner.

Payne also said he did not know whether Alaka Williams, who was listed as the company's contact and with whom he was communicating, was related to Warren Williams Jr. She is his wife. Payne also said that Warren Williams Sr. had 35 years of gaming experience, including with the D.C. lottery when it started in 1982. He could not say whether the elder Williams had remained active in lottery services.

"Having those facts wrong robs you of the feeling of confidence of what they know and don't know," Graham said.

Council members also wanted to know whether Club U had paid $100,000 in back rent. The club was in the Frank D. Reeves Municipal Center at 14th and U streets NW. Bill Rice, spokesman for the D.C. Office of Property Management, said the back rent was paid, as scheduled, by January 2007.

Staff writer Nikita Stewart contributed to this report.

View all comments that have been posted about this article.

Post a Comment

View all comments that have been posted about this article.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004628

1/8/08

Tony Marquez - HSBC

He's watched Bannaker group

Jim
NDC
Maddie Turay
Bannaker

All in the mix

Brad Dockser, Bill's son — (Herb Miller connection)

Radio One
either Wachovia or HSBC

apts. are ok

945 Florida

Parcels
3745
7480
14890
26 100

Phoenix Jones Ferry

SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SOLICITATION
SUMMARY OF PROPOSALS

DEVELOPER	PROPOSED USES ALL PARCELS	PROPOSED USES PARCEL 1	PROPOSED USES PARCEL 2	PROPOSED USES PARCEL 3	BUSINESS RELATIONSHIP
Banneker Ventures, LLC 35% District Development Group 35% Donatelli Development, Inc. 30% Contact: Omar A. Karim	104 du's or 103 11,750 gsf retail/cultural 47 below-grade parking 10 workforce units Paul Robeson Museum Cafe, restaurant Utopia Jazz Restaurant	45 du's 4,750 theater musem and retail 28 below-grade pkg.	combined with Parcel 1	59 du's 7,000 sf retail 19 below-grade pkg.	Lease or sale (sale price by future appraisal)

FOIA CONFIEDENTIAL TREATMENT REQUESTED

12/17/07

Banneker

NW One / Sursum 20% equity stake $140M responsibility
Walker Jones Elementary $47M with Regan
Mixed planning - Park Morton
6th St, The Icon - O'Marx was the partner
Driskell - 52 managing partner HFA??

DDG

Josh - CEO of Thurgood Marshall $14M New Market, Tax Exempt Bonds
old Nichols school

Ball Street Fund Brian Davis & Tim Clinton (former Duke bb players)
- Redevelopment in downtown Durham Fannie, Nachovia
- Phila - Eckvillage

MacFarlane Zahari Scott

Torti

Parcel 1 = 4 levels over Robeson; parking on Parcel 2
Parcels 2 & 3 5 levels over retail

Donatelli was a "consultant"
~~[illegible]~~

if 12, 70 vs 65' no PUD
special exception under 25%
might need variance for west parcel

30% Equity - MacFarlane

$1.50 aff. $3.00 market rents

Cash Flow

They'll talk ...

Net Proceeds definition

Close or lease 3/09

Base Rent Adjustment if delay

Oct '10 = $500K Stabilization outside date

Equity —

Devel. 10%

Inst. 90%

Staffing

7 full-time professionals = Bannecker

only NW1 + Walker Jones = right now active

December 4, 2007

Omar A. Karim, Principal
Banneker Ventures, LLC.
700 12th Street, NW Suite 700
Washington, DC 20005

Re: Shaw-Howard Florida Avenue Joint Development Site

Dear Mr. Karim:

Thank you for the submission of your proposal for the above-referenced 2007 Joint Development Solicitation (JDS) site.

The purpose of this letter is to bring to your attention missing or incomplete items or items that require further discussion and clarification. We would like to schedule an oral presentation by your team on December 17, 2007 at 10:30 a.m. at WMATA headquarters and have attached instructions for the presentation. We ask that you provide 10 copies of the supplementary information requested in this letter not later than the presentation and preferably before so that we may first review it.

The following items need clarification, correction or completion:

Technical Information
Within the schedule you presented, please indicate the outside, firm date by which a lease would be executed.

What, if any, zoning approvals or variances will you be seeking for Parcels 1 or 3?

Please explain your schedule more fully. It appears to build in very long time periods for negotiating a WMATA agreement and not enough time for local historic preservation, zoning, and building permit approvals.

Also, please provide an outside date for stabilization.

How will you finance affordable housing piece?

Washington Metropolitan Area Transit Authority

600 Fifth Street, NW
Washington, DC 20001
202/962-1234

By Metrorail:
Judiciary Square—Red Line
Gallery Place-Chinatown—
Red, Green and Yellow Lines
By Metrobus:
Routes D1, D3, D6, P6, 70, 71, 80, X2

A District of Columbia, Maryland and Virginia Transit Partnership

Assess the market for rental apartments in the area now that conversions of condominium projects to rental product are occurring. Is the market becoming oversaturated with rentals and would you expect to experience difficulty in obtaining financing for your project.?

Do you have prospective tenants for the Robeson museum or themed restaurant?

Have you discussed with DDOT the proximity of the Parcel 2 garage entrance to Florida Avenue?

Economic Information

WMATA expects escalation in the sale or rent amount from today's values if closing is delayed beyond a year. Please indicate how you would satisfy this requirement.

The pro forma rents do not seem to square with the schedule. For example, stabilization seems to take 7 months in the schedule but the pro forma appears to show a longer time. Please reconcile.

WMATA also expects and receives participations in capital events and in cash flow (or, alternatively to cash flow, revaluation of the project in which rent values do not fall below the previous year). Please provide your proposal.

Provide evidence of the interest of MacFarlane Partners in providing equity for this project. Do you have alternative equity sources?

Document the creditworthiness of the entire team. Banking references are provided only for the Donatelli part of the partnership, which is 30% of the team.

Please submit the balance sheets that the proposal indicates will be provided under separate cover.

We look forward to your presentation and to further discussion on this project.

Sincerely,

Joel R. Washington

Joel R. Washington, Director
Station Area Planning and Asset Management

Attachment

JOINT DEVELOPMENT SOLICITATION ISSUED AUGUST 24, 2007
PRESENTATION INSTRUCTIONS

These instructions are intended to provide guidance to Developers (and Development Teams) who have submitted Proposals to the Washington Metropolitan Area Transit Authority (WMATA) in response to the Joint Development Solicitation (JDS) issued on August 24, 2007, and have been invited to give a presentation to the WMATA Evaluation Team.

1. **Purpose**:
   The purpose of the oral presentations is to allow a Developer an opportunity to describe the key elements of its Proposal and to respond to questions from the WMATA Evaluation Team and jurisdictional representatives, approximately 8-12 attendees

2. **Organization of Presentations**:
   The presentation should be organized into two (2), 10-15-minute, segments. We have allotted an additional 15 minutes for questions after each presentation.

   Please note that the presentations and questions from those in attendance should be completed in approximately one (1) hour.

   The presentation should be structured in the following manner:

   a) Description of the Proposal highlighting relevant development experience of individual team development principals, Transit Oriented Development (TOD) principles, input received from both the local jurisdiction and community organizations, benefits to the local jurisdictions (taxes, jobs, etc.), anticipated schedule and timing of zoning requests, if appropriate. PLEASE DO NOT DISCLOSE ANY INFORMATION THAT YOU DO NOT WANT TO SHARE WITH THE APPLICABLE JURISDICTION. (Members of WMATA's Evaluation Team will be in attendance, and jurisdictional representatives are expected as well.)

   b) Proposed business relationship with WMATA, financial viability of the Proposal, and payments to WMATA. (Only members of WMATA's Evaluation Team will be in attendance.)

3. **Audio Visual Equipment, Handout Material and Other Aids**:
   Developers are encouraged to use maps, graphics and other visuals during their presentations. However, elaborate presentations are neither necessary nor encouraged.

   Equipment
   A slide projector, screen and/or easels will be available **upon request**. All other audio visual equipment must be provided by the Developer.

   Handouts
   Each Developer should ensure that ten (10) copies of any handout materials are available at the time of the presentation. **WMATA staff cannot be responsible for reproducing any handout materials**.

4. **Location**:
   All presentations will be held at the WMATA Headquarters Building, 600 Fifth Street, NW, Washington, DC. WMATA staff will escort you to the presentation room.

From: <eric.smart@bolansmart.com>
To: "Rosalyn Doggett" <rdoggett@wmata.com>
Date: 3/13/2008 4:49:37 PM
Subject: Re: Fwd: FW: WMATA Project Schedule (as of March 2008).pdf - Adobe Acrobat Professio

Roz

Attached is a shot at modifying Benneker's proposal to match the prior calculated NPV:

1) predevelopment rent escalated some to help achieve NPV

2) year 4 base rent commencement at $580,000 deferred to year 5 and escalated by 1.03%

3) approximate match for year 14 rent means escalating base rent at 1.01315% after first year of actual paid base rent

4) standard 1.03% per year estimated increase resumes thereafter.

At least this combination approximates the December 2007 NPV.

Eric

On Thu, 13 Mar 2008 11:53:24 -0500 (EST), "Rosalyn Doggett" <rdoggett@wmata.com> wrote:
> Eric, please note the new schedule attached. We had a lengthy conversation this
> morning with Banneker and some educating to do.
>
> End result: they accepted $580,000 starter rent. I said that I would work to
> make NPV for the first ten years as nearly the same as the old schedule as
> possible (maybe slow increases even more). However, that may not be possible
> based on the new schedule that came in while we were on conference call and
> which I would like you to analyze.
>
> They have once again made option fee and pre-stabilization payments
> nonrefundable. They will pay pre-stabilization rent quarterly in advance which
> I don't think affects the NPV significantly, if at all. They have pushed the
> rent payment date out at least a year so that, I believe, pre-stabilization rent
> would be in effect for another year and the new starter rent would be at least
> $580,000 x 1.03. I don't know what this schedule will do to them vis a vis NPV
> and their nearest competitor. But we said we would analyze, and that is what I

> would like you to do ASAP, I hope some time this afternoon. Let me know if you
> cannot. Thanks, R.
>
>
>
> >>> "Omar A. Karim" <okarim@bannekerventures.com> 3/13/2008 10:12 AM >>>
>
>
>
>
> From: Omar A. Karim [mailto:okarim@bannekerventures.com]
> Sent: Thursday, March 13, 2008 9:41 AM
> To: 'Rosalyn Doggett'; 'Marc E. Biondi'
> Cc: 'Flynn, Guy'; 'Bryant, Seth'; 'okarim@bannekerventures.com'
> Subject: WMATA Project Schedule (as of March 2008).pdf - Adobe Acrobat Professional
>
>
>
> Hello,
>
>
>
> Attached you will find the updated project Schedule as of March 2008.
>
>
>
> Thanks
>
>
>
> Omar A. Karim
>
> Banneker Ventures, LLC
>
> 700 12th Street, NW, Suite 700
>
> Washington, DC 20005
>
> (202) 667-4110 office
>
> (301) 523-1810 cell
>
> okarim@bannekerventures.com
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Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037
202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com

From: "Omar A. Karim" <okarim@bannekerventures.com>
To: <jrwashington@wmata.com>
Date: 5/9/2008 12:35:27 PM
Subject: Shaw-Howard/Florida Avenue Project - Letter to WMATA from Banneker Ventures

Mr. Washington,

Attached please find a letter from Banneker addressing issues relating to alleged financial obligations to the District of Columbia by Warren Williams, Principal of Banneker. Please call me with any questions as we are eager to continue to work with you and your staff to get this exciting project underway.

Thank you in advance.

Omar

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

CC: "'Rosalyn Doggett'" <rdoggett@wmata.com>, "Warren Williams" <warren@bannekerventures.com>, "'Flynn, Guy'" <guy.flynn@dlapiper.com>

BANNEKER VENTURES, LLC

May 9, 2008

VIA EMAIL

Joel Washington
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

RE: Shaw-Howard/Florida Avenue Joint Development Site – Follow-up

Dear Mr. Washington:

We are writing to respond to certain questions concerning alleged obligations due to the District of Columbia (the "District") by Mr. Warren Williams, Jr., Principal of Banneker Ventures ("Banneker").

To our knowledge, Mr. Williams, in his personal capacity, does not have any outstanding financial obligations due to the District, except, for local taxes that may be owing but not overdue. Furthermore, Mr. Williams, in his capacity as a Principal of Banneker, does not have any outstanding financial obligations due to the District, except, for local taxes that may be owing but not overdue.

Prior to joining Banneker, Mr. Williams was a co-owner of Levelle, Inc., a company that operated The Coach & Four Restaurant (the "Restaurant") located in The Frank D. Reeves Municipal Center at 2000 14th Street, NW, Washington, DC 20009. It is our understanding that Levelle does not have any outstanding financial obligations due to the District nor has it ever been in arrears to the District under its lease during its more than 10 years of operation in this government facility. The only amount that Levelle has ever paid to the District aside from its normal lease payments and any license fees, local taxes or duties was a $100,000 payment made on January 6, 2005 as part of a settlement agreement and release of certain claims and cross-claims made between Levelle and the District. The settlement agreement resolved any disputes between Levelle and the District. At present, Mr. Williams no longer has any interest in Levelle and Levelle no longer operates the Restaurant. You may confirm that Levelle has satisfied its obligations related to the lease for the Restaurant and otherwise by contacting Bill Rice of the District of Columbia's Office of Property Management at (202) 724-4400.

call 4377787

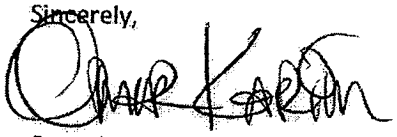
We hope that this clarifies any questions that WMATA may have regarding financial obligations due by Mr. Williams, Levelle or any company associated with Mr. Williams to the District.

700 12th Street, NW • Suite 700 • Washington, D.C. 20005 • (202) 667-4110
814 Thayer Avenue • Suite 300 • Silver Spring, Maryland 20910 • (301) 565-4980
www.bannekerventures.com

Left voice mail 5/27

Should you have any additional questions, please feel free to contact me at (202) 667-4110 (office) or (301) 523-1810 (cell).

Sincerely,



Omar A. Karim

Cc: Warren C. Williams, Jr.
Guy Flynn, DLA Piper US LLP

Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 406
Washington, D.C. 20004-3001

Muriel Bowser
Councilmember, Ward 4

Tel: 202.724.8052
Fax: 202.741.0908
mbowser@dccouncil.us

January 22, 2008

Warren Williams
The Warrenton Group
814 Thayer Street, Suite 300
Silver Spring, MD 20910

RE: Letter of Support for Taylor Flats at 804 Taylor Street, NW

Dear Mr. Williams:

It is my pleasure to provide you with this letter of support for the acquisition and rehabilitation of Taylor Flats. We have great, stable neighborhoods in Ward 4 with residents eager to live, work and do business in the Ward. Projects like the Taylor Flats ensure that all District residents are able to participate in the economic revitalization happening throughout the city.

Rehabilitating the Taylor Flats property, will enable the building to become one of the District's affordable housing gems. Since the property is being developed by a District based, LSDBE developer, this endeavor is a victory on many fronts. As I understand, there will be 26 units with the following unit and rent mix:

7 one bedroom, one bath	575 square feet	$965 per month
9 one bedroom, one bath, & den	700 square feet	$985 per month
10 2 bedroom, one bath	950 square feet	$1,185 per month

Taylor Flats will provide affordable housing to households earning no more than sixty percent (60%) of the Area Median Income adjusted for household size as defined by the United States Department of Housing and Urban Development. Its financing structure will include tax-exempt bond cap and an allocation of low income housing tax credits (LIHTC) from the District's Housing Finance Agency, subordinate debt from the District's Department of Housing and Community Development, and bond underwriting and LIHTC syndication from Centerline Capital Group.

I remain committed to making sure that Ward 4's neighborhoods are safe and walkable; that there is appropriate public transportation; that there is retail, dining, and affordable housing; that there are jobs created for all DC residents, and that there are recreation and wellness facilities for residents of all ages.

I wish you continued success and let me know if my office can be of any assistance.

Sincerely,

Muriel Bowser
Council Member, Ward 4

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BANNEKER VENTURES, LLC

April 23, 2008

Rosalyn Doggett
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

Re: Shaw-Howard Florida Avenue Joint Development

Dear Ms. Doggett:

You have asked that I address concerns that have been brought to your attention, by Jim Graham, District of Columbia Councilmember for Ward 1 and member of the Board of Directors of the Washington Metropolitan Area Transit Authority ("WMATA"), about the selection of Banneker Ventures, LLC ("Banneker") as the lead developer for the Shaw-Howard Florida Avenue Joint Development Site. Specifically, the concerns center on recent allegations and insinuations of questionable business practices involving Warren Williams, Jr., a principal of Banneker. The allegations relate to two matters, the closing of a night club in which Mr. Williams was an owner following the tragic death of a patron and unfounded claims by a tenants' group that Mr. Williams (as landlord) failed to maintain the building.

I hope that the Board of WMATA would not terminate our selection as the designated Developer of the above referenced site as a result of unfounded allegations. While I recognize that the WMATA Board has discretion to reject submissions where the selected developer does not have a satisfactory record of integrity and business ethics, except for the unfounded allegations mentioned above, I am unaware of any record establishing the lack of integrity or business ethics of Mr. Williams or any other member of our development team. To my knowledge, there are no criminal or administrative actions pending against Mr. Williams or any business venture in which he is involved. Notably, with respect to the tenants' group's allegations, a recent listing of District landlords charged criminally as a result of their failure and refusal to maintain their properties did NOT include Mr. Williams.

To address the controversies more directly, as I understand, Mr. Williams and his family were operators of a nightclub in the District's Reeves Center. Any outstanding debts to the District as a result of the tenancy have been paid and no amounts remain owing to the District. I can understand Mr. Graham's concern; however, the light that an unfortunate event shines on a situation can sometimes distort the facts and lead to erroneous conclusions. I respectfully submit that Mr. Graham's concerns about the nightclub do not point to any specific failures by Mr. Williams.

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814 Thayer Avenue • Suite 300 • Silver Spring, Maryland 20910 • (301) 565-4980
www.bannekerventures.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED

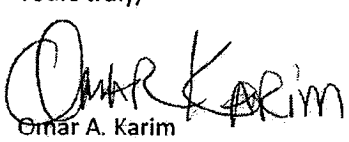
Banneker believes that the allegation that Mr. Williams is a "slum lord" is unfair. Mr. Williams reports that his sole remaining rental property located at 804 Taylor Street NW ("Taylor Flats") is currently undergoing a full renovation and repositioning. The 26 unit building is now home to only 3 residents, who have all negotiated transfers in order that the construction might commence. All units will be vacant as of July 1, 2008, with an expected re-occupancy in April 2009. Quite the opposite of being a "slum lord", Mr. Williams is a responsible developer who is actively engaged in the rehabilitation of property to the benefit of its tenants and the District. Please see the enclosed letter of support, dated January 22, 2008, for the rehabilitation of Taylor Flats from Councilmember Muriel Bowser of Ward 4, whose Ward Taylor Flats is located in.

As you are well aware from all of our literature and Bid Proposal documents, Mr. Williams has and continues to play a key role in our venture and our successful Bid proposal. Up to this point, his continued involvement in the development of the site has been unquestioned. As you also know, Mr. Williams has participated in a number of housing development projects across the District, many involving the renovation and/or restoration of apartments and condominiums, bringing both market rate and affordable housing units to underserved areas. Mr. Williams brings a wealth of knowledge and experience to our project.

Other than the unsubstantiated allegations relating to Mr. Williams, there does not appear to be any record upon which WMATA should seek to invoke its discretionary power to terminate our selection as the designated Developer of the above referenced site. Further, I think it worthwhile to point out that none of the allegations involve Banneker Ventures directly. Obviously, Banneker Ventures is a separate legal entity with a distinct management team and track record. Our winning Bid Selection contemplates a joint development with Banneker in the lead. Our team has devoted significant time and resources to this project. We are professional developers in the District and plan to continue our work for a long time. We care very much about our reputation and the quality of our projects. We remain, as always, prepared to meet with you and/or the WMATA Board to discuss the concerns raised by Mr. Graham and any other concerns or issues that need clarification. If you or the Board has specific questions, I am happy to provide answers or any other reasonably requested supplemental information.

Please do not hesitate to contact me if you have any further questions or if you need further information. You may reach me by telephone at (202) 667-4110.

Yours truly,



Omar A. Karim

Enclosure

cc: Guy E. Flynn, Partner, DLA Piper US LLP

From: "Flynn, Guy" <guy.flynn@dlapiper.com>
To: <jrwashington@wmata.com>
Date: 5/9/2008 2:09:14 PM
Subject: Shaw-Howard/Florida Avenue Project

Mr. Washington,

Please see the attached letter regarding this matter.

Thank you.

<http://www.dlapiper.com/>

Guy E. Flynn

DLA Piper US LLP
The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 21209-3600

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410-580-3149 F
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Circular 230 Notice: In accordance with Treasury Regulations which became applicable to all tax practitioners as of June 20, 2005, please note that any tax advice given herein (and in any attachments) is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of (i) avoiding tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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Thank you.

—

CC: "Rosalyn Doggett" <rdoggett@wmata.com>, "Marc E. Biondi" <mebiondi@wmata.com>, "Warren Williams" <warren@bannekerventures.com>, "Omar A. Karim" <okarim@bannekerventures.com>, "Josh Kern" <jkern@districtdevelopmentgroup.com>, "Merrick Malone" <malone@metropolis-dc.com>

DLA PIPER

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www.dlapiper.com

Guy E. Flynn
guy.flynn@dlapiper.com
T 410.580.4149
F 410.580.3149

May 9, 2008

VIA E-MAIL AND REGULAR MAIL

Mr. Joel Washington
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

Re: Shaw-Howard/Florida Avenue Joint Development Site and April 24, 2008 WMATA Board Meeting

Dear Mr. Washington:

We are writing on behalf of our client, Banneker Ventures, LLC ("Banneker"), as well as on behalf of District Development Group ("DDG") and Metropolis Development Company ("Metropolis") (Banneker, DDG and Metropolis are, collectively, "Developer"), in connection with the Shaw-Howard/Florida Avenue Joint Development Site (the "Site"). We understand that the Washington Metropolitan Area Transit Authority ("WMATA") Board of Directors met on April 24, 2008 to, among other things, approve a Term Sheet setting forth Developer's proposal for the Site (the "Proposal"). We further understand that at the April 24th meeting, the WMATA Board voted to defer its decision on the Proposal for at least sixty days. It is our understanding that WMATA has neither given Developer any official reason for the delay nor given Developer any information regarding what is to happen during the deferral period.

We are writing to seek confirmation of Developer's status and to seek clarification regarding the next steps in the process. As you might imagine, Developer has expended significant resources in connection with this process and is anxious to move forward once Board action is finalized on this important first step.

We understand that Banneker, as lead for Developer, has offered to provide to WMATA any additional information relevant to the Proposal (in addition to the full information already provided by Developer in its response to WMATA's RFP). Please advise if there is any specific

information that the WMATA Board would find necessary or useful in its deliberations on the Proposal.

Developer remains committed to the development of the Site and looks forward to moving ahead expeditiously with the proposed project. Should you or the WMATA Board require any additional information, please do not hesitate to contact me or Banneker, on behalf of the Developer team, directly. I may be reached at (410) 580-4149. Omar Karim of Banneker may be reached at (202) 667-4110 or (301) 523-1810.

Very truly yours,

Guy E. Flynn

GEF:dad

cc: Omar A. Karim, Banneker Ventures, LLC (via E-mail)
Warren Williams, Jr., Banneker Ventures, LLC (via E-mail)
Rosalyn Doggett, WMATA (via E-mail)
Marc Biondi, WMATA (via E-mail)
Josh Kern, District Development Group, LLC (via E-mail)
Merrick T. Malone, Metropolis Development Company, LLC (via E-mail)

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368072-1

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Art Lawson / Ann Chisholm

5/12

Carol wants to have reviewed the record of "financial responsibility"

ex parte favoritism?

"Social responsibility" guidelines

"Clean hands"

(a) We won't give you $ if you owe us $

(b) How far down to we go? employees? all jurisdictions?

+ draft memo to Carol

BANNEKER VENTURES, LLC

May 9, 2008

VIA EMAIL

(c) do you give them a chance to cure? + when

"ex parte"

Joel Washington
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

Carol: it is extremely labor intensive on staff - admin. burden

RE: Shaw-Howard/Florida Avenue Joint Development Site – Follow-up

Dear Mr. Washington:

We are writing to respond to certain questions concerning alleged obligations due to the District of Columbia (the "District") by Mr. Warren Williams, Jr., Principal of Banneker Ventures ("Banneker").

To our knowledge, Mr. Williams, in his personal capacity, does not have any outstanding financial obligations due to the District, except, for local taxes that may be owing but not overdue. Furthermore, Mr. Williams, in his capacity as a Principal of Banneker, does not have any outstanding financial obligations due to the District, except, for local taxes that may be owing but not overdue.

Prior to joining Banneker, Mr. Williams was a co-owner of Levelle, Inc., a company that operated The Coach & Four Restaurant (the "Restaurant") located in The Frank D. Reeves Municipal Center at 2000 14th Street, NW, Washington, DC 20009. It is our understanding that Levelle does not have any outstanding financial obligations due to the District nor has it ever been in arrears to the District under its lease during its more than 10 years of operation in this government facility. The only amount that Levelle has ever paid to the District aside from its normal lease payments and any license fees, local taxes or duties was a $100,000 payment made on January 6, 2005 as part of a settlement agreement and release of certain claims and cross-claims made between Levelle and the District. The settlement agreement resolved any disputes between Levelle and the District. At present, Mr. Williams no longer has any interest in Levelle and Levelle no longer operates the Restaurant. You may confirm that Levelle has satisfied its obligations related to the lease for the Restaurant and otherwise by contacting Bill Rice of the District of Columbia's Office of Property Management at (202) 724-4400.

We hope that this clarifies any questions that WMATA may have regarding financial obligations due by Mr. Williams, Levelle or any company associated with Mr. Williams to the District.

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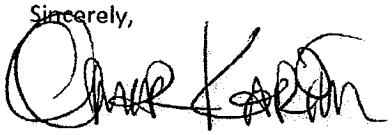
Sincerely,



Omar A. Karim

Cc: Warren C. Williams, Jr.
Guy Flynn, DLA Piper US LLP

From: "Omar A. Karim" <okarim@bannekerventures.com>
To: <jrwashington@wmata.com>
Date: 5/9/2008 12:35:27 PM
Subject: Shaw-Howard/Florida Avenue Project - Letter to WMATA from Banneker Ventures

Mr. Washington,

Attached please find a letter from Banneker addressing issues relating to alleged financial obligations to the District of Columbia by Warren Williams, Principal of Banneker. Please call me with any questions as we are eager to continue to work with you and your staff to get this exciting project underway.

Thank you in advance.

Omar

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

CC: "'Rosalyn Doggett'" <rdoggett@wmata.com>, "Warren Williams" <warren@bannekerventures.com>, "'Flynn, Guy'" <guy.flynn@dlapiper.com>

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Thank you.

—

CC: "Rosalyn Doggett" <rdoggett@wmata.com>, "Marc E. Biondi" <mebiondi@wmata.com>, "Warren Williams" <warren@bannekerventures.com>, "Omar A. Karim" <okarim@bannekerventures.com>, "Josh Kern" <jkern@districtdevelopmentgroup.com>, "Merrick Malone" <malone@metropolis-dc.com>

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May 9, 2008

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GEF:dad

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Merrick T. Malone, Metropolis Development Company, LLC (via E-mail)

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368072-1

BANNEKER VENTURES, LLC

May 9, 2008

VIA EMAIL

Joel Washington
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

RE: Shaw-Howard/Florida Avenue Joint Development Site – Follow-up

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

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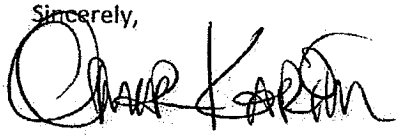
Sincerely,



Omar A. Karim

Cc: Warren C. Williams, Jr.
Guy Flynn, DLA Piper US LLP

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

○ Action ◉ Information	MEAD Number:	Resolution: ◉ Yes ○ No

TITLE:

FY09 Project Develop. Program

PURPOSE:

To obtain Board approval for the projects included in the FY09 Project Development Program.

DESCRIPTION:

Since FY99, the Board has approved $3 million per year for the Project Development Program as part of the annual Capital Budget.

This program provides the necessary planning to advance projects included in the System Access/Capacity Program and System Expansion Program portions of the adopted Capital Improvement Program.

FUNDING IMPACT:

The proposed FY09 Capital Improvement Program, Beyond Metro Matters: System Expansion Program includes $3,000,000 for Project Development.

need Fairfax ~~[illegible]~~ buy-in County may opt out of local

RECOMMENDATION:

It is recommended that the Board approve the proposed projects included in the FY09 Project Development Program.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004658

president is more secrecy.

Washington Post
5/14/08

Power Play

The D.C. Council is playing games with a fair process for choosing a lottery contractor.

PLAYING THE lottery is all about risk and money. But the games the D.C. Council is playing with a proposed new lottery contract risk more than tens of millions of dollars. They threaten to seriously compromise the integrity of how the District government does business.

Yesterday, council members tabled consideration of a $120 million, multi-year contract that would switch operation of the games to a new company. Their inaction jeopardizes what the chief financial officer has judged to be — without reservation — the best deal for the District. The deadline for action is Thursday. The company, W2I Venture, is not only the lowest bidder (its plan would save the city at least $5 million a year) but also promises to bring new technologies and games to the District. Consider also that the District has been none too happy with the current contract holder, giving it poor ratings for services and performance. Lottery Technology Enterprises has had the D.C. contract for 25 years, prompting W2I to charge that politics, not merit, is behind the council's handling of its bid. There is no question that the lobbying has been fierce, with each side trying to call in political chits.

It is troubling that the council at first tried to simply run out the clock on the contract shift. Council Chairman Vincent C. Gray (D) belatedly put the item on yesterday's agenda after we and others raised pointed questions. But then the council held no discussion and conducted no up-or-down vote. Only council member David A. Catania (I-At-Large) had the gumption to vote against tabling the measure. Council member Jim Graham (D-Ward 1), who made the motion to table the matter, asserted that there are unanswered questions about the winning bid; the contention is belied by the hundreds of pages of documents the chief financial officer compiled during a rigorous, year-and-a-half-long process. The office even went the extra mile to answer questions from council members that were not germane to whether the firm is a credible, responsible bidder. The bidding process was reviewed by the city's interim attorney general, who found it to be complete and proper. Moreover, there is an appeals process available to losing bidders.

The next move is up to D.C. Mayor Adrian M. Fenty (D). He could — and we hope he does — try to postpone the deadline and resubmit the contract for council consideration. The alternative would be to start all over and rebid the contract. Why, though, would any business owner in his or her right mind bother with a process that, it would seem, can be ignored or overturned on political whim?

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004659

Mrs. McCain's Refusal

The wife of an ethics-and-transparency crusader seeking the presidency shouldn't shield her tax filings.

"IT WON'T DO." That was our bottom line in 1984 when Rep. Geraldine Ferraro of New York, Democratic vice presidential candidate, balked at releasing her husband's income tax returns. Ms. Ferraro ultimately relented. It was our bottom line four years ago, when Teresa Heinz Kerry, wife of the Democratic nominee, refused to release her returns; Ms. Kerry relented as well. And it is just as apt now with regard to Cindy McCain's tax returns.

For a candidate who puts a premium on transparency and ethics, John McCain has been slow and grudging in releasing tax information. He did not commit to doing so until after he had secured the nomination, and then he disclosed only two years of taxes, far less than his Democratic rivals. Mr. McCain's wife, the heir to a liquor and beer distributorship, declined to release her returns, citing — as Ms. Heinz Kerry did — her children's privacy. Releasing tax information entails intrusion, but, as we wrote four years ago, presidential candidates and their spouses "relinquish a significant measure of privacy. Meanwhile, tax returns provide information not contained in financial disclosure forms, such as charitable contributions and the use of tax shelters." For Mrs. McCain to say, as she did on NBC's "Today" show this week, that she would never release her tax returns, not even if she were to become first lady, is unacceptable. "This is a privacy issue," she said. "My husband is the candidate."

The candidate should get his wife to reconsider. The last thing the country needs in a new president is more secrecy.

Washington Post
5/14/08

Power Play

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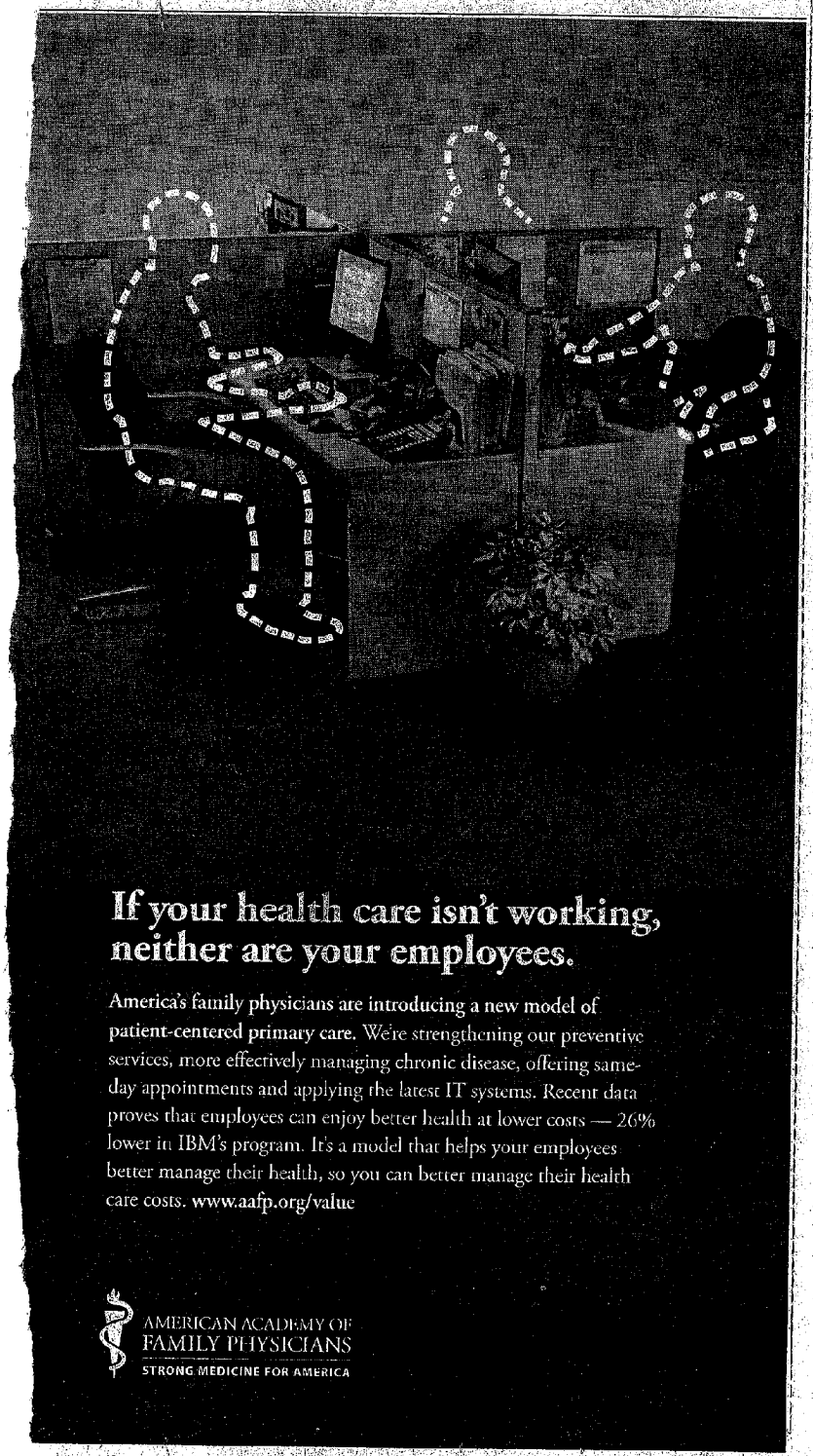
FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004660

FOIA CONFIDENTIAL TREATMENT REQUESTED
WMATA-INV 004661

issues for more
way to improve decision-making and
ountability is to reduce the number of political
kies — the acting principal associate deputy
lersecretary folks — layered into the government

and the largest tax increas
Steel said. Asked if there was a legal problem
using a slogan registered by the drug company Wyeth,
he said: "No one's raised serious concerns about that."



CFO Taking A 'Second Look' At New Firm's Lottery Plan

LOTTERY, *From B1*

ated nine months ago, and international gaming giant Intralot. Lottery Technology Enterprises and its partner, GTech, a national lottery services provider, have had the contract for almost 25 years and have filed a formal protest over the deal.

In a letter to the council, Fenty said the D.C. Lottery and Charitable Games Control Board would save about $5 million a year by awarding the contract to a company that could provide state-of-the-art technology to help boost lottery sales and offer more games. LTE, which has been paid $80 million since 2000, has been plagued by an aging network. Its contract expires in November 2009, but the city wants to end it early to save costs.

W2Tech, the parent of the W2I partnership, was created by Warren C. Williams Jr., a real estate developer recently criticized by tenants for allowing his property to deteriorate. Williams has denied tenants' allegations that he was attempting to force them to move out so he could convert their apartments into condominiums. He and his father also owned Club U, which the District closed in 2005 after a patron was fatally stabbed there.

The council was skeptical of the contract, which could grow from $11 million a year for six years to $120 million if a five-year extension is granted.

Questions about the proposal were raised for the second time this week when D.C. Council member Jim Graham (D-Ward 1) asked Gandhi about the status of the lottery contract. During Monday's committee hearing, several council members expressed concerns about the background of W2I's owners and fairness and transparency in the bidding process.

Graham said yesterday that the city should "get our facts straight" before awarding the contract, which could have come before the council for a vote as early as Tuesday.

"I am asking you to withdraw this contract," Graham said yesterday.

Finance committee Chairman Jack Evans (D-Ward 2) told Graham the council and finance office, which oversees the lottery, had discussed dropping the proposal with Gandhi the previous day.

"Mr. Graham, we talked, remember," Evans said. "I actually made that request already."

Graham responded: "I was not aware a decision had been made."

In an interview after the meeting, Graham said he wanted to make sure the private discussion was stated publicly.

"I had known that the requests had been made," he said. "I wanted to hear it, on the public record, that this is in fact a withdrawn contract. If they come back with this, I want to see scrutiny."

The questions raised by some council members this week focused on the ownership of W2Tech and whether its partnership with Intralot, which is owned by a Greek conglomerate, constituted a bona fide joint venture. It appeared that Intralot was investing more money in the joint venture than its local partner, W2Tech.

Eric W. Payne, the contracting officer for the finance office, testified Monday that Janisha Richardson, a Ward 1 advisory neighborhood commissioner, was W2Tech's controller. City records indicate that Richardson is the company's principal owner.

Payne also said he did not know whether Alaka Williams, who was listed as the company's contact and with whom he was communicating, was related to Warren Williams Jr. She is his wife. Payne also said that Warren Williams Sr. had 35 years of gaming experience, including with the D.C. lottery when it started in 1982. He could not say whether the elder Williams stayed active in lottery services.

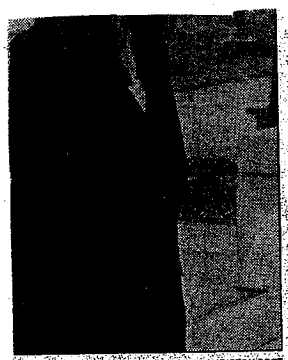
"Having those facts wrong robs you of the feeling of confidence of what they know and don't know," Graham said.

Council members also wanted to know whether Club U had paid $100,000 in back rent. The club was in the Frank D. Reeves Municipal Center at 14th and U streets NW. Bill Rice, spokesman for the D.C. Office of Property Management, said the back rent was paid, as scheduled, by January 2007.

Staff writer Nikita Stewart contributed to this report.

Jim Graham, left, asked fellow member Jack Evans to put it on the record the contract was withdrawn.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004662



BY KEVIN CLARK — THE WASHINGTON POST

Blanche Johnson Palfrey, and courthouse Monday.

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How did you understand it?
didn't pause.
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TODAY
YOUR DISTRICT
NEWS EXTRA
INSIDE THE HOME SECTION

B

DC 5

MS Delay Case

went to his son's house after learning from a newspaper reporter that his son had died.

"We still have not been contacted about his death," Miller said yesterday. His only contact with the city, he said, was when he called the medical examiner's office Friday for confirmation.

See MILLER, B4, Col. 5

D.C. LOTTERY

City Retracts Proposal to Hire Firm

CFO Taking 'Second Look' at Contractor

By Yolanda Woodlee
Washington Post Staff Writer

At the D.C. chief financial officer's request, Mayor Adrian M. Fenty has withdrawn a proposal to award a lottery contract worth more than $120 million to a new company. D.C. Council members had questioned the background and gaming industry experience of the company's owners.

The revelation came yesterday as Chief Financial Officer Natwar M. Gandhi testified at a routine budget hearing before the council's Committee on Finance and Revenue.

"We are taking a second look," Gandhi said. Later, in an e-mail, he said the office needed more time to "review and respond to the questions raised by the committee."

Gandhi, however, defended the contract, saying it will save more than $6 million a year and is the best and most cost-effective solution for the District. He said the office might resubmit the contract after completing criminal and civil background reviews.

Gandhi and Fenty (D) recommended awarding the lottery contract to W2I, a joint venture between local company W2Tech, cre-

See LOTTERY, B4, Col. 2

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004664

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004665

CHESAPEAKE BAY

Maryland

By DAVID A. FAHRENTHOLD
Washington Post Staff Writer

Maryland proposed significant cutbacks yesterday in the number of blue crabs that could be caught in the Chesapeake Bay, joining Virginia in a historic effort to stop the iconic species' collapse.

State regulators suggested barring watermen from catching female crabs during certain months and prohibiting recreational crabbers from catching females at all. They also suggested setting a limit on the bushels of female crabs that professional watermen could land during one day.

Overall, officials said their aim was to reduce by 20 to 40 percent the harvest of females, which account for about half of the total Maryland catch. That could put a major pinch on some watermen, who rely heavily on crabs now that the bay's tradi-

On the Fro

REED, *From B1*

country, depends on the decisions of a small group of officers such as Gventer, a cavalry trooper without a medical background, and on young squad and platoon leaders new to the world of helping heal physical and psychological wounds.

As commander of Able Troop of the Walter Reed Warrior Transition Brigade, Gventer was responsible for 240 of the medical center's 700 outpatient soldiers. In the two weeks before he searched for the missing lieutenant, he and his sergeants had saved the lives of two soldiers, including one who tried to kill himself with alcohol and pills.

Initially, the combat cadre had trouble adapting to the civilian atmosphere at the hospital and clashed with the medical system. Soldiers complained that some improvements were cosmetic. The brigade was criticized for pursuing criminal charges against a lieutenant recovering at Walter Reed who had attempted suicide in Iraq.

But a year into it, the Army can point to progress: Congress and government auditors say the system is improving. In a poll of recovering soldiers released last month, 71 percent said the military health system is on track.

"There's more we want to do," said Col. Terrence J. McKenrick, the brigade commander, who is recommending that the Army beef up the Walter Reed unit. The ratios — one squad leader for every 12 soldiers, one caseworker for every 18 and one doctor for every 200 — are still too high, he said.

Army leaders have enough confidenc in the approach that they have set up sim

GOVERNMENT CONTRACT BATTLE

5/21/08

City Wants Judge to Seal Lottery Bid

Attorney General Cites Sensitivity of Company Secrets

By Nikita Stewart
Washington Post Staff Writer

The office of the D.C. attorney general asked an administrative judge yesterday to seal records in the fight over the contract to run the D.C. Lottery, a deal that could be worth $120 million.

Last month, Lottery Technology Enterprises, which has operated the lottery for 25 years, filed a formal complaint with the Contract Appeals Board to challenge the District's choice of W2I Ventures to take over the gaming system next year.

The District responded yesterday with the request for a protective order, mainly to guard proprietary products of W2I's winning contract proposal, interim Attorney General Peter Nickles said.

Nickles called the request "standard."

"The papers contain some . . . commercial and trade secrets," he said. "By tomorrow or the next day, we'll determine what parts will be public."

The proposed contract, which must be approved by the D.C. Council, has been a volatile issue over the past month; LTE is accusing the city of showing favoritism toward W2I.

The council tabled the proposal at a meeting last week, but Mayor Adrian M. Fenty (D) resubmitted it the next day, giving the council 45 more days to take action.

LTE is a joint venture of locally owned New Tech Games and international gaming powerhouse GTech. City officials have criticized the company for antiquated equipment, glitches and a security breach that produced fake tickets worth $70,000 in 2006.

W2I is a partnership between locally owned W2Tech and Intralot, GTech's international rival. W2I is a 10-month-old company.

Although W2Tech is new, the family of husband and wife owners Alaka and Warren Williams Jr. is not new to doing business with the city.

Williams and his father owned a nightclub that leased space in the Frank D. Reeves Municipal Center and was closed after a patron was fatally stabbed in 2005. Also, the younger Williams has been accused of being a neglectful landlord.

The two-page order is followed by a page for signatures from attorneys for the city, W2I and LTE.

Under the agreement, if approved by the judge, documents would be limited to the parties involved.

According to LTE's initial April 4 protest, the company supports a protective order regarding proprietary information. But it wanted the city to provide it with all worksheets, summaries and other documents related to the best and final offers of both companies. It also requested the names of the panel that picked the winner.

LTE wants a hearing before Jonathan D. Zischkau, chief administrative judge for the appeals board, before signing any document that will restrict any parts of the contract from public view, said Ann Walker Marchant, a spokeswoman for LTE and daughter of New Tech Games partner George Walker.

"We think the protective order is way too broad," she said. "There should be transparency in the procurement process."

The company fears that other parts of the document that have nothing to do with trade secrets will be hidden, Marchant said. LTE saw some documents in the bidding and award process for the first time yesterday, she said, declining to go into detail until Zischkau announces a decision.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BY CAROL GUZY — THE WASHINGTON POST

tokes Community Freedom Public Charter School in
ıe end of the school year. Caballero, center, holds a weigh-in
track of his progress.

gh Losing

ained by His Young Cheering Section

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it's a bit mortifying to
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Then there's this: Each month, students watch Caballero climb onto a white scale.

"Does anyone know what today is?" Caballero asked one recent morning.

"It's weigh-in day!" the students gleefully shouted.

Caballero placed the scale on the floor. The room buzzed with anticipation. He took a deep breath as the needle on the scale's indicator flipped around.

A boy shouted: "180?"

It was quiet for a moment as Caballero bent over to read the number. He squinted.

"Hmmm," he said. "I lost one pound."

The kids still cheered.

As of this week, Caballero has lost a total of 56 pounds.

nake a big difference in the health of children.
ing."

A color-coded system guides children in picking healthy foods.

Fairfax celebrates its diversity with a monthly international menu.

The system's Energy Zone Web site, which has averaged 10,600 hits a month, allows parents and students to calculate the nutrition of the foods they eat and compare it with the Virginia Governor's Standards for School Nutrition.

■ Montgomery County, the 17th-largest school system in the country, received a **B+**, ranking sixth.

The system was praised for increasing the number of fresh fruits and low-fat vegetable side dishes on its menu. It offers peanut butter and jelly, and grilled cheese sandwiches as the daily vegetarian and/or vegan options. Three times a week, the system will highlight an additional vegetarian and/or vegan meal. Bottled water and juice are offered.

— Lori Aratani

To see the report cards, go to www.healthyschoollunches.org/reports/index.html.

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Council Expresses Skepticism About Gaming Firm

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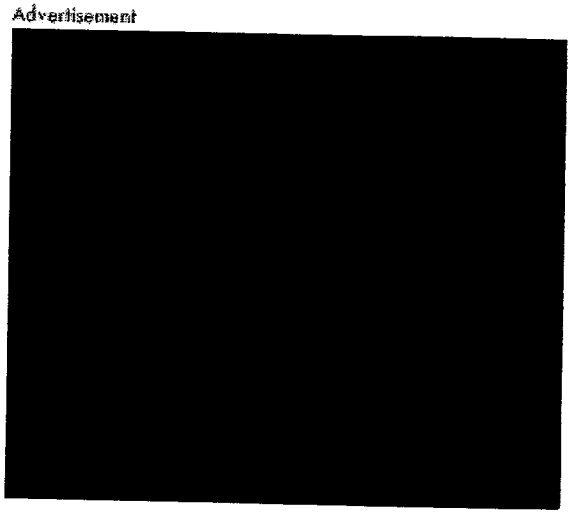

By Yolanda Woodlee
Washington Post Staff Writer
Tuesday, April 8, 2008; B02

Several D.C. Council members grilled city lottery and finance officials yesterday about a proposed $120 million contract the District wants to award to a start-up company, saying they want to know more about its experience in the gaming industry and whether it is a "bona fide" joint-venture firm.

At a hearing of the council's Committee on Finance and Revenue, members were skeptical about the company, W2I, a partnership between W2Tech, a nine-month-old local firm, and Intralot, an international lottery services provider. They wanted to know about the company's owners and partners and whether the process to select the firm was fair and transparent.

Council member Jim Graham (D-Ward 1) said the principals identified with W2Tech, Warren C. Williams Jr. and his father, Warren C. Williams Sr., raised a red flag with him because they had both been involved in controversies.

The pair owned Club U, a nightspot in the Frank D. Reeves Municipal Center that was closed after a man was fatally stabbed on the dance floor. And Williams Jr., a real estate developer, was recently accused by tenants of trying to force them out of their homes by not maintaining an apartment building he owns. Graham asked for a list of all officers of W2I.

"There are so many issues we need to look at here for real," Graham said. "Are there things they've done that would affect their ability to perform?"

Council member Jack Evans (D-Ward 2), the committee chairman, asked whether Sinclair Skinner, a friend of Mayor Adrian M. Fenty (D), was involved in the deal, but city officials said his name did not appear in the paperwork that W2I submitted.

Eric W. Payne, the contracting director for the finance office, defended the city's decision to abandon a 25-year contract with Lottery Technology Enterprises as a financial one, contending that W2I could do a better job for less money. W2I offered the "best technology solution and the lowest price," he said.

Payne said the new contract would reduce lottery costs from $11 million to $6 million a year, which he called a "win-win" for the city. He predicted that the savings would result from new games, more revenue and better technology.

But council members asked if the new firm actually could save that much money or if the contract was low-balled to win the award. Payne and Jeffrey "Jay" Young, the lottery's fiscal officer, said they would resign if the savings were not realized the first year.

The proposal presented to the council says that the contract would start at about $11 million a year for

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004668

six years; after that, it could reach about $120 million if a five-year renewal option were exercised.

Payne said that Lottery Technology Enterprises, which has run the city's lottery for about 25 years, has an antiquated gaming system and that W2I would overhaul it. He said that Intralot, the junior partner of W2I, is providing similar lottery services in Idaho, Nebraska and Montana and has been awarded contracts in South Carolina and New Mexico.

Intralot also brings greater cash reserves to the table than do LTE and its partner, GTech, Payne said.

But some council members questioned how much money the majority partner, W2Tech, was investing and whether its principals had experience in operating lotteries. Payne said that Warren Williams Sr. was involved with the D.C. Lottery when it was first implemented and has more than 35 years of experience in the gaming industry. But when pressed by Graham to prove that the senior Williams had provided lottery services for the entire time, Payne said he would have to get back to the council.

Council member David A. Catania (I-At Large) asked for a copy of the firm's incorporation papers to make sure it is "a bona fide" joint venture.

Council member Kwame R. Brown (D-At Large) said it would be unusual for the city to allow the junior partner of a team to put up 51 percent of the capital.

"If this is what we're doing today, this is something different," Brown said. "Other business partners have been denied. I'm not saying you're doing something wrong, but . . . different."

LTE has accused the city of giving an unfair advantage to W2I by extending the dates to submit a proposal to allow the company to get certified as a joint venture. Ann Walker Marchant, a spokeswoman for the company, said LTE filed a formal protest, including a complaint that the contract submission date was moved from Sept. 13 to Sept. 2o to allow W2I to get its joint venture certified.

Leonard Manning, chief executive of LTE, said he got a telephone call Sept. 12 from the finance office notifying him of the date change.

"I thought it was a hoax to get us not to submit something on time," Manning said.

For the contract to take effect this summer, the council would have to approve it during its meeting next Tuesday. If a vote is not taken, the proposal will be disapproved.

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WMATA-INV 004669

washingtonpost.com

A Failure in Enforcement

Agency's Ineffectiveness Has Helped Landlords Profit From Neglect

By Debbie Cenziper and Sarah Cohen
Washington Post Staff Writers
Tuesday, March 11, 2008; A01

The District agency entrusted with protecting tenants has routinely overlooked decrepit and dangerous conditions at rent-controlled apartment buildings in recent years despite claims that landlords were letting buildings rot to force families out.

At the same time, the Department of Consumer and Regulatory Affairs helped landlords profit once tenants had left -- approving more than 200 requests to begin converting newly emptied rental buildings into condominiums worth hundreds of millions of dollars. The agency regularly failed to conduct even the most cursory investigations, which in dozens of cases would have revealed filthy conditions, questionable evictions and letters urging tenants to leave.

"It's a total abdication of DCRA's responsibilities," said Julie Becker, a lawyer with the Legal Aid Society of the District of Columbia. "It's not just betraying tenants. It's betraying the law."

The most critical line of defense for tenants in the city's 135,000 rental units, DCRA is charged with enforcing housing codes and, until recently, a 28-year-old District law that gives tenants the right to decide whether apartment buildings convert to condominiums.

But a Washington Post investigation, which reviewed nearly 1,000 court cases, 128,000 housing code violation reports and hundreds of government records, found serious breakdowns at the agency:

Â¿ DCRA's goal is to investigate emergency complaints about shoddy buildings within 48 hours, but only about half are inspected that quickly. Dozens of investigations for utility outages, infestations, broken pipes and sewer backups have stalled for weeks or even months.

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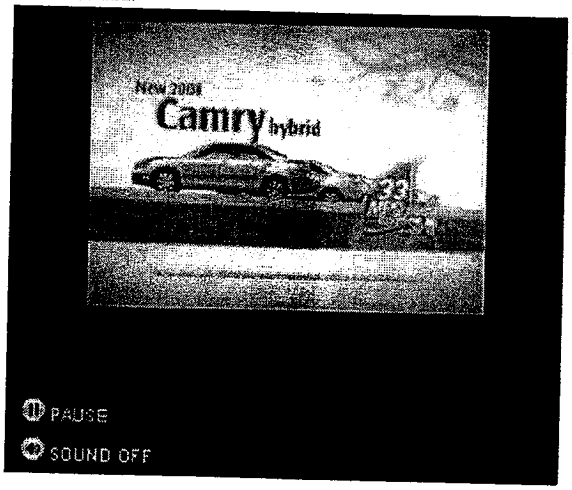

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Â¿ Agency leaders acknowledge that inspectors only sporadically made return visits to ensure repairs were completed, so it is impossible to know how many infractions have gone uncorrected. Last October, 1,900 reinspections were past due for all residential properties.

Â¿ DCRA took nearly 1,000 housing code cases to court in the past three years, but nearly half of the completed cases were dismissed, often because of agency failures. More than 30 cases died when officials for DCRA didn't show up for hearings.

Â¿ Even when judges have found owners liable and levied fines, DCRA often didn't try to collect the money. Of $572,000 in fines imposed during the past three years, landlords paid less than $112,000, court records show. DCRA can place liens on properties with outstanding fines, but a review of unpaid fines from 2005 shows that it often doesn't happen.

DCRA Director Linda Argo acknowledged the problems, saying the agency is providing more training to its 44 residential housing inspectors and sharing information about troubled properties with the newly independent Office of the Tenant Advocate.

Argo said reinspections of problem properties are "falling by the wayside," but the agency is developing a comprehensive system to better track inspections and reinspections. DCRA's computer program that monitors complaints, violations and inspections crashed for months in 2006 and now requires a $100-an-hour contractor on site 20 hours a week just to keep it running.

Argo, appointed in mid-2007, also said she wants to inspect troubled buildings on a regular basis, not just when tenants complain. Already, she said, there are signs of progress: The backlog for reinspections was cut in half over the past five months .

"There's a total consciousness about this," Argo said. "It is on our radar screen. It is a priority."

* * *

But change has been slow at DCRA, which Mayor Adrian M. Fenty (D) has repeatedly declared one of the city's most troubled agencies. It is also one of the most crucial: 52 percent of the city's residents are renters, one of the highest rates among comparable-size cities nationwide.

The sprawling agency, which oversees everything from construction permits to business licensing, has had five directors in seven years and has been studied by consultants, staff, auditors, lawyers and other professional groups at least 10 times in the past decade.

D.C. Council members have criticized a series of DCRA employees. They include Raenelle Humbles Zapata, in charge of overseeing rental housing, accused during a hearing by council member Jim Graham (D-Ward 1) of "gross negligence" for erroneously approving eviction requests for three rental complexes. At the time, Zapata said she had made a mistake but "had excellent reviews" at DCRA. She left in 2005.

Graham also questioned DCRA official Linda Harried for giving landlords letters approving the sale of apartment buildings without offering them to tenants first, as District law requires. Harried and others argued that they were following the law at the time. Harried left DCRA months later.

She reported to former DCRA administrator James Aldridge, who acknowledged during a council

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004671

hearing in 2005 that he did not intervene when Harried signed off on the sales. When Aldridge would not say that the agency had done anything wrong, council member Kwame R. Brown (D-At Large) fumed, "I am a little bit irate that the residents of the District of Columbia, who have been paying the salary of this employee for over twenty-some years, cannot get what I consider an accurate or honest answer."

Aldridge said in an interview that Graham was "simply grandstanding."

"DCRA interpreted the [law] as the council drafted it," he said.

Graham said DCRA for years has favored landlords, even when it was clear that tenants' rights were violated.

"Landlords are forever finding, by hook or by crook, another loophole," Graham said. "It's the profit engine that drives on and on here. A DCRA that is not very aggressive and marginally competent . . . all of that plays into the hands of those who want to make a buck off tenants."

* * *

One of the most striking imbalances plays out in the enforcement of the city's housing codes.

A Post analysis of data from the agency's tracking system found that just half of the 2,100 urgent complaints from 2007 were handled within 48 hours, DCRA's standard. Using different data, the agency put the figure at 76 percent in reports to the mayor.

At 804 Taylor St. NW, tenants have called DCRA complaining of no heat or water, cracked walls and a rat infestation, records show. The building is owned by Warren Williams Jr., a real estate developer.

In 2006, Williams started pressing tenants to leave the building, offering $3,000 and help finding a new apartment. He noted that if the building converted to condominiums, tenants would have the right to purchase a unit before any other buyers.

Tenants say the building fell into disrepair. On an afternoon last fall, rotting trash was piled in heaps in the back yard, and inside, a ceiling had collapsed and chunks of the walls had fallen into the stairwells.

"No cleaning, sweeping, security, repairs to lighting," said tenant John Parks, 44. Parks, a graduate student, doesn't want to give up his apartment because he can walk to Howard University, his rent is $425 a month and he can take his 3-year-old son to a nearby playground.

In February 2007, DCRA found more than 25 violations, but it dropped the case in April, saying the inspector couldn't get inside the building to reinspect. The agency went back in October for a buildingwide inspection and found more than 30 violations. The case was closed in January, with DCRA saying violations had been fixed.

Tenants say that some repairs were made but that the fixes were often cosmetic. The roof is still leaking, the walls are peeling and lights are not working, they say.

"DCRA has been very lax," said tenant James Posey, a city employee who has lived in the building for seven years. "I've been trying to get this stuff resolved since July of last year, but there's no sense of urgency on DCRA's part. Absolutely none."

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004672

A DCRA official said the agency has often had trouble getting into the building for inspections.

Williams said that his property manager had been absent from the building for personal reasons but that repairs have been made. He denied that he had tried to force tenants out by refusing to maintain the building.

"That's never been any intention of mine," Williams said. "Never, never."

When landlords fail to make repairs, DCRA can take them to court at the city's Office of Administrative Hearings and pursue fines. But poor record-keeping and follow-through have allowed dozens of landlords to escape penalties.

In the past three years, DCRA regularly sent legal notices to landlords using old or inaccurate addresses or notified the wrong person or company, a problem that administrative law judges have warned the agency about for years.

When mail is returned "undeliverable," judges give the agency a second chance to get the address right. But DCRA has often opted to dismiss cases without trying a second time.

Even when DCRA had the correct address, it often failed to follow up with a required second notice to unresponsive landlords. The agency, for example, filed more than 20 cases in 2005 against the company run by former D.C. Council member H.R. Crawford, citing uncollected trash and weeds at the company's apartment complex in Southeast. But the cases were dismissed in 2006 after Crawford failed to respond and DCRA did not send a required second notice.

Crawford said that he responded to all violations but that the complex was scheduled to be torn down and had become a dumping ground. He added that his company in late 2004 became a silent partner in the property.

DCRA officials attribute the dismissals to administrative problems.

In 11 cases, violations were dropped because the legal notices themselves were defective. In one case, DCRA attempted to fine a landlord $1,000 but didn't say why, inexplicably citing an unrelated statute that governs payments to dead firefighters and police officers.

Together, the hundreds of dismissed cases represented $664,000 in potential fines against landlords.

When judges imposed fines and landlords didn't pay, DCRA often failed to take the next step, putting liens on properties. A review of the 80 cases from 2005 with unpaid fines shows that DCRA placed liens on just 29 properties.

Argo said DCRA recently changed the way it sends legal notices to landlords to ensure that cases aren't dismissed. She also said that the agency is working out glitches with the Office of Administrative Hearings. Since January 2007, she said, the agency has issued 154 liens against properties for failure to pay delinquent fines.

"We are not just putting a fresh new coat of paint on the walls here," she said. "We are getting into the guts of DCRA and revitalizing our staff, our process and our procedures from the bottom up."

* * *

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004673

While one arm of DCRA failed to enforce housing codes, another routinely granted landlords permission to convert newly emptied buildings to condominiums. The law requires that tenants vote to approve condominiums and that developers pay a conversion fee to help uprooted tenants: 5 percent of the sales price of every new unit. But vacant buildings are exempt.

Records show DCRA regularly approved "vacancy exemptions" without requiring inspectors to go inside newly emptied buildings to look for signs that tenants had been forced out. Of 144 case files produced by DCRA, just 35 show interior inspections. Inspectors simply signed off on dozens of applications after claiming they couldn't get inside buildings because the owners had locked the doors.

In other cases, it would have been impossible for inspectors to determine what conditions had been like for tenants because the landlords -- even before receiving exemptions -- had launched wholesale renovations to prepare for condominiums.

Lauren Pair, who has overseen vacancy exemptions since August 2006, also said she does not research building code violations before approving exemptions because the law does not give her authority to reject an application on those grounds.

She and others said the law governing exemptions is vague. On the application, landlords are required to provide an explanation of how buildings became vacant, which the city calls a "self-certifying process."

"The law does not give the authority to challenge the information that we get from a landlord," said Keith Anderson, a rental property program specialist. "Unless we have knowledge about a property, we're basically bound to take their explanation."

But a review of more than 200 vacancy exemption applications shows that some landlords provided little or no explanation. DCRA approved the exemptions with few questions.

Pair said she has rejected some applications for "technical reasons," which were often quickly resolved, but has held up only one application in recent years. It was for a building on Vernon Street NW, where every fled after a late night fire in 2006. Investigators said the fire was deliberately set but have not determined who was responsible.

DCRA has overlooked tenants in other ways, too.

The law requires the city to provide displaced families with funds collected from the condominium conversion fee. But in the past three years, the exemptions have saved landlords $16 million in fees.

DCRA has collected $2.4 million since 2004 from landlords who did not have exemptions. But even then, few tenants benefited -- less than 2 percent of the money has been spent on housing assistance. The rest has been sitting untapped, officials said, even as thousands of families search for affordable housing. The fund was recently transferred to the Office of the Tenant Advocate.

Last October, city officials transferred oversight of vacancy exemptions and rental housing from DCRA to the Department of Housing and Community Development, saying the move would put more focus on the preservation of affordable housing.

The D.C. Council has for more than a year raised questions about the exemptions. It approved a measure from Graham in 2006 to repeal the provision, but the repeal was put on an emergency hold when developers raised concerns, and council members are expected to address the issue again in the coming

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004674

washingtonpost.com

A Failure in Enforcement

Agency's Ineffectiveness Has Helped Landlords Profit From Neglect

By Debbie Cenziper and Sarah Cohen
Washington Post Staff Writers
Tuesday, March 11, 2008; A01

The District agency entrusted with protecting tenants has routinely overlooked decrepit and dangerous conditions at rent-controlled apartment buildings in recent years despite claims that landlords were letting buildings rot to force families out.

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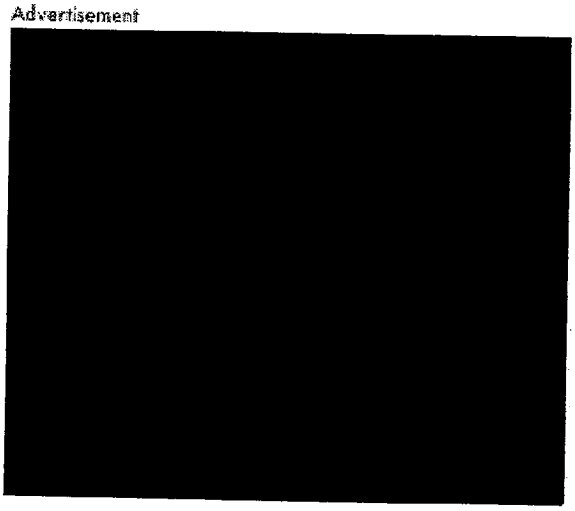

At the same time, the Department of Consumer and Regulatory Affairs helped landlords profit once tenants had left -- approving more than 200 requests to begin converting newly emptied rental buildings into condominiums worth hundreds of millions of dollars. The agency regularly failed to conduct even the most cursory investigations, which in dozens of cases would have revealed filthy conditions, questionable evictions and letters urging tenants to leave.

"It's a total abdication of DCRA's responsibilities," said Julie Becker, a lawyer with the Legal Aid Society of the District of Columbia. "It's not just betraying tenants. It's betraying the law."

The most critical line of defense for tenants in the city's 135,000 rental units, DCRA is charged with enforcing housing codes and, until recently, a 28-year-old District law that gives tenants the right to decide whether apartment buildings convert to condominiums.

But a Washington Post investigation, which reviewed nearly 1,000 court cases, 128,000 housing code violation reports and hundreds of government records, found serious breakdowns at the agency:

Â¿ DCRA's goal is to investigate emergency complaints about shoddy buildings within 48 hours, but only about half are inspected that quickly. Dozens of investigations for utility outages, infestations, broken pipes and sewer backups have stalled for weeks or even months.

Â¿ Agency leaders acknowledge that inspectors only sporadically made return visits to ensure repairs were completed, so it is impossible to know how many infractions have gone uncorrected. Last October, 1,900 reinspections were past due for all residential properties.

Â¿ DCRA took nearly 1,000 housing code cases to court in the past three years, but nearly half of the completed cases were dismissed, often because of agency failures. More than 30 cases died when officials for DCRA didn't show up for hearings.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004675

Â¿ Even when judges have found owners liable and levied fines, DCRA often didn't try to collect the money. Of $572,000 in fines imposed during the past three years, landlords paid less than $112,000, court records show. DCRA can place liens on properties with outstanding fines, but a review of unpaid fines from 2005 shows that it often doesn't happen.

DCRA Director Linda Argo acknowledged the problems, saying the agency is providing more training to its 44 residential housing inspectors and sharing information about troubled properties with the newly independent Office of the Tenant Advocate.

Argo said reinspections of problem properties are "falling by the wayside," but the agency is developing a comprehensive system to better track inspections and reinspections. DCRA's computer program that monitors complaints, violations and inspections crashed for months in 2006 and now requires a $100-an-hour contractor on site 20 hours a week just to keep it running.

Argo, appointed in mid-2007, also said she wants to inspect troubled buildings on a regular basis, not just when tenants complain. Already, she said, there are signs of progress: The backlog for reinspections was cut in half over the past five months .

"There's a total consciousness about this," Argo said. "It is on our radar screen. It is a priority."

* * *

But change has been slow at DCRA, which Mayor Adrian M. Fenty (D) has repeatedly declared one of the city's most troubled agencies. It is also one of the most crucial: 52 percent of the city's residents are renters, one of the highest rates among comparable-size cities nationwide.

The sprawling agency, which oversees everything from construction permits to business licensing, has had five directors in seven years and has been studied by consultants, staff, auditors, lawyers and other professional groups at least 10 times in the past decade.

D.C. Council members have criticized a series of DCRA employees. They include Raenelle Humbles Zapata, in charge of overseeing rental housing, accused during a hearing by council member Jim Graham (D-Ward 1) of "gross negligence" for erroneously approving eviction requests for three rental complexes. At the time, Zapata said she had made a mistake but "had excellent reviews" at DCRA. She left in 2005.

Graham also questioned DCRA official Linda Harried for giving landlords letters approving the sale of apartment buildings without offering them to tenants first, as District law requires. Harried and others argued that they were following the law at the time. Harried left DCRA months later.

She reported to former DCRA administrator James Aldridge, who acknowledged during a council hearing in 2005 that he did not intervene when Harried signed off on the sales. When Aldridge would not say that the agency had done anything wrong, council member Kwame R. Brown (D-At Large) fumed, "I am a little bit irate that the residents of the District of Columbia, who have been paying the salary of this employee for over twenty-some years, cannot get what I consider an accurate or honest answer."

Aldridge said in an interview that Graham was "simply grandstanding."

"DCRA interpreted the [law] as the council drafted it," he said.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004676

Graham said DCRA for years has favored landlords, even when it was clear that tenants' rights were violated.

"Landlords are forever finding, by hook or by crook, another loophole," Graham said. "It's the profit engine that drives on and on here. A DCRA that is not very aggressive and marginally competent . . . all of that plays into the hands of those who want to make a buck off tenants."

* * *

One of the most striking imbalances plays out in the enforcement of the city's housing codes.

A Post analysis of data from the agency's tracking system found that just half of the 2,100 urgent complaints from 2007 were handled within 48 hours, DCRA's standard. Using different data, the agency put the figure at 76 percent in reports to the mayor.

At 804 Taylor St. NW, tenants have called DCRA complaining of no heat or water, cracked walls and a rat infestation, records show. The building is owned by Warren Williams Jr., a real estate developer.

In 2006, Williams started pressing tenants to leave the building, offering $3,000 and help finding a new apartment. He noted that if the building converted to condominiums, tenants would have the right to purchase a unit before any other buyers.

Tenants say the building fell into disrepair. On an afternoon last fall, rotting trash was piled in heaps in the back yard, and inside, a ceiling had collapsed and chunks of the walls had fallen into the stairwells.

"No cleaning, sweeping, security, repairs to lighting," said tenant John Parks, 44. Parks, a graduate student, doesn't want to give up his apartment because he can walk to Howard University, his rent is $425 a month and he can take his 3-year-old son to a nearby playground.

In February 2007, DCRA found more than 25 violations, but it dropped the case in April, saying the inspector couldn't get inside the building to reinspect. The agency went back in October for a buildingwide inspection and found more than 30 violations. The case was closed in January, with DCRA saying violations had been fixed.

Tenants say that some repairs were made but that the fixes were often cosmetic. The roof is still leaking, the walls are peeling and lights are not working, they say.

"DCRA has been very lax," said tenant James Posey, a city employee who has lived in the building for seven years. "I've been trying to get this stuff resolved since July of last year, but there's no sense of urgency on DCRA's part. Absolutely none."

A DCRA official said the agency has often had trouble getting into the building for inspections.

Williams said that his property manager had been absent from the building for personal reasons but that repairs have been made. He denied that he had tried to force tenants out by refusing to maintain the building.

"That's never been any intention of mine," Williams said. "Never, never."

When landlords fail to make repairs, DCRA can take them to court at the city's Office of Administrative

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004677

Hearings and pursue fines. But poor record-keeping and follow-through have allowed dozens of landlords to escape penalties.

In the past three years, DCRA regularly sent legal notices to landlords using old or inaccurate addresses or notified the wrong person or company, a problem that administrative law judges have warned the agency about for years.

When mail is returned "undeliverable," judges give the agency a second chance to get the address right. But DCRA has often opted to dismiss cases without trying a second time.

Even when DCRA had the correct address, it often failed to follow up with a required second notice to unresponsive landlords. The agency, for example, filed more than 20 cases in 2005 against the company run by former D.C. Council member H.R. Crawford, citing uncollected trash and weeds at the company's apartment complex in Southeast. But the cases were dismissed in 2006 after Crawford failed to respond and DCRA did not send a required second notice.

Crawford said that he responded to all violations but that the complex was scheduled to be torn down and had become a dumping ground. He added that his company in late 2004 became a silent partner in the property.

DCRA officials attribute the dismissals to administrative problems.

In 11 cases, violations were dropped because the legal notices themselves were defective. In one case, DCRA attempted to fine a landlord $1,000 but didn't say why, inexplicably citing an unrelated statute that governs payments to dead firefighters and police officers.

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WMATA-INV 004678

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She and others said the law governing exemptions is vague. On the application, landlords are required to provide an explanation of how buildings became vacant, which the city calls a "self-certifying process."

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Last October, city officials transferred oversight of vacancy exemptions and rental housing from DCRA to the Department of Housing and Community Development, saying the move would put more focus on the preservation of affordable housing.

The D.C. Council has for more than a year raised questions about the exemptions. It approved a measure from Graham in 2006 to repeal the provision, but the repeal was put on an emergency hold when developers raised concerns, and council members are expected to address the issue again in the coming months. Fenty also proposed late last year that landlords with outstanding code violations be barred from converting their properties to condominiums.

But housing advocates say the mayor must also create a workable system of inspections and enforcement, including regular criminal referrals.

"The District has good laws, but it's a question of how they get enforced," said Joel Cohn, legislative director with the Office of the Tenant Advocate. "Unless you have someone who is actually paying

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attention, who knows the laws and is willing to prosecute, then the best laws in the world are pretty useless."

Staff researcher Meg Smith contributed to this report.

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City Backs Out of Deal With New Company

CFO Taking 'Second Look' at Contractor

By Yolanda Woodlee
Washington Post Staff Writer
Thursday, April 10, 2008; B04

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At the D.C. chief financial officer's request, Mayor Adrian M. Fenty has withdrawn a proposal to award a lottery contract worth more than $120 million to a new company. D.C. Council members had questioned the background and gaming industry experience of the company's owners.

The revelation came yesterday as Chief Financial Officer Natwar M. Gandhi testified at a routine budget hearing before the council's Committee on Finance and Revenue.

"We are taking a second look," Gandhi said. Later, in an e-mail, he said the office needed more time to "review and respond to the questions raised by the committee."

Gandhi, however, defended the contract, saying it will save more than $6 million a year and is "the best technological solution for the District." He said the office might resubmit the contract after completing criminal and civil background reviews.

Gandhi and Fenty (D) recommended awarding the lottery contract to W2I, a joint venture between local company W2Tech, created nine months ago, and international gaming giant Intralot. Lottery Technology Enterprises and its partner, GTech, a national lottery services provider, have had the contract for almost 25 years and have filed a formal protest over the deal.

In a letter to the council, Fenty said the D.C. Lottery and Charitable Games Control Board would save about $5 million a year by awarding the contract to a company that could provide state-of-the-art technology to help boost lottery sales and offer more games. LTE, which has been paid $80 million since 2000, has been plagued by an aging network. Its contract expires in November 2009, but the city wants to end it early to save costs.

W2Tech, the parent of the W2I partnership, was created by Warren C. Williams Jr., a real estate developer recently criticized by tenants for allowing his property to deteriorate. Williams has denied tenants' allegations that he was attempting to force them to move out so he could convert their apartments into condominiums. He and his father also owned Club U, which the District closed in 2005 after a patron was fatally stabbed there.

The council was skeptical of the contract, which could grow from $11 million a year for six years to $120 million if a five-year extension is granted.

Questions about the proposal were raised for the second time this week when D.C. Council member Jim Graham (D-Ward 1) asked Gandhi about the status of the lottery contract. During Monday's committee hearing, several council members expressed concerns about the background of W2I's owners and

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fairness and transparency in the bidding process.

Graham said yesterday that the city should "get our facts straight" before awarding the contract, which could have come before the council for a vote as early as Tuesday.

"I am asking you to withdraw this contract," Graham said yesterday.

Finance committee Chairman Jack Evans (D-Ward 2) told Graham the council and finance office, which oversees the lottery, had discussed dropping the proposal with Gandhi the previous day.

"Mr. Graham, we talked, remember," Evans said. "I actually made that request already."

Graham responded: "I was not aware a decision had been made."

In an interview after the meeting, Graham said he wanted to make sure the private discussion was stated publicly.

"I had known that the requests had been made," he said. "I wanted to hear it, on the public record, that this is in fact a withdrawn contract. If they come back with this, I want to see scrutiny."

The questions raised by some council members this week focused on the ownership of W2Tech and whether its partnership with Intralot, which is owned by a Greek conglomerate, constituted a bona fide joint venture. It appeared that Intralot was investing more money in the joint venture than its local partner, W2Tech.

Eric W. Payne, the contracting officer for the finance office, testified Monday that Janisha Richardson, a Ward 1 advisory neighborhood commissioner, was W2Tech's controller. City records indicate that Richardson is the company's principal owner.

Payne also said he did not know whether Alaka Williams, who was listed as the company's contact and with whom he was communicating, was related to Warren Williams Jr. She is his wife. Payne also said that Warren Williams Sr. had 35 years of gaming experience, including with the D.C. lottery when it started in 1982. He could not say whether the elder Williams had remained active in lottery services.

"Having those facts wrong robs you of the feeling of confidence of what they know and don't know," Graham said.

Council members also wanted to know whether Club U had paid $100,000 in back rent. The club was in the Frank D. Reeves Municipal Center at 14th and U streets NW. Bill Rice, spokesman for the D.C. Office of Property Management, said the back rent was paid, as scheduled, by January 2007.

Staff writer Nikita Stewart contributed to this report.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004682

From: "Omar A. Karim" <okarim@bannekerventures.com>
To: "'Rosalyn Doggett'" <rdoggett@wmata.com>
Date: Mon, Mar 17, 2008 2:10 PM
Subject: Executed copy of Outline of Operating Agreement b/t Members of Jazz @ Florida Avenue

Rosalyn,

As promised, attached please find an executed copy of the outline of the preliminary terms of the operating agreement b/t the members of the Jazz @ Florida Avenue project. Upon approval of the term sheet by WMATA's Board, and prior to the execution of the Definitive Agreement, we expect to have a more definitive and full operating agreement drafted and executed.

We look forward to speaking with you prior to your 9am meeting tomorrow.

Best,

Omar

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

CC: "'Bryant, Seth'" <Seth.Bryant@dlapiper.com>, "'Flynn, Guy'" <guy.flynn@dlapiper.com>, "Warren Williams" <warren@bannekerventures.com>, "'Joshua Kern'" <joshuakern@districtdevelopmentgroup.com>, <phinisjones@comcast.net>, <malone@metropolis-dc.com>

OUTLINE OF OPERATING AGREEMENT BETWEEN BANNEKER VENTURES, LLC, DISTRICT DEVELOPMENT GROUP, INC. AND METROPOLIS DEVELOPMENT COMPANY, LLC

The following outlines the terms of an operating agreement between Banneker Ventures, LLC ("Banneker"), District Development Group, Inc. ("DDG"), and Metropolis Development Company, LLC ("Metropolis") and the Washington Metropolitan Transit Authority ("WMATA") for the purpose of leasing WMATA's properties on the 700 and 800 blocks of Florida Avenue, NW, Washington, DC (collectively, the "Site"), and developing and operating a to-be-built mixed-use retail and residential project consisting of approximately 103 residential units and 12,000 square feet of retail space on the Site (the "Project").

The venture will be formed as a District of Columbia limited liability company (the "Company"). The Members of the Company shall include Banneker, or an affiliate thereof, DDG, or an affiliate thereof, and Metropolis, or an affiliate thereof. This outline contains the terms and conditions which, if successfully concluded, will result in a definitive operating agreement (the "Operating Agreement").

Business Plan:

The business plan for the Company calls for the negotiation and execution of a Term Sheet and Development Agreement with WMATA and the completion of the planned development as described above.

The Company intends to lease the residential portion of the Project as mixed-income apartments and the ground floor retail portion of the Project to a mix of different retailers, including a full-service restaurant and a boutique café/theatrical/music venue.

Once the Term Sheet and Development Agreement are approved by WMATA's Board of Directors, the Members will work collaboratively to obtain all necessary government approvals (BZA, HPRB, ANC, etc.), complete designs and commence necessary plans to start construction. DDG will take the lead on working with the neighbors, community organizations, and assist with construction management activities. Banneker will take the lead in the government approval process, working with WMATA, and design and operational issues. DDG will take the lead in working with the ANC and community organizations and permitting process, and work with Banneker and Metropolis during the construction process. Metropolis will take the lead in the construction process and work with Banneker and DDG in working with WMATA and in the design process. All of the Members will work to secure necessary construction and permanent financing for the Project.

Marketing and leasing of the Project shall be handled by one or more firms selected by the Members and commence six to nine months prior to construction completion. Once the Project is stabilized or at a time deemed optimal by the Members, it is anticipated that the Project will be permanently financed.

Schedule

An overall estimated schedule for the Project is attached as Exhibit A.

Proposed Development:

The Project will consist of a to-be-built residential and retail building of approximately 152,217 square feet with the following key statistics:

- Zoning – C2B
- Land Area (square feet) – Building 1: 3,800; Building 2: 8,600; Building 3: 16,472
- Residential Units – Approx. 103, of which 20% will be affordable units
- Retail – Approximately 11,757 square feet
- Parking – 24,525 square feet

Transaction Structure:

Managing Member

Banneker, or an affiliate, will serve as the Managing Member of the Company.

Decision Making

In its role as Managing Member, Banneker shall be responsible for day-to-day decisions of the Company. With respect to certain "Major Decisions, including: (1) terms between the general contractor for the Project and the Members; (2) the project budget; (3) changes to the project budget in excess of 5%; (4) selection of consultants, contractors and vendors that will be paid a fee in excess of $15,000; (5) selection of any lender or investor that will be providing financing to the Company and approval of the terms of any loan or equity participation in the Project; (6) terms of the Development Agreement with WMATA; (7) approval of design concepts for the Project; and (8) hiring of any Company employee, the Members shall have the right to approve such major decision. The Company's Operating Agreement shall spell out in full the remainder of Major Decisions.

If Banneker seeks the other Members' approval for a Major Decision and these Members reject such Major Decision, the Members agree to seek to work out their disagreements through the assistance of a mediator or third-party. If after meeting with a mediator or third-party, the Members are still at an impasse, Banneker shall have the right to purchase the other member's interest in the Company at fair market value (which shall be determined in a manner to be agreed upon in the Operating Agreement).

Joint Venture Capitalization, Initial Estimated Costs, Economic Allocations, Services and Key Provisions to the Operating Agreement

The following is a summary of the joint venture capitalization, initial estimated costs, economic allocations, services and key provisions to the Company's operating agreement.

Estimated Sources and Uses of Funds

Sources:		
Investment Equity	$9.0M	100.0%
Construction/Mini Perm Loan	$27.2M	100.0%
Total Sources	$36.2M	100.0%
Uses:		
Total Uses:	$36.2M	100.0%

Investment Equity by Member and Percentage Interests

Banneker	35.0%
DDG	35.0%
Metropolis	30.0%
Total	100.0%

The Members will adjust their equity percentages pro rata for admission of the third party equity investor source.

Promoted Interest

The Members will seek a promoted interest in connection with the respective Company. The promoted interest will be subordinated to return of and on a return of capital and other to- be-agreed upon requirements from the third party equity investor source. Any promoted interest will be allocated as follows:

	Share of Promote
Banneker	35.0%
DDG	35.0%
Metropolis	30.0%
Total	100.0%

Pre-Construction Funding and Venture Capitalization

The Members will be responsible for funding pre-construction activities on the following basis, excluding the initial $100,000 letter of credit posted by DDG with WMATA and to-be-determined Option and Security Deposit Fees that Metropolis shall post with WMATA for the right to negotiate a Development Agreement upon designation by WMATA and approval of the Term Sheet between the Members/Company and WMATA:

Banneker	35.0%
DDG	35.0%
Metropolis	30.0%
Total	100.0%

However, it is the intention of the Members to secure as much of the funds for pre-construction activities as the Members deem appropriate from a third party equity source.

All pre-construction capital invested in the Company will be treated as equity and earn a preferred return of 10%. It is anticipated that any third party equity invested in the Company will also receive a preferred return of 10%.

If any Member does not post its required share of the pre-construction or other required equity, the other Members may loan the non-posting Member the amount equal to the required equity. Any monies loaned to the non-posting Member shall receive a preferred return of __%.

Allocation Priority of Economics

To be determined during negotiations with MacFarlane Partners or another third party equity investor source.

The Members will adjust their equity percentages pro rata for admission of the third party equity investor.

Distributions to the Members will be made as follows:

1) First, to pay, to the extent unpaid, any unpaid member loans and preferred return to the Member(s) funding such loans pro rata.

2) Second, to pay, to the extent unpaid, the currently due and any catch-up of the cumulative preferred return to the Members pro rata.

3) Then, the balance will be distributed as follows:

Banneker	35.0%
DDG	35.0%

Metropolis	30.0%
Total	100.0%

Allocation Priority of Sale and Refinancing Proceeds.

To be determined in final form during negotiations with the third party equity investor source. The Members will adjust their equity percentages pro rata for admission of the third party equity investor source. Such adjustment is not reflected below.

Sale and refinancing proceeds will be paid as follows:

1) First, to pay, to the extent unpaid, any unpaid member loans and preferred return to the Member(s) funding such loans pro rata.

2) Second, to pay, to the extent unpaid, the currently due and any catch-up of the cumulative preferred return to the Members pro rata.

3) Then, once all equity capital is returned, the balance will be distributed as follows:

Banneker	35.0%
DDG	35.0%
Metropolis	30.0%
Total	100.0%

Construction Mini-Perm Loan

It is anticipated that the Company will obtain a construction loan for between 65-70% of the Project's total costs. To the extent the financing amount is greater or less than this amount, Members of the Company shall adjust their respective equity investment pro rata or, if required, additional equity will be raised upon mutually approved terms and conditions. The Company will attempt to have any financing to be non-recourse to the Members or their affiliates. However, the Members may be required to provide non-recourse carve-outs for the construction or future permanent lender (the so-called "good citizen" clauses).

Project Fees and Services

The Company intends to pay fair and reasonable fees to the Members for performing services in connection with the Project. Such fees shall include:

- Development Management at approximately 3.3% of the total costs allocated 1.1% to Banneker, 1.1% to DDG, and 1.1% to Metropolis.

- Project management at 1% of total costs to Banneker. Banneker will be responsible for day-to-day project administration and reporting.

The Company intends to negotiate a commercially reasonable GMAX contract with Tompkins, Inc. to serve as general contractor for the Project. If the Company is not able to reach terms with Tompkins, the Company will select another general contractor for the Project. The Company intends to enter into a guaranteed maximum price contract to build the Project.

Except as noted above, the fees will be paid out on a pro-rata basis over the construction period. The Members may cause, subject to lender and/or third party equity investor approval, to waive some or all of their fees to fund their respective shares of the equity investment.

Residential Management and Sales

The Members will work collectively to select the residential property manager. Banneker will serve as asset manager and receive an asset management fee of 1% of the gross revenue paid monthly. The asset manager shall meet regularly with the property manager and provide regular reports and distributions of cash flow and refinancing proceeds (if any) to the Members at intervals that the Members agree upon.

If the Members decide to sell the Project, Banneker will serve as co-sales agent for the Project and earn a fee of 1.0% of the gross sales price in addition to a reasonable fee to the sales and/or purchase agents, such fee to be paid at closing.

Accounting

The Company shall hire an accountant who shall keep accurate books and records of the Company's activities. Members shall have access to the Company's books and records on request.

Documents

All long form documents associated with the Operating Agreement of the Company shall be satisfactory to the Members.

This Outline of the Company's Operating Agreement is preliminary and does not include all of the terms and conditions of a full operating agreement, and has been prepared to facilitate discussions among the Members regarding the proposed Project.

SIGNATURE PAGES BELOW

FOIA CONFIEDENTIAL TREATMENT REQUESTED

AGREED TO BY THE PARTIES BELOW:

BANNEKER VENTURES, LLC

By: _____
Name: Omar Kallam
Title: Principal

DISTRICT DEVELOPMENT GROUP, INC.

By: _____
Name:
Title:

METROPOLIS DEVELOPMENT COMPANY, LLC

By: _____
Name: MERRICK T. MALONE
Title: Principal and Executive Vice President

From: "Omar A. Karim" <okarim@bannekerventures.com>
To: "'Rosalyn Doggett'" <rdoggett@wmata.com>
Date: 3/18/2008 9:27:36 AM
Subject: Final - WMATA Florida Avenue Term Sheet

Ms. Doggett,

As promised, attached please find a Final copy of the Term Sheet for the Florida Avenue project. We made five small comments reflected in Section 5.2 7.2, 8.5, 8.6 and 9.8.

√ 5.2 - or the proposal security, as applicable

Please call me with any questions. √ 7.2 - deleted stabilization definition

Thank you in advance. ~~8.5 I see no change~~

Omar √ 8.6 We will add back 1st ID on financing contingency

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700 √ 9.8 OK

Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

CC: "'Marc E. Biondi'" <mebiondi@wmata.com>, "'Seth Bryant'" <Seth.Bryant@dlapiper.com>, "'Guy Flynn'" <guy.flynn@dlapiper.com>, "Warren Williams" <warren@bannekerventures.com>, "'Joshua Kern'" <joshuakern@districtdevelopmentgroup.com>, "'Phinis Jones'" <phinisjones@comcast.net>, "'Merrick Malone'" <malone@metropolis-dc.com>

From: "Hernandez, Carmen" <Carmen.Hernandez@dlapiper.com>
To: "Flynn, Guy" <guy.flynn@dlapiper.com>, "Warren Williams" <warren@bannekerventures.com>, "Phinis Jones" <phinisjones@comcast.net>, "Josh Kern" <jkern@districtdevelopmentgroup.com>, "Merrick Malone" <malone@metropolis-dc.com>, <okarim@bannekerventures.com>, "Rosalyn Doggett" <rdoggett@wmata.com>, "Marc E. Biondi" <mebiondi@wmata.com>, "Donning, Deborah" <deborah.donning@dlapiper.com>
Date: 3/13/2008 5:12:19 PM
Subject: Banneker - WMATA Conference Call Monday, March 17th at 9:00 a.m. (EST)

Good afternoon,

Per Seth Bryant's request, the conference call has been scheduled for Monday, March 17th at 9:00 a.m. (EST). Below please find the dial in information.

Dial in Number: 800-369-1986

Passcode:36153

Thank you,

Carmen Hernandez

Guy Flynn
410 580 4149

<http://www.dlapiper.com/>
Carmen Hernandez
Legal Secretary
DLA Piper US LLP
1251 Avenue of the Americas
New York, New York 10020-1104
212.335.4973 T
212.335.4501 F
carmen.hernandez@dlapiper.com
www.dlapiper.com <http://www.dlapiper.com/>
Please consider the environment before printing my email

Please consider the environment before printing this email.

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message. To contact our email administrator directly, send to postmaster@dlapiper.com

Thank you.

CC: "Bryant, Seth" <Seth.Bryant@dlapiper.com>

From: Rosalyn Doggett
To: okarim@bannekerventures.com
Date: 3/14/2008 12:50:38 PM
Subject: Re: WMATA Project Schedule (as of March 2008).pdf - AdobeAcrobat Professional

Omar, as I conveyed in our phone conversation, please note that the rental payments to reach "status quo ante" would be

Pre-stabilization rent
$100,000/ year(pro-rated) for first 15 months
$115,000 for subsequent year
$130,000/year thereafter, pro-rated to the "outside date" for stabilization (45 months after definitive agreement execution)

First base rent paynent $597,000
Base rent scalated for first 10 years of lease payments at 1.5%/year
Base rent escalated thereafter at 3%/year

Please note also that in section 7.9 any payments for additional density would be $60/FAR sf x 7% escalated annually from the date of development agreement execution until first base rent payment, when it is simply added to base rent.

I have to leave now. I hope I have covered the bases. Look forward to talking to you on Monday.
Rosalyn

>>> "Omar A. Karim" <okarim@bannekerventures.com> 3/13/2008 1:05 PM >>>
Great. Monday @ 9am it is. Seth will send out a dial-in #.
------Original Message------
From: Rosalyn Doggett
Sender:
To: Omar A. Karim
To: Marc E. Biondi
Cc: Guy' 'Flynn
Cc: Seth Bryant
Sent: Mar 13, 2008 12:55 PM
Subject: Re: WMATA Project Schedule (as of March 2008).pdf - AdobeAcrobat Professional

My Monday morning is open; I can converse any time and suggest 9 a.m.

>>> "Omar A. Karim" <okarim@bannekerventures.com> 3/13/2008 9:41 AM >>>
Hello,

Attached you will find the updated project Schedule as of March 2008.

Thanks

Omar A. Karim

Banneker Ventures, LLC

667-460 office

301-523-1810 cell

FL AVE JD Comments/Corrections

Paragraph 3 – WMATA will transfer any surface easements on the property, however, the lease area will be limited by that area required by WMATA for the protection of its heavy rail tunnel, which passes through a portion of the property.

Throughout the document references to the document being "binding" need to be removed – reference to right to negotiate Definitive Agreement is okay.

6.6 – please extend the return of Security Deposit time frame to 20 business days.

7.5 (and other locations) – "Decrease" is relative to the amount due before the adjustment referenced. For example if January rent is $300K and an adjustment occurs, February rent would be no less than $300K, regardless of market conditions.

9.1 – we can provide notice as requested. Please remove the other changes to this section as WMATA's Office of the Secretary will provide the contacts.

9.2.3 – addition is accepted.

9.3 – Developer will need to make the determinations and submissions as appropriate.

9.9 – The reference needs to be changed due to recent changes in the Federal Regulations. A copy of the new Guidance is attached.

9.11 – Reference should be to DC laws not Maryland.

. arren

ph

Roz, Marc

3/17/08

(1) Pre-dev rent - acceptable

(2) Base rent - not acceptable

50% equity world

~~$59 per base rent~~

6.4 - ask Carol

3/12
Roz, Joel, Marc

1. Go back to timing you gave us - made you the preferred developer, time vs. money 6%/year

Higher Risk If you go for PUD, you have a parking problem

2. Option fee is nonrefundable

3. Rent raised bec of FTA

Joel, Marc, Roz
Omar, Josh (DDG), Marc
Ken

3/13/08

~~[illegible] 2008~~
They will go back to original deposit on
$ 100K
$ ~~[illegible]~~ 250K - need to get bldg up
$250 K or $200K
$ Pre-stabilization rent is nonrefundable
paid quarterly in advance

Merrick –

If city wants affordable, city will have to pay subsidy

★ Roz to work with Eric to make NPV come out same

7% = FTA; they're OK

Extension of Lease by mutual consent

Preferred Return – Open Item right now

Schedule –

14 from T.S. Approval [redacted]

35% > dwgs + 1 mo
65% > dwgs + 1 mo
100% " + 3 mo (not 15 days)

Outside date for Stabilization
+ 2 years
= 13 months added

1. Agreement with Metropolis

2. Defense ~~Stabilization~~ Pre-Stabilization

90% leased

3. Right of Entry Permit -
Substantially in the form attached

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BSA Table 1
Florida Avenue / Shaw - Proposal Comparisons

			1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	11 2018	12 2019	13 2020	14 2021	15 2022		60 2067
Banneker / District - lease (mid December 2007)																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent			$60,000	$100,000	$100,000														
Offeror Land Valuation																			
Base Rent	3.000%	fixed annual escalations				$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$2,617,307
Other Base Rent Adjustment		not applicable																	
Total Gross Revenue			$160,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$2,617,307
WMATA Participation	10.00%	of defined capital events																	
Implied Initial Land Value	$7,847,280	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ residual			$160,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117		$48,075,772
NPV																			
Base Rent	9.00%	discount rate	$6,496,797																
With Residual	9.00%	discount rate	$6,778,279																

Banneker / District - lease (March 2008)																			
Revenues																			
Option Fee			$100,000																
Predevelopment Rent			$60,000	[redacted]															
Offeror Land Valuation																			
Base Rent	[redacted]	unpaid year 4, then escalated @ 1.03% to next year																	
	[redacted]	fixed annual escalations years 6 to 14					[redacted]	$605,256	$813,215	$621,279	$629,449	$637,726	$646,112	$654,608	$663,216	$671,938			
	3.000%	fixed annual escalations years 15+																	
Other Base Rent Adjustment		not applicable																	
Total Gross Revenue			$160,000	$100,000	$115,000	$130,000	$597,400	$605,256	$813,215	$621,279	$629,449	$637,726	$646,112	$654,608	$663,216	$671,938	$692,096		$2,617,226
WMATA Participation	10.00%	of defined capital events																	
Implied Initial Land Value	$0	FY08 assessed values																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ residual			$160,000	$100,000	$115,000	$130,000	$597,400	$605,256	$813,215	$621,279	$629,449	$637,726	$646,112	$654,608	$663,216	$671,938	$692,096		$48,075,692
NPV																			
Base Rent	9.00%	discount rate	$6,473,544																
With Residual	9.00%	discount rate	$6,755,026																

WMATA-INV 004700

From: "Omar A. Karim" <okarim@bannekerventures.com>
To: "'Rosalyn Doggett'" <rdoggett@wmata.com>, "'Marc E. Biondi'" <mebiondi@wmata.com>
Date: 3/17/2008 2:05:01 PM
Subject: Executed copy of Outline of Operating Agreement b/t Members of Jazz @ Florida Avenue

Rosalyn and Marc,

As promised, attached please find an executed copy of the outline of the preliminary terms of the operating agreement b/t the members of the Jazz @ Florida Avenue project. Upon approval of the term sheet by WMATA's Board, and prior to the execution of the Definitive Agreement, we expect to have a more definitive and full operating agreement drafted and executed.

We look forward to speaking with you prior to your 9am meeting tomorrow.

Best,

Omar

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

CC: "'Bryant, Seth'" <Seth.Bryant@dlapiper.com>, "'Flynn, Guy'" <guy.flynn@dlapiper.com>, "Warren Williams" <warren@bannekerventures.com>, "'Joshua Kern'" <joshuakern@districtdevelopmentgroup.com>, <phinisjones@comcast.net>, <malone@metropolis-dc.com>

OUTLINE OF OPERATING AGREEMENT BETWEEN BANNEKER VENTURES, LLC, DISTRICT DEVELOPMENT GROUP, INC. AND METROPOLIS DEVELOPMENT COMPANY, LLC

The following outlines the terms of an operating agreement between Banneker Ventures, LLC ("Banneker"), District Development Group, Inc. ("DDG"), and Metropolis Development Company, LLC ("Metropolis") and the Washington Metropolitan Transit Authority ("WMATA") for the purpose of leasing WMATA's properties on the 700 and 800 blocks of Florida Avenue, NW, Washington, DC (collectively, the "Site"), and developing and operating a to-be-built mixed-use retail and residential project consisting of approximately 103 residential units and 12,000 square feet of retail space on the Site (the "Project").

The venture will be formed as a District of Columbia limited liability company (the "Company"). The Members of the Company shall include Banneker, or an affiliate thereof, DDG, or an affiliate thereof, and Metropolis, or an affiliate thereof. This outline contains the terms and conditions which, if successfully concluded, will result in a definitive operating agreement (the "Operating Agreement").

Business Plan:

The business plan for the Company calls for the negotiation and execution of a Term Sheet and Development Agreement with WMATA and the completion of the planned development as described above.

The Company intends to lease the residential portion of the Project as mixed-income apartments and the ground floor retail portion of the Project to a mix of different retailers, including a full-service restaurant and a boutique café/theatrical/music venue.

Once the Term Sheet and Development Agreement are approved by WMATA's Board of Directors, the Members will work collaboratively to obtain all necessary government approvals (BZA, HPRB, ANC, etc.), complete designs and commence necessary plans to start construction. DDG will take the lead on working with the neighbors, community organizations, and assist with construction management activities. Banneker will take the lead in the government approval process, working with WMATA, and design and operational issues. DDG will take the lead in working with the ANC and community organizations and permitting process, and work with Banneker and Metropolis during the construction process. Metropolis will take the lead in the construction process and work with Banneker and DDG in working with WMATA and in the design process. All of the Members will work to secure necessary construction and permanent financing for the Project.

Marketing and leasing of the Project shall be handled by one or more firms selected by the Members and commence six to nine months prior to construction completion. Once the Project is stabilized or at a time deemed optimal by the Members, it is anticipated that the Project will be permanently financed.

Schedule

An overall estimated schedule for the Project is attached as Exhibit A.

Proposed Development:

The Project will consist of a to-be-built residential and retail building of approximately 152,217 square feet with the following key statistics:

- Zoning – C2B
- Land Area (square feet) – Building 1: 3,800; Building 2: 8,600; Building 3: 16,472
- Residential Units – Approx. 103, of which 20% will be affordable units
- Retail – Approximately 11,757 square feet
- Parking – 24,525 square feet

Transaction Structure:

Managing Member

Banneker, or an affiliate, will serve as the Managing Member of the Company.

Decision Making

In its role as Managing Member, Banneker shall be responsible for day-to-day decisions of the Company. With respect to certain "Major Decisions, including: (1) terms between the general contractor for the Project and the Members; (2) the project budget; (3) changes to the project budget in excess of 5%; (4) selection of consultants, contractors and vendors that will be paid a fee in excess of $15,000; (5) selection of any lender or investor that will be providing financing to the Company and approval of the terms of any loan or equity participation in the Project; (6) terms of the Development Agreement with WMATA; (7) approval of design concepts for the Project; and (8) hiring of any Company employee, the Members shall have the right to approve such major decision. The Company's Operating Agreement shall spell out in full the remainder of Major Decisions.

If Banneker seeks the other Members' approval for a Major Decision and these Members reject such Major Decision, the Members agree to seek to work out their disagreements through the assistance of a mediator or third-party. If after meeting with a mediator or third-party, the Members are still at an impasse, Banneker shall have the right to purchase the other member's interest in the Company at fair market value (which shall be determined in a manner to be agreed upon in the Operating Agreement).

Joint Venture Capitalization, Initial Estimated Costs, Economic Allocations, Services and Key Provisions to the Operating Agreement

The following is a summary of the joint venture capitalization, initial estimated costs, economic allocations, services and key provisions to the Company's operating agreement.

Estimated Sources and Uses of Funds

Sources:		
Investment Equity	$9.0M	100.0%
Construction/Mini Perm Loan	$27.2M	100.0%
Total Sources	$36.2M	100.0%
Uses:		
Total Uses:	$36.2M	100.0%

Investment Equity by Member and Percentage Interests

Banneker	35.0%
DDG	35.0%
Metropolis	30.0%
Total	100.0%

The Members will adjust their equity percentages pro rata for admission of the third party equity investor source.

Promoted Interest

The Members will seek a promoted interest in connection with the respective Company. The promoted interest will be subordinated to return of and on a return of capital and other to- be-agreed upon requirements from the third party equity investor source. Any promoted interest will be allocated as follows:

	Share of Promote
Banneker	35.0%
DDG	35.0%
Metropolis	30.0%
Total	100.0%

Pre-Construction Funding and Venture Capitalization

The Members will be responsible for funding pre-construction activities on the following basis, excluding the initial $100,000 letter of credit posted by DDG with WMATA and to-be-determined Option and Security Deposit Fees that Metropolis shall post with WMATA for the right to negotiate a Development Agreement upon designation by WMATA and approval of the Term Sheet between the Members/Company and WMATA:

Banneker	35.0%
DDG	35.0%
Metropolis	30.0%
Total	100.0%

However, it is the intention of the Members to secure as much of the funds for pre-construction activities as the Members deem appropriate from a third party equity souree.

All pre-construction capital invested in the Company will be treated as equity and earn a preferred return of 10%. It is anticipated that any third party equity invested in the Company will also receive a preferred return of 10%.

If any Member does not post its required share of the pre-construction or other required equity, the other Members may loan the non-posting Member the amount equal to the required equity. Any monies loaned to the non-posting Member shall receive a preferred return of __%.

Allocation Priority of Economics

To be determined during negotiations with MacFarlane Partners or another third party equity investor source.

The Members will adjust their equity percentages pro rata for admission of the third party equity investor.

Distributions to the Members will be made as follows:

1) First, to pay, to the extent unpaid, any unpaid member loans and preferred return to the Member(s) funding such loans pro rata.

2) Second, to pay, to the extent unpaid, the currently due and any catch-up of the cumulative preferred return to the Members pro rata.

3) Then, the balance will be distributed as follows:

Banneker	35.0%
DDG	35.0%

Metropolis	30.0%
Total	100.0%

Allocation Priority of Sale and Refinancing Proceeds.

To be determined in final form during negotiations with the third party equity investor source. The Members will adjust their equity percentages pro rata for admission of the third party equity investor source. Such adjustment is not reflected below.

Sale and refinancing proceeds will be paid as follows:

1) First, to pay, to the extent unpaid, any unpaid member loans and preferred return to the Member(s) funding such loans pro rata.

2) Second, to pay, to the extent unpaid, the currently due and any catch-up of the cumulative preferred return to the Members pro rata.

3) Then, once all equity capital is returned, the balance will be distributed as follows:

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Metropolis	30.0%
Total	100.0%

Construction Mini-Perm Loan

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Project Fees and Services

The Company intends to pay fair and reasonable fees to the Members for performing services in connection with the Project. Such fees shall include:

- Development Management at approximately 3.3% of the total costs allocated 1.1% to Banneker, 1.1% to DDG, and 1.1% to Metropolis.

- Project management at 1% of total costs to Banneker. Banneker will be responsible for day-to-day project administration and reporting.

The Company intends to negotiate a commercially reasonable GMAX contract with Tompkins, Inc. to serve as general contractor for the Project. If the Company is not able to reach terms with Tompkins, the Company will select another general contractor for the Project. The Company intends to enter into a guaranteed maximum price contract to build the Project.

Except as noted above, the fees will be paid out on a pro-rata basis over the construction period. The Members may cause, subject to lender and/or third party equity investor approval, to waive some or all of their fees to fund their respective shares of the equity investment.

Residential Management and Sales

The Members will work collectively to select the residential property manager. Banneker will serve as asset manager and receive an asset management fee of 1% of the gross revenue paid monthly. The asset manager shall meet regularly with the property manager and provide regular reports and distributions of cash flow and refinancing proceeds (if any) to the Members at intervals that the Members agree upon.

If the Members decide to sell the Project, Banneker will serve as co-sales agent for the Project and earn a fee of 1.0% of the gross sales price in addition to a reasonable fee to the sales and/or purchase agents, such fee to be paid at closing.

Accounting

The Company shall hire an accountant who shall keep accurate books and records of the Company's activities. Members shall have access to the Company's books and records on request.

Documents

All long form documents associated with the Operating Agreement of the Company shall be satisfactory to the Members.

This Outline of the Company's Operating Agreement is preliminary and does not include all of the terms and conditions of a full operating agreement, and has been prepared to facilitate discussions among the Members regarding the proposed Project.

SIGNATURE PAGES BELOW

FOIA CONFIEDENTIAL TREATMENT REQUESTED

AGREED TO BY THE PARTIES BELOW:

BANNEKER VENTURES, LLC

By: _____
Name: Omar Kahn
Title: Principal

DISTRICT DEVELOPMENT GROUP, INC.

By: _____
Name:
Title:

METROPOLIS DEVELOPMENT COMPANY, LLC

By: _____
Name: MERRICK T. MALONE
Title: Principal and Executive Vice President

FOIA CONFIEDENTIAL TREATMENT REQUESTED

THE JAZZ

ID	Task Name	Duration	Start	Finish	Predecessors
1	The Jazz @ Florida Avenue	1123 days	Mon 9/3/07	Wed 12/21/11	
2	**WMATA Neogiations and Approval**	**8.9 mons**	**Mon 3/3/08**	**Wed 11/5/08**	
3	**Term Sheet**	**1.85 mons**	**Mon 3/3/08**	**Tue 4/22/08**	
4	Term Sheet Negotiations	10 days	Mon 3/3/08	Fri 3/14/08	
5	Approval of Term Sheet	1 day	Tue 4/22/08	Tue 4/22/08	4
6	**Development Agreement**	**5.05 mons**	**Wed 4/23/08**	**Wed 9/10/08**	
7	Negotiation of Development Agreement	5 mons	Wed 4/23/08	Tue 9/9/08	5
8	WMATA Board Approval of Development Agreement	1 day	Wed 9/10/08	Wed 9/10/08	7
9	**Development Plan**	**6.05 mons**	**Wed 5/21/08**	**Wed 11/5/08**	
10	Get Design Team to prepare Prelim Development Plan	4 wks	Wed 5/21/08	Tue 6/17/08	7SF+8 wks
11	Get Civil Engineers to do Phase I & Phase II	6 wks	Wed 5/21/08	Tue 7/1/08	5FS+1 mon
12	Utility Study	6 wks	Wed 5/21/08	Tue 7/1/08	5FS+1 mon
13	Preliminary Development Plan Submission to WMATA	1 wk	Fri 6/27/08	Thu 7/3/08	10
14	Development Plan Approved by WMATA	2 mons	Thu 9/11/08	Wed 11/5/08	8
15	**Local Approvals/Informationals**	**17.9 mons**	**Tue 9/18/07**	**Thu 1/29/09**	
16	**Community Organizations**	**0.55 mons**	**Thu 9/11/08**	**Thu 9/25/08**	
17	Send ltr to Columbia Heights CDC	2 wks	Thu 9/11/08	Wed 9/24/08	8
18	Send ltr to LeDroit Park Organization	2 wks	Thu 9/11/08	Wed 9/24/08	8
19	Send copies of ltrs sent to organizations to WMATA	1 day	Thu 9/25/08	Thu 9/25/08	17,18
20	**BZA**	**14.9 mons**	**Tue 12/11/07**	**Thu 1/29/09**	
21	Pre-meeting with OP staff re: zoning issues	1 day	Tue 12/11/07	Tue 12/11/07	
22	File application for variance with BZA (parking relief)	4 mons	Thu 9/11/08	Wed 12/31/08	8
23	BZA hearing	1 day	Thu 1/1/09	Thu 1/1/09	22
24	Receipt of BZA order	1 mon	Fri 1/2/09	Thu 1/29/09	23
25	**HPRB**	**11.4 mons**	**Tue 12/11/07**	**Thu 10/23/08**	
26	Pre-meeting with OP/HPRB staff re: historic review	1 day	Tue 12/11/07	Tue 12/11/07	
27	Prepare application for review by HPRB	2 wks	Thu 9/11/08	Wed 9/24/08	8
28	File application with HPRB	1 day	Thu 9/25/08	Thu 9/25/08	27
29	HPRB hearing and receipt of resolution	1 day	Thu 10/23/08	Thu 10/23/08	27FS+1 mon
30	**ANC 1B**	**15.85 mons**	**Tue 9/18/07**	**Wed 12/3/08**	
31	Pre-meeting with ANC 1B	1 day	Tue 9/18/07	Tue 9/18/07	
32	Meeting with ANC re: BZA variance and HPRB review	1 mon	Thu 11/6/08	Wed 12/3/08	22SS+2 mons
33	**Pre-Construction**	**13.5 mons**	**Thu 11/6/08**	**Wed 11/18/09**	

Project: WMATA Summary project sch
Date: Thu 3/13/08

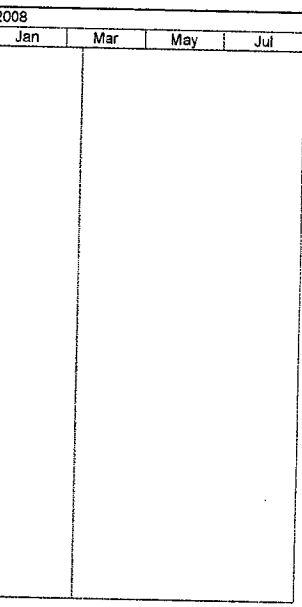
Task — Progress — Summary — External Tasks — Deadline
Split — Milestone — Project Summary — External Milestone

WMATA-INV 004709

FOIA CONFIEDENTIAL TREATMENT REQUESTED

THE JAZZ

ID	Task Name	Duration	Start	Finish	Predecessors
34	35% Drawings	3 mons	Thu 11/6/08	Wed 1/28/09	14
35	Review by WMATA	1 mon	Thu 1/29/09	Wed 2/25/09	34
36	65% Drawings	3 mons	Thu 2/26/09	Wed 5/20/09	35
37	Review by WMATA	1 mon	Thu 5/21/09	Wed 6/17/09	36
38	GMP Set Drawings	3 mons	Thu 6/18/09	Wed 9/9/09	37
39	Excavation & Site Work Permits	1 mon	Thu 9/10/09	Wed 10/7/09	38
40	Building Permits	1.5 mons	Thu 10/8/09	Wed 11/18/09	39
41	**Construction**	**18 mons**	**Thu 11/19/09**	**Wed 4/6/11**	
42	Site Work	2 mons	Thu 11/19/09	Wed 1/13/10	40
43	Excavation & Remediation	2 mons	Thu 1/14/10	Wed 3/10/10	42
44	Sheeting and Shoring	2 mons	Thu 3/11/10	Wed 5/5/10	43
45	Garage Construction	1.5 mons	Thu 5/6/10	Wed 6/16/10	44
46	Shell Building Construction	6.5 mons	Thu 6/17/10	Wed 12/15/10	45
47	Building Fit Out	4 mons	Thu 12/16/10	Wed 4/6/11	46
48	Landscaping	2 wks	Thu 12/16/10	Wed 12/29/10	46
49	**Building Operations**	**10.8 mons**	**Thu 4/7/11**	**Thu 2/2/12**	
50	C of O	15 days	Thu 4/7/11	Wed 4/27/11	47
51	Initial Occupancy Residential/Stabilization	10 mons	Thu 4/28/11	Wed 2/1/12	50
52	Retail TI	3 mons	Thu 4/7/11	Wed 6/29/11	47
53	Retail Occupany/Stabilization	2 mons	Thu 6/30/11	Wed 8/24/11	52
54	Project Stablization	1 day	Thu 2/2/12	Thu 2/2/12	51

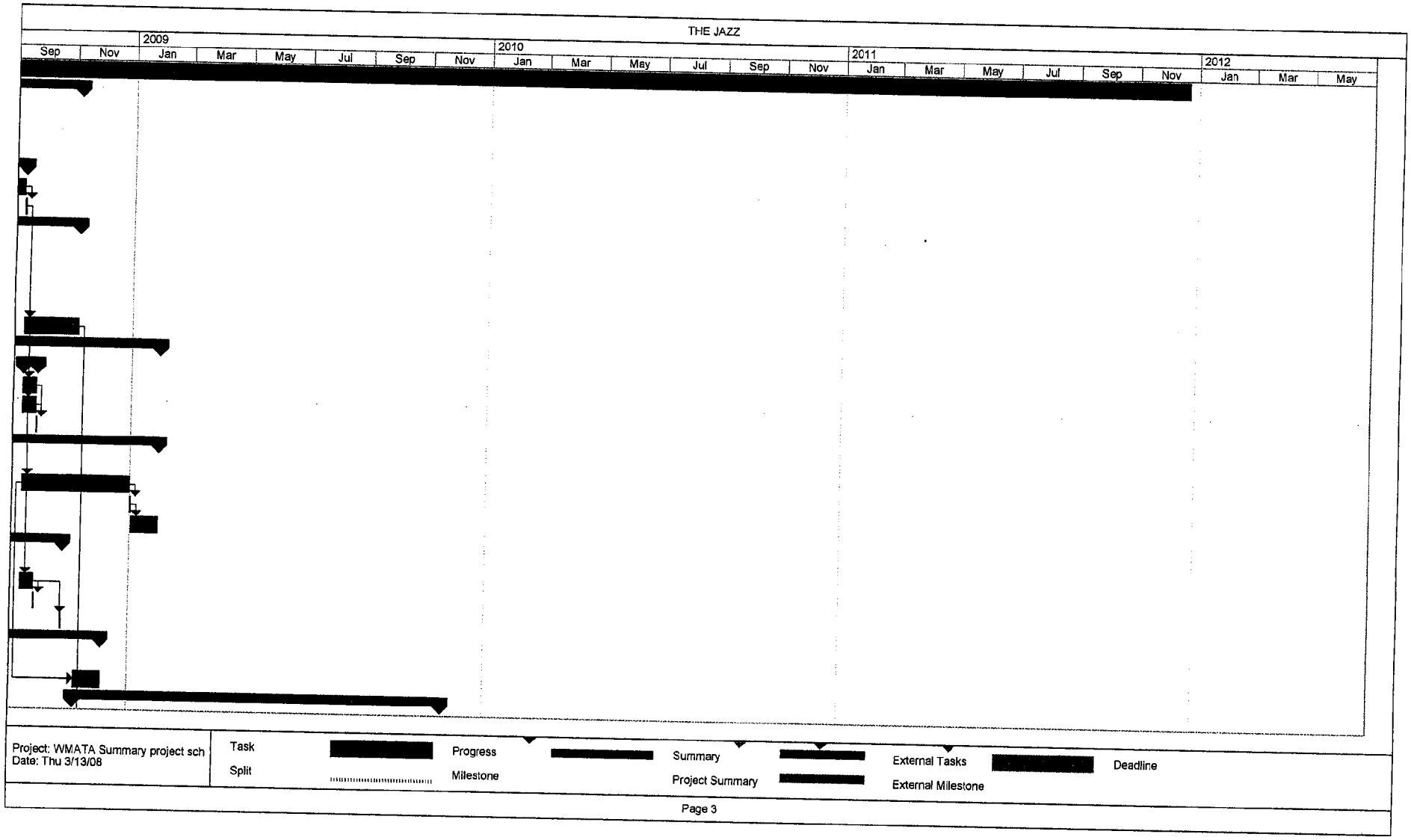


Project: WMATA Summary project sch
Date: Thu 3/13/08

Task
Split
Progress
Milestone
Summary
Project Summary
External Tasks
External Milestone
Deadline

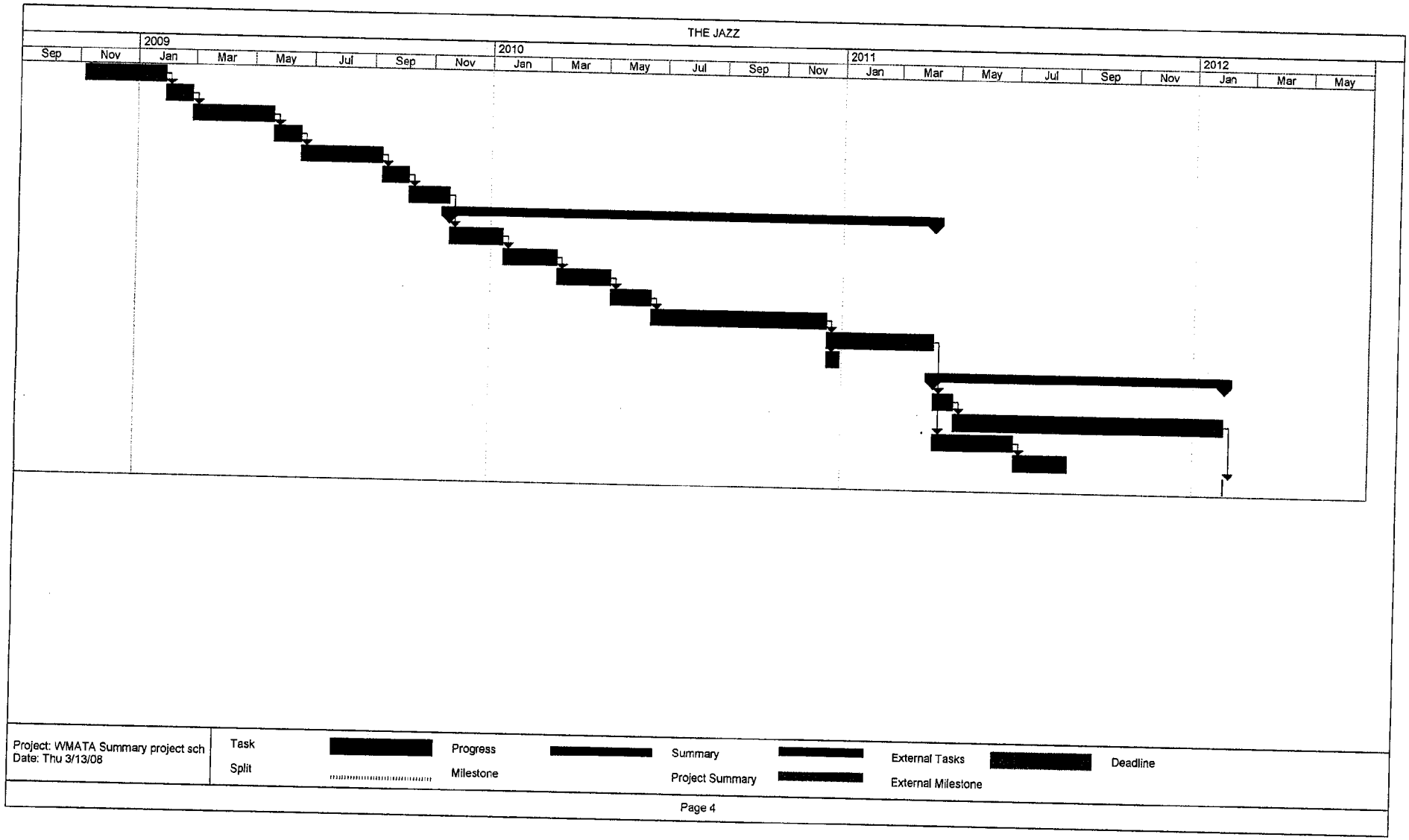
WMATA-INV 004710

FOIA CONFIEDENTIAL TREATMENT REQUESTED



WMATA-INV 004711

FOIA CONFIEDENTIAL TREATMENT REQUESTED



WMATA-INV 004712

1/27/08

Moddie Rents

$2.55 or $2.65
but says rents go from $2.90-$3.00 at present
in the area

Bannecker Rents
$3.00

Moddie -
now 5% net proceeds
was 3% gross proceeds

Moddie has Real Estate Taxes of @ $300K/year
Moddie has ridership of @

Bannecker - note possible variance &
Bill St is a late entrant

OP Issues
Variances
~~OP~~ ~~Condiscussion~~ M

Diane Branch: Howard

3/7?

Merrick Malone did not find the terms objectionable

Mayor wants Merrick to work with them
Merrick wants them to change their tune

20%	8.8	Land	.07	530
16%	7.0	Equity 20% non-land	.07	490
64%	28.0	Debt	.065	1,820
	43.8			

Original Equity to Construct Project - not to exceed 20% total project cost
6% Preferred Return =

Share of net proceeds to be based on allocations in the definitive agreement

CAPITAL MARKETS OVERVIEW

Market Commentary

• Spreads tightened slightly in the past week, suggesting that the market is finding its footing, albeit at spread levels that are higher than we have seen for years.

• Most lenders are looking to upcoming pooled securitizations to get a better feel for the depth of the market and pricing at different risk points, and the hope is that there will be sufficient investor demand to give lenders confidence as to market clearing pricing levels.

• Interestingly, U.S. CMBS delinquencies fell to a historical low of 0.27% last month, according to the latest loan delinquency index from Fitch Ratings. This is clear evidence of the extent to which emotion, rather than defaults/delinquencies, is driving the market.

• Balance sheet lenders continue to tighten underwriting standards rather than grab market share. With the exception of multi-family, where owners can still get 75% financing from Fannie and Freddy, senior financing above 70% LTV has essentially disappeared.

• Strong sponsors who can put 35-40% equity into their deals can still lock in very attractive spreads on floating and fixed rate financing, with all-in rates below 6%. After several frustrating years of losing deals to private buyers who took advantage of loose credit to bid up assets, these pension fund and other core investors are finally in a position to strengthen their holdings in key markets.

Base Rates

		March 7, 2008	*Two Weeks Ago*	*One Year Ago*
Prime		6.00%	6.00%	8.25%
LIBOR				
	30 Day	3.00%	3.12%	5.32%
U.S. Treasury				
	2 Year	1.54%	1.98%	4.56%
	5 Year	2.45%	2.81%	4.45%
	10 Year	3.55%	3.79%	4.51%
Swaps			*Swap Spreads*	
	2 Year	2.58%	103.3	
	5 Year	3.53%	108.6	
	10 Year	4.40%	86.5	

Senior & Subordinate Lending Spreads

	Maximum Loan-to-Value	*DSCR*	*Spreads*
Fixed Rate - 5 Years	65 - 70%*	1.20 - 1.35	T + 300 - 350
Fixed Rate - 10 Years	65 - 70%*	1.20 - 1.35	T + 250 - 350
Floating Rate - 5 Years			
Core Asset	<70%*	1.20 - 1.35	L + 200 - 250
Value Add Asset	<70%*	1.20 - 1.35	L + 250 - 350
Mezzanine Moderate Leverage	65 - 75%		L + 600 - 800
Mezzanine High Leverage	75 - 85%		L + 1000+

* 75 - 80% for Multi-Family

10-Year Fixed Rate Ranges By Asset Class

	Maximum Loan-to-Value	*Class A*	*Class B/C*
Anchored Retail	70%	T + 270	T + 300
Strip Center	65 - 70%	T + 300	T + 350
Multi-Family (non-agency)	70 - 75%	T + 250	T + 270
Distribution/Warehouse	65 - 70%	T + 280	T + 350
R&D/Flex/Ind	70%	T + 275	T + 350
Office	70%	T + 275	T + 350
Hotel	65 - 70%	T + 300	T + 350

* DSCR assumed to be greater than 1.2x

Recent Deals/Closings/Quotes - Debt

Asset Type	*Type of Financing*	*Type of Lender*	*Rate/Return*	*Loan-to-Value*	*Term*	*Amortization*
Industrial	Fixed	Finance Company	T + 340	70%	5 Years	20 Year
Industrial	Fixed	Investment Bank	T + 400	70%	10 Years	2 years I/O
Entitled Land	Floating	Investment Bank	L + 400	n/a	18 months + 2 3-month options	I/O
Hotel	Fixed	Insurance Company	T + 210	n/a	5 Years	I/O
Self-Storage/Office	Fixed	Insurance Company	S + 250	55%	10 Years	I/O
Distribution	Floating	Offshore Bank	L + 240	n/a	3+1+1	I/O
Multi-Family	Floating	Offshore Bank	L + 200	75%	3+1+1	I/O
Office	Fixed	Insurance Company	T + 210	n/a	10 Years	5 years I/O

Recent Deals/Closings/Quotes - Equity

Asset Type	*Type of Financing*	*Type of Investor*	*Target Return*	*Equity Split*	*Comments*
Entitled Land	Asset JV	Investment Bank	20 - 22%	95%/5%	8-12%-15%, 12-16%-35%, >16%-45%
Retail	Programmatic JV	Insurance Company	14 - 16%	95%/5%	n/a
Hotel	Programmatic JV	Hedge Fund	20 - 22%	90%/10%	8-12%-20%, 12-18%-30%, >18%-50%
Multi-Family	Asset JV	Opportunity Fund	20 - 22%	90%/10%	12% preferred return; 18% hurdle

For More Information:
Chris Moyer
(212) 841-9220
chris.moyer@cushwake.com

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004715

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Scottrade AMERITRADE 100 FREE TRADES E*TRADE Securities LLC

Press Release Source: Equity Residential

Equity Residential Closes $500 Million Secured Loan

Tuesday March 11, 5:53 pm ET

CHICAGO--(BUSINESS WIRE)--Equity Residential (NYSE: EQR - News) today announced that the company closed a $500 million secured loan originated by Wachovia Multifamily Capital, Inc. for repurchase by Freddie Mac (NYSE: FRE - News). The loan has an 11.5 year term with 10.5 years at a fixed rate and the final year at a floating rate. The all-in effective interest rate is 5.48 percent. The loan is collateralized with thirteen geographically diverse properties and allows for collateral substitutions and releases upon certain conditions. The company currently has approximately $1.4 billion available on its unsecured revolving credit facility and approximately $500 million of unrestricted cash. Proceeds from the new loan will be used to retire all of the company's 2008 loan maturities as they come due.

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*Numbers as of market close 1/15/2008

"With the current uncertainty in the credit markets, we are very pleased to build on our long term relationship with Freddie Mac to further solidify our already strong balance sheet. Freddie Mac and Wachovia are valued partners of the company and, as demonstrated by this loan, continue to make substantial liquidity available to the multifamily sector," said Mark J. Parrell, Equity Residential's Executive Vice President and Chief Financial Officer.

Equity Residential is an S&P 500 company focused on the acquisition, development and management of high quality apartment properties in top U.S. growth markets. Equity Residential owns or has investments in 569 properties consisting of 150,162 apartment units. For more information on Equity Residential, please visit our website at www.equityresidential.com.

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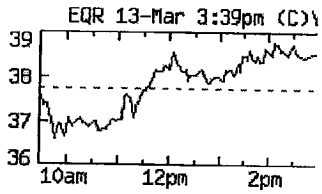

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- EQUITY RESIDENTIAL Financials - EDGAR Online Fina (Wed Mar 5)
- U.S. housing crisis puts of first-time buyers - at Reuters (Mon Mar 3)
- U.S. housing crisis puts of first-time buyers - at Reuters (Sun Mar 2)
- Equity Residential Present at Citigroup Real Estate Conference To Be Web C Business Wire (Thu Feb 28)

M

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- Stocks Rise After S&P Re AP (3:37 pm)
- Stricter Mortgage Rules Proposed - AP (3:43 pm)
- Gold Hits Record $1,000 a

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004716

Equity Residential
Marty McKenna
(312) 928-1901

Source: Equity Residential

Ounce - AP (2:20 pm)
- Retail Sales Plunge by 0.6 Percent - AP (11:36 am)

M

- Most-viewed articles

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004717

7,500,00

525,000 appraiser

Rent is equivalent of $450,000 in Aug '07

75,000 discount for affordable

20 du into 75K = 3,750/du/year ÷ 7% = 53,000
land value deduction

130,000 FAR s.f.
11 758
118,250 × $57/sf = $6,740,250
.20
23,650

~~94,600 sf × 57/SF 5,392,200~~

11,750 × 57 669,750

20 affordable 23,250 × $29 674,250

94 market 94,600 × $57 5,392,200

6,736,200

.07

471,534

× 1.03 × 3 =

× 1015 × 1

522,987

20 4½ value

10 ¢

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

11/7/08

BSA Table 1
Florida Avenue / Shaw - Mid December 2007 Proposals

			1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	11 2018	12 2019	13 2020	14 2021	15 2022	60 2067
Banneker / District - lease																		
Revenues																		
Option Fee			$100,000															
Predevelopment Rent			$60,000	$100,000	$100,000													
Offeror Land Valuation																		
Base Rent	3.00%	fixed annual escalations				$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$2,617,307
Other Base Rent Adjustment		not applicable																
Total Gross Revenue			$160,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$2,617,307
WMATA Participation	10.00%	of defined capital events																
Implied Initial Land Value	$7,847,280	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual			$160,000	$100,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$48,075,772
NPV																		
Base Rent	5.73%	discount rate	$12,338,401															
With Residual	5.73%	discount rate	$14,036,328															

Moodie Turay / Clark - lease (Option One: Illustrative without alley closing, assumed 130,000 FAR with initial value held at $85 / FAR)

			1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	11 2018	12 2019	13 2020	14 2021	15 2022	60 2067
Revenues																		
Option Fee			$100,000															
Predevelopment Rent	$10,000	per month	$60,000	$120,000	$120,000	$120,000												
Offeror Land Valuation	2.00%	pre stabilization escalator	$8,450,000	$8,619,000	$8,791,380	$8,967,208	$9,146,552											
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$0	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$281,153	$2,476,086
Total Gross Revenue			$160,000	$120,000	$120,000	$120,000	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$1,012,877	$3,207,810
WMATA Participation	5.00%	of defined capital events																
Implied Initial Land Value	$0	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual			$160,000	$120,000	$120,000	$120,000	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$731,724	$1,012,877	$48,666,275
NPV																		
Base Rent	5.73%	discount rate	$10,161,978															
With Residual	5.73%	discount rate	$11,787,887															
With Base Rent Escal	9.00%	disc rate on escalation	$13,574,499	(Illustrative)														
With Base Rent Escal	5.73%	disc rate on escalation	$16,966,012	(Illustrative)														

Moodie Turay / Clark - lease (Option Two: Illustrative without alley closing, assumed 130,000 FAR with initial value held at $61.50 / FAR)

			1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	11 2018	12 2019	13 2020	14 2021	15 2022	60 2067
Revenues																		
Option Fee			$100,000															
Predevelopment Rent	$10,000	per month	$60,000	$120,000	$120,000	$120,000												
Offeror Land Valuation	3.00%	pre stabilization escalator	$7,995,000	$8,234,850	$8,481,896	$8,736,352	$8,998,443											
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$0	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$276,601	$2,435,991
Total Gross Revenue			$160,000	$120,000	$120,000	$120,000	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$996,476	$3,155,866
WMATA Participation	5.00%	of defined capital events																
Implied Initial Land Value	$0	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual			$160,000	$120,000	$120,000	$120,000	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$719,875	$996,476	$48,614,332
NPV																		
Base Rent	5.73%	discount rate	$10,003,612															
With Residual	5.73%	discount rate	$11,609,720															
With Base Rent Escal	9.00%	disc rate on escalation	$13,367,078	(Illustrative)														
With Base Rent Escal	5.73%	disc rate on escalation	$16,723,673	(Illustrative)														

WMATA-INV 004719

From: <eric.smart@bolansmart.com>
To: <rdoggett@wmata.com>
Date: 3/12/2008 3:14:35 PM
Subject: Florida comments

Roz

Please see attached word file with marked comments and PDF with our interpretation of what is meant by your Base Rent proposal. Figure you have flagged most of our comments already, plus of course others that are part of your overall WMATA standards. Give me a call on my cell after 3:30 if wish to discuss.

Eric
--
Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037
202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general)
www.bolansmart.com

FL Ave

AGM Review 3/4 2/08
Nat. Soc, Sid, Jim H

Do Exec Session
mid-month — April 10 - PDRE
Attach Terms

Ask Mara Whether Term Sheet

March 18

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Property Name	Shaw-Howard University Metrorail Station Area
Address	Florida Avenue Washington, District of Columbia 20001
Property Type	Vacant Land
Owner of Record	Washington Metropolitan Area Transit Authority (WMATA)
Tax ID	0393 0044, 0393 0045, 0416 0018, and 0416 0031
Land Area	0.66 acres; 28,892 SF
Zoning Designation	C-2-B / ARTS, Community Business Center District / Uptown Arts
Highest and Best Use	Mixed (apartment/retail) use
Total Buildable Square Feet	130,014 (4.5 FAR)
Exposure Time; Marketing Period	6 - 12 months; 6 - 12 months
Sales Comparison Approach	
Number of Sales	5
Range of Sale Dates	Jul 05 to Dec 06
Range of Prices per Bldg. SF (Unadjusted)	$43.11 - $78.20
Range of Prices per Bldg. SF (Adjusted)	$55.62 - $65.31
Concluded Value per Bldg. SF	$57.50
Number of Units (By Right FAR)	130,014
Indicated Value	$7,500,000 ($57.69/Bldg. SF)

VALUE CONCLUSION

Appraisal Premise	Interest Appraised	Date of Value	Value Conclusion
Market Value	Fee Simple	August 9, 2007	$7,500,000
Annual Market Rent for Land Lease		August 9, 2007	$525,000 7%

Notifying Lower bidders to raise —

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004722

1st draft

The subject is a tract of vacant land containing a total area of 0.66 acres, or 28,892 square feet. The property is zoned C-2-B / ARTS, Community Business Center District / Uptown Arts, which permits wide array of service, retail, and residential uses.

Based on the valuation analysis in the accompanying report, and subject to the definitions, assumptions, and limiting conditions expressed in the report, our opinion of value is as follows:

VALUE CONCLUSIONS

Appraisal Premise	Interest Appraised	Date of Value	Value Conclusion
Market Value	Fee Simple	August 9, 2007	$6,200,000
Annual Market Rent for Land Lease		August 9, 2007	$425,000

Moreover, as indicated in the Sales Comparison Approach section, it is our opinion that the market value per square foot of Floor Area Ratio is **$48.00.**

EXTRAORDINARY ASSUMPTIONS & HYPOTHETICAL CONDITIONS

The value conclusions are subject to the following extraordinary assumptions and hypothetical conditions that may affect the assignment results.

1. The fee simple value of a property typically includes its surface, subsurface, and air rights. The portion of the site that is the subject of this appraisal has metrorail lines below it with a 19 foot upper limit, the subsurface rights more than 19 feet below ground are not included in its fee simple value.

2. According to the Scope of Work provided by the Washington Metropolitan Area Transit Authority (WMATA), "the northern portions of the parcels contains an existing Metrorail tunnel that has an upper limit that is 19 feet below the surface." Constructing a underground parking garage on the portions of the subjects' parcels affected by the Metrorail tunnel (19 foot upper limit) is not feasible. Also, we were not provided with the land area affected by the Metrorail tunnel. Therefore, our value conclusions assume that a underground parking garage could be constructed on the portion of the site not affected by the Metrorail tunnel, that would adequately serve the sites' highest and best use.

3. According to the Scope of Work provided by the Washington Metropolitan Area Transit Authority (WMATA), "WMATA can provide to the appraiser cost estimates for extraordinary costs that may be involved in building over the WMATA tunnel." Although we have requested these cost estimates from WMATA, they have not been provided to us. Therefore, our valuation of the subject assumes that there are no additional costs for building over the WMATA tunnel.

4. Due to the nature of the subject improvements, there could possibly be some adverse effects to the site from toxic or hazardous wastes. Since it is the property owner's obligation to correct any contamination caused by these factors, we respectfully recommend that an environmental site assessment audit be prepared by a qualified, professional engineer prior to any decision regarding the disposition of the real property under analysis. The site assessment audit is recommended in order to identify any potential environmental liabilities and associated remediation costs. We have assumed that all environmental issues have been cured for the purposes of this appraisal.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

From: "Gardner, Geraldine (OP)" <geraldine.gardner@dc.gov>
To: "Rosalyn Doggett" <rdoggett@wmata.com>
Date: 3/11/2008 5:26:40 PM
Subject: FL Ave. Parcel Update

Hi Ros

Tarek and I were curious about the status of the Florida Avenue proposals. If you have a chance, please send us and update or call Tarek directly. The ANCs have recently inquired about the status and we thought it was time for a checkin with you. Tarek's number is 202.442.7619.

Thanks

Geraldine

Geraldine I. Gardner

Associate Director, Neighborhood Planning

DC Office of Planning

801 N. Capitol St. NE, 4th Fl.

Washington, DC 20002

(202) 442- 8970 (P)

(202) 442-7638 (F)

Geraldine.Gardner@dc.gov <mailto:Geraldine.Gardner@dc.gov>

P Please consider the environment before printing this e-mail

CC: "Bolden, Tarek (OP)" <Tarek.Bolden@dc.gov>

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Terminal Value	3.00% annual compounded increase $45,458,466 on land only																	
Cash Flow w/ residual		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
NPV		$100,000	$0	$0	$0	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$267,904	$46,013,990
Base Rent	5.73% discount rate	$4,057,000																
With Residual	5.73% discount rate	$5,754,927																

NPV $7.5M

Banneker / District / Donatelli - lease

Revenues																		
Option Fee																		
Predevelopment Rent		$100,000																
Offeror Land Valuation	Assumes Start	$60,000	$100,000	$100,000														
Base Rent	3.00% fixed annaul escalations				$500,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958		$2,541,074
Other Base Rent Adjustment	not applicable																	
Total Gross Revenue		$160,000	$100,000	$100,000	$500,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958		$2,541,074
WMATA Participation	TBD																	
Implied Initial Land Value	$7,947,280 FY08 assessed values																	
Terminal Value	3.00% annual compounded increase $45,458,466 on land only																	
Cash Flow w/ residual		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
NPV		$160,000	$100,000	$100,000	$500,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958		$47,999,540
Base Rent	5.73% discount rate	$12,000,328																
With Residual	5.73% discount rate	$13,698,255																

2008

Developer shows $375k in 2011; Erec does not

Assumes developer Selection in April?

+9 mos $375k in 2012, then increases 3% until month 39

WMATA-INV 004725

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Developer Selection Should be 2008

BSA Table 2
Florida Avenue / Shaw - October 2007 Proposals

		1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	60 2068
Lakritz Adler - sale																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent																	
Purchase Price				$4,890,000													
Base Rent																	
Total Gross Revenue																	
WMATA Participation																	
Terminal Value																	
Cash Flow		$100,000	$0	$4,890,000													
NPV	5.73% discount rate	$4,574,339															
Lakritz Adler - lease																	
Revenues																	
Option Fee		$100,000															
Predevelopment Rent																	
Offeror Land Valuation				$4,890,000													
Base Rent	20.00% 10-yr fixed escalations					$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$267,904	$555,525
Other Base Rent Adjustment	not applicable																
Total Gross Revenue		$100,000	$0	$0	$0	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$267,904	$555,525
WMATA Participation	0.00% not offered																
Implied Initial Land Value	$7,947,280 FY08 assessed values																
	3.00% annual compounded increase																
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual		$100,000	$0	$0	$0	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$223,253	$267,904	$46,013,990
NPV																	
Base Rent	5.73% discount rate	$4,057,000															
With Residual	5.73% discount rate	$5,754,927															

≈ $7.5 M

WMATA-INV 004726

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ils
45
.86
890 Phone/Fax

kritz\Adler ontact: Joshua dler	75,483 gsf office 145-room hotel 26,124 gsf/nsf retail 78 below-grade parking	4,124 gsf free-standing theater/restaurant	75,483 gsf office 14,000 nsf retail and entertainment 44 below-grade pkg. needs assemblage with adjacent 11,320 sf parcel	145-room hotel 8,000 gsf retail 34 below-grade pkg.	Lease or sale

WMATA-INV 004727

From: "Bryant, Seth" <Seth.Bryant@dlapiper.com>
To: "Omar A. Karim" <okarim@bannekerventures.com>, "Rosalyn Doggett" <rdoggett@wmata.com>, "Warren Williams" <warren@bannekerventures.com>, "Marc E. Biondi" <mebiondi@wmata.com>
Date: 3/11/2008 11:19:26 AM
Subject: Banneker Ventures - WMATA Conference Call - Thursday, March 13th at 9:30 AM

Dear All,

We look forward to our conference call on Thursday, March 13th at 9:30 a.m. (EST). The dial in information is as follows:

Dial in Number: 888-790-1115

Passcode: 55784

Best regards,

Seth

B. Seth Bryant
Of Counsel
DLA Piper US LLP
1251 Avenue of the Americas
27th Floor
New York, NY 10020-1104
212.335.4752 T
212.884.8552 F
646.469.6105 M
seth.bryant@dlapiper.com
www.dlapiper.com
Circular 230 Notice: In accordance with Treasury Regulations which became applicable to all tax practitioners as of June 20, 2005, please note that any tax advice given herein (and in any attachments) is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of (i) avoiding tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

-----Original Message-----
From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Monday, March 10, 2008 6:10 PM
To: 'Rosalyn Doggett'
Cc: 'Marc E. Biondi'; Bryant, Seth; Flynn, Guy; Myers, Paul B.
Subject: RE: term sheet discussion

Ms. Doggett,

We are available for a 9:30 conf. call with you all on Thursday morning. DLA Piper will be sending a dial-in # for your convenience. Please expect a
marked up copy of the Term Sheet tomorrow early afternoon.

My best,

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

-----Original Message-----
From: Rosalyn Doggett [mailto:rdoggett@wmata.com]
Sent: Monday, March 10, 2008 5:10 PM
To: okarim@bannekerventures.com
Cc: Marc E. Biondi
Subject: term sheet discussion

Marc Biondi, Office of General Counsel, and I have scheduled time to review
your markup at 9:30 on March 12. We have scheduled a call or meeting with
you on March 13 at 9:30.

If your markups are very few, perhaps-- but I don't promise at all-- we could accomplish both on March 12. We will have to see.

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message. To contact our email administrator directly, send to postmaster@dlapiper.com

Thank you.

CC: "Flynn, Guy" <guy.flynn@dlapiper.com>, "Myers, Paul B." <paul.myers@dlapiper.com>

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites
~~March 3, 2008~~ April

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, dated ~~March~~ April __, 2008, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

1. Parties

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC ("Banneker"), together with District Development Group, LLC ("DDG") and Metropolis Development Company LLC ("Metropolis"), will form a limited liability ~~corporation~~ company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or ~~some~~ other name as determined by Banneker, DDG and Metropolis (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, except for any equity partners that the DEVELOPER needs to provide financing for the Project, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, such consent not to be unreasonably withheld, with the terms of ~~which~~ such consent ~~will~~ to be provided in the Definitive Agreement.

2. Definitive Agreement

The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within five months of Board Term Sheet approval, will be a ~~Master~~ Development Agreement ("DDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement ~~Term Sheet~~ or the ~~issuance of the~~ start of construction of the Project~~initial building permit to the DEVELOPER for the DEVELOPER Improvements~~.

3. Property to Be Leased by Developer

WMATA will lease to DEVELOPER approximately 28, 892 sf of land area ~~as well as any and all easements, etc.~~ outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31. The Leased Premises shall not include those property

FOIA CONFIEDENTIAL TREATMENT REQUESTED

interests necessary for protection of WMATA's on-site infrastructure. ~~[[COMMENT: WE PRESUME THAT ALL NECESSARY SUBDIVISION HAS/WILL BE COMPLETED BY WMATA.]]~~

4. Project

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47 below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide knowledge-qualified representations customarily ~~for~~ made by WMATA in transactions of this type, ~~customarily acceptable to WMATA,~~ including with respect to ~~but will not warrant~~ title to the Leased Premises and, ~~the environmental history or condition of the property, or the fitness of the Leased Premises for any use~~. Subject to the continued accuracy of such representations, and subject further to DEVELOPER'S Study Period rights as provided herein and satisfaction or waiver by DEVELOPER of all conditions precedent herein provided, DEVELOPER ~~the representations customarily acceptable to WMATA, DEVELOPER~~ will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: ~~No later than full execution of the Definitive Agreement,~~ Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right-of-Entry Permit for entry into ~~on~~ the Leased Premises, substantially in the form attached hereto as Exhibit ~~B~~ C. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit (as defined below) and both DEVELOPER and WMATA shall be relieved of any further obligations

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004731

hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00), (the "Security Deposit") to secure DEVELOPER's performance. The Security Deposit will replace the $100,000 Proposal Security.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if DEVELOPER shall be in default under the Definitive Agreement beyond applicable notice, cure and grace periods therein provided. In such event, the Security Deposit may be applied by WMATA in whole or in part to cure such default. No such application of the Security Deposit shall constitute a waiver of any such default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

~~6.4 The Security Deposit may be applied by WMATA in whole or in part to cure or remedy any breach or default by DEVELOPER. No such application of the Security Deposit shall constitute a waiver of any breach or default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.~~

6.~~4~~5 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance (not to be unreasonably withheld, delayed or conditioned) by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

~~6.5 In the event of a "default" by WMATA (such term to be defined in the Definitive Agreement, WMATA shall pay DEVELOPER's actual and reasonable expenses incurred in connection with pursuing the Project and negotiating the Term Sheet and Definitive Agreement.~~

6.6 WMATA shall return the Security Deposit plus interest to DEVELOPER within ~~ten (10)~~twenty (20) business days of its receipt of a copy of the Certificate of

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004732

Occupancy for the Project.

7. Consideration

7.1 Option Fee: DEVELOPER will pay WMATA ~~-~~ $100,000 (the "Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet and written notification to the DEVELOPER by WMATA of such approval. The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation ~~-~~ (as defined in this Section 7) and shall be non-refundable. ~~fully refunded to DEVELOPER should the parties fail to obtain all necessary final signatures to the Definitive Agreement by all parties (including the WMATA Board) within five (5) months after the date of WMATA Board's approval of this Term Sheetnon-refundable. Upon timely final execution and approval of the Definitive Agreement, the Option Fee shall be merged with the Security Deposit and shall be applied towards DEVELOPER's Security Deposit obligation provided in Section 6.1 hereof, such that DEVELOPER shall be required to fund only an additional One Hundred Thousand and No/100 Dollars ($100,000.00) towards the Security Deposit. Upon application of the Option Fee as such, the Option Fee shall be considered and treated, for all purposes, as part of the Security Deposit.~~

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement (but anticipated to mean attainment of 90% occupancy by the Developer, or forty-five (45) ~~twenty-eight (28)~~ months after WMATA Board approval and execution of the Definitive Agreement (the "Ppre-stabilization Period"). Pre-stabilization Rent will be $100,000 per year payable in advance in quarterly instalments of $25,000. ~~Should DEVELOPER not be able to secure approvals from District agencies, quasi-agencies or other reviewing organizations, WMATA shall refund DEVELOPER's Pre-stabilization Rent in full. Should the Project not be stabilized by the end of the Pre-stabilization Period, the Pre-Stabilization Rent shall be increased by 10% per year each year until the Project is stabilized.~~

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a ~~[[~~penalty payment, the amount of which to be determined in the Definitive Agreement~~]]~~ ~~*[[QUESTION: HOW MUCH WILL THIS "PENALTY PAYMENT" BE?]]*~~. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly, payable in advance in quarterly instalments of one-quarter of the Initial Base Rent. ~~[[~~In no event shall the Initial Base Rent (for a full year) be less than Five Hundred ~~and Eighty~~ Thousand and No/100 Dollars ($500,000.00~~580,000.00~~).~~]]~~ ~~*[COMMENT: TO DISCUSS WITH WMATA*~~

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004733

~~*REGARDING HOW THIS NUMBER WAS DERIVED.]*~~ After the Initial Base Rent payment, Base Rent will be due annually, in quarterly instalments, beginning on the first business day of the calendar year for the remaining term of the Lease- ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent ~~*[[QUESTION: ANNUALIZED AMOUNT? OR PRO-RATED AMOUNT PER 7.3?]]*~~multiplied by 1.--* for that year (the "Initial Escalation Factor").
[*TBD—this is an escalator that would be less than 3% and would be designed to bring Base Rent to the pro forma amount ($500,000 escalated by 3% per year) through year 10 of the lease]

7.3.2 For the second through tenth years of the Lease, subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of the Lease and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.5 DEVELOPER shall lease the Leased Premises for a period of sixty (60) years (the "Lease Period"). The Definitive Agreement will provide a mechanism by which Developer may request an extension of the Lease Period, subject to completion of a written agreement between the parties and approval, if necessary, by WMATA's Board of Directors. ~~with an option to purchase the Leased Premises beginning from no later than ten years from~~

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004734

~~the end of the Pre-Stabilization Period. This Option shall extend for the remaining term of the Lease Period and a right to exercise such option every five years. The price that DEVELOPER shall pay WMATA to purchase the Leased Premises shall be calculated based upon~~

7.4 Capital Event Participation: Capital Events (defined hereinbelow) shall be permitted in accordance with this Section 7.4. Whenever a Ceapital Eevent occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital Event" shall mean ~~events include~~ any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of DEVELOPER's Improvements, ~~and~~ (iii) other dispositions, transfers, and conversions of direct interests in DEVELOPER to new members not originally included as direct members of DEVELOPER as of the date of execution of the Definitive Agreement, and ~~("Capital Event"). Any~~(iv) any transaction, at any level of organization, by which a change of control (meaning a transfer of at least 50.1% of the ownership interests and a transfer of the majority voting and management rights) occurs within a constituent member of DEVELOPER~~that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event~~. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER~~'s Project lender~~. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Capital Event.

The parties agree to define in the Definitive

7.5 Periodic Rent Revaluation: Upon a Capital Event or ~~no less frequently than~~ every ten years, whichever is— earlier, the Base Rent will be adjusted to 7 % of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Periodic Rent Revaluation.

7.6 WMATA Improvements: intentionally omitted

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within five months following Board Term Sheet Approval (as provided in

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Section 2 above), WMATA will refund DEVELOPER's full ~~Option Fee~~Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER within ~~ten (10)~~ twenty (20) business days.

7.8 ~~7.8~~ WMATA Delays: The maximum length of 45~~38~~28 months for the Pre-stabilization Period will be extended, on a day-for-day basis, for delays ~~beyond the control of DEVELOPER, including delays in~~ caused by WMATA actions or failure to act, including obtaining FTA Approval in accordance with Section 8.5 below and ~~any delays caused by acts of God, terrorism, casualty, or other events of "force majeure" beyond DEVELOPER's ability to control~~caused by WMATA. In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, [[even though DEVELOPER's schedule may take longer than anticipated.]]

7.9 Force Majeure Delays: The maximum length of 45 months for the Pre-stabilization Period will be extended, subject to an increase in the rental payments due in order to maintain the net present value of the Definitive Agreement to WMATA, for any delays caused by acts of God, terrorism, casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement.

7.10 Changes to Project Scope: Changes to Project ~~Scope~~ to increase density may be requested by the Developer, subject to the terms and conditions for such changes in Project Scope as may be required by WMATA in the Definitive Agreement. Such terms and conditions ~~may~~ will require increases in rent or other compensation to WMATA.

~~7.9~~7.11 Additional Density:

7.~~9~~11.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf (subject to true-up of 3% per year from the execution of the Definitive Agreement) of additional density and multiplying the product derived (Project land value) by 7%

7.~~9~~11.2 During the term of the Lease, any densities or unit totals actually constructed on the ~~approved for~~ DEVELOPER Improvements that are more than those originally shown in the Approved sSite Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above, with such additional Base Rent ~~only~~ including the incremental increase associated with any actually constructed DEVELOPER Improvements.

8. Conditions to Definitive Agreement Consummation

If each of the ~~foregoing~~ conditions is not satisfied within the timeframes provided above therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

~~If each of the foregoing conditions is not satisfied within the timeframes provided above therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement~~

9. Special Considerations

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004737

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area ~~(Advisory Neighborhood Commission 1B, The LeDroit Park Civic Association and Columbia Heights Community Development Corporation),~~ as specified by WMATA, to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable ~~best~~ efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the applicable ~~[name of specific District agency]~~ District agency or agencies a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004738

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9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS— ~~March 2006~~ Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten~~thirty~~ (3~~1~~0) calendar days prior to commencement of construction of the DEVELOPER Improvements.

9.7 Interim Improvements: intentionally omitted

9.8 ~~DELETED.~~Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA ~~Circular 9300.1.A, Appendix B~~notice of Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law, which can be found at 72 FR 5788.

9.10 Transit Operations: ~~DEVELOPER and WMATA will cooperatively develop a construction and operational protocol to ensure, to the extent commercially~~

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004739

~~reasonable, that n~~Neither~~Neither~~ the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to WMATA infrastructure located under the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement, and which requirements shall ~~not be unreasonable. and shall be acceptable to DEVELOPER.~~

12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a ~~Term Sheet and~~ Definitive Agreement with WMATA for a period of five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004740

Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

By:
Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

Title:

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004741

From: Marc E. Biondi
To: Carmen Hernandez; Deborah Donning; Guy Flynn; Josh Kern; Merrick Malone; okarim@bannekerventures.com; Phinis Jones; Rosalyn Doggett; Warren Williams
Date: 3/17/2008 5:12:20 PM
Subject: Revised Term Sheet

All,

I think that the attached Term Sheet reflects the deal as it was left after this morning's call.

A couple of things to note:

Rent Payments have been updated to reflect Roz's email of Friday.

The concept of Non-Capital Events has been added and left for definition in the DA.

WMATA/Force Majeure and Project Changes have been separated into sections 7.8, 7.9 and 7.10.

9.6 and 9.8 remain as I have not yet been able to discuss this issue with higher level decision makers.

"COMMENTS" have been deleted.

I'll look forward to hearing from you in the morning.

Marc

Marc Biondi
Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Direct Dial: 202-962-1011
Fax: 202-962-2550
mebiondi@wmata.com

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CC: Seth Bryant

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, and dated as of the date last executed below, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

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1. Parties

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC ("Banneker"), together with District Development Group, LLC ("DDG") and Metropolis Development Company LLC ("Metropolis"), will form a limited liability company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or another name as determined by Banneker, DDG and Metropolis (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, except for any equity partners that the DEVELOPER needs to provide financing for the Project, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, such consent not to be unreasonably withheld, with the terms of such consent to be provided in the Definitive Agreement.

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2. Definitive Agreement

The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within five months of Board Term Sheet approval, will be a Joint Development Agreement ("JDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement or the start of construction of the Project.

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3. Property to Be Leased by Developer

WMATA will lease to DEVELOPER approximately 28, 892 sf of land area outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31. The Leased Premises shall not include those property interests necessary for protection of

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004743

WMATA's Transit Facilities.

4. Project

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47 below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide knowledge-qualified representations customarily made by WMATA in transactions of this type, including with respect to title to the Leased Premises and the environmental history or condition of the property. Subject to the continued accuracy of such representations, and subject further to DEVELOPER'S Study Period rights as provided herein and satisfaction or waiver by DEVELOPER of all conditions precedent herein provided, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right-of-Entry Permit for entry into the Leased Premises, substantially in the form attached hereto as **Exhibit C**. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit (as defined below) and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

6. Security Deposit

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004744

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00), (the "Security Deposit") to secure DEVELOPER's performance. The Security Deposit will replace the $100,000 Proposal Security.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if DEVELOPER shall be in default under the Definitive Agreement beyond applicable notice, cure and grace periods therein provided. In such event, the Security Deposit may be applied by WMATA in whole or in part to cure such default. No such application of the Security Deposit shall constitute a waiver of any such default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.4 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance (not to be unreasonably withheld, delayed or conditioned) by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

6.5 WMATA shall return the Security Deposit plus interest to DEVELOPER within twenty (20) business days of its receipt of a copy of the Certificate of Occupancy for the Project.

7. Consideration

7.1 Option Fee: DEVELOPER will pay WMATA $100,000 (the "Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet and written notification to the DEVELOPER by WMATA of such approval. The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be non-refundable.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004745

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement (but anticipated to mean attainment of 90% occupancy by the Developer, or forty-five (45) months after WMATA Board approval and execution of the Definitive Agreement (the "Pre-stabilization Period"). Pre-stabilization Rent, for the first fifteen (15) months, will be $100,000 per year payable in advance in quarterly instalments of $25,000. Pre-stabilization Rent will increase to $115,000.00 per year for the next twelve (12) months. For the remaining Pre-stabilization Period, rent shall be $130,000.00 per year.

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a penalty payment, the amount of which to be determined in the Definitive Agreement. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly, payable in advance in quarterly instalments of one-quarter of the Initial Base Rent. In no event shall the Initial Base Rent (for a full year) be less than Five Hundred and Ninety-Seven Thousand and No/100 Dollars ($597,000.00). After the Initial Base Rent payment, Base Rent will be due annually, in quarterly instalments, beginning on the first business day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent multiplied by 1.5% for that year (the "Initial Escalation Factor").

7.3.2 For the second through tenth years of the ~~Lease~~ Base Rent payments, subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the ~~Base Rent payment for the~~ preceding calendar year.

7.3.3 For the eleventh year of the ~~Lease~~ Base Rent payments and thereafter, except for Base Rent to be determined pursuant to ~~7.3.4 and 7.5~~ below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

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7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.5 DEVELOPER shall lease the Leased Premises for a period of sixty (60) years (the "Lease Period"). The Definitive Agreement will provide a mechanism by which Developer may request an extension of the Lease Period, subject to completion of a written agreement between the parties and approval, if necessary, by WMATA's Board of Directors.

7.4 Capital Event Participation: Capital Events (defined hereinbelow) shall be permitted in accordance with this Section 7.4. Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital Event" include any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of DEVELOPER's Improvements, (iii) other dispositions, transfers, and conversions that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event. The Parties agree that Non-Capital Events, which will require WMATA approval, but not WMATA monetary participation, also exist and will be defined in the Definitive Agreement. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Capital Event.

7.5 Periodic Rent Revaluation: Upon a Capital Event or every ten years, whichever is earlier, the Base Rent will be adjusted to 7 % of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Periodic Rent Revaluation.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004747

7.6 WMATA Improvements: intentionally omitted

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within five months following Board Term Sheet Approval (as provided in Section 2 above), WMATA will refund DEVELOPER's full Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER within twenty (20) business days.

7.8 WMATA Delays: The maximum length of 45 months for the Pre-stabilization Period will be extended, on a day-for-day basis, for delays caused by WMATA actions or failure to act, including obtaining FTA Approval in accordance with Section 8.5 below and. In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, even though DEVELOPER's schedule may take longer than anticipated.

7.9 Force Majeure Delays: The maximum length of 45 months for the Pre-stabilization Period may be extended, subject to an increase in the rental payments due in order to maintain the net present value of the Definitive Agreement to WMATA, for any delays caused by acts of God, terrorism, casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement.

7.10 Changes to Project: Changes to Project, which increase Project density may be requested by the Developer, subject to the terms and conditions for such changes to the Project as may be required by WMATA in the Definitive Agreement. Such terms and conditions will require increases in rent or other compensation to WMATA.

7.11 Additional Density:

7.11.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf (subject to true-up of 3% per year from the execution of the Definitive Agreement) of additional density and multiplying the product derived (Project land value) by 7%.

7.11.2 During the term of the Lease, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those originally shown in the Approved Site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above, with such additional Base Rent including the incremental increase associated with any actually constructed DEVELOPER Improvements.

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8. Conditions to Definitive Agreement Consummation

If each of the following conditions is not satisfied within the timeframes provided above therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

9. Special Considerations

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area as specified by WMATA to apprise such groups of the Project and provide

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable efforts to obtain such entitlements.

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9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the applicable District agency or agencies a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

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9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS—2007 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004750

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten (10) calendar days prior to commencement of construction of the DEVELOPER Improvements.

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9.7 Interim Improvements: intentionally omitted

9.8 Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin.

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9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law, which can be found at 72 FR 5788.

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9.10 Transit Operations: Neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

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9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

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Inserted: DEVELOPER and WMATA will cooperatively develop a construction and operational protocol to ensure, to the extent commercially reasonable, that n

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10. Indemnification

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004751

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to WMATA Transit Facilities located under the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

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12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

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Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

By:

Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

Title:

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004752

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004753

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fully refunded to DEVELOPER should the parties fail to obtain all necessary final signatures to the Definitive Agreement by all parties (including the WMATA Board) within five

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. Upon timely final execution and approval of the Definitive Agreement, the Option Fee shall be merged with the Security Deposit and shall be applied towards DEVELOPER's Security Deposit obligation provided in Section 6.1 hereof, such that DEVELOPER shall be required to fund only an additional One Hundred Thousand and No/100 Dollars ($100,000.00) towards the Security Deposit. Upon application of the Option Fee as such, the Option Fee shall be considered and treated, for all purposes, as part of the Security Deposit.

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Upon timely final execution and approval of the Definitive Agreement, the Option Fee shall be merged with the Security Deposit and shall be applied towards DEVELOPER's Security Deposit obligation provided in Section 6.1 hereof, such that DEVELOPER shall be required to fund only an additional One Hundred Thousand and No/100 Dollars ($100,000.00) towards the Security Deposit. Upon application of the Option Fee as such, the Option Fee shall be considered and treated, for all purposes, as part of the Security Deposit.

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Should the Project not be stabilized by the end of the Pre-stabilization Period, the Pre-Stabilization Rent shall be increased by 10% per year each year until the Project is stabilized.

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]] *[[QUESTION: HOW MUCH WILL THIS "PENALTY PAYMENT" BE?]]*

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]] *[COMMENT: TO DISCUSS WITH WMATA REGARDING HOW THIS NUMBER WAS DERIVED.]*

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[[QUESTION: ANNUALIZED AMOUNT? OR PRO-RATED AMOUNT PER 7.3?]]

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[*TBD—this is an escalator that would be less than 3% and would be designed to bring Base Rent to the pro forma amount ($500,000 escalated by 3% per year) through year 10 of the lease]

Post Call Revision

DLA PIPER 3/13~~12~~ COMMENTS |

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites
March 3, 2008

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, dated March __, 2008, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

1. Parties

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC ("Banneker"), together with District Development Group, LLC ("DDG") and Metropolis Development Company LLC ("Metropolis"), will form a limited liability company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or some other name as determined by Banneker, DDG and Metropolis (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, except for any equity partners that the DEVELOPER needs to provide financing for the Project and except as otherwise permitted pursuant to Section 7.4 below~~, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, the terms of which consent will be provided in the Definitive Agreement. [[GENERAL COMMENT: WITHIN REASONABLE PARAMETERS, DEVELOPER NEEDS THE RIGHT TO SYNDICATE INTERESTS IN UPPER AND LOWER TIERS TO RAISE CAPITAL, ETC. HAPPY TO DISCUSS FURTHER.]]~~

2. Definitive Agreement

The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within five months of Board Term Sheet approval, will be a Master Development Agreement ("MDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement or the issuance of the start of construction of the Project.

3. Property to Be Leased by Developer

WMATA will lease to DEVELOPER approximately 28, 892 sf of land area as well as any and all easements, etc. outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004756

sf in Square 416, lots 18 and 31. *[[COMMENT: WE PRESUME THAT ALL ~~NECESSARY~~ EXISTING SUBDIVISION FOR CREATION OF THE ABOVE LOTS HAS/WILL BE COMPLETED BY WMATA. DEVELOPER ~~INDICATES~~ACKNOWLEDGES THAT LOTS 18 AND 31 NEED TO BE CONSOLIDATED BY DEVELOPER.]]*

4. Project

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47 below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide knowledge-qualified representations customary for transactions of this type, , including with respect to title to the Leased Premises and the environmental history or condition of the property. Subject to the continued accuracy of such representations, and subject further to DEVELOPER'S Study Period rights as provided herein and satisfaction or waiver by DEVELOPER of all conditions precedent herein provided, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right-of-Entry Permit on the Leased Premises. DEVELOPER shall have sixty (60)days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit (as defined below) and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004757

termination of this Term Sheet or the Definitive Agreement.

6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00~~200,000.00), which may consist, in part, of the Option Fee which shall previously have been paid by DEVELOPER pursuant to Section 7.1 below (collectively~~ (the "Security Deposit") to secure DEVELOPER's performance. The Security Deposit will replace the $100,000 Proposal Security.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if DEVELOPER shall be in default under the Definitive Agreement beyond applicable notice, cure and grace periods therein provided. In such event, the Security Deposit may be applied by WMATA in whole or in part to cure such default. No such application of the Security Deposit shall constitute a waiver of any such default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.4 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance (not to be unreasonable withheld, delayed or conditioned) by WMATA of those sureties identified in Section 9.6 of this agreement.

6.5 In the event of a "default" by WMATA (such term to be defined in the Definitive Agreement), WMATA shall pay DEVELOPER's actual and reasonable expenses incurred in connection with pursuing the Project and negotiating the Term Sheet and Definitive Agreement.

6.6 WMATA shall return the Security Deposit to DEVELOPER within ten (10) days of its receipt of a copy of the Certificate of Occupancy for the Project.

7. Consideration

7.1 Option Fee: DEVELOPER will pay ~~has paid~~ to WMATA a $100,000 fee (the "Option Fee") within ten (10) days following WMATA Board approval of the Term Sheet. ~~, receipt of which WMATA hereby acknowledges.~~ The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004758

Event Participation (as defined in this Section 7) and shall be non-refundable. ~~fully refunded to DEVELOPER should the parties fail to obtain all necessary final signatures to the Definitive Agreement by all parties (including the WMATA Board) within five (5) months after the date of WMATA Board's approval of this Term Sheet. Upon timely final execution and approval of the Definitive Agreement, the Option Fee shall be merged with the Security Deposit and shall be applied towards DEVELOPER's Security Deposit obligation provided in Section 6.1 hereof, such that DEVELOPER shall be required to fund only an additional One Hundred Thousand and No/100 Dollars ($100,000.00) towards the Security Deposit. Upon application of the Option Fee as such, the Option Fee shall be considered and treated, for all purposes, as part of the Security Deposit.~~

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement, or forty-five (45) months after WMATA Board approval and execution of the Definitive Agreement (the "Pre-stabilization Period"). Pre-stabilization Rent will be $100,000 per year payable in advance in quarterly instalments of $25,000. ~~Should DEVELOPER not be able to secure approvals from District agencies, quasi-agencies or other reviewing organizations, WMATA shall refund DEVELOPER's Pre-stabilization Rent in full. Should the Project not be stabilized by the end of the Pre-stabilization Period, the Pre-Stabilization Rent shall be increased by 310% per year each year until the Project is stabilized.~~

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a [[penalty payment]] ~~*[[QUESTION: HOW MUCH WILL THIS "PENALTY PAYMENT" BE?]]*~~ Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly, payable in advance in quarterly instalments of one-quarter of the Initial Base Rent. [[In no event shall the Initial Base Rent (for a full year) be less than Five Hundred Eighty Thousand and No/100 Dollars ~~($580,000.00500,000.00)~~.]] *[COMMENT: TO DISCUSS WITH WMATA REGARDING HOW THIS NUMBER WAS DERIVED.]* After the Initial Base Rent payment, Base Rent will be due annually, in quarterly instalments, beginning on the first business day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

597,000

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent *[[QUESTION: ANNUALIZED AMOUNT? OR PRO-RATED AMOUNT PER 7.3?]]* multiplied by 1.--* for that year (the "Initial Escalation

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004759

Factor").
[*TBD—this is an escalator that would be less than 3% and would be designed to bring Base Rent to the pro forma amount ($500,000 escalated by 3% per year) through year 10 of the lease]

7.3.2 For the second through tenth years of the Lease, subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of the Lease and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7~~5~~% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.5 DEVELOPER shall lease the Leased Premises for a period of sixty (60) years (the "Lease Period"), ~~with a Developer holding an option to~~ extend the Lease Period upon such terms as shall be agreed upon by the parties in the Definitive Agreement. ~~purchase the Leased Premises beginning from no later than ten years from the end of the Pre-Stabilization Period. This Option shall extend for the remaining term of the Lease Period and a right to exercise such option every five years. The price that DEVELOPER shall pay WMATA to purchase the Leased Premises shall be calculated based upon [TO BE DISCUSSED WITH WMATA DURING THURSDAY'S CALL].~~

7.4 Capital Event Participation: Capital Events (defined hereinbelow) shall be permitted in accordance with this Section 7.4. Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation") in the amount provided below. Capital Event" shall mean any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, ~~and~~ (ii) sales or re-financings of DEVELOPER's Improvements, and (iii) other dispositions,

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004760

transfers, and conversions, at any level of organization, that change the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement; *provided, however*, that the term "Capital Event" shall not include changes in, or reconstitutions of, membership interests that are not of a "capital" nature. The scope of permitted membership interest transfers will be more fully fleshed out in the Definitive Agreement. ~~*[[COMMENT: PER THE COMMENT IN SECTION 1.2, DEVELOPER NEEDS THE RIGHT, SUBJECT TO REASONABLE PARAMETERS, TO FREELY TRANSFER INTERESTS INTERNALLY WITHOUT PAYING CAPITAL EVENT FEES EACH TIME. THUS, WE'VE DELETED THE FORGOING REFERENCES.]]*~~ A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity [[and Preferred Return (to be defined in the Definitive Agreement)]] ~~*[[FEES TO BE FURTHER DISCUSSED.]]*~~ to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease ~~*[[COMMENT: "DECREASE" RELATIVE TO WHAT?]]*~~ as a result of any Capital Event.

7.5 Periodic Rent Revaluation: Every ten years, the Base Rent will be adjusted to 8% of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA ~~Base Rent will never dec~~rease *[[COMMENT: AGAIN, "DECREASE" RELATIVE TO WHAT?]]* as a result of any Periodic Rent Revaluation.

7.6 WMATA Improvements: intentionally omitted

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within five months following Board Term Sheet Approval (as provided in Section 2 above), WMATA will refund DEVELOPER's full Proposal Security of One Hundred Thousand and No/100 Dollars~~Option Fee~~ ($100,000.00) to DEVELOPER within ten (10) days.

7.8 WMATA Delays: The maximum length of 45 months for the Pre-stabilization Period will be extended for delays beyond the control of DEVELOPER, including delays in WMATA obtaining FTA Approval in accordance with Section 8.5 below ~~and any delays caused by acts of God, terrorism, casualty, or other events of "force majeure"~~ beyond DEVELOPER's ability to control. ~~In~~ no other event will payment of

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004761

Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, [[even though DEVELOPER's schedule may take longer than anticipated.]] *[[COMMENT: NEED TO DISCUSS WHAT HAPPENS IF DELAYS OR AGREED-UPON CHANGES OCCUR TO THE PROJECT SCOPE OR DESIGN THAT REQUIRE MODIFICATION TO ENTITLEMENT APPLICATIONS, PERMITS, ETC. – i.e., PUD, TDR's, ETC.?]]*

7.9 Additional Density:

37%/yr from Def Agreement

7.9.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf of additional density and multiplying the product derived (Project land value) by ~~7~~%.

7.9.2 During the term of the Lease, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those originally shown in the Approved Site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above, with such additional Base Rent only including the incremental increase associated with any actually constructed DEVELOPER Improvements.

8. Conditions to Definitive Agreement Consummation

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days *[[COMMENT: IS THIS ENOUGH TIME?]]* after execution of the Definitive Agreement.

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004762

by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

8.6 Financing Contingency: Developer shall have received a commitment for construction financing from a bank or other lending institution in such amounts, and upon such terms and conditions, as shall be consistent with the approved development budget for the Project and as shall otherwise be reasonably satisfactory to Developer and WMATA.

If each of the foregoing conditions is not satisfied within the timeframes provided above therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement. ~~*[[COMMENT: ALSO CONSIDER GETTING BACK PRE-STABILIZATION RENT PER COMMENT AT 7.2 ABOVE.]]*~~

9. Special Considerations *[[COMMENT: SHOULDN'T OBTAINING ALL OF THE FOLLOWING, AS WELL AS ALL OTHER NECESSARY ENTITLEMENTS/APPROVALS, BE EXPRESS CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO GO FORWARD? IN OTHER WORDS, WHAT IF, DESPITE REASONABLE EFFORTS, WE CAN'T GET THEM?]]*

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area (Advisory Neighborhood Commission 1B, The ~~LeDroit~~ Park Civic Association and Columbia Heights Community Development Corporation), to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions,

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004763

historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the [~~name of specific District agency~~] applicable DC agencies a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and ~~construction~~ standards and criteria, including, without limitation "*STANDARDS – March 2006 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004764

obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten (10) calendar days prior to commencement of construction of the DEVELOPER Improvements.

9.7 Interim Improvements: intentionally omitted

9.8 DELETED.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Circular 9300.1.A, Appendix B. [TRANSIT-ORIENTED DEVELOPMENT SHOULD BE DEFINED; ALSO, PLEASE PROVIDE A COPY OF THIS CIRCULAR TO DEVELOPER]

9.10 Transit Operations: DEVELOPER and WMATA will cooperatively develop a construction and operational protocol to ensure, to the extent commercially reasonable, that neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. [[WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to the Leased Premises or breach of any agreement, or expose WMATA to any liability.]] *~~[[COMMENT: NEED TO MAKE SURE THAT THIS WMATA RIGHT DOES NOT INTERFERE WITH DEVELOPMENT ACTIVITIES OR TIMETABLE.]]~~* No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004765

condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement and shall be acceptable to DEVELOPER.

12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Term Sheet and Definitive Agreement with WMATA for a period of five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

By:
Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

Title:

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004766

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Lease Term		1	2	3	4	5	6	7	8	9	10	11	12	13
Stabilized Rent Term					1	2	3	4	5	6	7	8	9	10
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Banneker / District - lease														
Proforma Base Rent	3.000% fixed annaul escalations				$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387
Adjusted Base Rent	1.315% fixed annaul escalations				$580,000	$587,627	$595,354	$603,183	$611,115	$619,151	$627,293	$635,542	$643,899	$652,367

WMATA-INV 004767

DLA PIPER 3/11 COMMENTS

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites
March 3, 2008

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, dated March __, 2008, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

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1. **Parties**

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC ("Banneker"), together with District Development Group, LLC ("DDG") and Metropolis Development Company LLC ("Metropolis"), will form a limited liability company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or some other name as determined by Banneker, DDG and Metropolis (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, except for any equity partners that the DEVELOPER needs to provide financing for the Project, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, the terms of which consent will be provided in the Definitive Agreement.

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2. **Definitive Agreement**

The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within five months of Board Term Sheet approval, will be a Master Development Agreement ("MDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of twenty (20) months [redacted] after the WMATA Board approves the Definitive Agreement or the issuance of the start of construction of the Project.

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3. **Property to Be Leased by Developer**

WMATA will lease to DEVELOPER approximately 28, 892 sf of land area as well as any and all easements, etc. outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31. *[[COMMENT: WE PRESUME THAT ALL NECESSARY SUBDIVISION HAS/WILL BE COMPLETED BY WMATA]]*

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004768

4. Project

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47 below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide knowledge-qualified representations customary for transactions of this type, including with respect to title to the Leased Premises and the environmental history or condition of the property. Subject to the continued accuracy of such representations, and subject further to DEVELOPER'S Study Period rights as provided herein and satisfaction or waiver by DEVELOPER of all conditions precedent herein provided, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

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5.2 Study Period: Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right-of-Entry Permit on the Leased Premises. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit (as defined below) and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

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6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Thousand and No/100 Dollars ($200,000.00) [redacted], which may consist, in part, of the Option Fee which shall previously have been paid by DEVELOPER

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004769

pursuant to Section 7.1 below (collectively the "Security Deposit") to secure DEVELOPER's performance.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if DEVELOPER shall be in default under the Definitive Agreement beyond applicable notice, cure and grace periods therein provided. In such event, the Security Deposit may be applied by WMATA in whole or in part to cure such default. No such application of the Security Deposit shall constitute a waiver of any such default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.4 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance (not to be unreasonable withheld, delayed or conditioned) by WMATA of those sureties identified in Section 9.6 of this agreement.

6.5 In the event of a "default" by WMATA (such term to be defined in the Definitive Agreement, WMATA shall pay DEVELOPER's actual and reasonable expenses incurred in connection with pursuing the Project and negotiating the Term Sheet and Definitive Agreement.

6.6 WMATA shall return the Security Deposit to DEVELOPER within ten (10) days of its receipt of a copy of the Certificate of Occupancy for the Project.

7. Consideration

7.1 Option Fee: DEVELOPER will pay WMATA $100,000 (the "Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet and written notification to the DEVELOPER by WMATA of such approval. The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be fully refunded to DEVELOPER should the parties fail to obtain all necessary final signatures to the Definitive Agreement by all parties (including the WMATA Board) within five (5) months after the date of WMATA Board's approval of this Term Sheet. Upon timely final execution and approval of the Definitive Agreement, the Option Fee shall be merged with the Security Deposit and shall be applied towards DEVELOPER's Security Deposit obligation provided in Section 6.1 hereof, such that DEVELOPER shall be required to fund only an additional One Hundred Thousand and No/100 Dollars ($100,000.00) towards the Security Deposit. Upon application of the Option

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Deleted: is not consummated for any reason other than WMATA's default, non-satisfaction of an express condition precedent to DEVELOPER's obligations, or DEVELOPER exercising its rights under the Study Period. ¶ ¶ . 6.4 . The Security Deposit may be applied by WMATA in whole or in part to cure or remedy any breach or default by DEVELOPER. No such application of the Security Deposit shall constitute a waiver of any breach or default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

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See as such, the Offer Proceeds be considered and treated, for all purposes, as part of the Security Deposit.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004771

7.2 Pre-stabilization Rent: Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement, [redacted] or forty-five (45) [redacted] months after WMATA Board approval and execution of the Definitive Agreement (the "Pre-stabilization Period"). Pre-stabilization Rent will be $100,000 per year payable in advance in quarterly instalments of $25,000. Should DEVELOPER not be able to secure approvals from District agencies, quasi-agencies or other reviewing organizations, WMATA shall refund DEVELOPER's Pre-stabilization Rent in full. [redacted] Should the Project not be stabilized by the end of the Pre-stabilization Period, the Pre-Stabilization Rent shall be increased by 10% per year each year until the Project is stabilized.

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7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a [[penalty payment]] *[[QUESTION: HOW MUCH WILL THIS "PENALTY PAYMENT" BE?]]*. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly, payable in advance in quarterly instalments of one-quarter of the Initial Base Rent. [[In no event shall the Initial Base Rent (for a full year) be less than Five Hundred Thousand and No/100 Dollars ($500,000.00).]] *[[COMMENT: TO DISCUSS WITH WMATA REGARDING HOW THIS NUMBER WAS DERIVED.]]* After the Initial Base Rent payment, Base Rent will be due annually, in quarterly instalments, beginning on the first business day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

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7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent *[[QUESTION: ANNUALIZED AMOUNT? OR PRO-RATED AMOUNT PER 7.3?]]* multiplied by 1.--* for that year (the "Initial Escalation Factor").

[*TBD—this is an escalator that would be less than 3% and would be designed to bring Base Rent to the pro forma amount ($500,000 escalated by 3% per year) through year 10 of the lease]

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004772

7.3.2 For the second through tenth years of the Lease, subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of the Lease and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 5% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year. [redacted]

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7.3.5 DEVELOPER shall lease the Leased Premises for a period of sixty (60) years (the "Lease Period") with an option to purchase the Leased Premises beginning from no later than ten years from the end of the Pre-Stabilization Period. This Option shall extend for the remaining term of the Lease Period and a right to exercise such option every five years. The price that DEVELOPER shall pay WMATA to purchase the Leased Premises shall be calculated based upon [TO BE DISCUSSED WITH WMATA DURING THURSDAY'S CALL]. [redacted]

7.4 Capital Event Participation: Capital Events (defined hereinbelow) shall be permitted in accordance with this Section 7.4. Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital Event" shall mean any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of DEVELOPER's Improvements, (iii) other dispositions, transfers, and conversions of direct interests in DEVELOPER to new members not originally included as direct members of DEVELOPER as of the date of execution of the Definitive Agreement, and (iv) any transaction, at any level of organization, by which a change of control (meaning a

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004773

transfer of at least 50.1% of the ownership interests and a transfer of the majority voting and management rights) occurs within a constituent member of DEVELOPER. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity and Preferred Return (to be defined in the Definitive Agreement) [redacted] to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease *[[COMMENT: "DECREASE" RELATIVE TO WHAT?]]* as a result of any Capital Event.

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7.5 Periodic Rent Revaluation: Upon a Capital Event or no less frequently than every ten years, whichever is earlier, the Base Rent will be adjusted to 5% of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease *[[COMMENT: AGAIN, "DECREASE" RELATIVE TO WHAT?]]* as a result of any Periodic Rent Revaluation. [redacted]

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7.6 WMATA Improvements: intentionally omitted

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within five months following Board Term Sheet Approval (as provided in Section 2 above), WMATA will refund DEVELOPER's full Option Fee to DEVELOPER within ten (10) days.

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7.8 WMATA Delays: The maximum length of 38 months for the Pre-stabilization Period will be extended for delays beyond the control of DEVELOPER, including delays in WMATA obtaining FTA Approval in accordance with Section 8.5 below and any delays caused by acts of God, terrorism, casualty, or other events of "force majeure" beyond DEVELOPER's ability to control. [redacted] In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, [[even though DEVELOPER's schedule may take longer than anticipated.]] *[[COMMENT: NEED TO DISCUSS WHAT HAPPENS IF DELAYS OR AGREED-UPON CHANGES OCCUR TO THE PROJECT SCOPE OR DESIGN THAT REQUIRE MODIFICATION TO ENTITLEMENT APPLICATIONS, PERMITS, ETC. – i.e., PUD, TDR's, ETC.?]]*

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 004774

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7.9 Additional Density:

7.9.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf of additional density and multiplying the product derived (Project land value) by 5%. [redacted]

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7.9.2 During the term of the Lease, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those originally shown in the Approved Site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above, with such additional Base Rent only including the incremental increase associated with any actually constructed DEVELOPER Improvements.

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8. Conditions to Definitive Agreement Consummation

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days *[[COMMENT: IS THIS ENOUGH TIME?]]* after execution of the Definitive Agreement.

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004775

possibility that the FTA may not approve the Definitive Agreement.

If each of the foregoing conditions is not satisfied within the timeframes provided above therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement. *[[COMMENT: ALSO CONSIDER GETTING BACK PRE-STABILIZATION RENT PER COMMENT AT 7.2 ABOVE.]]*

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9. Special Considerations *[[COMMENT: SHOULDN'T OBTAINING ALL OF THE FOLLOWING, AS WELL AS ALL OTHER NECESSARY ENTITLEMENTS/APPROVALS, BE EXPRESS CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO GO FORWARD? IN OTHER WORDS, WHAT IF, DESPITE REASONABLE EFFORTS, WE CAN'T GET THEM?]]* ONE ANWSER IS THAT YOU SHOULD NOT BE PROPOSING A PROJECT THAT DOES NOT HAVE REASONABLE CHANCE OF SUCCEEDING.

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9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area (Advisory Neighborhood Commission 1B, The LeDroit Park Civic Association and Columbia Heights Community Development Corporation), to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

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9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable efforts to obtain such entitlements.

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9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004776

soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the [name of specific District agency] a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

Deleted: District

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS— March 2006 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten (10) calendar days prior to commencement of construction of the DEVELOPER Improvements.

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Deleted: Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin.

9.7 Interim Improvements: intentionally omitted

9.8 DELETED.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Circular 9300.1.A, Appendix B. [TRANSIT-ORIENTED DEVELOPMENT SHOULD BE DEFINED; ALSO, PLEASE PROVIDE A COPY OF THIS CIRCULAR TO DEVELOPER]

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004777

9.10 Transit Operations: DEVELOPER and WMATA will cooperatively develop a construction and operational protocol to ensure, to the extent commercially reasonable, that neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

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9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. [[WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to the Leased Premises or breach of any agreement, or expose WMATA to any liability.]] *[[COMMENT: NEED TO MAKE SURE THAT THIS WMATA RIGHT DOES NOT INTERFERE WITH DEVELOPMENT ACTIVITIES OR TIMETABLE.]]* No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement and shall be acceptable to DEVELOPER.

12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Term Sheet and Definitive Agreement with WMATA for a period of five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 004778

agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

By:
Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

Title:

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004779

From: "Flynn, Guy" <guy.flynn@dlapiper.com>
To: "Rosalyn Doggett" <rdoggett@wmata.com>, "Marc E. Biondi" <mebiondi@wmata.com>
Date: 3/13/2008 2:58:50 PM
Subject: Shaw/Howard Term Sheet (3/13/08 2:35 p.m. MARKED REVISED DRAFT)

Attached is a further markup of the Term Sheet per our discussion this morning. Note that I am sending to the full distribution at the same time that I am sending it to the Developer entities. Accordingly, the changes remain fully subject to review and approval by them.

Please review and provide any comments.

If we don't talk before then, looking forward to our call Monday morning at 9 a.m.

Thanks.

Guy Flynn
DLA Piper
410-580-4149

Please consider the environment before printing this email.

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message. To contact our email administrator directly, send to postmaster@dlapiper.com

Thank you.

CC: "Omar A. Karim" <okarim@bannekerventures.com>, "Bryant, Seth" <Seth.Bryant@dlapiper.com>, "Myers, Paul B." <paul.myers@dlapiper.com>, <warren@bannekerventures.com>, "Joshua Kern" <joshuakern@districtdevelopmentgroup.com>, "Phinis Jones" <phinisjones@comcast.net>, <malone@metropolis-dc.com>, "Brad Dockser" <bdockser@macfarlanepartners.com>

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WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites
March 3, 2008

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, dated March __, 2008, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

1. Parties

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC ("Banneker"), together with District Development Group, LLC ("DDG") and Metropolis Development Company LLC ("Metropolis"), will form a limited liability company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or some other name as determined by Banneker, DDG and Metropolis (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, except for any equity partners that the DEVELOPER needs to provide financing for the Project and except as otherwise permitted pursuant to Section 7.2 below.

Deleted: , nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, the terms of which consent will be provided in the Definitive Agreement

Deleted: [[GENERAL COMMENT: WITHIN REASONABLE PARAMETERS, DEVELOPER NEEDS THE RIGHT TO SYNDICATE INTERESTS IN UPPER AND LOWER TIERS TO RAISE CAPITAL, ETC. HAPPY TO DISCUSS FURTHER.]]

2. Definitive Agreement

The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within five months of Board Term Sheet approval, will be a Master Development Agreement ("MDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement or the issuance of the start of construction of the Project.

3. Property to Be Leased by Developer

WMATA will lease to DEVELOPER approximately 28, 892 sf of land area as well as any and all easements, etc. outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31. *[[COMMENT: WE PRESUME THAT ALL EXISTING SUBDIVISION FOR CREATION OF THE ABOVE LOTS HAS/WILL BE COMPLETED BY WMATA. DEVELOPER ACKNOWLEDGES THAT LOTS 18 AND 31 NEED TO BE CONSOLIDATED BY DEVELOPER.]]*

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4. Project

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DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47 below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide knowledge-qualified representations customary for transactions of this type, , including with respect to title to the Leased Premises and the environmental history or condition of the property. Subject to the continued accuracy of such representations, and subject further to DEVELOPER'S Study Period rights as provided herein and satisfaction or waiver by DEVELOPER of all conditions precedent herein provided, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right-of-Entry Permit on the Leased Premises. DEVELOPER shall have sixty (60)days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit (as defined below) and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) (the "Security Deposit") to secure DEVELOPER's performance. The Security Deposit will replace the

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$100,000 Proposal Security.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if DEVELOPER shall be in default under the Definitive Agreement beyond applicable notice, cure ~~and grace~~ periods therein provided. In such event, the Security Deposit may be applied by WMATA in whole or in part to cure such default. No such application of the Security Deposit shall constitute a waiver of any such default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.4 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance (not to be unreasonable withheld, delayed or conditioned) by WMATA of those sureties identified in Section 9.6 of this agreement.

6.5 In the event of a "default" by WMATA (such term to be defined in the Definitive Agreement), ~~WMATA~~ shall pay DEVELOPER's actual and reasonable expenses incurred in connection with pursuing the Project and negotiating the Term Sheet and Definitive Agreement.

Can't agree to undefinite terms

6.6 WMATA shall return the Security Deposit to DEVELOPER within ~~ten (10)~~ 20 BD's days of its receipt of a copy of the Certificate of Occupancy for the Project.

7. Consideration

7.1 Option Fee: DEVELOPER will pay to WMATA a $100,000 fee (the "Option Fee") within ten (10) days following WMATA Board approval of the Term Sheet. The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be non-refundable.

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Deleted: fully refunded to DEVELOPER should the parties fail to obtain all necessary final signatures to the Definitive Agreement by all parties (including the WMATA Board) within five (5) months after the date of WMATA Board's approval of this Term Sheet. Upon timely final execution and approval of the Definitive Agreement, the Option Fee shall be merged with the Security Deposit and shall be applied towards DEVELOPER's Security Deposit obligation provided in Section 6.1 hereof, such that DEVELOPER shall be required to fund only an additional One Hundred Thousand and No/100 Dollars ($100,000.00) towards the Security Deposit. Upon application of the Option Fee as such, the Option Fee shall be considered and treated, for all purposes, as part of the Security Deposit.

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7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement, or forty-five (45) months after WMATA Board approval and execution of the Definitive Agreement (the "Pre-stabilization Period"). Pre-stabilization Rent will be ~~$100,000~~ per year payable in advance in quarterly instalments of $25,000. ~~Should the Project not be stabilized by the end of the Pre-stabilization Period, the Pre-Stabilization Rent shall be increased by 3% per year each year until the Project is stabilized.~~

rent is 1/2 delete due at end of 45mo Pre-Stab Pd

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7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a [[penalty payment]] *[[QUESTION: HOW MUCH WILL THIS "PENALTY PAYMENT" BE?]]* . Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly, payable in advance in quarterly instalments of one-quarter of the Initial Base Rent. [[In no event shall the Initial Base Rent (for a full year) be less than Five Hundred Eighty Thousand and No/100 Dollars ($580,000.00.]] *[COMMENT: TO DISCUSS WITH WMATA REGARDING HOW THIS NUMBER WAS DERIVED.]* After the Initial Base Rent payment, Base Rent will be due annually, in quarterly instalments, beginning on the first business day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

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7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent *[[QUESTION: ANNUALIZED AMOUNT? OR PRO-RATED AMOUNT PER 7.3?]]* multiplied by 1.--* for that year (the "Initial Escalation Factor").
[*TBD—this is an escalator that would be less than 3% and would be designed to bring Base Rent to the pro forma amount ($500,000 escalated by 3% per year) through year 10 of the lease]

See e-mail

7.3.2 For the second through tenth years of the Lease, subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of the Lease and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004784

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will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

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7.3.5 DEVELOPER shall lease the Leased Premises for a period of sixty (60) years (the "Lease Period"), with Developer holding an option to extend the Lease Period upon such terms as shall be agreed upon by the parties in the Definitive Agreement.

no, not what we discussed

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Deleted: purchase the Leased Premises beginning from no later than ten years from the end of the Pre-Stabilization Period. This Option shall extend for the remaining term of the Lease Period and a right to exercise such option every five years. The price that DEVELOPER shall pay WMATA to purchase the Leased Premises shall be calculated based upon [TO BE DISCUSSED WITH WMATA DURING THURSDAY'S CALL].

7.4 Capital Event Participation: Capital Events (defined hereinbelow) shall be permitted in accordance with this Section 7.4. Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation") in the amount provided below. Capital Event" shall mean any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of DEVELOPER's Improvements, and (iii) other dispositions, transfers, and conversions, at any level of organization, that change the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement; *provided, however*, that the term "Capital Event" shall not include changes in, or reconstitutions of, membership interests that are not of a "capital" nature. The scope of permitted membership interest transfers will be more fully fleshed out in the Definitive Agreement. A one-time payment per Capital Event ~~will be paid to WMA~~TA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the ~~original equity~~ [[and Preferred Return (to be defined in the Definitive Agreement)]] *[[PREFS TO BE FURTHER DISCUSSED]]* to DEVELOPER not yet repaid. To confirm ~~DEVELOPER's original~~ project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease *[[COMMENT: "DECREASE" RELATIVE TO WHAT?]]* as a result of any Capital Event.

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no loopholes unless "not for profit" transfers

best I can do is "no"

"If any"

Show me that I will be in as good a position as 10% off top

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004785

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7.5 Periodic Rent Revaluation: Every ten years, the Base Rent will be adjusted to 5% of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease *[[COMMENT: AGAIN, "DECREASE" RELATIVE TO WHAT?]]* as a result of any Periodic Rent Revaluation.

7.6 WMATA Improvements: intentionally omitted

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within five months following Board Term Sheet Approval (as provided in Section 2 above), WMATA will refund DEVELOPER's full Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER within ten (10) days.

OK

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7.8 WMATA Delays: The maximum length of 45 months for the Pre-stabilization Period will be extended for delays beyond the control of DEVELOPER, including delays in WMATA obtaining FTA Approval in accordance with Section 8.5 below and any delays caused by acts of God, terrorism, casualty, or other events of "force majeure" beyond DEVELOPER's ability to control. In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, [[even though DEVELOPER's schedule may take longer than anticipated.]] *[[COMMENT: NEED TO DISCUSS WHAT HAPPENS IF DELAYS OR AGREED-UPON CHANGES OCCUR TO THE PROJECT SCOPE OR DESIGN THAT REQUIRE MODIFICATION TO ENTITLEMENT APPLICATIONS, PERMITS, ETC. – i.e., PUD, TDR's, ETC.?]]*

Stet

We'll amend

7.9 Additional Density:

7.9.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf of additional density and multiplying the product derived (Project land value) by 5%.

goes up 3%/yr. from Def. Agmts execution

7.9.2 During the term of the Lease, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those originally shown in the Approved Site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above, with such additional Base Rent only including the incremental increase associated with any actually constructed DEVELOPER Improvements.

8. Conditions to Definitive Agreement Consummation

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8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days *[[COMMENT: IS THIS ENOUGH TIME?]]* after execution of the Definitive Agreement.

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

8.5 Financing Contingency: Developer shall have received a commitment for construction financing from a bank or other lending institution in such amounts, and upon such terms and conditions, as shall be consistent with the approved development budget for the Project and as shall otherwise be reasonably satisfactory to Developer and WMATA.

If each of the foregoing conditions is not satisfied within the timeframes provided above therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

Deleted: *[[COMMENT: ALSO CONSIDER GETTING BACK PRE-STABILIZATION RENT PER COMMENT AT 7.2 ABOVE.]]*

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004787

9. Special Considerations *[[COMMENT: SHOULDN'T OBTAINING ALL OF THE FOLLOWING, AS WELL AS ALL OTHER NECESSARY ENTITLEMENTS/APPROVALS, BE EXPRESS CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO GO FORWARD? IN OTHER WORDS, WHAT IF, DESPITE REASONABLE EFFORTS, WE CAN'T GET THEM?]]*

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area (Advisory Neighborhood Commission 1B, The LeDroit Park Civic Association and Columbia Heights Community Development Corporation), to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the [name of specific District agency] a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by

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WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS— March 2006 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten (10) calendar days prior to commencement of construction of the DEVELOPER Improvements.

9.7 Interim Improvements: intentionally omitted

9.8 DELETED.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Circular 9300.1.A, Appendix B. [TRANSIT-ORIENTED DEVELOPMENT SHOULD BE DEFINED; ALSO, PLEASE PROVIDE A COPY OF THIS CIRCULAR TO DEVELOPER]

9.10 Transit Operations: DEVELOPER and WMATA will cooperatively develop a construction and operational protocol to ensure, to the extent commercially reasonable, that neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any

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environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. [[WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to the Leased Premises or breach of any agreement, or expose WMATA to any liability.]] *[[COMMENT: NEED TO MAKE SURE THAT THIS WMATA RIGHT DOES NOT INTERFERE WITH DEVELOPMENT ACTIVITIES OR TIMETABLE.]]* No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement and shall be acceptable to DEVELOPER.

12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Term Sheet and Definitive Agreement with WMATA for a period of five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

By:
Joel R. Washington

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004790

Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

Title:

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WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites
March 3, 2008

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, dated March __, 2008, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

1. Parties

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC ("Banneker"), together with District Development Group, LLC ("DDG") and Metropolis Development Company LLC ("Metropolis"), will form a limited liability company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or some other name as determined by Banneker, DDG and Metropolis (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, except for any equity partners that the DEVELOPER needs to provide financing for the Project, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, the terms of which consent will be provided in the Definitive Agreement. *[[GENERAL COMMENT: WITHIN REASONABLE PARAMETERS, DEVELOPER NEEDS THE RIGHT TO SYNDICATE INTERESTS IN UPPER AND LOWER TIERS TO RAISE CAPITAL, ETC. HAPPY TO DISCUSS FURTHER.]]*

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2. Definitive Agreement

The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within five months of Board Term Sheet approval, will be a Master Development Agreement ("MDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement or the issuance of the start of construction of the Project.

3. Property to Be Leased by Developer

WMATA will lease to DEVELOPER approximately 28,892 sf of land area as well as any and all easements, etc. outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31. *[[COMMENT: WE PRESUME THAT ALL*

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NECESSARY SUBDIVISION HAS/WILL BE COMPLETED BY WMATA. DEVELOPER INDICATES THAT LOTS 18 AND 31 NEED TO BE CONSOLIDATED.]]

4. **Project**

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47 below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. **Due Diligence**

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide knowledge-qualified representations customary for transactions of this type, , including with respect to title to the Leased Premises and the environmental history or condition of the property. Subject to the continued accuracy of such representations, and subject further to DEVELOPER'S Study Period rights as provided herein and satisfaction or waiver by DEVELOPER of all conditions precedent herein provided, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right-of-Entry Permit on the Leased Premises. DEVELOPER shall have sixty (60)days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit (as defined below) and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

6. **Security Deposit**

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6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Thousand and No/100 Dollars ($200,000.00), which may consist, in part, of the Option Fee which shall previously have been paid by DEVELOPER pursuant to Section 7.1 below (collectively the "Security Deposit") to secure DEVELOPER's performance.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if DEVELOPER shall be in default under the Definitive Agreement beyond applicable notice, cure and grace periods therein provided. In such event, the Security Deposit may be applied by WMATA in whole or in part to cure such default. No such application of the Security Deposit shall constitute a waiver of any such default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.4 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance (not to be unreasonable withheld, delayed or conditioned) by WMATA of those sureties identified in Section 9.6 of this agreement.

6.5 In the event of a "default" by WMATA (such term to be defined in the Definitive Agreement), WMATA shall pay DEVELOPER's actual and reasonable expenses incurred in connection with pursuing the Project and negotiating the Term Sheet and Definitive Agreement.

6.6 WMATA shall return the Security Deposit to DEVELOPER within ten (10) days of its receipt of a copy of the Certificate of Occupancy for the Project.

7. Consideration

7.1 Option Fee: DEVELOPER has paid to WMATA $100,000 (the "Option Fee"), receipt of which WMATA hereby acknowledges. The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be fully refunded to DEVELOPER should the parties fail to obtain all necessary final signatures to the Definitive Agreement by all parties (including the WMATA Board) within five (5) months after the date of WMATA Board's approval of this Term Sheet. Upon timely final execution and approval of the Definitive Agreement, the Option Fee shall be

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merged with the Security Deposit and shall be applied towards DEVELOPER's Security Deposit obligation provided in Section 6.1 hereof, such that DEVELOPER shall be required to fund only an additional One Hundred Thousand and No/100 Dollars ($100,000.00) towards the Security Deposit. Upon application of the Option Fee as such, the Option Fee shall be considered and treated, for all purposes, as part of the Security Deposit.

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7.2 Pre-stabilization Rent: Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement, or forty-five (45) months after WMATA Board approval and execution of the Definitive Agreement (the "Pre-stabilization Period"). Pre-stabilization Rent will be $100,000 per year payable in advance in quarterly instalments of $25,000. Should DEVELOPER not be able to secure approvals from District agencies, quasi-agencies or other reviewing organizations, WMATA shall refund DEVELOPER's Pre-stabilization Rent in full. Should the Project not be stabilized by the end of the Pre-stabilization Period, the Pre-Stabilization Rent shall be increased by 10% per year each year until the Project is stabilized.

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a [[penalty payment]] *[[QUESTION: HOW MUCH WILL THIS "PENALTY PAYMENT" BE?]]* . Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly, payable in advance in quarterly instalments of one-quarter of the Initial Base Rent. [[In no event shall the Initial Base Rent (for a full year) be less than Five Hundred Thousand and No/100 Dollars ($500,000.00).]] *[COMMENT: TO DISCUSS WITH WMATA REGARDING HOW THIS NUMBER WAS DERIVED.]* After the Initial Base Rent payment, Base Rent will be due annually, in quarterly instalments, beginning on the first business day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent *[[QUESTION: ANNUALIZED AMOUNT? OR PRO-RATED AMOUNT PER 7.3?]]* multiplied by 1.--* for that year (the "Initial Escalation Factor").
[*TBD—this is an escalator that would be less than 3% and would be designed to bring Base Rent to the pro forma amount ($500,000 escalated by 3% per year) through year 10 of the lease]

7.3.2 For the second through tenth years of the Lease, subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year;

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7.3.3 For the eleventh year of the Lease and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 5% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.5 DEVELOPER shall lease the Leased Premises for a period of sixty (60) years (the "Lease Period") with an option to purchase the Leased Premises beginning from no later than ten years from the end of the Pre-Stabilization Period. This Option shall extend for the remaining term of the Lease Period and a right to exercise such option every five years. The price that DEVELOPER shall pay WMATA to purchase the Leased Premises shall be calculated based upon [TO BE DISCUSSED WITH WMATA DURING THURSDAY'S CALL].

7.4 Capital Event Participation: Capital Events (defined hereinbelow) shall be permitted in accordance with this Section 7.4. Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital Event" shall mean any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, and (ii) sales or re-financings of DEVELOPER's Improvements, *[[COMMENT: PER THE COMMENT IN SECTION 1.2, DEVELOPER NEEDS THE RIGHT, SUBJECT TO REASONABLE PARAMETERS, TO FREELY TRANSFER INTERESTS INTERNALLY WITHOUT PAYING CAPITAL EVENT FEES EACH TIME. THUS, WE'VE DELETED THE FORGOING REFERENCES.]]* A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity and Preferred Return (to be defined in the Definitive Agreement) to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one

Deleted: , (iii) other dispositions, transfers, and conversions of direct interests in DEVELOPER to new members not originally included as direct members of DEVELOPER as of the date of execution of the Definitive Agreement, and (iv) any transaction, at any level of organization, by which a change of control (meaning a transfer of at least 50.1% of the ownership interests and a transfer of the majority voting and management rights) occurs within a constituent member of DEVELOPER

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hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease *[[COMMENT: "DECREASE" RELATIVE TO WHAT?]]* as a result of any Capital Event.

7.5 Periodic Rent Revaluation: Every ten years, the Base Rent will be adjusted to 5% of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease *[[COMMENT: AGAIN, "DECREASE" RELATIVE TO WHAT?]]* as a result of any Periodic Rent Revaluation.

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7.6 WMATA Improvements: intentionally omitted

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within five months following Board Term Sheet Approval (as provided in Section 2 above), WMATA will refund DEVELOPER's full Option Fee to DEVELOPER within ten (10) days.

7.8 WMATA Delays: The maximum length of 45 months for the Pre-stabilization Period will be extended for delays beyond the control of DEVELOPER, including delays in WMATA obtaining FTA Approval in accordance with Section 8.5 below and any delays caused by acts of God, terrorism, casualty, or other events of "force majeure" beyond DEVELOPER's ability to control. In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, [[even though DEVELOPER's schedule may take longer than anticipated.]] *[[COMMENT: NEED TO DISCUSS WHAT HAPPENS IF DELAYS OR AGREED-UPON CHANGES OCCUR TO THE PROJECT SCOPE OR DESIGN THAT REQUIRE MODIFICATION TO ENTITLEMENT APPLICATIONS, PERMITS, ETC. – i.e., PUD, TDR's, ETC.?]]*

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7.9 Additional Density:

7.9.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf of additional density and multiplying the product derived (Project land value) by 5%.

7.9.2 During the term of the Lease, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those originally shown in the Approved Site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above, with such additional Base Rent only including the incremental increase associated with any actually constructed DEVELOPER Improvements.

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8. Conditions to Definitive Agreement Consummation

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days *[[COMMENT: IS THIS ENOUGH TIME?]]* after execution of the Definitive Agreement.

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

8.5 Financing Contingency: Developer shall have received a commitment for construction financing from a bank or other lending institution in such amounts, and upon such terms and conditions, as shall be consistent with the approved development budget for the Project and as shall otherwise be reasonably satisfactory to Developer and WMATA.

If each of the foregoing conditions is not satisfied within the timeframes provided above therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive

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Agreement. *[[COMMENT: ALSO CONSIDER GETTING BACK PRE-STABILIZATION RENT PER COMMENT AT 7.2 ABOVE.]]*

9. Special Considerations *[[COMMENT: SHOULDN'T OBTAINING ALL OF THE FOLLOWING, AS WELL AS ALL OTHER NECESSARY ENTITLEMENTS/APPROVALS, BE EXPRESS CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO GO FORWARD? IN OTHER WORDS, WHAT IF, DESPITE REASONABLE EFFORTS, WE CAN'T GET THEM?]]*

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area (Advisory Neighborhood Commission 1B, The LeDroit Park Civic Association and Columbia Heights Community Development Corporation), to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the [name of specific District agency] a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

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9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS— March 2006 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten (10) calendar days prior to commencement of construction of the DEVELOPER Improvements.

9.7 Interim Improvements: intentionally omitted

9.8 DELETED.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Circular 9300.1.A, Appendix B. [TRANSIT-ORIENTED DEVELOPMENT SHOULD BE DEFINED; ALSO, PLEASE PROVIDE A COPY OF THIS CIRCULAR TO DEVELOPER]

9.10 Transit Operations: DEVELOPER and WMATA will cooperatively develop a construction and operational protocol to ensure, to the extent commercially reasonable, that neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated

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excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. [[WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to the Leased Premises or breach of any agreement, or expose WMATA to any liability.]] *[[COMMENT: NEED TO MAKE SURE THAT THIS WMATA RIGHT DOES NOT INTERFERE WITH DEVELOPMENT ACTIVITIES OR TIMETABLE.]]* No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement and shall be acceptable to DEVELOPER.

12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Term Sheet and Definitive Agreement with WMATA for a period of five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004802

By:
Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

Title:

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004803

From: "Omar A. Karim" <okarim@bannekerventures.com>
To: "'Rosalyn Doggett'" <rdoggett@wmata.com>, "'Marc E. Biondi'" <mebiondi@wmata.com>
Date: 3/12/2008 12:33:13 AM
Subject: Comments to Draft Term Sheet b/t WMATA and Developers of Florida Avenue parcels

Ms. Doggett and Mr. Biondi,

We attach for your review our comments to the draft Term Sheet that you provided us. We think that the comments are within the spirit of our written and oral submissions to you, including: (1) our initial Response to the Request for an Opportunity to Compete Against an Unsolicited Proposal, (2) Response to the Request for Proposals, (3) In-person Interviews with you and your staff; and (4) subsequent written correspondences to you. We are hopeful that we will be able to finalize the document during our conference call on Thursday morning. Should you have any questions in the meantime, please call me.

Thank you in advance and we look forward to working with you on this exciting project.

Best,

Omar

Omar A. Karim

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

(202) 667-4110 office

(301) 523-1810 cell

okarim@bannekerventures.com

CC: "'Flynn, Guy'" <guy.flynn@dlapiper.com>, "'Bryant, Seth'" <Seth.Bryant@dlapiper.com>, "'Myers, Paul B.'" <paul.myers@dlapiper.com>, <warren@bannekerventures.com>, "'Joshua Kern'" <joshuakern@districtdevelopmentgroup.com>, "'Phinis Jones'" <phinisjones@comcast.net>, <malone@metropolis-dc.com>, "'Brad Dockser'" <bdockser@macfarlanepartners.com>

Marc - free at 4, 4:15 etc. - Mark Mare

DLA PIPER 3/11 COMMENTS

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites
March 3, 2008

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, dated March __, 2008, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

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1. Parties

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC ("Banneker"), together with District Development Group, LLC ("DDG") and Metropolis Development Company LLC ("Metropolis"), will form a limited liability company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or some other name as determined by Banneker, DDG and Metropolis (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, except for any equity partners that the DEVELOPER needs to provide financing for the Project, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, the terms of which consent will be provided in the Definitive Agreement.

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yes

2. Definitive Agreement

The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within five months of Board Term Sheet approval, will be a Master Development Agreement ("MDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement or the ~~issuance of the~~ start of construction of the Project.

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3. Property to Be Leased by Developer

WMATA will lease to DEVELOPER approximately 28, 892 sf of land area as well as any and all easements, etc. outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31. *[[COMMENT: WE PRESUME THAT ALL NECESSARY SUBDIVISION HAS/WILL BE COMPLETED BY WMATA.]]*

exclusive of any reservations by Grantor

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4. Project

(1) Add
No change in rent
Should understand
Jump to one a yr.

(2) MPUD
Pre-Stabilized & Base
Rent agreed upon
6% / year - prorated
monthly in advance for
allowance ...

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004805

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47 below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide knowledge-qualified representations ~~customary for transactions of this type,~~ including with respect to title to the Leased Premises and the environmental history or condition of the property. ~~Subject to the continued accuracy of such representations, and subject further~~ to DEVELOPER'S Study Period rights as provided herein and satisfaction or waiver by DEVELOPER of all conditions precedent herein provided, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right-of-Entry Permit on the Leased Premises. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit (as defined below) ~~and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.~~

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6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Thousand and No/100 Dollars ($200,000.00), which may consist, in part, of the Option Fee which shall previously have been paid by DEVELOPER pursuant to Section 7.1 below (collectively the "Security Deposit") to secure DEVELOPER's

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WMATA-INV 004806

performance.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if DEVELOPER shall be in default under the Definitive Agreement beyond applicable notice, cure and grace periods therein provided. In such event, the Security Deposit may be applied by WMATA in whole or in part to cure such default. No such application of the Security Deposit shall constitute a waiver of any such default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.4 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance (not to be unreasonable withheld, delayed or conditioned) by WMATA of those sureties identified in Section 9.6 of this agreement.

6.5 In the event of a "default" by WMATA (such term to be defined in the Definitive Agreement, WMATA shall pay DEVELOPER's actual and reasonable expenses incurred in connection with pursuing the Project and negotiating the Term Sheet and Definitive Agreement.

6.6 WMATA shall return the Security Deposit to DEVELOPER within ten (10) days of its receipt of a copy of the Certificate of Occupancy for the Project.

7. Consideration

7.1 Option Fee: DEVELOPER will pay WMATA $100,000 (the "Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet and written notification to the DEVELOPER by WMATA of such approval. The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be fully refunded to DEVELOPER should the parties fail to obtain all necessary final signatures to the Definitive Agreement by all parties (including the WMATA Board) within five (5) months after the date of WMATA Board's approval of this Term Sheet. Upon timely final execution and approval of the Definitive Agreement, the Option Fee shall be merged with the Security Deposit and shall be applied towards DEVELOPER's Security Deposit obligation provided in Section 6.1 hereof, such that DEVELOPER shall be required to fund only an additional One Hundred Thousand and No/100 Dollars ($100,000.00) towards the Security Deposit. Upon application of the Option Fee as such, the Option Fee shall be considered and treated, for all purposes, as

Deleted: The Security Deposit will replace the $100,000 Proposal Security.

Deleted: is not consummated for any reason other than WMATA's default, non-satisfaction of an express condition precedent to DEVELOPER's obligations, or DEVELOPER exercising its rights under the Study Period. ¶ ¶ 6.4. The Security Deposit may be applied by WMATA in whole or in part to cure or remedy any breach or default by DEVELOPER. No such application of the Security Deposit shall constitute a waiver of any breach or default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

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part of the Security Deposit.

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7.2 Pre-stabilization Rent: Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement, or forty-five (45) months after WMATA Board approval and execution of the Definitive Agreement (the "Pre-stabilization Period"). Pre-stabilization Rent will be $100,000 per year payable in advance in quarterly instalments of $25,000. [[Should DEVELOPER not be able to secure approvals from District agencies, quasi-agencies or other reviewing organizations, WMATA shall refund DEVELOPER's Pre-stabilization Rent in full. Should the Project not be stabilized by the end of the Pre-stabilization Period, the Pre-Stabilization Rent shall be increased by 10% per year each year until the Project is stabilized.]]

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not consistent with proposal

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a [[penalty payment]] *[[QUESTION: HOW MUCH WILL THIS "PENALTY PAYMENT" BE?]]*. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly, payable in advance in quarterly instalments of one-quarter of the Initial Base Rent. [[In no event shall the Initial Base Rent (for a full year) be less than Five Hundred Thousand and No/100 Dollars ($500,000.00).]] *[COMMENT: TO DISCUSS WITH WMATA REGARDING HOW THIS NUMBER WAS DERIVED.]* After the Initial Base Rent payment, Base Rent will be due annually, in quarterly instalments, beginning on the first business day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

10 % of Initial Base Rent

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7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent *[[QUESTION: ANNUALIZED AMOUNT? OR PRO-RATED AMOUNT PER 7.3?]]* multiplied by 1.--* for that year (the "Initial Escalation Factor").
[*TBD—this is an escalator that would be less than 3% and would be designed to bring Base Rent to the pro forma amount ($500,000 escalated by 3% per year) through year 10 of the lease]

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7.3.2 For the second through tenth years of the Lease, subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of the Lease and thereafter, except for Base Rent to

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004809

be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 5% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

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per WMATA approval FTA -

7.3.5 DEVELOPER shall lease the Leased Premises for a period of sixty (60) years (the "Lease Period") with an option to purchase the Leased Premises beginning from no later than ten years from the end of the Pre-Stabilization Period. This Option shall extend for the remaining term of the Lease Period and a right to exercise such option every five years. The price that DEVELOPER shall pay WMATA to purchase the Leased Premises shall be calculated based upon [TO BE DISCUSSED WITH WMATA DURING THURSDAY'S CALL].

no option to purchase

7.4 Capital Event Participation: Capital Events (defined hereinbelow) shall be permitted in accordance with this Section 7.4. Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital Event" shall mean any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of DEVELOPER's Improvements, (iii) other dispositions, transfers, and conversions of direct interests in DEVELOPER to new members not originally included as direct members of DEVELOPER as of the date of execution of the Definitive Agreement, and (iv) any transaction, at any level of organization, by which a change of control (meaning a transfer of at least 50.1% of the ownership interests and a transfer of the majority voting and management rights) occurs within a constituent member of DEVELOPER. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity and Preferred Return (to be defined in the Definitive Agreement) to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one

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revert to old language 3 & 4

tentatively "no"

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004810

hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease *[[COMMENT: "DECREASE" RELATIVE TO WHAT?]]* as a result of any Capital Event.

7.5 Periodic Rent Revaluation: Upon a Capital Event or no less frequently than every ten years, whichever is earlier, the Base Rent will be adjusted to 5% of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease *[[COMMENT: AGAIN, "DECREASE" RELATIVE TO WHAT?]]* as a result of any Periodic Rent Revaluation.

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7.6 WMATA Improvements: intentionally omitted

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within five months following Board Term Sheet Approval (as provided in Section 2 above), WMATA will refund DEVELOPER's full Option Fee to DEVELOPER within ten (10) days.

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7.8 WMATA Delays: The maximum length of 38 months for the Pre-stabilization Period will be extended for delays beyond the control of DEVELOPER, including delays in WMATA obtaining FTA Approval in accordance with Section 8.5 below and any delays caused by acts of God, terrorism, casualty, or other events of "force majeure" beyond DEVELOPER's ability to control. In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, [[even though DEVELOPER's schedule may take longer than anticipated.]] *[[COMMENT: NEED TO DISCUSS WHAT HAPPENS IF DELAYS OR AGREED-UPON CHANGES OCCUR TO THE PROJECT SCOPE OR DESIGN THAT REQUIRE MODIFICATION TO ENTITLEMENT APPLICATIONS, PERMITS, ETC. –i.e., PUD, TDR's, ETC.?]]*

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7.9 Additional Density:

7.9.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf of additional density and multiplying the product derived (Project land value) by 5%.

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7.9.2 During the term of the Lease, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those originally shown in the Approved Site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above, with such additional Base Rent only including the incremental increase associated with any actually constructed DEVELOPER Improvements.

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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 004811

8. Conditions to Definitive Agreement Consummation

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days *[[COMMENT: IS THIS ENOUGH TIME?]]* after execution of the Definitive Agreement.

we already — you tell us?

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

If each of the foregoing conditions is not satisfied within the timeframes provided above therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement. *[[COMMENT: ALSO CONSIDER GETTING BACK PRE-STABILIZATION RENT PER COMMENT AT 7.2 ABOVE.]]*

Agree to all of it

9. Special Considerations *[[COMMENT: SHOULDN'T OBTAINING ALL OF THE FOLLOWING, AS WELL AS ALL OTHER NECESSARY ENTITLEMENTS/APPROVALS, BE EXPRESS CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO GO FORWARD? IN OTHER WORDS, WHAT IF, DESPITE REASONABLE EFFORTS, WE*

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004812

CAN'T GET THEM?]]

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area (Advisory Neighborhood Commission 1B, The LeDroit Park Civic Association and ~~Columbia Heights Community Development Corporation~~) as designated by OP + WMATA, to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

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9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable efforts to obtain such entitlements.

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9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the [name of specific District agency] a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

BZA if necessary

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9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004813

Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS— March 2006 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten (10) calendar days prior to commencement of construction of the DEVELOPER Improvements. No day for day extension

9.7 Interim Improvements: intentionally omitted

9.8 DELETED

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Circular 9300.1.A, Appendix B. [TRANSIT-ORIENTED DEVELOPMENT SHOULD BE DEFINED; ALSO, PLEASE PROVIDE A COPY OF THIS CIRCULAR TO DEVELOPER]

9.10 Transit Operations: DEVELOPER and WMATA will cooperatively develop a construction and operational protocol to ensure, to the extent commercially reasonable, that neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or ~~State of Maryland~~ laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors,

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Deleted: Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin.

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Deleted: Neither

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004814

officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. [[WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to the Leased Premises or breach of any agreement, or expose WMATA to any liability.]] *[[COMMENT: NEED TO MAKE SURE THAT THIS WMATA RIGHT DOES NOT INTERFERE WITH DEVELOPMENT ACTIVITIES OR TIMETABLE.]]* No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

77
not addressed like

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement and shall be acceptable to DEVELOPER.

12. Non-Binding Intent

to be presented to the Board when

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a ~~Term Sheet~~ Definitive Agreement with WMATA ~~for a period of~~ five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

By:
Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004815

Title:

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 004816

From: Rosalyn Doggett
To: okarim@bannekerventures.com
Date: 3/4/2008 5:15:14 PM
Subject: ShawHoward Fl. Ave Project Term Sheet

Omar, please find below a draft term sheet for the Project for which Banneker Ventures has been tentatively selected as developer.

Upon your review, please call me as to next steps within the tight time frame in which we would like to execute a mutually satisfactory document.

You will note that the base rent is initally higher than what you proposed. This is as a result of FTA oversight, which I can explain to you as we discuss what I have inserted. The base rent does not contemplate affordable housing. Again, this is something that we can discuss.

Please also note that, in the interest of saving time, our General Counsel has not completed its review of the term sheet and that any final negotiated docuument will be subject to review and approval by our General Counsel.

I look forward to hearing from you. Please do call if you have any questions at the outset.

CC: eric.smart@bolansmart.com; Joel R. Washington; Marc E. Biondi

To include whatever Inchu. 2g requires!!

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites
March 3, 2008

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, dated _____March , 2008, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

1. Parties

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC, together with District Development Group, LLC and Metropolis Development Company LLC, will form a limited liability corporation for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, the terms of which consent will be provided in the Definitive Agreement.

2. Definitive Agreement

The Definitive Agreement, to be presented to the Board for approval within five months' of Board Term Sheet approval, will be a Master Development Agreement ("MDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of fourteen months (14) months after the WMATA Board approves the Term Sheet or the issuance of the initial building permit to the DEVELOPER for the DEVELOPER Improvements.

3. Property to Be Leased by Developer

WMATA will lease to DEVELOPER approximately 28, 892 sf of land area outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31.

4. Project

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47

FOIA CONFIEDENTIAL TREATMENT REQUESTED

below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide representations customarily acceptable to WMATA, but will not warrant title to the Leased Premises, the environmental history or condition of the property, or the fitness of the Leased Premises for any use. Subject to the representations customarily acceptable to WMATA, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: No later than full execution of the Definitive Agreement, WMATA will grant DEVELOPER a Right-of-Entry Permit. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period").

6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) (the "Security Deposit") to secure DEVELOPER's performance. The Security Deposit will replace the $100,000 Proposal Security.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if the Definitive Agreement is not consummated for any reason other than WMATA's default, non-satisfaction of an express condition precedent to DEVELOPER's obligations, or DEVELOPER exercising its rights under the Study Period.

6.4 The Security Deposit may be applied by WMATA in whole or in part to cure or remedy any breach or default by DEVELOPER. No such application of the Security Deposit shall constitute a waiver of any breach or default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.5 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

7. Consideration

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004819

7.1 Option Fee: DEVELOPER will pay WMATA $100,000 (the"Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet . The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be non-refundable.

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement, or twenty-eight (28) months after WMATA Board approval of the Definitive Agreement (the "pre-stabilization Period"). Pre-stabilization Rent will be $100,000 per year payable in advance in quarterly instalments of $25,000.

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a penalty payment. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly. In no event shall the Initial Base Rent (for a full year) be less than Five Hundred and Eighty Thousand and No/100 Dollars ($580,000.00). After the Initial Base Rent payment, Base Rent will be due annually on the first day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent multiplied by 1.--* for that year (the "Initial Escalation Factor"). [*TBD—this is an escalator that would be less than 3% and would be designed to bring Base Rent to the pro forma amount ($500,000 escalated by 3% per year) through year10 of the lease]

7.3.2 For the second through tenth years of the Lease subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of the Lease and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser

FOIA CONFIEDENTIAL TREATMENT REQUESTED

process that establishes unit values for each type of Project land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.4 Capital Event Participation: Whenever a capital event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital events include assignments of the Definitive Agreement or the Lease, sales or re-financings of DEVELOPER's Improvements, and other dispositions, transfers, and conversions ("Capital Event"). Any transaction, at any level of organization, that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER's Project lender. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease as a result of any Capital Event.

7.5 Periodic Rent Revaluation: Upon a Capital Event or every ten years, whichever is earlier, the Base Rent will be adjusted to 7 % of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease as a result of any Periodic Rent Revaluation.

7.6 WMATA Improvements: intentionally omitted

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement, WMATA will refund DEVELOPER's Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER.

7.8 WMATA Delays: The maximum length of 28 months for the Pre-stabilization Period will be extended, on a day-for-day basis, for delays caused by WMATA. In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, even though DEVELOPER's schedule may take longer than anticipated.

7.9 Additional Density:

7.9.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf of additional density and

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004821

multiplying the product derived (Project land value) by 7%.

7.9.2 During the term of the Lease, any densities or unit totals approved for DEVELOPER Improvements that are more than those originally shown in the Approved site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above.

8. Conditions to Definitive Agreement Consummation

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

9. Special Considerations

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement, DEVELOPER shall contact the appropriate community groups in the area, as specified by WMATA, to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004822

Project on the Leased Premises. DEVELOPER will use commercially reasonable best efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the District a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS— March 2006 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least thirty (30) calendar days prior to commencement of construction of the DEVELOPER Improvements.

9.7 Interim Improvements: intentionally omitted

9.8 Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004823

included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Circular 9300.1.A, Appendix B.

9.10 Transit Operations: Neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

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DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

12. Non-Binding Intent

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004824

This Term Sheet will have no binding effect on the parties. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet.

Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

By:
Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

Title:

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004825

From: Marc E. Biondi
To: Rosalyn Doggett
Date: 3/4/2008 1:15:47 PM
Subject: Re: Fwd: Florida Avenue Term Sheet

Roz,

A couple quick comments:

?

Pre-stabilization rent: is an escalator or outside date needed in this section?

Fix

Section 7.5 cross references section 7.3.4 for a three appraiser process. There is no three appraiser process in section 7.3.4.

Fix

Section 7.8 talks about a Pre-Development Period. This term is not used elsewhere in the document. Is Pre-Stabilization intended? If so, is the reference to 18 months correct?

OK

Please remove the signature line for Counsel on the Term Sheet.

Also, please note to the recipient that Counsel has not completed its review and that any final negotiated Term Sheet will be subject to review and approval by this office.

Please let me know when (whether) you intend to meet with the Developer to discuss the Term Sheet.

Thanks,

Marc

Marc Biondi
Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Direct Dial: 202-962-1011
Fax: 202-962-2550
mebiondi@wmata.com

THIS E-MAIL MESSAGE IS PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE RECIPIENT NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE NAMED RECIPIENT, OR THE AGENT RESPONSIBLE TO DELIVER IT TO THE NAMED RECIPIENT, YOU ARE NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING OR OTHER USE OF THIS INFORMATION COMMUNICATION IS STRICTLY PROHIBITED AND NO PRIVILEGE IS WAIVED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY THE ABOVE-NAMED INDIVIDUAL IMMEDIATELY, COLLECT IF NECESSARY.

>>> Rosalyn Doggett 3/4/2008 12:40 PM >>>
I neglected to add that I would like to send this to Banneker by the end of today! If you can't get to it, I think that items can be added/changed in the next couple of days.

>>> Rosalyn Doggett 3/4/2008 12:04 PM >>>
Attached is a term sheet for the project.

One area may cause the developer some heartburn. I have put in a base rent that is quite a bit higher than what the developer proposed. The developer proposed $500,000 as the initial base rent number in 2011. I used $525,000 (our appraiser's number for Aug '07) escalated by 3 ½ years to closing on the

lease to come up with an initial base rent of $580,000.

The developer proposed 20% affordable housing at half the rent of market rate ($1.50 vs. $3.00/ sf). I asked Malcolm Marshall to ask our appraiser if a lower discounted rental rate can be justified based on a clause we would have to put in the term sheet that 20% of the housing would be affodable by households making less than 60% of the area median income (or something to that effect). However, the appraiser called us back and said 20% affordable housing did not justify a discount-- some of their comparables included affordable housing.

In any event, the inclusion of affordable housing is a policy call, not something that the city currently requires. It is something that the developer thought would help with local community acceptance. So another question is whether the new jd guidelines (goal #5) justify our discounting the rent for affordable housing.

Overall, the project yields an npv that is far higher than our appraiser's current assessment of market value. However, I am now sensitive to FTA's parsing our appraisals and looking at initial rental values.

In any event, I am going to go with the higher number based on the conversation with Malcolm's appraiser.

CC: Joel R. Washington

From: Rosalyn Doggett
To: eric.smart@bolansmart.com; Marc E. Biondi
Date: 3/4/2008 12:04:54 PM
Subject: Florida Avenue Term Sheet

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CC: Joel R. Washington

get contr. dwgs
if a problem ....

Eric

Stabilization — 28 months

Quarterly installments in escrow of $25,000

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites
March 3, 2008

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, dated _____March , 2008, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

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1.2 Banneker Ventures, LLC, together with District Development Group, LLC and Metropolis Development Company LLC, will form a limited liability corporation for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, the terms of which consent will be provided in the Definitive Agreement.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

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6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if the Definitive Agreement is not consummated for any reason other than WMATA's default, non-satisfaction of an express condition precedent to DEVELOPER's obligations, or DEVELOPER exercising its rights under the Study Period.

6.4 The Security Deposit may be applied by WMATA in whole or in part to cure or remedy any breach or default by DEVELOPER. No such application of the Security Deposit shall constitute a waiver of any breach or default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.5 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

7. Consideration

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004830

7.1 Option Fee: DEVELOPER will pay WMATA $100,000 (the"Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet . The Option Fee shall not be applicable to Pre-development Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be non-refundable.

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement, or eighteen (18) months after WMATA Board approval of the Definitive Agreement (the "pre-Development Period"). Pre-Development Rent will be $100,000 per year payable quarterly in advance.

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a penalty payment. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly. In no event shall the Initial Base Rent (for a full year) be less than Five Hundred and Eighty Thousand and No/100 Dollars ($580,000.00). After the Initial Base Rent payment, Base Rent will be due annually on the first day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent multiplied by 1.--* for that year (the "Initial Escalation Factor"). [*TBD—this is an escalator that would be less than 3% and would be designed to bring Base Rent to the pro forma amount ($500,000 escalated by 3% per year) through year10 of the lease]

7.3.2 For the second through tenth years of the Lease subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of the Lease and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project land use

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004831

multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.4 Capital Event Participation: Whenever a capital event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital events include assignments of the Definitive Agreement or the Lease, sales or re-financings of DEVELOPER's Improvements, and other dispositions, transfers, and conversions ("Capital Event"). Any transaction, at any level of organization, that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER's Project lender. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease as a result of any Capital Event.

7.5 Periodic Rent Revaluation: Upon a Capital Event or every ten years, whichever is earlier, the Base Rent will be adjusted to 7 % of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease as a result of any Periodic Rent Revaluation.

7.6 WMATA Improvements: intentionally omitted

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement, WMATA will refund DEVELOPER's Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER.

7.8 WMATA Delays: The maximum length of ~~18 months~~ 28 months for the Pre-~~development~~ Stabilization Period will be extended, on a day-for-day basis, for delays caused by WMATA. In no other event will payment of Pre-~~development~~ Stabilization Rent, Initial Base Rent, or Base Rent be delayed, even though DEVELOPER's schedule may take longer than anticipated.

7.9 Additional Density:

7.9.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf of additional density and

FOIA CONFIEDENTIAL TREATMENT REQUESTED

multiplying the product derived (Project land value) by 7%.

7.9.2 During the term of the Lease, any densities or unit totals approved for DEVELOPER Improvements that are more than those originally shown in the Approved site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above.

8. Conditions to Definitive Agreement Consummation

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

9. Special Considerations

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement, DEVELOPER shall contact the appropriate community groups in the area, as specified by WMATA, to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004833

Project on the Leased Premises. DEVELOPER will use commercially reasonable best efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the District a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS— March 2006 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least thirty (30) calendar days prior to commencement of construction of the DEVELOPER Improvements.

9.7 Interim Improvements: intentionally omitted

9.8 Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004834

included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and f) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Circular 9300.1.A, Appendix B.

9.10 Transit Operations: Neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

12. Non-Binding Intent

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004835

This Term Sheet will have no binding effect on the parties. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet.

Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

By:
Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Approved as to Legal Form:
WMATA General Counsel

Banneker Ventures, LLC

By:

Title:

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004836

WMATA Original

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites
~~March 3, 2008~~

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, dated _____March , 2008, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

1. Parties

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC, together with District Development Group, LLC and Metropolis Development Company LLC, will form a limited liability corporation for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, the terms of which consent will be provided in the Definitive Agreement.

2. Definitive Agreement

The Definitive Agreement, to be presented to the Board for approval within five months' of Board Term Sheet approval, will be a Master Development Agreement ("MDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of fourteen months (14) months after the WMATA Board approves the Term Sheet or the issuance of the initial building permit to the DEVELOPER for the DEVELOPER Improvements.

3. Property to Be Leased by Developer

WMATA will lease to DEVELOPER approximately 28, 892 sf of land area outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31.

4. Project

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47

FOIA CONFIEDENTIAL TREATMENT REQUESTED

below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide representations customarily acceptable to WMATA, but will not warrant title to the Leased Premises, the environmental history or condition of the property, or the fitness of the Leased Premises for any use. Subject to the representations customarily acceptable to WMATA, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: No later than full execution of the Definitive Agreement, WMATA will grant DEVELOPER a Right-of-Entry Permit. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period").

6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) (the "Security Deposit") to secure DEVELOPER's performance. The Security Deposit will replace the $100,000 Proposal Security.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if the Definitive Agreement is not consummated for any reason other than WMATA's default, non-satisfaction of an express condition precedent to DEVELOPER's obligations, or DEVELOPER exercising its rights under the Study Period.

6.4 The Security Deposit may be applied by WMATA in whole or in part to cure or remedy any breach or default by DEVELOPER. No such application of the Security Deposit shall constitute a waiver of any breach or default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.5 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

7. Consideration

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004838

7.1 Option Fee: DEVELOPER will pay WMATA $100,000 (the"Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet . The Option Fee shall not be applicable to Pre-development Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be non-refundable.

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of receipt of Project Stabilization, to be defined in the Definitive Agreement, or sixteen (16) months after WMATA Board approval of the Definitive Agreement (the "pre-Development Period"). Pre-Development Rent will be $100,000 per year.

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a penalty payment. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly. In no event shall the Initial Base Rent (for a full year) be less than Five Hundred and Eighty Thousand and No/100 Dollars ($580,000.00). After the Initial Base Rent payment, Base Rent will be due annually on the first day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent multiplied by 1.--* for that year (the "Initial Escalation Factor"). [*TBD—this is an escalator that would be less than 3% and would be designed to bring Base Rent to the pro forma amount ($500,000 escalated by 3% per year) through year10 of the lease]

7.3.2 For the second through tenth years of the Lease subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of the Lease and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project land use

FOIA CONFIEDENTIAL TREATMENT REQUESTED

multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.4 Capital Event Participation: Whenever a capital event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital events include assignments of the Definitive Agreement or the Lease, sales or re-financings of DEVELOPER's Improvements, and other dispositions, transfers, and conversions ("Capital Event"). Any transaction, at any level of organization, that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER's Project lender. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease as a result of any Capital Event.

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7.6 WMATA Improvements: intentionally omitted

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement, WMATA will refund DEVELOPER's Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER.

7.8 WMATA Delays: The maximum length of 18 months for the Pre-development Period will be extended, on a day-for-day basis, for delays caused by WMATA. In no other event will payment of Pre-development Rent, Initial Base Rent, or Base Rent be delayed, even though DEVELOPER's schedule may take longer than anticipated.

7.9 Additional Density:

7.9.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf of additional density and

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004840

multiplying the product derived (Project land value) by 7%.

7.9.2 During the term of the Lease, any densities or unit totals approved for DEVELOPER Improvements that are more than those originally shown in the Approved site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above.

8. Conditions to Definitive Agreement Consummation

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

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8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004841

Project on the Leased Premises. DEVELOPER will use commercially reasonable best efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

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9.7 Interim Improvements: intentionally omitted

9.8 Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004842

included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and f) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Circular 9300.1.A, Appendix B.

9.10 Transit Operations: Neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

12. Non-Binding Intent

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004843

This Term Sheet will have no binding effect on the parties. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet.

Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

By:

Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Approved as to Legal Form:

WMATA General Counsel

Banneker Ventures, LLC

By:

Title:

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA Joint Development Term Sheet - WMATA Lease - Redline
Grosvenor-Strathmore Metro Station (North Parcel) – JDS04-3
~~July 21, 2006~~ May 9, 2007

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Grosvenor-Strathmore Metro Station in Montgomery County, Maryland, dated _____, ~~2006~~ 2007, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a possible lease of a parcel of certain real property known as WMATA's Grosvenor-Strathmore North Parcel (the "North Parcel"). The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

1. **Parties**

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Trammell Crow Residential will form a limited liability corporation for the Project (as defined in Section 4 herein), TCR Mid Atlantic Properties, Inc. (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, the terms of which consent will be provided in the Definitive Agreement.

2. **Definitive Agreement**

2.1 The Definitive Agreement will be a ~~twenty (20) year~~ Master Development Agreement ("MDA") that will include, as an exhibit, a seventy-five (75) year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. ~~Pursuant to the Definitive Agreement, DEVELOPER will obtain four (4), ten (10) year options to renew (to sixty (60) years total).~~ The ~~lease~~ Lease term will begin with the earlier of thirty (30) months after the WMATA Board approves the Term Sheet or the issuance of the initial building permit to the DEVELOPER for either the DEVELOPER Improvements or the WMATA Improvements.

2.2 WMATA's fee simple interest in the North Parcel and Leased Premises will be unsubordinated. Ownership of the DEVELOPER's Improvements will revert to WMATA at the end of the ~~lease~~ Lease term.

3. **Property to Be Leased by Developer**

WMATA shall lease to DEVELOPER a portion of the North Parcel, ~~described~~ outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). For DEVELOPER's rezoning of the North Parcel, the Leased Premises may include land and improvements (whether existing or to be constructed) reserved by WMATA for its exclusive, use, operation, access, maintenance, repair, servicing, replacement and removal, in connection with WMATA's transit operations, including the WMATA Improvements (as defined in Section 4.2 herein) (collectively, the "Reserved Areas and Interests"). The Definitive Agreement will include a description of the Reserved Areas and Interests.

4. **Project**

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") will include up to 700,000 residential FAR gross square feet with not less than 425 dwelling units and not more than 500 dwelling units, plus associated residential parking per Montgomery County approvals, and up to 18,000 gross square feet of convenience retail plus associated parking per Montgomery county approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises;

4.2 WMATA improvements (the "WMATA Improvements") including a new extension to the WMATA parking structure containing, at a minimum, five hundred (500) parking spaces (the "Addition"), reconfigured bus bays and Kiss & Ride parking, and other improvements necessary to replace or relocate any WMATA facility (or transit operation) displaced by the construction or the operation of the DEVELOPER Improvements. Existing WMATA Park & Ride surface spaces do not need to be permanently replaced. The Addition will have a design compatible with the design of the existing on-site garage and will have ingress/egress through the existing garage;

4.3 All stormwater management systems, wetlands mitigation, utilities (below or above ground), grading, cut and fill, streets, sewers, sidewalks, landscaping, and any other sitework required to serve the DEVELOPER Improvements and the WMATA Improvements, which will comply with plans approved by WMATA and the cognizant governmental agencies (collectively, the "Site Work"); and

4.4 A continuous, ADA-compliant, covered pedestrian path from the Metrorail station entrance to the pedestrian bridge over Tuckerman Lane (the "New Arts Walk") to realign and replace the existing covered concrete path built by Montgomery County (the "Arts Walk"), as necessary to allow construction of the Addition as contemplated. The New Arts Walk will be of a similar quality, character, and design as the existing Arts Walk. DEVELOPER will obtain all necessary WMATA and Montgomery County approvals of plans for the New Arts Walk prior to the start of its construction.

4.5 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide representations customarily acceptable to WMATA, but will not warrant title to the North Parcel, the environmental history or condition of the property, or the fitness of the Leased Premises for any use. Subject to the representations customarily acceptable to WMATA, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: No later than full execution of the Definitive Agreement, WMATA will grant DEVELOPER a Right-of-Entry Permit. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period").

6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004846

DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) (the "Security Deposit") to secure DEVELOPER's performance.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if the Definitive Agreement is not consummated for any reason other than WMATA's default, non-satisfaction of an express condition precedent to DEVELOPER's obligations, or DEVELOPER exercising its rights under the Study Period.

6.4 The Security Deposit may be applied by WMATA in whole or in part to cure or remedy any breach or default by DEVELOPER. No such application of the Security Deposit shall constitute a waiver of any breach or default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.5 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

7. Consideration

7.1 Option Fees: DEVELOPER will begin paying WMATA monthly installments of ~~Six~~ Twelve Thousand Five Hundred and No/100 Dollars ~~($6,500.00)~~ ($12,500.00) (the "Initial Option Fee"), within ten (10) days of ~~full execution~~ WMATA Board approval of the Term Sheet and continue until the earlier of the end of the Study Period under the Definitive Agreement or five months after WMATA Board approval of the Term Sheet ("Initial Option Fee Period"). The Initial Option Fee shall be due on the first of every month during the Initial Option Fee Period and be prorated for partial months.

7.1.1 If the Initial Option Fee Period ends before the end of the Study Period under the Definitive Agreement, then the monthly option fee shall be Fifteen Thousand and No/100 Dollars ($15,000.00) ("Second Option Fee") from the end of the Initial Option Fee Period to the end of the Study Period under the Definitive Agreement ("Second Option Fee Period").

7.1.2 Initial Option Fees and Second Option Fees shall not be applicable to Pre-development Rent, Initial Base Rent, ~~or~~ Base Rent, or Capital Event Participation ~~or Participating Rents~~ (as defined in this Section 7) and shall be non-refundable.

~~In the event that WMATA is unsuccessful in the pending lawsuit against a third party, so that the Leased Premises are deemed to be subject to a right of first refusal, WMATA will return the Option Fee to DEVELOPER.~~

7.2 Pre-development Rent: Pre-development Rent payments will begin at the end of the Study Period under the Definitive Agreement and continue until the earlier of

FOIA CONFIEDENTIAL TREATMENT REQUESTED

the date of the initial occupancy permit for the DEVELOPER's Improvements ("Initial Occupancy") or forty-eight (48) months after WMATA Board approval of the Term Sheet (the "Pre-development Period"). Pre-development rent for the Leased Premises will be One Hundred and Forty Thousand and No/100 Dollars ~~($100,000)~~ ($140,000) for the 1st ~~calendar year~~ twelve (12) month period, ~~One~~ Two Hundred ~~Fifty~~ and Forty Thousand and No/100 Dollars ~~($150,000)~~ ($240,000) for the 2nd ~~calendar year~~ twelve (12) month period, Four Hundred Thousand and No/100 Dollars ($400,000) for the 3rd ~~calendar year~~ twelve (12) month period, ~~Four~~ Six Hundred ~~Fifty-five~~ Thousand and No/100 Dollars ~~($455,000)~~ ($600,000) for the 4th ~~calendar year~~ twelve (12) month period, and Seven Hundred Thousand and No/100 Dollars ($700,000) for the final fourteen (14) month period (the "Pre-development Rent"). ~~prorated for partial calendar years. Pre-development Rent payments will begin at the end of the Study Period and continue until the earlier of the date of the first occupancy permit for the DEVELOPER's Improvements ("Initial Occupancy") or sixty (60) months after Term Sheet execution (the "Pre-development Period").~~

7.3~~A~~ Base Rent ~~(Alternative 1):~~ ~~The initial annual base rent payment will be paid by DEVELOPER in two installments (the "Initial Base Rent"). The first installment of Initial Base Rent will be One Hundred Fifty Thousand and No/100 Dollars ($150,000) and will be paid within fourteen (14) calendar days of the end of the Pre-development Period. The second and final installment of Initial Base Rent, in the amount of Three Hundred Fifty Thousand and No/100 Dollars ($350,000) will be paid six months after the payment of the first installment of Initial Base Rent.~~ The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-development Period ("Initial Base Rent"). The Initial Base Rent will be determined through a three appraiser process as described in **Exhibit C**. The Initial Base Rent payment will be for the first calendar year after the end of the Pre-development Period and will be pro-rated accordingly. In no event shall the Initial Base Rent (for a full year) be less than Eight Hundred Thousand and No/100 Dollars ($800,000.00). After the Initial Base Rent payment, base rent will be due annually on February 1 for the remaining term of the Lease ("Base Rent"). Base Rent payments will be determined as follows:

7.3~~A~~.1 ~~After the Initial Base Rent payment, DEVELOPER will pay subsequent base rent annually for the remaining term of the Lease (the "Base Rent"). On the first anniversary of the first installment of the Initial Base Rent, DEVELOPER will pay Seven Hundred Ten Thousand and No/100 Dollars ($710,000.00), with each subsequent payment escalating above the prior year's payment at a rate of three percent (3%) per annum.~~ For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent and the Escalation Factor for that year, as defined in **Exhibit C.**

7.3.2 For the second and subsequent Base Rent payments due after the Initial Base Rent payment, except for those Base Rent payments to be determined pursuant to 7.3.3 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Escalation Factor for that calendar year. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004848

7.3.3 In the tenth (10th) year after the year in which the WMATA Board approves the Definitive Agreement, and every tenth (10th) year thereafter, the Lease Base Rent payment will be reset to then current market rates. The parties shall use the three appraiser process in **Exhibit C** to determine such market-rate Base Rent.

~~7.3B. Base Rent (Alternative 2): This Alternative 2 will be included in the Definitive Agreement if the WMATA Board finds it acceptable. In Alternative 2, DEVELOPER will pay WMATA Base Rent in a single payment for the term of the Definitive Agreement (the "Lump Sum"). For a sixty-year (60) term of the Definitive Agreement, the Lump Sum will be Fourteen Million Five Hundred Thousand and No/100 Dollars ($14,500,000.00) (the "Lump Sum"). If WMATA's management and its Board find a ninety-nine (99) year lease term to be acceptable, then the Lump Sum will be Nineteen Million One Hundred and Fifty-five Thousand Two Hundred Fifty and No/100 Dollars ($19,155,250.00). DEVELOPER will pay the Lump Sum upon the earlier of the end of the Pre-development Period or forty-five (45) calendar days after Initial Occupancy.~~

~~7.4A Participating Rent (Alternative 1): During the term of the Definitive Agreement, DEVELOPER will pay WMATA ten percent (10%) of annual gross revenue over Twenty-Four Million and No/100 Dollars ($24,000,000.00) from the DEVELOPER's Improvements (the "Participating Rent").~~

~~7.4B Participating Rent (Alternative 2): If DEVELOPER pays the Lump Sum per the terms of Section 7.3B above (Alternative 2), then no Participating Rent will be due for the term of the Definitive Agreement.~~

7.54 Capital Event Participation: Whenever a capital event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital events include assignments of the Definitive Agreement or the Lease, sales ~~and~~ or re-financings of DEVELOPER's Improvements, and other dispositions, transfers, and conversions ("Capital Event"). Any transaction, at any level of organization, that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from ~~the~~ such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER's Project lender. Such repaid amounts of debt and equity must be from Capital Event proceeds. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs.

7.65 WMATA Improvements: DEVELOPER will construct the WMATA Improvements at no cost to WMATA.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004849

7.~~7~~6 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement, WMATA will refund DEVELOPER's Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER. DEVELOPER submitted the Proposal Security to WMATA with its original proposal for the North Parcel.

7.~~8~~7 WMATA Delays: The maximum length of ~~sixty(60)~~ forty-eight (48fs) months for the Pre-development Period will be extended, on a day-for-day basis, for delays caused by WMATA. In no other event will payment of Pre-development Rent, Initial Base Rent, or Base Rent~~, or the Lump Sum~~ be delayed, even though DEVELOPER's schedule may take longer than anticipated.

7.8 Additional Density: During the term of the Lease, any densities or unit totals approved for DEVELOPER Improvements that are more than those originally shown in the Approved Site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payment will be determined per the method described in **Exhibit C**, using the new total FAR square feet for each land use, as well as those Final Unit Values and the Final Lease Rate employed in the then most recent Base Rent adjustment per Section 7.3.3 above.

8. Conditions to Definitive Agreement Consummation

8.1 Pending Litigation: ~~Litigation between WMATA and a third party is intended to be resolved so that the Leased Premises are not subject to a right of first refusal.~~ The U.S. Court of Appeals has affirmed the District Court's finding that Potomac Investment Properties' Right of First Refusal has been fully satisfied and is, therefore, no longer in force. In the event that the Leased Premises are deemed to be subject to a right of first refusal by the U.S. Supreme Court, either WMATA or DEVELOPER may terminate the Definitive Agreement.

8.2 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any site plan submission to Montgomery County, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing and an environmental evaluation may be required, and agrees to fully cooperate and assist WMATA with ~~the Compact Public Hearing~~ both. If WMATA determines a Compact Public Hearing or environmental evaluation is necessary, then DEVELOPER will provide WMATA with Fifty Thousand and No/100 Dollars ($50,000.00) ("~~Compact Public Hearing~~ Advance") for the purpose of preparing ~~hearing~~ materials and conducting the Compact Public Hearing or the environmental evaluation. Any part of the ~~Compact Hearing~~ Advance not actually expended by WMATA incident to conducting the Compact Public Hearing or the environmental evaluation shall be refunded to DEVELOPER,

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004850

net of any amounts applied to payments due to WMATA.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. ~~If the FTA does not approve the transaction,~~ The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

9. Special Considerations

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement, DEVELOPER shall contact the appropriate community groups in the area, as specified by WMATA, to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special use permits, zoning modifications, or similar actions relating to the Leased Premises (collectively, "Rezoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable best efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Rezoning. WMATA will not incur any costs in connection with the Rezoning either in the actual Rezoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by Montgomery County, Maryland, the Maryland Department of the Environment, the U.S. Army Corps of Engineers, or any other local, state, or federal agency having jurisdiction.

9.3 Site Plan Approval: DEVELOPER will submit to Montgomery County, Maryland a rezoning request and an application for County approval of the WMATA-approved Site Plan (collectively the "Site Plan") for development of the ~~Project Property~~ North Parcel under Montgomery County zoning regulations and as contemplated herein. The Approved Site Plan will be that Site Plan that has all necessary WMATA and Montgomery County approvals.

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004851

any modifications to the Site Plan or the ~~WMATA-a~~ Approved Site Plan, such modifications will be subject to WMATA's approval.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to, the design and construction documents for the WMATA Improvements and any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS—~~July 2002~~ March 2006 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision ~~1~~ 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. DEVELOPER will begin and diligently pursue construction of the Addition no later than the start of construction on the DEVELOPER Improvements. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least thirty (30) calendar days prior to commencement of construction of the DEVELOPER Improvements. Construction of WMATA Improvements, Site Work, and the New Arts Walk shall be insured by one hundred percent (100%) completion /restoration and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such bonds shall name WMATA as sole obligee and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least thirty (30) days prior to the start of construction on the WMATA Improvements.

9.7 Interim Facilities: In the event that DEVELOPER's construction activities interrupt or interfere with the operation of any existing WMATA facilities, DEVELOPER will provide, at its sole cost and expense, interim facilities ("Interim Facilities") during such construction period. DEVELOPER will be responsible for providing shuttle service to the Interim Facilities if the parking space in the Interim Facilities furthest from the Metrorail station entrance is more than a 1,500 foot walk from such entrance. Such shuttle service will be provided during Metrorail revenue hours, at intervals comparable to the intervals between Metrorail trains. DEVELOPER will be responsible for providing such service on terms mutually acceptable to WMATA and DEVELOPER, but in no event shall WMATA or its patrons incur any cost or expense for such service. WMATA shall have the right to sole possession of all revenues derived from Interim Facilities.

9.8 Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either Montgomery County or WMATA that is not included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, e) the timely delivery of Interim Facilities acceptable to WMATA, and f)

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004852

the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Circular 9300.1.A, Appendix B.

9.10 Transit Operations: Neither the construction nor the operation of DEVELOPER's Improvements will interfere with WMATA's transit operations.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, ~~and~~ its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004853

Agreed this _____ day of _____, 2007, by

Washington Metropolitan Area Transit Authority

By: _____
Gary Malasky
Managing Director
Office of Property Development & Management

Approved as to Legal Form: _____
WMATA General Counsel

TCR Mid Atlantic Properties, Inc.

By: _____

Title: _____

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

M E M O R A N D U M

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Sites- Tentative Developer Selection

DATE: February 26, 2008

FROM: Nat Bottigheimer

TO: John B. Catoe, Jr.

The Department of Planning and Joint Development (PLJD) recommends tentative selection of Banneker Ventures as developer of Metro's three Shaw-Howard/Florida Avenue parcels and preparation and negotiation of a term sheet with that team. If negotiations are unsuccessful, we recommend turning to the Moddie Turay Company for negotiation of a term sheet.

In early 2007, Metro issued Requests for Expressions of Interest for its Shaw-Howard/Florida Avenue joint development sites: Parcel 1, 3,800 sf on Florida Avenue at 9th St, NW; Parcel 2, 8,600 sf on Florida Avenue between 8th and 9th streets, NW, and Parcel 3, 16,500 sf on Florida Avenue between 7th and 8th streets.

After evaluation of responses, Metro requested six developers to submit more detailed proposals, and four did so with two combining as one team.

On October 5, 2007, Metro received three proposals from teams led by:

1. Banneker Ventures
2. Lakritz Adler
3. Moddie Turay Company

Washington Metropolitan Area Transit Authority

The recommendation to tentatively select Banneker Ventures is based on the Metro Evaluation Team's ranking of the proposals (memo attached) in accordance with the evaluation criteria in the Joint Development Solicitation and Source Selection Plan.

Metro team members comprising the Evaluation Team were from the Office of Station Area Planning and Asset Management (SAAM) and the Office of the General Counsel (COUN) with participation by the Office of Joint Development and Adjacent Construction (JDAC) since the sites are partly over Metrorail tunnels. In addition to Metro staff review and due diligence, outside real estate consultant Bolan Smart provided financial and market analysis, and representatives from the District of Columbia's Office of the Deputy Mayor for Economic Development and Office of Planning evaluated the proposals for conformance with city plans and policies.

The Banneker and Moddie Turay proposals both encompass residential development over ground floor retail for all three sites and are not substantially different in concept.

In many other aspects, the teams match up evenly. A major difference was the financial offer from Banneker providing approximately $2.2 million more in net present value to Metro over the course of a 60-year lease. Further, the Banneker proposal has less complication than the Moddie Turay proposal, which envisions combining the smallest Metro site with an alley to be closed and adjacent historic district property to be acquired. The financial terms for this acquisition have not been agreed to, and the city staff has informed us that the prospects for closing an alley and removing two contributing historic structures are uncertain.

Staff is aware that a key potential benefit to the community of Metro's joint development program is the promotion of high-quality transit-oriented development. As a result, staff took pains to evaluate the degree to which proposals submitted by adjacent property owners could contribute to a higher-quality development project compared to a project developed independent of adjacent property owner projects.

Of particular interest were the buildings next to the Metro property fronting on 9th Street. To evaluate the potential benefits of combining Metro's property with adjacent property, staff visited these sites, consulted with District of Columbia planning and historic preservation staff, and reviewed each of the joint development proposals with attention to this important evaluation factor.

In staff's opinion, developing Metro's property independently of the development of the adjacent properties would not reduce the potential of adjacent properties to be redeveloped in accordance with historic district requirements.

Further, combining the adjacent properties with Metro's three parcels (1) would result in a significant potential for delaying the redevelopment of Metro's property because of the historic district and the alley closing issues mentioned above and (2) would not appear to offer substantial benefits in terms of transit oriented development quality.

cc. Jack Requa
Chuck Woodruff
Carol O'Keeffe
Shiva Pant

M E M O R A N D U M

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Sites - Tentative Developer Selection

DATE: January 29, 2008

FROM: Rosalyn Doggett

THRU: Joel R. Washington JRW

TO: Nat Bottigheimer

WMATA received 3 proposals for its Shaw-Howard/Florida Avenue joint development sites: Parcel 1, 3,800 sf on Florida Avenue at 9th St, NW; Parcel 2, 8,600 sf on Florida Avenue between 8th and 9th streets, NW, and Parcel 3, 16,500 sf on Florida Avenue between 7th and 8th streets. In accordance with the Source Selection Plan for the Shaw-Howard/Florida Avenue Joint Development Sites, an Evaluation Team composed of Rosalyn Doggett, Chair, John Magarelli and Marc Biondi met a number of times to rate proposals from each of three teams. Two meetings were held before interviews with the teams, and two were held after interviews and additional due diligence. The development teams are led by:

Banneker Ventures
Lakritz Adler
Moddie Turay Company

The Evaluation Team recommends tentative selection of Banneker Ventures and preparation and negotiation of a term sheet with that team. If negotiations are unsuccessful, the Evaluation Team recommends turning next to the Moddie Turay Company for negotiation of a term sheet.

The Lakritz Adler proposal does not meet the threshold test in the Source Selection Plan of providing WMATA with net present value of rent over a 60-year lease that meets WMATA's current fair market value appraisal for the site ($7.5 million as of August 2007). The failure to meet appraisal value, alone, eliminates the team from further consideration. Further, Lakritz Adler offers one-half or less of the present value offered by the other two teams so it is thought that the deficit cannot be made up through negotiation even if there were other reasons to select the team, which there do not appear to be.

Washington Metropolitan Area Transit Authority

FOIA CONFIEDENTIAL TREATMENT REQUESTED

The net present values of the offers over a sixty-year lease period are:

Banneker	$14 million
Moddie Turay	$11.8 million
Lakritz Adler	$ 6 million

Banneker Ventures has been recommended because it provides greater rental present value to WMATA, approximately $2.2 million more than its remaining competitor.

Both teams propose 4 to 5 story residential development over retail for all three parcels that comprise the joint development site, at a matter-of-right FAR of 4.5. Moddie Turay proposes combining Parcel 1with two small adjacent parcels totaling 3,000 sf, which it controls, and utilizing the air rights over an alley proposed to be closed between Parcels 1 and 2; however its financial offer is not contingent on the two parcels being incorporated or the alley closing. Banneker proposes 103 dwelling units and 12,000 sf of retail whereas, utilizing the combined properties and alley closing, Moddie Turay proposes 130 dwelling units and 26,000 sf of retail. Otherwise, there is little difference in design concept between the two teams.

The Evaluation Team ranked the teams according to the evaluation criteria in the Source Selection Plan. These final rankings are shown in the accompanying table, which lists the evaluation criteria underlined below.

The Team found that both proposals reflect TOD principles since they are on a walkable street within blocks of two different Green Line Metro stations (Shaw-Howard and U Street-Cardozo-African American Civil War Memorial), maximize matter-of-right density and provide a mix of uses that will contribute to the ongoing revitalization of the area. The Banneker proposal includes a modest amount of affordable housing and represents that its building will be "green." Both proposals are equally viable in the market provided that the apartment market remains strong in the area. Each proposes some ground floor arts/retail uses that would be an asset to the community if realized. Their proposals conform to the District of Columbia's Duke Plan (except that the plan advocates even taller buildings if possible through a PUD; lack of space for underground parking may be a constraint, however). Also, the Office of Planning has since indicated that it will support by-right development. Both provide similar benefits to the local jurisdiction in terms of property and sales taxes.

The Moddie Turay proposal is slightly more creative in that it combines Parcel 1 with adjoining property, making a larger and more regular development parcel. However, it is not clear from talking to District planning and regulatory officials that the developer can accomplish either the alley closing

or the demolition of two structures which "contribute" to the historic district in which they are located. There may be issues with combining the adjoining fee property with leased WMATA property; also a sales price has not yet been agreed upon between Moddie Turay and the adjoining property owner. Price and historic preservation negotiations could delay project execution. Neither project will have an impact on WMATA facilities though construction over the Metro tunnel which runs partially beneath each parcel will need to be coordinated by JDAC. Once more detailed designs are prepared it is possible that the teams may need to seek a variance for required parking because of limitations in construction over the Metro tunnel.

There is little difference in experience. The Banneker team members (led by Omar Karim) include the District Development Group and, recently added, Metropolis Development, which has replaced Donatelli Development as a team member. Metropolis Development has extensive experience in developing new and adaptive residential buildings with ground floor retail in the Shaw neighborhood, including the Langston Lofts condominium project at 14th and V streets, a WMATA joint development site. The other teams members are less experienced but are obtaining approvals for a Silver Spring residential building at the present time. The Banneker Team architect, Torti Gallas, is experienced in residential and retail design on nearby U Street and over Metro tunnels. Moddie Turay and his company staff appear to have somewhat less experience but have an experienced local architect, Suman Sorg, and have teamed with Clark Enterprises represented by General Counsel Rebecca Owen who stated in interviews that Clark will deploy the necessary personnel to build the project for which the Moddie Turay Company will be project manager. Ms. Owen added that this could be either Clark Realty Capital, Clark's housing arm (which has participated in Fort Totten and Huntington but elected not to follow through on its contract for Western Bus Garage) or new personnel hired by Clark Enterprises, the parent company. Clark Enterprises clearly has construction expertise; however Banneker has stated that it intends to use Tompkins Builders, a local firm with Metro-related experience.

Financial benefit to WMATA was discussed earlier, and Banneker's offer is clearly superior in that regard. In terms of financial viablility, neither proposal has obvious flawed market or financial assumptions though Banneker depends on rent increases, which appear to be achievable, to subsidize affordable housing. Clark would more likely have access to financial sources. However, lender references for both teams indicated an interest in financing projects on these sites. Equity for Banneker would be provided by MacFarlane Partners, who are active team participants, and Clark will furnish its own equity, which it has the resources to do. Both teams provide modest enhancement to Metro Ridership.

It should be noted that WMATA requested both lease and sale proposals and received both. Net present value analysis showed that the lease proposals generate more revenue for WMATA over 60 years than the sale proposals. Since the Board's preference is to lease, the sale proposals were not considered further.

The accompanying table summarizes the land use and financial elements of the two finalist lease proposals. Both have financial elements that would likely need to be strengthened or provided in negotiations, for example, capital event participation for both teams; bonus density rent provisions and slightly higher base rent for Banneker; and annual base rent escalation for Moddie Turay. It is conceivable that negotiations could change the relative positions of the teams.

But for the present, it appears fair to start with the Banneker team since its financial offer is superior and its proposal does not have the potential complications of combining property with an adjacent owner. The Moddie Turay team, though close in ranking, has no clear superiority overall.

Rosalyn Doggett, Chair

John Magarelli

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FLORIDA AVENUE PROPOSALS EVALUATION 1-08				
	POSSIBLE POINTS	BANNEKER	LAKRITZ ADLER	MODDIE TURAY
TECHNICAL CRITERIA	50 Total	42	45	45
1 ReflectsTOD Principles	10	10	10	10
2 Market Viability	10	7	8	7
3 Prior Team Experience	10	7	8	9
4 Innovation/Creativity	5	3	4	4
5 Compatibility with Local Land Use Plan	5	5	5	5
6 Benefits to Local Jurisdiction	10	10	10	10
ECONOMIC CRITERIA	50 Total	35	20	30
1 Financial Benefits to WMATA	35	25	10	20
2 Financial Viability of Proposal	5	5	5	5
3 Enhanced Ridership	10	5	5	5
TOTAL POINTS	100	77	65	75

WMATA-INV 004861

FOIA CONFIDENTIAL TREATMENT REQUESTED

COMPARISON OF SHAW HOWARD/FLORIDA AVENUE LEASE PROPOSALS		
Category	Banneker 60 year lease	Moddie Turay 60.year lease
Development Summary	104 du's, 11,750 sf retail, 47 below grade pkg. 127,692 gsf (excludes garage) 4.5 MOR FAR on site size of 28,892 sf Total Dev. Cost $35.6M	130 du's, 26,282 retail, 62 below grade pkg. (includes closed alley and 2 adj. lots) 4.5 MOR FAR on site size of 31,892 sf plus closed alley. Total Dev. Cost $43.6M
Non-Refundable Option Fee-amount, start, duration	$100,000 upon Selected Developer/Term Sheet approval 2/08	$100,000 upon Selected Developer/Term Sheet Approval
Land Value and derivation (Appraisal: $7.5M in 2007)	$8.2M, year 2010, based on residual land value	$8.8-9M, year 2011, based on $65/sf 2008 escalated 2%/year to 2011 (WMATA land only)
Pre-development Rent	$100,000/yr. from Agreement execution through construction thru yr. 2 of stabilization 6/08-11/10 (11/10 = outside rent start date) [Note: 11/10 = 50% stabilization on pro forma 3% escalation occurs 18 months later]	$120,000/year ($10,000/month) upon execution of agreement thru stabilization 12/11 willing to agree on mutually acceptable outside rent commencement date
Construction Period Rent	see above ($100,000/yr.)	see above ($10,000/month)
Base rent: (Appraisal: $525,000)	$500,000 in 12/10 (6% residual land value)	@ $700,822 (8% land value) in12/11
Escalation of base rent from 2008 to start of payment	None (base rent is the projected rent though it is below appraiser's current rent)	2%/yr. on 2008 $65 base land value
Escalation of base rent if delay from schedule	Increase pre-development rent 3% if projected closing (3/09) is delayed beyond a year	Increase pre-devel. rent to ½ stabilized rent if no full rent start by 12/11
Annual Base Rent escalation	3%	none
Periodic Rent revaluation	not addressed	adjust every 10 years- 3 appraiser method
Cash Flow Participation	share of gross income to be negotiated	not addressed
Capital event participation	share of net proceeds (after all project and sale-related expenses)	5% net proceeds (to be defined) but not construction loan takeout
Density increase payments	not addressed	based on increased FAR land value if PUD
NPV with residual	$14 M with residual	$11.8 M with residual

WMATA-INV 004862

Washington Metropolitan Area Transit Authority

METRO ELECTRONIC ACTION DOCUMENT

MEAD ID: 99585

IDENTIFICATION			
ACTION:	N/A	LAST MODIFIED:	07/13/2006
AWARD VALUE:	(Not yet awarded)	CONTRACT: (Proposed)	

DESCRIPTION	
SUBJECT:	Approval of the FY 2007 Joint Development Work Program
PURPOSE:	To obtain Real Estate Committee and Board approval of the FY 2007 Joint Development Work Program.

ORIGINATION					
INITIATOR				DEPARTMENTAL APPROVAL	
ELISA HILL on 06/14/2006				Approved by THOMAS, EDWARD 07/13/2006	
PHONE:	202-962-1593	OFFICE:	LAND	DEPT:	Secretary and Chief of St

COORDINATION (ROUTING)			
OFFICE	NAME	ACTION/DATE	COMMENTS
PRMT (74100)	JACKSON, LUCY	Approved 06/21/2006	
(11200)	MONEME, EMEKA	Approved 07/12/2006	
PRMT (74500)	HARRIS, GWENDOLYN	*(Reviewer)*	
LAND (73400)	MEISTER, MARK	Approved 07/12/2006	
LAND (73400)	MALASKY, GARY	Re-assigned 07/12/2006	[Reassigned to: MARK MEISTER, by:ELISA HILL] Mr. Malasky is on sick leave.
AGMP (81100)	THOMAS, EDWARD	Approved w/ Comments 07/13/2006	Incorporate a planning context; make reference to the JD Task Force and indicate cooperative efforts with communities will be performed during the selection process.
COUN (14100)	O'KEEFFE, CAROL	Approved 07/13/2006	

FINAL APPROVALS	
OFFICE	NAME/ACTION
GM	Approved for by GMGR CEO on 07/13/2006
BOARD	Approved w/ Comments for by BOARD WMATA on 07/21/2006

SUPPORTING DOCUMENTATION	
DESCRIPTION	FILE

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004863

Washington Metropolitan Area Transit Authority

METRO ELECTRONIC ACTION DOCUMENT

NARRATIVE

Improvements to the Joint Development Process and Revenue-Generating Elements

In FY 2006, the Board recognized that Joint Development needed a better planning framework and provided resources and direction toward that end. Joint Development has collaborated with BPPD to establish complementary work programs that integrate the local jurisdictions master plan and zoning requirements with WMATA facilities replacement and station access guidelines to provide potential partners a more accurate and complete description of the development potential of the sites offered in solicitations.

The General Manager has established a Joint Development Task Force which will begin soon to review the Joint Development Work Program, guidelines and business operations and make recommendations for improving the program. That work should be completed by December 2006-January 2007.

The properties selected for this year¿s solicitation package were done so based on near term marketability, private sector interest and the support of the local jurisdictions for their development. A consultant was used to analyze the market, zoning, site constraints and other factors that predict a site¿s market and development potential. Based on selection standards developed by staff in Joint Development with their consultant, all available sites were ranked and categorized by level of private sector interest, amount of required public intervention and stakeholder support and/or other constraints. The lists of potential sites were sent to the local jurisdictions for comments. Comments from local government representatives (elected representatives and staff) were also sought. This process resulted in the list of sites presented in the FY 2007 Work Program.

Changes to the property selection and developer solicitation processes are already underway for next year¿s offering. These changes make the process more transparent; solicit more input from the local community prior to finalizing the solicitation package in order that the community¿s vision for the properties can be clearly conveyed to potential developers; in conjunction with BPPD, Joint Development takes a more active role in local planning exercises for areas involving station properties and in local zoning and development legislation that may affect WMATA properties values and/or use.

The FY 2007 Work Program reflects the requirements of the Revised Joint Development Policies and Guidelines, approved and adopted by the Board on February 21, 2002. The annual work program describes the joint development activities which will be undertaken in the upcoming fiscal year.

The sites to be offered for development in FY 2007 are classified as Level 1 (significant private sector interest; no public intervention required) or Level 2 (private sector interest but stakeholder or other constraints; or stakeholder support but weak private sector interest).

Sites Recommended for Solicitation by Jurisdictions

The following sites which have been approved by the local jurisdictions will be offered for development in FY 2007:

DISTRICT OF COLUMBIA (3 sites)

Navy Yard Chiller Plant

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004864

Navy Yard East Entrance
Shaw-Howard University (3 parcels)

MARYLAND ¿ PRINCE GEORGE¿S COUNTY (1 site)

Capitol Heights

VIRGINIA ¿ FAIRFAX COUNTY (1 site)

Backlick Road

VIRGINIA ¿ CITY OF ALEXANDRIA (1 site)

Royal Street Bus Garage

A solicitation for the Shaw-Howard University parcels may be released mid-year after the litigation affecting these parcels is resolved. The timing of the Royal Street Bus Garage solicitation will be determined in collaboration with the Mayor of the City of Alexandria. Additional prospective sites in Arlington County, Virginia, the City of Alexandria, Virginia, the City of Rockville, Maryland, Montgomery County, Maryland and Prince George¿s County, Maryland are undergoing additional study and planning efforts by the respective jurisdictions and will not be offered in FY 2007.

FINANCIAL IMPACT

Discounted cash value to WMATA for projects that were closed and for which term sheets and agreements were executed in FY 2006 is approximately $80 million over the term of the agreements. The total value of the development projects is estimated to exceed $775 million. Project revenues for FY 2006 are expected to exceed the budget projection of $9.6 million. Consistent with the FY 2007 Budget, the Joint Development Program is projected to generate $20.7 million in sales, guaranteed ground rent and connection fees in FY 2007.

RECOMMENDATION

Staff recommends that the Real Estate Committee and the Board approve the FY 2007 Joint Development Work Program. Upon approval, a solicitation document will be widely disseminated in an effort to generate transit oriented development proposals for the offered sites.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004865

Metallic Turnout 12/07

Date: 12/17/07
Project Number:
Client: Maddie Turay Co.
Project Name: Renaissance Row
SORG
ARCHITECTS
Contents: WMATA Interview Presentation
Notes:
2000 S Street N.W Washington, DC 20009 (T) 202.393.6445 (F) 202.393.6497

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Monday, July 21, 2008, @ 6:30 P.M.**
Office of Zoning Hearing Room
~~441 4th Street, N.W., Suite 220 South~~
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Case No. 07-31 (Application of Joseph C. Young, Ralph Higgs, Jr. & 717 -721 T Street, N.W. – Map Amendment @ Square 416)

THIS CASE IS OF INTEREST TO ANC 1B

On November 20, 2007, the Office of Zoning received an application from Joseph C. Young, Ralph Higgs, Jr. & 717 -721 T Street, N.W. (the "Applicants") for a map amendment. The Office of Planning provided its report on February 29, 2008, and the case was set down for hearing on March 10, 2008.

The property that is the subject of this application is located at 715 through 727 T Street, N.W. and consists of Lots 24, 25, 26, 27, 801, 821 and 822 in Square 416 ("Subject Property"). The Subject Property has a land area of approximately 3,420 square feet and is zoned R-4. Square 416 is bounded by 8th Street to the west, Florida Avenue to the north, 7th Street to the east, and T Street to the south, in Northwest Washington, D.C.

The Zoning Commission will consider amending the Zoning Map to rezone the Subject Property from R-4 Zone district to the C-2-B Zone District, or alternatively the C-2-A Zone District, and include it in the Uptown Arts Overlay District.

The C-2-B and C-2-A Zone Districts are designated to serve commercial and residential functions, to provide for shopping and business needs, housing and mixed uses for large segments of the District of Columbia outside of the central core. C-2-B Zone Districts is intended to include high-density residential and mixed uses. The C-2-B District shall be located on arterial streets, in uptown centers, and at rapid transit stops, to a maximum FAR of 3.5 and a maximum height of sixty-five feet. The C-2-A District is intended to include development of medium proportions. The Uptown Arts Overlay permits bonus density for space devoted to certain preferred uses, up to 4.5 FAR in the underlying C-2-B District, and 3.0 FAR in the C-2-A District.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR § 3022.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than fourteen (14) days prior to the date set for the hearing, a written statement containing the following information:**

(a) The person's name, address, and daytime telephone number;
(b) A request to appear and participate as a party;
(c) Whether the person will appear as a proponent or opponent of the application;
(d) Whether the person will appear through legal counsel, and if so, the name and address of legal counsel;
(e) A list of witnesses who will testify on the person's behalf;
(f) A summary of the testimony of each witness;
(g) An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts;
(h) The total amount of time being requested to present their case; and
(i) A written statement setting forth why the person should be granted party status, including reference to the following:
    (1) The property owned or occupied by the person, or in which the person has an interest, that will be affected by the action requested of the Commission;
    (2) The legal interest the person has in said property, such as owner, tenant, trustee, or mortgagee;
    (3) The distance between the person's property and the property that is the subject of the application before the Commission;

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004869

(4) The economic, social, or other impacts likely to affect the person and/or the person's property if the action requested of the Commission is approved or denied; and

(5) An explanation of how the person's interest as identified in response to paragraph (4) would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.

The applicant shall also provide the information indicated in (e) through (h) to the extent that the information is not contained in the Applicant's prehearing submission as required by 11 DCMR § 3013.1. The information shall be filed no later than fourteen (14) days before the date of the hearing.

If an affected Advisory Neighborhood Commission (ANC) intends to participate at the hearing, the ANC shall submit the written report described in § 3012.5 no later than seven (7) days before the date of the hearing. The report shall also contain the information indicated in (e) through (h) above.

Time limits.

The following time limits for oral testimony shall be adhered to unless changed by the Commission, and no time may be ceded:

1.	Applicant and parties in support	60 minutes collectively
2.	Parties in opposition	15 minutes each (60 minutes collectively)
3.	Organizations	5 minutes each
4.	Individuals	3 minutes each

Information responsive to this notice should be forwarded to the Director, Office of Zoning, Suite 210, 441 4th Street, N.W., Washington, D.C. 20001. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, GREGORY N. JEFFRIES, CURTIS L. ETHERLY, JR., PETER G. MAY, AND MICHAEL G. TURNBULL, ---------- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JERRILY R. KRESS, FAIA, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004870

December 4, 2007

Moddie Turay, President
Moddie Turay Company, LLC
2500 Q Street., NW Suite 338
Washington, DC 20007

Re: Shaw-Howard Florida Avenue Joint Development Site

Dear Mr. Turay:

Thank you for the submission of your proposal for the above-referenced 2007 Joint Development Solicitation (JDS) site.

The purpose of this letter is to bring to your attention missing or incomplete items or items that require further discussion and clarification. We would like to schedule an oral presentation by your team on December 17, 2007 at 1 p.m. at WMATA headquarters and have attached instructions for the presentation. We ask that you provide 10 copies of the supplementary information requested in this letter not later than the presentation and preferably before so that we may first review it.

The following items need clarification, correction or completion:

Technical Information

What is the experience of the team in actually carrying out a residential development? This was not apparent from your proposal.

What is the contractual arrangement between Moddie Turay Company and Clark Enterpises? Has an agreement been worked out?

What, if any, zoning approvals or variances will you be seeking for Parcels 1 or 3?

Assess the market for rental apartments in the area now that conversions of condominium projects to rental product are occurring. Is the market becoming oversaturated with rentals and would you expect to experience difficulty in obtaining financing for your project.?

Do you have prospective tenants for the retail components of your project?

You appear to close the alley between 8th and 9th streets. Do you regard this as feasible? Can you obtain agreement from adjacent property owners?

Calculations of annual property, sales and any other taxes to the local jurisdiction are missing from your proposal. Please provide.

Economic Information

Note that your valuation of the site is considerably below WMATA's appraisal and needs to be increased substantially or your offer cannot be considered.

WMATA expects escalation in the sale or rent amount from today's values if closing is delayed beyond a year. Please indicate how you would satisfy this requirement.

Please be more precise about how you derived fair market value indicated as $6,496,200.

The pro forma rent, $279,000 annually does not seem to square with your statement that you will pay 8% of land value. Nor does escalation, stated as 2.5% annually , appear to take place in the pro forma.

Schedule: since rent does not start until stabilization, please indicate the outside date for stabilization.

WMATA also expects and receives participations in capital events and in cash flow (or, alternatively to cash flow, revaluation of the project in which rent values do not fall below the previous year). Please provide your proposal.

Is it expected that Clark Enterprises will provide the equity for this project? Do you have alternative equity sources?

Please submit the balance sheet that the proposal indicates will be provided under separate cover.

We look forward to your presentation and to further discussion on this project.

Sincerely,

Joel R. Washington, Director
Station Area Planning and Asset Management

Attachment

From: "Moddie Turay" <moddie@moddieturay.com>
To: "'Rosalyn Doggett'" <rdoggett@wmata.com>
Date: 1/24/2008 4:45:04 PM
Subject: Shaw/Howard Metro RFP

Rosalyn,

I hope all is well. After our last conversation before the holiday I inadvertently thought I sent you the below response in regards to some of the major points of our conversation that I wanted to touch on further.

We continue to be excited about the opportunity to create a world-class mixed-use project along Florida Avenue. This project has the personal attention of Jim Clark (Chairman of the board and CEO) and other senior Clark executives. They, as I do, consider this a great opportunity to create a dynamic destination project with an exciting mix of retailers and distinctive architecture in a historic and emerging neighborhood. We feel our retail mix will strike the right balance between local and national retailers which will create the ultimate walking and shopping experience.

Our team has been in further consultation with our zoning attorney, Allison Prince, at Pillsbury Winthrop Shaw Pittman LLP in regards to the alley closing. Given their recent analysis of the alley system, they are confident that at a minimum, our FAR would not change given the options available to us.

Most importantly, our financial offer to WMATA is not contingent on the closing of the alley. This is because the two lots under our control adjacent to the WMATA parcel at 9th & U allow us to maximize the 4.5 FAR given the combined development footprint.

We would love to sit down with you again to further discuss our proposal at your convenience. Thank you again and please let me know if you have any additional questions.

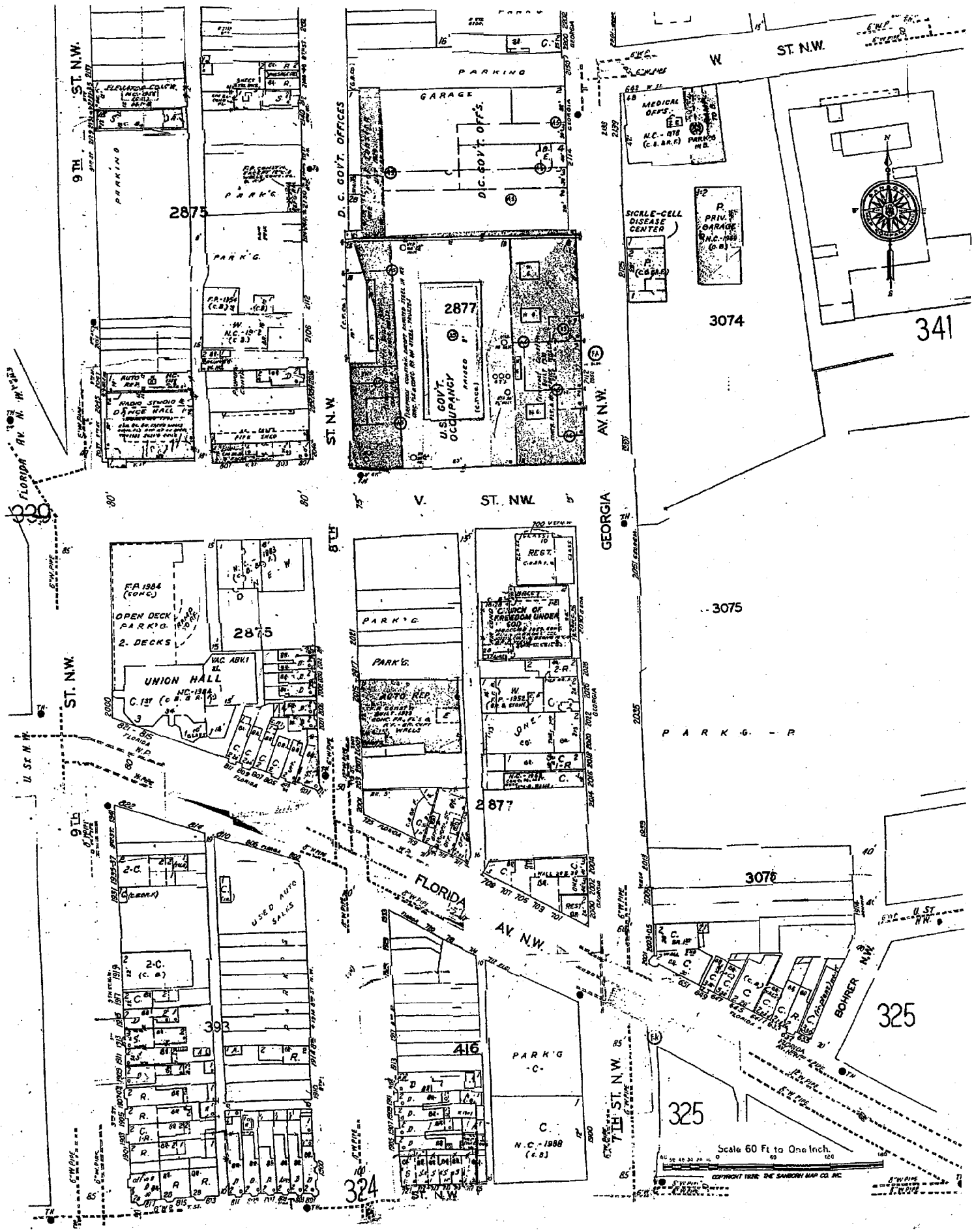
Best wishes,

Moddie Turay

Cc: Rebecca Owen (Clark Enterprise Inc.)

No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.5.516 / Virus Database: 269.19.10/1241 - Release Date: 1/24/2008 9:58 AM

CC: <jwashington@wamta.com>, <rowen@clarkus.com>



FOIA CONFIEDENTIAL TREATMENT REQUESTED

MTC
Moddie Turay Company

December 17, 2007

Mr. Joel R. Washington, Director
Station Area Planning and Asset Manager
Washington Area Metropolitan Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Re: SHAW-HOWARD FLORIDA AVENUE JOINT DEVELOPMENT SITE

Dear Mr. Washington:

Thank you for reviewing my proposal. I hope the following responses address your questions and provide clarifications on our proposal.

I. Technical Information

1. What is the experience of the team in actually carrying out a residential development? This was not apparent from your proposal.

Our development team has significant residential development experience in the Washington DC Metropolitan Area and nationwide. Clark's portfolio of projects includes some of the most prominent in the market and reflects the company's extensive knowledge of the residential real estate industry. Clark has acted as the developer and co-developer in numerous joint ventures with qualified development partners, such as Moddie Turay Company, LLC (MTC). Clark has decided to form an ongoing strategic partnership with MTC based on MTC's principal's significant experience in managerial roles, while at Western Development Corporation, on some of the most complex mixed-use projects in the Washington DC Metropolitan Area.

MTC also has significant experience working with District officials and community members. Clark offers unparalleled resources to meet the needs of any joint venture. Clark has, in-house and at the ready disposal of our development team, substantial expertise to bring to every phase of the development process. Further, Clark is not only the largest, private general contractor in the United States, but also one of the largest residential developers in the Washington Metropolitan Area. In the past seven years, Clark has developed (or has under development) more than $6 billion of real estate, including numerous large-scale residential real estate developments. Clark will provide the equity for the project and act as the co-developer and general contractor in the joint venture with MTC, providing all of the necessary development services needed to create a world-class mixed-use project along Florida Avenue.

Below are some examples of our most recent residential projects:

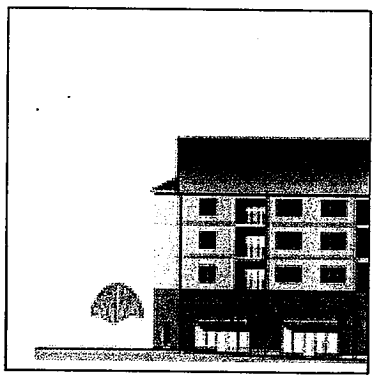
Moddie Turay Company
moddie@moddieturay.com
3222 M St., NW, Suite 140
Washington, DC 20007
(P): 202.413.4160
(F): 202.342.1458

FOIA CONFIEDENTIAL TREATMENT REQUESTED

MTC
Moddie Turay Company

Fort Totten Park Apartments
308-Unit, Transit-Oriented Development

Phase I at Fort Totten is a joint-development project with Clark and Washington Metropolitan Area Transit Authority (WMATA). This 308-unit luxury apartment community is located directly adjacent to Fort Totten Metro transit station. The four- story buildings feature hardi-plank "Italianate train station" architecture, garage and surface parking, and 5,000 square feet of retail. Residences have a variety of features, including private terraces or balconies, washer/dryers, and loft-style studios. Community amenities include a swimming pool, a fitness center, a room for parties and event, and a lounge.



Address: Galloway and Third ST, NE WDC
Architect: Burt Hill Kosar Rittelmann Associates
Completion: December 2007
Clark's Role: Developer, Manager

3883 Connecticut Avenue:
Nine-Story, 157-Unit Class A Apartment Community

3883 Connecticut Avenue is a luxury, nine-story apartment community offering 157 homes with state-of-the-art amenities in the upper northwest section of Washington, DC, in the desirable Cleveland Park neighborhood. The apartment are pre-wired for high-speed Internet access in each kitchen, living room, bedroom, and den, and they will also offer multiple phone lines and cable television jacks. Interior amenities include full-size washers/dryers, dishwashers, granite kitchen countertops, ceramic title entry foyers, and optional soaker tubs. Recreational amenities include a rooftop pool, fully-equipped fitness center, business center, and multipurpose room. The building also features a grand lobby, 24-hour doorman, and concierge service. Parking is provided in three-level underground garage.

Address: 3883 Connecticut Avenue, WDC
Architect: Weihe Partnership
Completion: August 2002
Clark's Role: Owner, Developer, General Contractor, Property Manager

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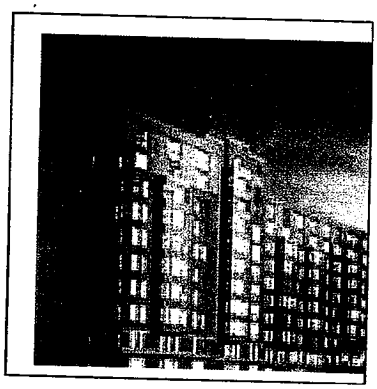
FOIA CONFIEDENTIAL TREATMENT REQUESTED

MTC
Moddie Turay Company

The Clarendon
292 Luxury Apartment Units

The Clarendon is a unique 292-unit luxury community incorporating unusual architectural features, as it integrates a 12-Story tower with a four-story building and has a public street passing through its center.

The Clarendon offer more than 60 distinct floor plans, including industrial-style loft units. Select apartments offer balconies, private terraces, oversized windows, French doors, sliding glass doors, fireplaces, and granite kitchen countertops. In addition, each apartment is pre-wired for high-speed internet access and satellite television. Community amenities include a courtyard pool with sundeck, underground parking, a business center, 24-hour fitness center, and concierge services.



Address: 1200 N. Herndon Street, Arlington, VA
Architect: Torti Gallas and Partners
Completion: March 2005
Clark's Role: Owner, Developer, General Contractor, Property Manager

2. **What is the contractual arrangement between Moddie Turay Company and Clark Enterprises? Has an agreement been worked out?**

   Clark and the Moddie Turay Company have formed a joint venture under the legal entity, Renaissance Row LLC, and are currently in the final stages of negotiating the joint venture terms. An agreement is expected to be signed by the end of December. The arrangement provides that Clark will fund 100% of the total equity for the project. Clark and Moddie Turay Company will jointly develop the project and will use resources of both companies.

3. **What, if any, zoning approvals or variances will you be seeking Parcels 1 or 3?**

   We are confident that we can build what we have presented based on our preliminary evaluation of the current zoning. However, as we proceed with the entitlement process and as our project is refined, we may determine that may require a variance. At this time, we do not anticipate needing a variance. However, if we are selected, we will remain in consultation with our land use counsel.

4. **Assess the market for rental apartments in the area now the conversions of condominium projects to rental product are occurring. Is the market becoming oversaturated with rentals and would you expect to experience difficulty in obtaining financing for your project?**

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

MTC
Moddie Turay Company

Apartment vacancy in the District of Columbia is forecasted at 3.1% with effective rent increasing 5% from last year. Clark is the owner of over 5,000 apartment units in the Washington Metropolitan Area. We feel the Shaw neighborhood is a growth area that can sustain the current in flux of condominium conversions and speaks directly to our long term investment strategy to acquire, develop and own high quality, well-located real estate opportunities in the Washington Metropolitan area. Since its inception in 1972, Clark has become one of the nation's largest privately held companies and based on Clark's track record, we do not anticipate difficulties in obtaining financing for Renaissance Row with any number of Clark's long term banking relationships. *See the attached letter from Maury Zanoff, CBRE, which confirms our ability to obtain financing.*

5. **Do you have prospective tenants for retail components of your project?**

Renaissance Row, LLC provided letters of interest from prospective tenants in our proposal, and we have re-attached them to this response for your review. The following are local retailers we believe will greatly contribute to our vision of creating a first class mixed use project with a neighborhood feel that will speak to the past present and future Shaw neighborhood.

Tryst: We have a letter of interest from the owner, Constantine Stavropoulos, of Tryst Coffeehouse, Open City restaurant, and the Diner. All three of his establishments are wildly successful neighborhood and DC staples. Constantine is extremely excited about creating what he calls "neighborhood gathering places" at Renaissance Row.

Yes! Organic Market: Yes! Organic Grocery has six locations in Washington DC and considers the Shaw neighborhood a key area for its growth. An organic grocery such as Yes! is a great addition to the retail mix and will further promote a neighborhood feel. The concept for this location will be relatively similar to Dean & Deluca in Georgetown with wine and spirits, prepared foods and outdoor seating that will help activate the streetscape.

Hank's Oyster Bar: With locations in Dupont Circle and Old Town Alexandria, Hank's is a well-established neighborhood restaurant with a strong following and great food. The owner, Jamie Leeds, established her reputation for serving creative American comfort foods at 15 Ria and continues her artistry with New England style beach fare.

Art Vines: Art Vines is a new Art Gallery/Lounge Bar concept scheduled to open in downtown on 7th St NW in the spring of 2008. This venue would be a home run for the 24/7 environment we want to create at Renaissance Row and will promote local artists and serve as a gathering place for both wine and art enthusiasts.

6. **You appear to close the alley between 8th and 9th streets. Do you regard this as feasible? Can you obtain agreement from adjacent property owners?**

Yes, we do regard this as feasible. It is called for in the Duke Ellington Plan and thus supported by the regulatory agencies. We also believe we can obtain agreements from the adjacent property owners. Also, as an alternative strategy, we could re-configure the site plan to create an alley throughput to transverse the WMATA property if alley access is necessary.

7. **Calculations of annual property, sales and any other taxes to the local jurisdiction are missing from your proposal.**

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

The calculations of annual property, sales and any other taxes to the local jurisdictions are included as an attachment.

II. Economic Information

1. **Note that your valuation of the site is considerably below WMATA's appraisal and needs to be increased substantially or your offer cannot be considered.**

   Please see the answer to question number 3.

2. **WMATA expects escalation in the sale or rent amount from today's values if closing is delayed beyond a year. Please indicate how you would satisfy this requirement.**

   In the scenario of an out-right sale, we propose that the land value escalate 2.5% annually until closing. In the scenario of a ground lease, we propose that the land value escalate 2.0% until stabilization.

3. **Please be more precise about how you derived fair market value indicated as $6,496,200.**

   The land market has significantly changed since the condo run up of values in 2005 and the credit crunch during the past year. Accordingly, we value the WMATA land at $50 per FAR SF. We arrived at this number by analyzing comparable land sales in the surrounding neighborhood and adjusting to account for the market differences in the Shaw neighborhood as compared to the more mature U Street area. An example is set forth below:

   a. 2400 14th Street – located at 14th and Florida near the 14th and U ST market. The land traded to Level 2 Development on 3/7/2006 for $13,270,000 or $55 per FAR SF. Rental rates are $2.90-3.00 per SF in the 14th and U ST market. We are projecting slightly lower rents for the WMATA site of $2.65 per SF based on market information. As such, the land should be valued at less than $55 per FAR SF.

   The land is zoned Arts Overlay/C-2-B. With the Arts Overlay, we can build up to a 4.5 FAR. This results in a fair market value of $6,496,200 at $50 per FAR SF. Should we decide to pursue a Planned Unit Development, the FAR will increase up to 6.0. Accordingly, this results in an increased fair market value of $8,661,600 at $50 per FAR SF.

   If we purchase the land out-right from WMATA, we are prepared to pay $6,496,200 upon closing and up to an additional $2,165,400 upon rezoning for a total of $8,661,600.

   If WMATA would prefer a ground lease, we are prepared to value the land up to an above-market number of $65 per FAR SF with 2.0% annual escalations until stabilization. This equates to a fair market value of $8,445,060 by-right and up to $11,260,080 if we pursue a Planned Unit Development.

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MTC
Moddie Turay Company

4. **The pro forma rent, $279,000 annually does not seem to square with your statement that you will pay 8% of land value. Nor does escalation, stated as 2.5% annually, appear to take place in the pro forma.**

   The pro forma has been adjusted to reflect the ground rent based upon 8% of the land value (please find our pro forma attached). We are prepared to value the land up to an above-market number of $65 per FAR SF with 2.0% annual escalations until stabilization, projected to be December 2011. In this scenario, the ground lease payment would be $716,957 annually. Thereafter, the fair market value will be adjusted every 10 years to appraised value using the "three appraiser method."

5. **Schedule: since rent does not start until stabilization, please indicate the outside date for stabilization.**

   Based on positive market indicators and our past positive experiences with WMATA, we anticipate the project will be stabilized by December 2011. The fair market value of the land will be escalated by 2.0% annually until stabilization. In the event the project is not stabilized by December 2012, we will pay WMATA one-half of the stabilized ground rental amount due and owing to WMATA as set forth above (payable monthly beginning in December 2012). The land value will continue to escalate by 2.0% annually until stabilization is reached.

6. **WMATA also expects and receives participations in capital events and in cash flow (or, alternatively to cash flow, revaluation of the project in which rent values do not fall below the previous year). Please provide in your proposal.**

   We propose that WMATA receives participations in the amount of 3% of ~~gross~~ net proceeds upon certain "capital events" to be further defined. We do not propose that WMATA receive a participation in operating cash flow; however, as noted above, we have increased the fair market value of the land resulting in substantially larger ground lease payment.

7. **Is it expected that Clark Enterprises will provide the equity for this project? Do you have alternative equity sources?**

   Yes, Clark Enterprises or an affiliate thereof will provide the equity for this project. At this time, we do not anticipate other equity sources will be necessary.

8. **Please submit the balance sheet that the proposal indicates will be provided under separate cover.**

   Please see the attached statement of net worth from Clark Enterprises, Inc.

Thank you for your consideration and allowing me to give a presentation of our proposal.

Sincerely,

Moddie Turay

Moddie Turay Company
moddie@moddieturay.com

3222 M St., NW, Suite 140
Washington, DC 20007

(P): 202.413.4160
(F): 202.342.1458

MTC
Moddie Turay Company

Attachments:

a. CBRE Letter
b. Fiscal Impact Calculations
c. Statement of Net Worth
d. Pro forma

Moddie Turay Company
moddie@moddieturay.com

3222 M St., NW, Suite 140
Washington, DC 20007

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COMMERCIAL REAL ESTATE SERVICES

CBRE
CB RICHARD ELLIS

Maury E. Zanoff
Managing Director

CB Richard Ellis, Inc.
Capital Markets

750 9th Street, NW
Suite 900
Washington, DC 20001-4516

202 585 5645 Tel
202 585 5786 Fax

maury.zanoff@cbre.com
www.cbre.com/capitalmarkets

December 11, 2007

King Davidson
Development Associate
Clark Enterprises, Inc.
7500 Old Georgetown Road, 15th Floor
Bethesda, MD 20814

Re: Clark Enterprises

To whom it may concern:

Based upon Clark Enterprises' excellent credit and reputation in the lending community, we feel confident that they should not have difficulty in obtaining financing for their Renaissance Row apartment project located at 9th Street and Florida Avenue in Washington, DC.

Sincerely,

Maury E. Zanoff
Managing Director
CBRE Capital Markets

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Renaissance Row
Summary of Estimated Economic and Fiscal Impacts
CONSTRUCTION PERIOD

Economic Impacts	Direct	Indirect	Totals
Jobs (FTE)	170	148	318
Payroll	$ 5,089,684	$ 3,928,218	$ 9,017,901

Fiscal Impact to the District	
Income Tax (Direct)	$ 358,823
Income Tax (Indirect)	$ 282,313
Direct Sales Tax	$ 1,786,207
TOTAL	$ 2,427,342

Project Cost	$ 43,566,016

Estimated Income Taxes (Direct and Indirect Labor)

Type of Labor	Construction Value	Labor Hours per $1,000	Total Hours	Total FTE Jobs	Annual Earning/FTE	Direct Income Taxes
Direct Construction	$ 43,566,016	8	352,885	170	$ 5,089,684	######## #########

Type of Labor	Total Annual Earnings	Earnings Multiplier	Indirect Earnings Impact	Total Earnings Impact	Indirect Income Taxes
Indirect Construction	$ 5,089,684	1.7718	########## ###	$ 9,017,901	######## #########

Output Type	Total FTE Jobs	Employment Multiplier	Indirect Employment Impact	Total Employment Impact
Construction Labor	170	1.8728	148	318

Total Economic Impact

Output	Output Multiplier	Indirect and Induced Economic Impact	Total Economic Impact
$ 43,566,016	1.6929	$ 30,186,892	$ 73,752,908

Material Purchases

Type of Purchases	Per $1,000 Construction Cost	Expenditure
Regionally Purchased	$ 305	$ 13,287,635
Purchased Out of Region	$ 105	$ 4,574,432
Total Material Purchase		$ 17,862,067

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Renaissance Row
Summary of Estimated Economic and Fiscal Impacts
OPERATIONS PERIOD

FISCAL IMPACT TO THE DISTRICT	ANNUAL	20 YEAR TOTAL
Direct Sales Tax	$ 830,539	$ 23,487,372
Income Tax	$ 158,983	$ 4,495,990
Property Tax	$ 299,617	$ 8,473,073
TOTAL	$ 1,289,139	$ 36,456,435

SALES TAXES

Type	Gross Square Feet	Est. Sales per SF	Est. Annual Sales	Tax Rate	Est. Annual Sales Taxes	20 Year Total
General Retail/Entertainment	10,000	$ 350	$ 3,500,000	5.75%	$ 201,250	$ 5,691,286
Restaurant	10,000	$ 500	$ 5,000,000	10.00%	$ 500,000	$ 14,139,841
Grocery	7,495	$ 300	$ 2,248,500	5.75%	$ 129,289	$ 3,656,245
TOTAL	27,495		$ 10,748,500		$ 830,539	$ 23,487,372

INCOME TAXES

Employees (FTE)	Gross Square Feet	FTE per SF	No. of FTE	Annual Wages	Annual Tax Revenue	20 Year Total
General Retail/Entertainment	10,000	350	29	714,286	$ 51,857	$ 1,466,503
Restaurant	10,000	350	29	714,286	$ 51,857	$ 1,466,503
Grocery	7,495	350	21	535,357	$ 38,867	$ 1,099,144
TOTAL	27,495	350	79	1,963,929	$ 142,581	$ 4,032,151

Employees (FTE)	Percent	FTE per SF	No. of FTE	Annual Wages	Annual Tax Revenue	20 Year Total
Maintenance	60%	1000	3	109,200	$ 11,204	$ 316,843
Security	40%	1000	2	72,800	$ 5,198	$ 146,996
TOTAL			5	182,000	$ 16,402	$ 463,839

REAL ESTATE TAXES

Type	Assessed Value	Tax Rate	Annual RE Taxes	20 Year Total
Residential	$ 23,687,573	0.85	$ 201,344	$ 5,693,955
Retail	$ 5,312,034	1.85	$ 98,273	$ 2,779,119
Total	$ 28,999,607		$ 299,617	$ 8,473,073

CLARK ENTERPRISES, INC.

December 12, 2007

PERSONAL & CONFIDENTIAL

Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington DC 20001
Attention: Joel R. Washington

Re: Clark Enterprises, Inc. Certification of Minimum Net Worth

Dear Mr. Washington,

Enclosed is a certification of Minimum Net Worth for Clark Enterprises, Inc. as of June 30, 2007.

These statements are confidential, corporate information. They are to be used only by you and are not to be distributed unless prior, written notice is given to myself and/or Clark Enterprises, Inc., and Clark Enterprises, Inc. has had an opportunity to object to such distribution in appropriate proceedings. Please note that within the Clark organization, this information is to be discussed only with Rebecca Owen, Larry Nussdorf or myself. Please let me if you have any questions regarding this statement.

Sincerely,
Clark Enterprises, Inc.

Dawn H. Silva
Assistant Vice President

Enclosures
cc: Rebecca Owen

7500 Old Georgetown Road · 15th Floor · Bethesda, Maryland 20814-6195
T: 301-657-7100 · F: 301-657-7263 · www.clarkenterprisesinc.com

CLARK

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Clark Enterprises, Inc.

This statement is provided to WMATA to certify that Minimum Net Worth of Clark Enterprises, Inc. as of June 30, 2007 was a minimum of $75,000.000.

By: Dawn H. Silva

Date: 12/12/07

Dawn H. Silva
Assistant Vice-President of Clark Enterprises, Inc.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

F. Summary Table
Sources and Uses
9/18/2007
Ground Lease Scenario

Sources and Uses

Sources of Funds:		Total
Equity	25.0%	10,891,504
Debt	75.0%	32,674,512
	100.0%	$ 43,566,016

Uses of Funds	Per Unit	Total
Land	$ 9,260	$ 1,496,570
Net GMP/HC Cont.	$ 174,537	$ 28,208,283
Soft Costs	$ 54,905	$ 8,873,592
Development Fee	$ 10,412	$ 1,682,778
Pre Devel Rent	$ 2,475	$ 400,000
Financing Costs	$ 2,022	$ 326,745
Interest Expense	$ 15,951	$ 2,578,048
	$ 269,562	$ 43,566,016

WMATA-INV 004887

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA Sources and Uses Assumptions Backup
9/18/2007
Ground Lease Scenario

Basic Assumptions

Number of Units	
Units	130
Total	130
GSF Per Unit	1,009
NSF as a % of GSF	80%
Average Net Sq. Ft. per Unit	807
Residential - Net Rentable Sq. Ft.	104,936
Retail - Net Rentable Sq. Ft.	26,282

Financing Assumptions

Construction Loan:	
Loan Amount	32,674,512
LTC/Amount	75.0%
Initial Base Rate	7.00%
Permanent Loan (2012):	
Start Month	Month 25
Cap Rate Used	6.50%
Project Value	$43,756,604
Loan to Value	69.59%
Rate	6.75%
Amortization	30 Years
Loan Amount	$30,452,209
Monthly Payment	$197,512
Annual Debt Service	$2,370,149
Stabilized NOI for Perm Loan (2013)	$2,844,179
DSCR	1.20
Closing Costs/Fees	1.0%
Refinancing (2021):	
Start Month	Month 144
Cap Rate Used	7.00%
Project Value	$63,543,119
Loan to Value	70.14%
Rate	7.00%
Amortization	30 Years
Loan Amount	$44,571,388
Monthly Payment	$296,535
Annual Debt Service	$3,558,415
Stabilized NOI for Perm Loan (2022)	$4,448,018
DSCR	1.25
Closing Costs/Fees	1.0%
Ground Lease (WMATA):	
Market Value (Escalated 3 years)	$ 8,961,965
Escalations	2.0%

Operating Assumptions

Revenue Assumptions:	
Apartments:	
Month Renting Begins	19
Rent Per Sq. Ft. (Current)	$2.65
Rent increase per year	3.0%
Prelease (Units preleased at delivery)	20
Absorption (Units Rented/Month)	16
Multifamily Rental Vacancy	5.13%
Parking:	
Month Parking Space Sales Begin	19
Parking Revenues/Space (Current)	$150
Number of Spaces	62
Absorption (Leased/Month)	10
Retail:	
Retail Annual NNN Rent (Current)	$50.00
Retail rent increase per year	2.0%
Absorption	6,000
Retail Vacancy	5.00%
Expense Assumptions:	
Gross Operating Expenses	$ 11,562
Deduct for Retail Tenant Contribution	$ -
Net Operating Cost per Unit Per Year (Current)	$ 11,562
Fixed vs. Variable Expenses	50%
Phased-in Fixed Expenses	40%
Operating Cost Increase per Year	3.0%
Reserves	$250 per unit

Residential Operating Expenses ($/unit)	
Payroll	$ 4,500.00
Marketing	$ 550.00
Administration	$ 140.00
Maintenance Contracts	$ -
R&M	$ 600.00
Utilities	$ 372.00
Taxes & Ins.	$ 3,500.00
CDA Assessment	$ -
Fees	$ 1,500.00
Total	**11,562.00**
Retail Reimbursements	-
Net Operating Cost/Unit/Year	**$11,562.00**

Sources and Uses

Sources of Funds:		
		Total
Equity	25.0%	10,891,504
Debt	75.0%	32,674,512
	100.0%	$43,566,016

Uses of Funds	Per Unit	Total
Land	$ 9,260	$ 1,496,570
Net GMP/HC Cont.	174,537	28,208,283
Soft Costs	54,905	8,873,592
Development Fee	10,412	1,682,778
Pre Devel Rent	2,475	400,000
Financing Costs	2,022	326,745
Interest Expense	15,951	2,578,048
	$ 269,562	$ 43,566,016

12/17/2007

WMATA-INV 004888

WMATA Sources and Uses Assumptions Backup
9/18/2007
Ground Lease Scenario

	Per Unit	Per GFA	Total
Land:	$ 9,260	$ 9.83	$ 1,496,570
Hard Costs:			
GMP	136,956	145.36	22,134,560
Escalations	24,652	26.16	3,984,221
Hard Cost Contingency	12,929	13.72	2,089,502
Soft Costs:			
Architecture & Engineering	8,080	8.58	1,305,939
Civil, Design and Submission Fees	1,237	1.31	200,000
Site Development Bonds, Fees and Permits	1,237	1.31	200,000
Dry Utility Relocation and New Service	6,514	6.91	1,052,750
Building Permit Fees	911	0.97	147,238
Furniture, Fixtures and Equipment	4,412	4.68	713,000
Predevelopment / Feasibility	3,886	4.12	628,098
Retail Commissions	4,065	4.31	657,050
Retail Tenant Improvement Allowance	12,196	12.94	1,971,150
Monetary Proffers	-	-	-
Connection Fees	3,094	3.28	500,000
Marketing	3,094	3.28	500,000
Project Legal	1,921	2.04	310,500
Accounting	-	-	-
Builders Risk Insurance	541	0.57	87,360
Real Estate Taxes	223	0.24	36,120
Title Insurance & Other	3,492	3.71	564,386
Development Fee	10,412	11.05	1,682,778
Financing Costs	2,022	2.15	326,745
Ground Lease Payments ($10,000 per month)	2,475	2.63	400,000
Interest Expense	15,951	16.93	2,578,048
Total	$ 269,562	$ 286.10	$ 43,566,016

	Units	Gross Floor Area	Net Rentable Square Feet
Residential Units	130	122,484	104,936
Retail		29,790	26,282
		152,274	131,218

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004889

G. WMATA Assumptions
9/18/2007
Ground Lease Scenario

Financing

Construction Loan	
Loan Rate	7.00%
Term	24 months
Amount	$32,674,512
LTC	75%
% Equity	25%
Permanent Loan	
Loan Rate	6.75%
Term	120 months
Amount	$30,452,209
LTV	69.59%

Revenues

Office Rent	N/A	
Retail Rent (current)	$ 50.00	RSF
Residential Rent (current)	$ 2.65	RSF
Parking	$ 150.00	per space
Other Revenues	$ -	

Construction Costs

Total Hard Costs	$28,206,283	
Total Soft Costs	$13,861,163	
% of Hard Costs	49%	
Cost of Improvements	$ 260,302	per residential unit
Costs of Improvements	$ 276.27	per Retail RSF
Cost per structured space	$ 40,300	
Cost per surface space	$ 4,030	
Land Value per FAR SF (current)	$ 65.00	of Land Value (annually)
Ground Rent to WMATA	8.00%	

Operating Costs

Operating Expenses (current)	$ 1,503,060	
Per GSF	$ 9.87	
Precentage of Revenue	32%	

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

15 Year Cash Flow
Ground Lease Scenario

Year	ALL YEARS TOTAL	1 2007	2 2008	3 2009	4 2010	5 2011	6 2012	7 2013	8 2014	9 2015	10 2016	11 2017	12 2018	13 2019	14 2020	15 2021
Available Units at BOP					130	130	14	-	-	-	-	-	-	-	-	-
Total Units Rented					-	116	14	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP					130	14	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented					-	116	130	130	130	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP					62	62	2	-	-	-	-	-	-	-	-	-
Total Rented in Period					-	60	2	-	-	-	-	-	-	-	-	-
Remaining to Remt at EOP					62	2	-	-	-	-	-	-	-	-	-	-
-Cumulative Spaces Rented					-	60	62	62	62	62	62	62	62	62	62	62
Remaining Retail SF					26,282	26,282	-	-	-	-	-	-	-	-	-	-
Total SF Rented in Period					-	26,282	-	-	-	-	-	-	-	-	-	-
Remaining to Remt at EOP					26,282	-	-	-	-	-	-	-	-	-	-	-
Cumulative SF Rented					-	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Average Residential Rent/SF		$ 2.65	$ 2.73	$ 2.81	$ 2.90	$ 2.98	$ 3.07	$ 3.16	$ 3.26	$ 3.36	$ 3.46	$ 3.56	$ 3.67	$ 3.78	$ 3.89	$ 4.01
Average Retail Rent/SF		$ 50.00	$ 51.50	$ 53.05	$ 54.64	$ 56.28	$ 57.96	$ 59.70	$ 61.49	$ 63.34	$ 65.24	$ 67.20	$ 69.21	$ 71.29	$ 73.43	$ 75.63
Average Parking Rent/Space		$ 150.00	$ 154.50	$ 159.14	$ 163.91	$ 168.83	$ 173.89	$ 179.11	$ 184.48	$ 190.02	$ 195.72	$ 201.59	$ 207.64	$ 213.86	$ 220.28	$ 226.89
Construction Costs																
Land Costs																
WMATA Option Fee		$ 100,000														
1933-35 9th ST Purchase		$ 1,500,000														
Hard Costs:																
GMP					$ 14,756,373	$ 7,378,187										
Escalations					$ 2,656,147	1,328,074										
Hard Cost Contingency					$ 1,393,002	$ 696,501										
Soft Costs:																
Architecture & Engineering			$ 195,891	$ 195,891	$ 522,376	$ 391,782										
Civil, Design and Submission Fees					$ 200,000											
Site Development Bonds, Fees and Permits					$ 200,000											
Dry Utility Relocation and New Service					$ 1,052,750											
Building Permit Fees					$ 147,238											
Furniture, Fixtures and Equipment						$ 713,000										
Predevelopment / Feasibility			$ 314,049	$ 157,025	$ 157,025											
Retail Commissions						$ 657,050										
Retail Tenant Improvement Allowance						$ 1,971,150										
Connection Fees						$ 500,000										
Marketing					$ 100,000	$ 400,000										
Project Legal		$ 108,675	$ 31,050	$ 31,050	$ 31,050	$ 108,675										
Builders Risk Insurance					$ 43,680	$ 43,680										
Real Estate Taxes			$ 5,418	$ 5,418	$ 5,418	$ 19,866										
Title Insurance & Other			$ 564,386													
Development Fee			$ 252,417	$ 252,417	$ 913,748	$ 264,196										
Financing Costs					$ 326,745											
Ground Lease Payments ($10,000 per month)			$ 40,000	$ 120,000	$ 120,000	$ 120,000										
Interest Expense					$ 669,763	$ 1,908,286										
Total		$ 1,708,675	$ 1,403,211	$ 761,800	$ 23,295,315	$ 16,500,446										
NET REVENUES																
Rental Revenues	$ 51,346,810	-	-	-	-	1,122,778	3,921,364	4,039,005	4,160,175	4,284,981	4,413,530	4,545,936	4,682,314	4,822,783	4,967,467	5,116,491
Parking Revenues	$ 1,715,949	-	-	-	-	36,278	131,144	135,079	139,131	143,305	147,604	152,032	156,593	161,291	166,130	171,114
General MF Rental and Parking Vacancy Allowance	$ (2,662,660)	-	-	-	-	-	(207,894)	(214,131)	(220,554)	(227,171)	(233,986)	(241,006)	(248,236)	(255,683)	(263,354)	(271,254)
Retail Revenues	$ 17,608,101	-	-	-	-	497,724	1,422,424	1,450,873	1,479,890	1,509,488	1,539,678	1,570,471	1,601,881	1,633,918	1,633,918	1,633,918
General Retail Vacancy Allowance	$ (867,140)	-	-	-	-	(11,621)	(71,121)	(72,544)	(73,995)	(75,474)	(76,984)	(78,524)	(80,094)	(81,696)	(81,696)	(81,696)
Total Revenues	$ 67,141,060	-	-	-	-	1,645,160	5,195,918	5,338,282	5,484,647	5,635,128	5,789,842	5,948,910	6,112,458	6,280,614	6,422,465	6,568,573

WMATA-INV 004891

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Year		ALL YEARS TOTAL	1 2007	2 2008	3 2009	4 2010	5 2011	6 2012	7 2013	8 2014	9 2015	10 2016	11 2017	12 2018	13 2019	14 2020	15 2021
	Operating Expense/Unit/Year		-	-	-	-	(5,830)	(12,999)	(13,389)	(13,791)	(14,204)	(14,630)	(15,069)	(15,521)	(15,987)	(16,467)	(16,961)
	Operating Expenses	(22,401,463)	-	-	-	-	(757,945)	(1,689,871)	(1,740,567)	(1,792,784)	(1,846,567)	(1,901,964)	(1,959,023)	(2,017,794)	(2,078,328)	(2,140,678)	(2,204,898)
	Replacement Reserves	(485,617)	-	-	-	-	(30,766)	(35,514)	(36,579)	(37,676)	(38,807)	(39,971)	(41,170)	(42,405)	(43,677)	(44,988)	(46,337)
8.00%	Ground Lease - Howard	(7,459,159)	-	-	-	-	-	(119,493)	(716,957)	(716,957)	(716,957)	(716,957)	(716,957)	(716,957)	(716,957)	(716,957)	(730,041)
	NET RENTAL INCOME	$ 37,668,787	-	-	-	-	856,448	3,351,041	2,844,179	2,937,230	3,032,797	3,130,949	3,231,759	3,335,302	3,441,651	3,519,843	3,587,296
	REFINANCE CASH FLOW																
	Gross Loan Proceeds	$ 11,896,876	-	-	-	-	-	(2,222,303)	-	-	-	-	-	-	-	-	14,119,179
	Less- Cost of Refinance	$ 750,236	-	-	-	-	-	304,522	-	-	-	-	-	-	-	-	445,714
	Net Proceeds	$ 11,146,640	-	-	-	-	-	(2,526,825)	-	-	-	-	-	-	-	-	13,673,465
	DISPOSITION CASH FLOW																
	Gross Sale Price	$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Less: Cost of Sales	$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Net Proceeds	$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	EQUITY ACCOUNT																
	Beginning Balance		-	1,708,675	3,111,886	3,873,686	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
	Equity Infusion		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Equity Funding	$ 10,891,504	1,708,675	1,403,211	761,800	7,017,818	-	-	-	-	-	-	-	-	-	-	-
	Ending Balance (Profit)		1,708,675	3,111,886	3,873,686	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
	CONSTRUCTION DEBT																
	Beginning Balance		-	-	-	-	19,327,641	-	-	-	-	-	-	-	-	-	-
	Loan Draw	30,096,464	-	-	-	18,657,878	11,438,586	-	-	-	-	-	-	-	-	-	-
	Interest	2,578,048	-	-	-	669,763	1,908,286	-	-	-	-	-	-	-	-	-	-
	Principal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Total Amount Due to Loan		-	-	-	19,327,641	32,674,512	-	-	-	-	-	-	-	-	-	-
	PERMANENT DEBT																
	Beginning Balance		-	-	-	-	-	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209
	Monthly Payment		-	-	-	-	-	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524
3%	WMATA Participation on Capital Event Proceeds		-	-	-	-	-	-	-	-	-	-	-	-	-	-	410,204
	Cash Flow Available From Operations		-	-	-	-	856,448	3,351,041	2,844,179	2,937,230	3,032,797	3,130,949	3,231,759	3,335,302	3,441,651	3,519,843	3,587,296
	Cash Flow Available From Sale / Refinance		-	-	-	-	-	(2,526,825)	-	-	-	-	-	-	-	-	13,673,465
	Cash Flow Available After Debt Service		-	-	-	-	856,448	(1,231,309)	788,655	881,706	977,273	1,075,425	1,176,235	1,279,777	1,386,127	1,464,319	14,795,033
	EQUITY CASH FLOW																
	Contributions	$ 3,873,686	1,708,675	1,403,211	761,800	7,017,818	-	-	-	-	-	-	-	-	-	-	-
	Loan Paydown	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Refinance Cash Flow	13,673,465	-	-	-	-	-	-	-	-	-	-	-	-	-	-	13,673,465
	Disposition Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Operating Cash Flow	40,565,623	-	-	-	-	1,645,160	3,140,394	2,844,179	2,937,230	3,032,797	3,130,949	3,231,759	3,335,302	3,441,651	3,519,843	3,587,296
	Total	$ 62,319,316	(1,708,675)	(1,403,211)	(761,800)	(7,017,818)	1,645,160	3,140,394	2,844,179	2,937,230	3,032,797	3,130,949	3,231,759	3,335,302	3,441,651	3,519,843	17,260,761
	RETURN CALCULATIONS																
			$ (1,708,675)	$ (1,403,211)	$ (761,800)	$ (7,017,818)	$ 856,448	$ (1,231,309)	$ 788,655	$ 881,706	$ 977,273	$ 1,075,425	$ 1,176,235	$ 1,279,777	$ 1,386,127	$ 1,464,319	$ 20,503,503
	IRR (15 year)	9.89%															
	Return on Investment (ROI)		0%	0%	0%	0%	4%	0%	7%	7%	7%	7%	7%	8%	8%	8%	40%
	Avg 15 year ROI	8.79%															
	Return on Equity (ROE)		0%	0%	0%	0%	8%	-11%	7%	8%	9%	10%	11%	12%	13%	13%	158%
	Avg 15 year ROE	15.86%															

WMATA-INV 004892

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Fee, Income, Reserves Breakout
Ground Lease Scenario

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Developer Fee	$ -	$ 252,417	$ 913,748	$ 264,196	$ 264,196	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
*4% of Hard Costs (excluding land)															
Replacement Reserves	$ -	$ -	$ -	$ (30,766)	$ (35,514)	$ (36,579)	$ (37,676)	$ (38,807)	$ (39,971)	$ (41,170)	$ (42,405)	$ (43,677)	$ (44,988)	$ (46,337)	$ (47,727)
Per Dwelling Unit	$ -	$ -	$ -	$ (236.66)	$ (273.18)	$ (281.38)	$ (289.82)	$ (298.51)	$ (307.47)	$ (316.69)	$ (326.19)	$ (335.98)	$ (346.06)	$ (356.44)	$ (367.13)
Per GSF	$ -	$ -	$ -	$ (0.20)	$ (0.23)	$ (0.24)	$ (0.25)	$ (0.25)	$ (0.26)	$ (0.27)	$ (0.28)	$ (0.29)	$ (0.30)	$ (0.30)	$ (0.31)
Cash Flow After Debt Service Available to Partners	$ -	$ -	$ -	$ -	$ 856,448	$(1,231,309)	$ 788,655	$ 881,706	$ 977,273	$ 1,075,425	$ 1,176,235	$ 1,279,777	$ 1,386,127	$ 1,464,319	$14,795,033

WMATA-INV 004893

Yes! Organic Market
3809 12th Street, N.E.
Washington, DC 20017

September 27, 20007

Moddie Turay, President
Moddie Turay Company, LLC
3222 M ST NW, Suite 140
Washington, D.C. 20007

Re: Renaissance Row
Letter of Interest
Yes! Organic Market

Dear Moddie:

I have been briefed about your proposed project "Renaissance Row", and Yes! Organic Market is pleased to express interest in approximately 10,000 square feet at your company's development proposal to Washington Metropolitan Area Transit Authority (WMATA) to create a vibrant new mixed-use development that will activate Florida Avenue NW in the Shaw neighborhood. As discussed in our meeting, our preference would be to purchase the unit rather than to lease it. In any case, my preliminary interest in this project is genuine and considerable.

I am hopeful that I can know more about the progress of "Renaissance Row", and that I will be able to participate in an appropriate manner. To that end, I would ask that your office advise me at your earliest convenience of how I might become involved. I appreciate your taking the time to inform me, and I can assure you that, whatever information you further provide will be studied with the most serious consideration.

Sincerely,

Gary M. Cha
Owner

TRYST INC
THE DINER
& OPEN CITY

September 24, 2007

Moddie Turay
Moddie Turay Company, LLC
3222 M ST NW
STE 140
Washington, DC 20007

Dear Mr. Turay:

I enjoyed your presentation on the Renaissance Row Project along Florida Avenue between 9th and 7th Streets NW. I think your plan for the area is spot-on and I would be interested in being a part of that vision. Our concept is to create "neighborhood gathering places" and your mixed use plan helps promote this idea.

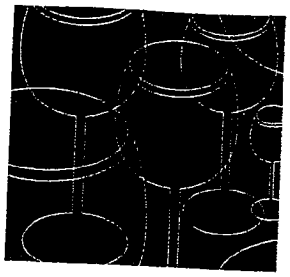
Please keep me abreast of your progress and continue to provide me with information. I look forward to hearing from you.

Sincerely,

Constantine Stavropoulos
President/Owner
Tryst, The Diner & Open City

2459 18TH STREET NW • WASHINGTON, DC • 20009
PHONE: 202-232-5500 • FAX: 202-363-6708

FOIA CONFIEDENTIAL TREATMENT REQUESTED



ARTVINES
WINE GALLERY ART BAR

October 4, 2007

Moddie Turay
Moddie Turay Company, LLC
3222 M ST NW
STE 140
Washington, DC 20007

Re: Letter of Interest for Renaissance Row

Dear Mr. Turay:

I'm very excited about your project, Renaissance Row, and am interested in being a part of it. Introducing ArtVines.

"Fine wine. Fine art. When people speak of the finer things in life, surely these are part of the conversation. A conversation as old as civilization. And as new as right now. Today, there's a new place to continue that conversation. A place dedicated to the appreciation and enjoyment of art and wine—together. Introducing ArtVines. Wine Gallery. Art Bar. Where palate meets palette. And the pleasure is all yours."

ArtVines, a wine bar and art gallery, would draw on Shaw's artist, student and residential community and boost its arts and wine education programs. I think ArtVines complements your retail program and would become a great neighborhood venue. ArtVines is positioned to become Washington's most unique wine bar/art gallery/special events environment. Please visit www.artvines.com.

Please keep me abreast of your progress and continue to provide me with information. I look forward to working with you to bring ArtVines to your exciting Renaissance Row development project.

Sincerely,

Horace Flournoy

Horace Flournoy
CEO/Founder
ArtVines LLC

2459 18TH STREET NW • WASHINGTON, DC • 20009
PHONE: 202-232-5500 • FAX: 202-363-6708

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Dear Mr. Turay,

As the owner of Hank's Oyster Bar in Dupont Circle, I am very interested in expanding the number of neighborhood restaurants within the District. Your project, Renaissance Row, would be a perfect fit for creating more restaurants that service the communities you are building. I would be very interested in discussing a future partnership with you to build another much needed neighborhood restaurant in Shaw.

Thank you,

JAMIE LEEDS
CHEF/OWNER

HANKS OYSTER BAR
DC
1624 Q Street NW Washington DC 20009
T 202.462.HANK (4265) F 202.462.8888 info@hanksdc.com
OLD TOWN
1026 King St. (off Henry St.)
Alexandria, VA 22314
T. 703.739.HANK (4265)

December 4, 2007

Moddie Turay, President
Moddie Turay Company, LLC
2500 Q Street., NW Suite 338
Washington, DC 20007

Re: Shaw-Howard Florida Avenue Joint Development Site

Dear Mr. Turay:

Thank you for the submission of your proposal for the above-referenced 2007 Joint Development Solicitation (JDS) site.

The purpose of this letter is to bring to your attention missing or incomplete items or items that require further discussion and clarification. We would like to schedule an oral presentation by your team on December 17, 2007 at 1 p.m. at WMATA headquarters and have attached instructions for the presentation. We ask that you provide 10 copies of the supplementary information requested in this letter not later than the presentation and preferably before so that we may first review it.

The following items need clarification, correction or completion:

Technical Information

What is the experience of the team in actually carrying out a residential development? This was not apparent from your proposal.

What is the contractual arrangement between Moddie Turay Company and Clark Enterpises? Has an agreement been worked out?

What, if any, zoning approvals or variances will you be seeking for Parcels 1 or 3?

Assess the market for rental apartments in the area now that conversions of condominium projects to rental product are occurring. Is the market becoming oversaturated with rentals and would you expect to experience difficulty in obtaining financing for your project.?

Do you have prospective tenants for the retail components of your project?

Washington Metropolitan Area Transit Authority

600 Fifth Street, NW
Washington, DC 20001
202/962-1234

By Metrorail:
Judiciary Square—Red Line
Gallery Place-Chinatown—Red, Green and Yellow Lines
By Metrobus:
Routes D1, D3, D6, P6, 70, 71, 80, X2

A District of Columbia, Maryland and Virginia Transit Partnership

FOIA CONFIEDENTIAL TREATMENT REQUESTED

You appear to close the alley between 8th and 9th streets. Do you regard this as feasible? Can you obtain agreement from adjacent property owners?

Calculations of annual property, sales and any other taxes to the local jurisdiction are missing from your proposal. Please provide.

Economic Information

Note that your valuation of the site is considerably below WMATA's appraisal and needs to be increased substantially or your offer cannot be considered.

WMATA expects escalation in the sale or rent amount from today's values if closing is delayed beyond a year. Please indicate how you would satisfy this requirement.

Please be more precise about how you derived fair market value indicated as $6,496,200.

The pro forma rent, $279,000 annually does not seem to square with your statement that you will pay 8% of land value. Nor does escalation, stated as 2.5% annually , appear to take place in the pro forma.

Schedule: since rent does not start until stabilization, please indicate the outside date for stabilization.

WMATA also expects and receives participations in capital events and in cash flow (or, alternatively to cash flow, revaluation of the project in which rent values do not fall below the previous year). Please provide your proposal.

Is it expected that Clark Enterprises will provide the equity for this project? Do you have alternative equity sources?

Please submit the balance sheet that the proposal indicates will be provided under separate cover.

We look forward to your presentation and to further discussion on this project.

Sincerely,

Joel R. Washington

Joel R. Washington, Director
Station Area Planning and Asset Management

Attachment

Re Maddie Turay
Alley Closing

442 8818
Square 393
Wed the 2nd
Steve Calcott

Steve: 1/8/08
two bldgs next door are listed as contributing in National Register
double bldg - facade has been mucked around with

very high threshold to demolish
prefers

Joel Lawson 1/8/08

Council would have to approve closing
Every abutting property owner who is affected would have to consent
Depending on what is going on, width of alley, etc., the following review
Fire Marshal
Police Dept
DPW
DDOT
} would comment

DDOT now planning to take a firmer stance vs. closing
through alleys because servicing should take place in alley not street

Bridging of alley at third floor level might be ok,
not favored; aesthetically not great, see Tech World

11/30/07

A. Lakinty seems to be paying ~~[illegible]~~/FAR sf. for the adjacent property yet values our property at $50

B. Roy to call 3 Lakinty

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Maddie Tuway ED RILEY 11/15/07

D Exec Summary

✓ 1. need evidence of adjacent parcel under contract

✓ 2. he cites CEI (not Clark Realty Capital) as doing F+ Tollen apts

F. Development entity

✓ no evidence of an agreement betw. Clark + MTC

G. Site plan shows alley closed between 8th + 9th -
no discussion of feasibility; plan not well thought out

I Schedule is conservative but seems realistic +

J Zoning - he says his bldgs will be 153,000 sf - more than others -
at 4.5 FAR. Seems wrong maybe includes 2 adj lots?

T. Previous Projects - CEI has 50% of F+ Tollen
CEI is not a developer, MTC is not a developer

Lakritz Adler

p7 Exec Summary 1. No evidence ~~R~~ Lakritz has "ratified a 10-year fee-subordinated ground lease + purchase option at 1920 8th ST 11,320 SF
p16 - says they own the 10 year etc.

p18 "Find market for purchase + transfer of Arts Overlay ~~[illegible] FAR~~ credits at reasonable prices"

p19 Emphasize reverse commuters, highest density TOD ≈ adjacent parcel

p22 Do others have HPRB?
need to go to HPRB

King Davidson
R. Doggett
1/5/08
Maddie

$65 is today's value
$61.50 today's

4.0 years until stabilization Jan 2012

Stabilized at end of 2011 or Jan 2012

If not hasn't stabilized they will jump up payments to half of stabilized ground rent starting ~~Dec~~ Jan 2013

[No escalation - & then jump every 10 years to FMV]

152,274 is Total 161,000
includes alley closing & 2 adjacent parcels

3800
8600
16472
28,872 x 4.5

65 ē 2%
61.50 ē 3% escal.

Call through Maddie

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Moddie

~~Dee Smith~~ 724 8062 12/17

- Steve Calcott
-

413-416

(a) After stabilization, ~~3% annual escalation or~~ every 10 yrs still 2% ?

(b) Rent revaluation - you said yes during interview, still mean it? every 10 yrs.

(c) If you get less sf. (no alley closing, no use of parcels next door), will you still pay same rent?

If I use.

(d) Marc Brondi -

can I be looking at mail red. after 12/19?

King Davidson of Clark ran the numbers

Moddie Turay Company Contact: Moddie Turay	104 -130 du's 26,282 nsf retail 62 below-grade parking	not broken out	not broken out needs assemblage with adjacent lots (1933-35 9th St.)	not broken out	Lease or sale

Washington Metropolitan Area Transit Authority
Office of Property Development and Management

Meeting: Florida Avenue Moddie Turay Proposal

Date: 12/17/07 1 pm

Name	Office/Organization	Office Phone Email Address
1. King Davidson	Clark Enterprises	301-657-7218 king.davidson@clarkus.com
2. Jessica Hubley	Clark Enterprises	301-657-7155 jessicahubley@clarkus.com
3. Rebecca Owen	Clark Enterprises	301.657.7214 rowen@clarkus.com
4. Moddie Turay	Moddie Turay Co.	(202) 413-4160 Moddie@Moddieturay.com
5. SUMAN SORG	SORG & ASSOCIATES	202 393 6495 SUMANSESORGANDASSOCIATES.COM
6. ROSALYN DOGGETT	WMATA / SAAM	202 962 2208 rdoggett@wmata.com
7. Tariq Bushney	WMATA / JDAC	(202) 962-2043 tbushney@wmata.com
8. John Magarelli	WMATA / SAAM	(202) 962 1357 jmagarelli@wmata.com
9. Joel R. Washington	WMATA / SAAM	jrwashington@wmata.com 202-962-2616
10. MARC BIONDI	WMATA / COUN	202 962 1011 MEBIONDI@WMATA.COM
11. Eric Smart	Bolan Smart Associates	202 776-7740 eric.smart@bolansmart.com
12. ~~King Davidson~~		
13.		
14.		
15.		

T:\Harrison\LAND meeting sign-in.wpd

12/17/07
Moddie Turay

LLC

Clark = 100% equity
Turay - Clark - Clark would do the hiring
Moddie = day to day mgmt
Clark controls as major financial partner
Jessica: "contract betw. the 2 nearly inked"

They have the full parking required -

Want hardware store, too. Tryst,

He's spoken to the alley ~~partners~~ adjoiners; doesn't think it

Clark = long-term apt. holders

Prospect to deliver - end of 2011, early 2012

Rents of $2.55
Going higher = more cost vs a vis rents

GROUND LEASE $65/FAR based on 2% escalation
$520 to $720
would discuss fraud outside stabilization date
Participation
3% upon capital events - of whatever the jv gets after debt retirement
Land Value Adjusted every 10 years

1. Middle

Worst case scenario if you ~~[illegible]~~ have to create an alley on your property

Show parking:

2. ~~[illegible]~~ Bannicker

how do you make up for Donatelli

Suman – can ~~the deal with historics~~ manage a little ~~[illegible]~~ approvals + architecture

Bannicker – manage the community better

Moddie

$44M project

11/~~28~~ 29/07

A. Taxes

No sales tax

B. Riders

Incoherent

C. FMV

$6.5 M Section C, Vol 2 escalated 2.5% until stabilization

8% lease

at 279,000 / rent/year vs 559,000 Eric Shows

this is a non-starter

D. No cash flow or capital event participation

Basically the business proposition is simply "confused"

FOIA CONFIDENTIAL TREATMENT REQUESTED

BSA 12/17/07

BSA Table 1
Florida Avenue / Shaw - December 2007 Proposals

2008 9 10 2011 2012 2013

			1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	80 2088
Lakritz Adler - lease																		
Revenues																		
Option Fee			$100,000															
Predevelopment Rent																		
Offeror Land Valuation																		
Base Rent	[redacted]	fixed annaul escalations			$4,890,000													
Other Base Rent Adjustment		not applicable					$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	
Total Gross Revenue			$100,000	$0	$0	$0	$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$595,559
WMATA Participation	0.00%	not offered																
Implied Initial Land Value	$7,947,280	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$0	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Cash Flow w/ residual			$100,000	$0	$0	$0	$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$595,559
NPV																		
Base Rent	5.73%	discount rate	$4,330,076															
With Residual	5.73%	discount rate	$4,330,076															

Banneker / District - lease																		
Revenues																		
Option Fee			$100,000															
Predevelopment Rent			$60,000	$100,000	100,000													
Offeror Land Valuation																		
Base Rent	[redacted]	fixed annaul escalations			$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	
Other Base Rent Adjustment		not applicable																
Total Gross Revenue			$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,826
WMATA Participation	[redacted]																	
Implied Initial Land Value	$7,947,280	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$0	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Cash Flow w/ residual			$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,826
NPV																		
Base Rent	5.73%	discount rate	$13,037,046															
With Residual	5.73%	discount rate	$13,037,046															

Moodie Turay / Clark - lease																		
Revenues																		
Option Fee			$100,000															
Predevelopment Rent	$10,000	per month	$90,000	$120,000	$120,000													
Offeror Land Valuation	2.00%	term rent escalator	[redacted]	$8,459,680	$8,629,078	$8,801,659												
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$242,183	$242,163	$2,382,719
Total Gross Revenue			$190,000	$120,000	$120,000	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$946,296	$946,296	$3,086,852
WMATA Participation	[redacted]	not offered																
Implied Initial Land Value	$0	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$0	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Cash Flow w/ Residual			$190,000	$120,000	$120,000	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$704,133	$946,296	$946,296	$3,086,852
NPV																		
Base Rent	5.73%	discount rate	$10,357,123															
With Residual	5.73%	discount rate	$10,357,123															
With Base Rent Escal	9.00%	disc rate on escalation	$12,117,148	(illustrative)														
With Base Rent Escal	5.73%	disc rate on escalation	$15,380,684	(illustrative)														

higher option fees & pre-dev rent from Clark - pay earlier

check historic context

WMATA-INV 004910

FOIA CONFIEDENTIAL TREATMENT REQUESTED

(1)

F. Summary Table
Sources and Uses
9/18/2007
Ground Lease Scenario

Sources and Uses

Sources of Funds:		Total
Equity	25.0%	10,891,504
Debt	75.0%	32,674,512
	100.0%	$ 43,566,016

Uses of Funds	Per Unit	Total
Land	$ 9,260	$ 1,496,570
Net GMP/HC Cont.	$ 174,537	$ 28,208,283
Soft Costs	$ 54,905	$ 8,873,592
Development Fee	$ 10,412	$ 1,682,778
Pre Devel Rent	$ 2,475	$ 400,000
Financing Costs	$ 2,022	$ 326,745
Interest Expense	$ 15,951	$ 2,578,048
	$ 269,562	$ 43,566,016

??

WMATA-INV 004911

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA Sources and Uses Assumptions Backup
9/18/2007
Ground Lease Scenario

(2)

Basic Assumptions

Number of Units	
Units	130
Total	130
GSF Per Unit	1,009
NSF as a % of GSF	80%
Average Net Sq. Ft. per Unit	807
Residential - Net Rentable Sq. Ft.	104,936
Retail - Net Rentable Sq. Ft.	26,282

131,170 gsf
26,282 net rentable

Financing Assumptions

Construction Loan:	
Loan Amount	32,674,512
LTC/Amount	75.0%
Initial Base Rate	7.00%
Permanent Loan (2012):	
Start Month	Month 25
Cap Rate Used	6.50%
Project Value	$43,756,604
Loan to Value	69.59%
Rate	6.75%
Amortization	30 Years
Loan Amount	$30,452,209
Monthly Payment	$197,512
Annual Debt Service	$2,370,149
Stabilized NOI for Perm Loan (2013)	$2,844,179
DSCR	1.20
Closing Costs/Fees	1.0%
Refinancing (2021):	
Start Month	Month 144
Cap Rate Used	7.00%
Project Value	$63,543,119
Loan to Value	70.14%
Rate	7.00%
Amortization	30 Years
Loan Amount	$44,571,388
Monthly Payment	$296,535
Annual Debt Service	$3,558,415
Stabilized NOI for Perm Loan (2022)	$4,448,018
DSCR	1.25
Closing Costs/Fees	1.0%
Ground Lease (WMATA):	
Market Value (Escalated 3 years)	$ 8,961,965
Escalations	2.0%

7,990,000

Sources and Uses

Sources of Funds:		Total
Equity	25.0%	10,891,504
Debt	75.0%	32,674,512
	100.0%	$43,566,016

Uses of Funds	Per Unit	Total
Land	$ 9,260	$ 1,496,570
Net GMP/HC Cont.	174,537	28,208,283
Soft Costs	54,905	8,873,592
Development Fee	10,412	1,682,778
Pre Devel Rent	2,475	400,000
Financing Costs	2,022	326,745
Interest Expense	15,951	2,578,048
	$ 269,562	$ 43,566,016

157,452 ÷ 4.5 = 34,989 sf
" - 28,892
6,097 - since parcels next door are 3,000 sf
Assume he is talking about

-8000 = 26,989
(does this include 2 parcels next door) say 8000 sf x 4.5 = 36,000

Net Rentable
104,936
26,282
131,218 x 61.50 = 8,069,907 (this is already more than 7,990,000 which was supposedly escalation 3%/year)

x .08 = $716,957

28,892 (solicitation parcel size)
x 4.5 =
130,014 x 61.50 = 7,995,861 today

Operating Assumptions

Revenue Assumptions:	
Apartments:	
Month Renting Begins	19
Rent Per Sq. Ft. (Current)	$2.65
Rent increase per year	3.0%
Prelease (Units preleased at delivery)	20
Absorption (Units Rented/Month)	16
Multifamily Rental Vacancy	5.13%
Parking:	
Month Parking Space Sales Begin	19
Parking Revenues/Space (Current)	$150
Number of Spaces	62
Absorption (Leased/Month)	10
Retail:	
Retail Annual NNN Rent (Current)	$50.00
Retail rent increase per year	2.0%
Absorption	6,000
Retail Vacancy	5.00%
Expense Assumptions:	
Gross Operating Expenses	$ 11,562
Deduct for Retail Tenant Contribution	$ -
Net Operating Cost per Unit Per Year (Current)	$ 11,562
Fixed vs. Variable Expenses	50%
Phased-In Fixed Expenses	40%
Operating Cost Increase per Year	3.0%
Reserves	$250 per unit

Residential Operating Expenses ($/unit)		
Payroll	$	4,500.00
Marketing	$	550.00
Administration	$	440.00
Maintenance Contracts	$	-
R&M	$	600.00
Utilities	$	372.00
Taxes & Ins.	$	3,600.00
CDA Assessment	$	-
Fees	$	1,500.00
Total		**11,562.00**
Retail Reimbursements		
Net Operating Cost/Unit/Year		**$11,562.00**

12/17/2007

Volume 2 - F&G Updated Interview.xls

WMATA-INV 004912

(3)

WMATA Sources and Uses Assumptions Backup
9/18/2007
Ground Lease Scenario

	Per Unit	Per GFA	Total
Land:	$ 9,260	$ 9.83	$ 1,496,570
Hard Costs:			
GMP	136,956	145.36	22,134,560
Escalations	24,652	26.16	3,984,221
Hard Cost Contingency	12,929	13.72	2,089,502
Soft Costs:			
Architecture & Engineering	8,080	8.58	1,305,939
Civil, Design and Submission Fees	1,237	1.31	200,000
Site Development Bonds, Fees and Permits	1,237	1.31	200,000
Dry Utility Relocation and New Service	6,514	6.91	1,052,750
Building Permit Fees	911	0.97	147,238
Furniture, Fixtures and Equipment	4,412	4.68	713,000
Predevelopment / Feasibility	3,886	4.12	628,098
Retail Commissions	4,065	4.31	657,050
Retail Tenant Improvement Allowance	12,196	12.94	1,971,150
Monetary Proffers	-	-	-
Connection Fees	3,094	3.28	500,000
Marketing	3,094	3.28	500,000
Project Legal	1,921	2.04	310,500
Accounting	-	-	-
Builders Risk Insurance	541	0.57	87,360
Real Estate Taxes	223	0.24	36,120
Title Insurance & Other	3,492	3.71	564,386
Development Fee	10,412	11.05	1,682,778
Financing Costs	2,022	2.15	326,745
Ground Lease Payments ($10,000 per month)	2,475	2.63	400,000
Interest Expense	15,951	16.93	2,578,048
Total	$ 269,562	$ 286.10	$ 43,566,016

	Units	Gross Floor Area	Net Rentable Square Feet
Residential Units	130	122,484	104,936
Retail		29,790	26,282
		152,274	131,218

3rd

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004913

(4)

G. WMATA Assumptions
9/18/2007
Ground Lease Scenario

Financing

Construction Loan	
Loan Rate	7.00%
Term	24 months
Amount	$32,674,512
LTC	75%
% Equity	25%
Permanent Loan	
Loan Rate	6.75%
Term	120 months
Amount	$30,452,209
LTV	69.59%

Revenues

Office Rent	N/A	
Retail Rent (current)	$ 50.00	RSF
Residential Rent (current)	$ 2.65	RSF
Parking	$ 150.00	per space
Other Revenues	$ -	

Construction Costs

Total Hard Costs	$28,208,263	
Total Soft Costs	$13,861,163	
% of Hard Costs	49%	
Cost of Improvements	$ 260,302	per residential unit
Costs of Improvements	$ 276.27	per Retail RSF
Cost per structured space	$ 40,300	
Cost per surface space	$ 4,030	
Land Value per FAR SF (current)	$ 65.00	of Land Value (annually)
Ground Rent to WMATA	8.00%	

Operating Costs

Operating Expenses (current)	$ 1,503,060	
Per GSF	$ 9.87	
Precentage of Revenue	32%	

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

(5)

15 Year Cash Flow
Ground Lease Scenario

Year	ALL YEARS TOTAL	1 2007	2 2008	3 2009	4 2010	5 2011	6 2012	7 2013	8 2014	9 2015	10 2016	11 2017	12 2018	13 2019	14 2020	15 2021
Available Units at BOP					130	130	14	-	-	-	-	-	-	-	-	-
Total Units Rented					-	116	14	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP					130	14	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented					-	116	130	130	130	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP					62	62	2	-	-	-	-	-	-	-	-	-
Total Rented in Period					-	60	2	-	-	-	-	-	-	-	-	-
Remaining to Remit at EOP					62	2	-	-	-	-	-	-	-	-	-	-
Cumulative Spaces Rented					-	60	62	62	62	62	62	62	62	62	62	62
Remaining Retail SF					26,282	26,282	-	-	-	-	-	-	-	-	-	-
Total SF Rented in Period					-	26,282	-	-	-	-	-	-	-	-	-	-
Remaining to Remit at EOP					26,282	-	-	-	-	-	-	-	-	-	-	-
Cumulative SF Rented					-	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Average Residential Rent/SF		$ 2.65	$ 2.73	$ 2.81	$ 2.90	$ 2.98	$ 3.07	$ 3.16	$ 3.26	$ 3.36	$ 3.46	$ 3.56	$ 3.67	$ 3.78	$ 3.89	$ 4.01
Average Retail Rent/SF		$ 50.00	$ 51.50	$ 53.05	$ 54.64	$ 56.28	$ 57.96	$ 59.70	$ 61.49	$ 63.34	$ 65.24	$ 67.20	$ 69.21	$ 71.29	$ 73.43	$ 75.63
Average Parking Rent/Space		$ 150.00	$ 154.50	$ 159.14	$ 163.91	$ 168.83	$ 173.89	$ 179.11	$ 184.48	$ 190.02	$ 195.72	$ 201.59	$ 207.64	$ 213.86	$ 220.28	$ 226.89
Construction Costs																
Land Costs																
WMATA Option Fee		$ 100,000														
1933-35 9th ST Purchase		$ 1,500,000														
Hard Costs:																
GMP					$ 14,756,373	$ 7,378,187										
Escalations					$ 2,656,147	$ 1,328,074										
Hard Cost Contingency					$ 1,393,002	$ 696,501										
Soft Costs:																
Architecture & Engineering			$ 195,891	$ 195,891	$ 522,376	$ 391,782										
Civil, Design and Submission Fees					$ 200,000											
Site Development Bonds, Fees and Permits					$ 200,000											
Dry Utility Relocation and New Service					$ 1,052,750											
Building Permit Fees					$ 147,238											
Furniture, Fixtures and Equipment						$ 713,000										
Predevelopment / Feasibility			$ 314,049	$ 157,025	$ 157,025											
Retail Commissions						$ 657,050										
Retail Tenant Improvement Allowance						$ 1,971,150										
Connection Fees						$ 500,000										
Marketing					$ 100,000	$ 400,000										
Project Legal		$ 108,675	$ 31,050	$ 31,050	$ 31,050	$ 108,675										
Builders Risk Insurance					$ 43,680	$ 43,680										
Real Estate Taxes			$ 5,418	$ 5,418	$ 5,418	$ 19,866										
Title Insurance & Other			$ 564,386													
Development Fee			$ 252,417	$ 252,417	$ 913,748	$ 264,196										
Financing Costs					$ 326,745											
Ground Lease Payments ($10,000 per month)			$ 40,000	$ 120,000	$ 120,000	$ 120,000										
Interest Expense					$ 669,763	$ 1,908,286										
Total		$ 1,708,575	$ 1,403,211	$ 761,800	$ 23,295,315	$ 16,500,446										
NET REVENUES																
Rental Revenues	$ 51,346,810	-	-	-	-	1,122,778	3,921,364	4,039,005	4,160,175	4,284,981	4,413,530	4,545,936	4,682,314	4,822,783	4,967,467	5,116,491
Parking Revenues	$ 1,715,949	-	-	-	-	36,278	131,144	135,079	139,131	143,305	147,604	152,032	156,593	161,291	166,130	171,114
General MF Rental and Parking Vacancy Allowance	$ (2,662,660)	-	-	-	-	-	(207,894)	(214,131)	(220,554)	(227,171)	(233,986)	(241,006)	(248,236)	(255,683)	(263,354)	(271,254)
Retail Revenues	$ 17,608,101	-	-	-	-	497,724	1,422,424	1,450,873	1,479,890	1,509,488	1,539,678	1,570,471	1,601,881	1,633,918	1,633,918	1,633,918
General Retail Vacancy Allowance	$ (867,140)	-	-	-	-	(11,621)	(71,121)	(72,544)	(73,995)	(75,474)	(76,984)	(78,524)	(80,094)	(81,696)	(81,696)	(81,696)
Total Revenues	$ 67,141,060	-	-	-	-	1,645,160	5,195,918	5,338,282	5,484,647	5,635,128	5,789,842	5,948,910	6,112,458	6,280,614	6,422,465	6,568,573

GHolland
for Jay
Jan 9, 2012

WMATA-INV 004915

FOIA CONFIEDENTIAL TREATMENT REQUESTED

(6)

Year	ALL YEARS TOTAL	Year 1 2007	2 2008	3 2009	4 2010	5 2011	6 2012	7 2013	8 2014	9 2015	10 2016	11 2017	12 2018	13 2019	14 2020	15 2021
Operating Expense/Unit/Year		-	-	-	-	(5,830)	(12,999)	(13,389)	(13,791)	(14,204)	(14,630)	(15,069)	(15,521)	(15,987)	(16,467)	(16,961)
Operating Expenses	(22,401,463)	-	-	-	-	(757,945)	(1,689,871)	(1,740,567)	(1,792,784)	(1,846,567)	(1,901,964)	(1,959,023)	(2,017,794)	(2,078,328)	(2,140,678)	(2,204,898)
Replacement Reserves	(485,617)	-	-	-	-	(30,766)	(35,514)	(36,579)	(37,676)	(38,807)	(39,971)	(41,170)	(42,405)	(43,677)	(44,988)	(46,337)
8.00% Ground Lease - Howard	(7,459,159)	-	-	-	-	-	(119,493)	(716,957)	(716,957)	(716,957)	(716,957)	(716,957)	(716,957)	(716,957)	(716,957)	(730,041)
NET RENTAL INCOME	$ 37,668,787	-	-	-	-	856,448	3,351,041	2,844,179	2,937,230	3,032,797	3,130,949	3,231,759	3,335,302	3,441,651	3,519,843	3,587,296
REFINANCE CASH FLOW																
Gross Loan Proceeds	$ 11,896,876	-	-	-	-	-	(2,222,303)	-	-	-	-	-	-	-	-	14,119,179
Less- Cost of Refinance	$ 750,236	-	-	-	-	-	304,522	-	-	-	-	-	-	-	-	445,714
Net Proceeds	$ 11,146,640	-	-	-	-	-	(2,526,825)	-	-	-	-	-	-	-	-	13,673,465
DISPOSITION CASH FLOW																
Gross Sale Price	$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Less: Cost of Sales	$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Proceeds	$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
EQUITY ACCOUNT																
Beginning Balance		-	1,708,675	3,111,886	3,873,686	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
Equity Infusion		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equity Funding	$ 10,891,504	1,708,675	1,403,211	761,800	7,017,818	-	-	-	-	-	-	-	-	-	-	-
Ending Balance (Profit)		1,708,675	3,111,886	3,873,686	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
CONSTRUCTION DEBT																
Beginning Balance		-	-	-	-	19,327,641	-	-	-	-	-	-	-	-	-	-
Loan Draw	30,096,464	-	-	-	18,657,878	11,438,586	-	-	-	-	-	-	-	-	-	-
Interest	[illegible]	-	-	-	669,763	1,908,286	-	-	-	-	-	-	-	-	-	-
Principal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Amount Due to Loan		-	-	-	19,327,641	32,674,512	-	-	-	-	-	-	-	-	-	-
PERMANENT DEBT																
Beginning Balance		-	-	-	-	-	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209
Monthly Payment		-	-	-	-	-	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524
3% WMATA Participation on Capital Event Proceeds		-	-	-	-	-	-	-	-	-	-	-	-	-	-	410,204
Cash Flow Available From Operations		-	-	-	-	856,448	3,351,041	2,844,179	2,937,230	3,032,797	3,130,949	3,231,759	3,335,302	3,441,651	3,519,843	3,587,296
Cash Flow Available From Sale / Refinance		-	-	-	-	-	(2,526,825)	-	-	-	-	-	-	-	-	13,673,465
Cash Flow Available After Debt Service		-	-	-	-	856,448	(1,231,309)	788,655	881,706	977,273	1,075,425	1,176,235	1,279,777	1,386,127	1,464,319	14,795,033
EQUITY CASH FLOW																
Contributions	$ 3,873,686	1,708,675	1,403,211	761,800	7,017,818	-	-	-	-	-	-	-	-	-	-	-
Loan Paydown	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Refinance Cash Flow	13,673,465	-	-	-	-	-	-	-	-	-	-	-	-	-	-	13,673,465
Disposition Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Operating Cash Flow	40,565,623	-	-	-	-	1,645,160	3,140,394	2,844,179	2,937,230	3,032,797	3,130,949	3,231,759	3,335,302	3,441,651	3,519,843	3,587,296
Total	$ 62,319,316	(1,708,675)	(1,403,211)	(761,800)	(7,017,818)	1,645,160	3,140,394	2,844,179	2,937,230	3,032,797	3,130,949	3,231,759	3,335,302	3,441,651	3,519,843	17,260,761
RETURN CALCULATIONS																
		$ (1,708,675)	$ (1,403,211)	$ (761,800)	$ (7,017,818)	$ 856,448	$ (1,231,309)	$ 788,655	$ 881,706	$ 977,273	$ 1,075,425	$ 1,176,235	$ 1,279,777	$ 1,386,127	$ 1,464,319	$ 20,503,503
IRR (15 year)	9.89%															
Return on Investment (ROI)		0%	0%	0%	0%	4%	0%	7%	7%	7%	7%	7%	8%	8%	8%	40%
Avg 15 year ROI	6.79%															
Return on Equity (ROE)		0%	0%	0%	0%	8%	-11%	7%	8%	9%	10%	11%	12%	13%	13%	158%
Avg 15 year ROE	15.85%															

WMATA-INV 004916

FOIA CONFIEDENTIAL TREATMENT REQUESTED

(7)

Fee, Income, Reserves Breakout
Ground Lease Scenario

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Developer Fee	$ -	$ 252,417	$ 913,748	$ 264,196	$ 264,196	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
*4% of Hard Costs (excluding land)															
Replacement Reserves	$ -	$ -	$ -	$ (30,766)	$ (35,514)	$ (36,579)	$ (37,676)	$ (38,807)	$ (39,971)	$ (41,170)	$ (42,405)	$ (43,677)	$ (44,988)	$ (46,337)	$ (47,727)
Per Dwelling Unit	$ -	$ -	$ -	$ (236.66)	$ (273.18)	$ (281.38)	$ (289.82)	$ (298.51)	$ (307.47)	$ (316.69)	$ (326.19)	$ (335.98)	$ (346.06)	$ (356.44)	$ (367.13)
Per GSF	$ -	$ -	$ -	$ (0.20)	$ (0.23)	$ (0.24)	$ (0.25)	$ (0.25)	$ (0.26)	$ (0.27)	$ (0.28)	$ (0.29)	$ (0.30)	$ (0.30)	$ (0.31)
Cash Flow After Debt Service Available to Partners	$ -	$ -	$ -	$ -	$ 856,448	$(1,231,309)	$ 788,655	$ 881,706	$ 977,273	$ 1,075,425	$ 1,176,235	$ 1,279,777	$ 1,386,127	$ 1,464,319	$14,795,033

WMATA-INV 004917

MTC
Moddie Turay Company

Roz needs to call Fred Lawson re historic district

December 19, 2007

Joel R. Washington
Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Pretty sure this is based on 5 by right FAR

Re: Shaw-Howard Florida Avenue Joint Development Site

Dear Mr. Washington:

Thank you for taking the time to meet with us on Monday to review our proposal.

As you know, we are excited by the prospect of developing WMATA's vibrant and dynamic site to meet the goals of the Duke Ellington Plan and to encourage use of mass transit. We welcome the opportunity to discuss any of our terms with you further. In response to questions raised in our recent interview, we offer the following modifications and clarifications to our proposal for your consideration. We are willing to send a revised proforma reflecting the changes presented below.

Ground Lease:

- We are offering you two ground lease payment options:

= 129,944 s.f.

Option One: 8% of fair market value based on an above-market number of $65 per FAR SF with 2% annual escalations until stabilization. This equates to a fair market value of $8,445,060 by-right and $11,260,080 if we obtain PUD approval.

I suppose this is $8,961,965 on pro forma

Option Two: 8% of fair market value based on an above-market number of $61.50 per FAR SF with 3% annual escalations until stabilization. This equates to a fair market value of $7,990,326 by-right and $10,653,768.

either is above appraisal

- *Both offers represent an increase from our original offer of 8% of fair market value based on $50 per FAR SF with 2.5% annual escalations until stabilization (equating a fair market value of $6,496,200 by-right and $$8,661,600 if we pursue a PUD).*

Is this before or after stabilization?

Moddie Turay Company
moddie@moddieturay.com
3222 M St., NW, Suite 140
Washington, DC 20007
(P): 202.413.4160
(F): 202.342.1458

FOIA CONFIEDENTIAL TREATMENT REQUESTED

MTC
Moddie Turay Company

Pre-Stabilization Rent Bump-Up & Outside Rent Commencement Date:

- Pursuant to our original proposal, MTC/CEI will pay WMATA $10,000/month upon execution of the ground lease and development agreement. — non-refundable
- Under our modified terms, in the event stabilization has not been achieved by December 2012, MTC/CEI will bump up the $10,000 payment to one-half of the stabilized ground rent due and owing WMATA (payable monthly beginning in December 2012).
- In addition, we will set an "outside rent commencement" date that is mutually acceptable to both WMATA and MTC/CEI.) check pr. schedule

Participations in Capital Events:

- We propose that WMATA receive participations in the amount of 5% of net proceeds upon "Capital Events." Capital Events shall be defined as a sale or transfer of the developer improvements or the property (as applicable), an assignment of tenant's ground lease interest (as applicable) or a refinancing of existing lender debt (but not including obtaining a permanent loan at the project or a take-out of the construction loan at the project).
- *This represents an increase from 3% to 5% for participations in capital events.* net proceeds will be same as rcd. less debt paid off + original equity

PUD to Allow for Increased Density and Building Height:

- We will continuously review the best alternative for the site. If such a time occurs when construction prices and rents warrant the increased density and height achievable with a PUD approval, we plan to fully pursue it.

Best,

Moddie Turay
Moddie Turay Company, LLC

Cc:
Rosalyn Doggett, WMATA
Rebecca Owen, CEI

Moddie Turay Company
moddie@moddieturay.com
3222 M St., NW, Suite 140
Washington, DC 20007
(P): 202.413.4160
(F): 202.342.1458

FOIA CONFIEDENTIAL TREATMENT REQUESTED

From: "Moddie Turay" <moddie@moddieturay.com>
To: <jwashington@wamta.com>
Date: 12/19/2007 5:11:39 PM
Subject: MTC/CEI - Shaw-Howard Florida Avenue Joint Development Site

Joel,

I hope this message finds you well. I have attached an electronic version of my letter mailed to you today regarding our recent interview on Monday, December 17th.

Thank you in advance and I look forward to talking with you soon.

Best wishes,

Moddie Turay

Moddie Turay Company, LLC

Cc:

Rosalyn Doggett, WMATA

Rebecca Owen, CEI

Jessica Hubley, CEI

King Davidson, CEI

Nia Francis, MTC

No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.5.503 / Virus Database: 269.17.4/1189 - Release Date: 12/18/2007 9:40 PM

CC: "'Rosalyn Doggett'" <rdoggett@wmata.com>, <rowen@clarkus.com>, <Jessica.Hubley@clarkus.com>, <King.Davidson@clarkus.com>, <nia@moddieturay.com>

From: "Moddie Turay" <moddie@moddieturay.com>
To: "'Rosalyn Doggett'" <rdoggett@wmata.com>
Date: 2/4/2008 2:21:16 PM
Subject: FW: 1931 9th ST LOI

Rosalyn,

I hope all is well.

Our team has recently negotiated and signed an LOI to acquire the lot adjacent to our private parcel currently under control along 9th ST (identified in RFP). Please find LOI attached. This new lot is currently used as a parking lot and is approximately 4,669 SF (1931 9th ST NW) and would allow us to build approximately an additional 3000 sq ft of retail (net) 14,684 sqft of residential (net) (or 17 additional residential units).

Please let us know if you have any questions or if you are available to meet with us to discuss further.

Thank you so much

Moddie Turay

CC: <jrwashington@wmata.com>, <rowen@clarkus.com>

8027 Leesburg Pike, Suite 300, Vienna, Virginia 22182-2735/ (703) 288-4000/ Fax (703) 288-2999/ www.klnb.com

KLNB Retail

A division of KLNB, founded in 1958.

Maryland / Washington D.C. / Virginia

Commercial Real Estate Services

January 30, 2008

VIA FAX 202-234-7295

Teles Professional Services, LLC
C/O Tchako Ngandjui
1931 9th Street, NW
Washington, DC 20001

RE: Letter of Intent to Purchase
1931 9th Street, NW
Washington, DC

Dear Tchako:

This letter is intended to serve as an outline of terms which may be acceptable to the Buyer for the purchase of the below described property. The initial proposed terms are as follows:

1. Premises: The premises to be purchased is that property described on the attached Exhibit "A" depicting 1931 9th Street, NW Washington DC consisting of approximately 4,669 square feet and shall include all of Seller's right, title and interest to any appurtenant easements (" Property").

2. Parties to the Transaction: The parties to the transaction are Moddie Turay Company, LLC or it assigns ("Buyer") and Teles Professional Services, LLC as owner of the Property ("Seller").

3. Purchase Price: The purchase price for the Property shall be $ ("Purchase Price"), payable in cash at the close of escrow.

4. Earnest Money: Within five (5) days of mutual execution of the Purchase Agreement, Buyer shall deliver to its Title Company selected by Buyer ("Title Company") earnest money of and 00/100 Dollars , which shall be held by the Title Company and applied toward the Purchase Price at closing, or be fully refundable to Buyer in the event this transaction does not close.

5. Condition of Premises: "As is". However, Seller shall deliver all pertinent due diligence documents Seller and Seller's consultants may have in their possession such as, but not limited to, Surveys identifying all lot boundaries, topographical reports, most recent Phase I environmental reports, relevant soils reports, copies of all documents on Title, and recorded encumbrances.

6. Study Period:

Buyer shall have Ninety (90) days from the date of mutual execution of a Purchase and Sale Agreement and Seller's delivery, with written notice, of all pertinent due diligence documents to satisfy itself of market and title and the feasibility of purchasing the property.

7. Extension Periods:

Buyer may, after providing written notice to Seller, extend the aforementioned Study Period for up to two (2) forty five (45) day periods. Upon the exercise of the first Extension Period, Buyer shall deposit an additional earnest money into escrow ("Extension Payment"). Upon the exercise of the remaining Extension Period, Buyer shall deposit an additional into escrow when the extension is exercised. The Extension Payments shall be applicable to the purchase price.

8. Closing/Closing Costs:

Closing shall occur no later than the ninetieth (90th) day from the date Buyer has satisfied or waived its contingencies, including any extensions thereof, or upon Buyer giving the Seller notice that it is ready to close on the Property, whichever occurs first. Buyer and Seller shall share closing costs (i.e. transfer and recordation costs) as is customary in Washington DC.

9. Representations and Warranties:

The Purchase Agreement will contain customary warranties and representations made by a Seller in a real property transaction of this nature. Seller also agrees to allow Buyer reasonable access to the Property .

10. Environmental:

Within the Purchase and Sale Agreement relating to this proposed transaction, Seller will represent to its present actual knowledge and without any independent investigation of the Property, that there are no hazardous wastes or hazardous substances on, in or under the Property in amounts or kinds that pose a threat to human health or the environment or that could give rise to liability under environmental laws, except as may be described in the Reports provided to Buyer or otherwise disclosed to Buyer in writing.

11. Real Property Taxes and other Pro-rations:

Seller shall agree to pay all real property taxes on the Property prior to the year of closing. All real estate taxes due and payable in the year of closing shall be prorated between the parties. Any pending or levied assessments against the Property shall be paid by Seller at closing.

KLNB Retail
Commercial Real Estate Services A division of KLNB, founded in 1960

12. **Broker Disclosure:** Both parties hereby express to each other that no broker has been involved in this transaction. Each party shall hold the other harmless from any claims by any other broker for compensation in connection with this transaction.

13. **Expiration of Letter of Intent:** If this Letter of Intent is not accepted by Seller by 5:00 p.m. on February 08, 2008, it shall automatically expire and be of no further force and effect.

Very truly yours,

Matt Skalet
KLNB Retail

We the undersigned agree to negotiate in good faith towards timely execution of a binding Purchase Agreement between the parties.

Moddie Turay Company, LLC:

By: Jafara (Moddie) Turay _____

Its: President

Date: January 28, 2008

14. **SELLER:** **is Letter of Intent this** **day of** _____, **2008.**
By: Tchako Ngandjui
Its:
Date:

We Hereby Consent to Th _____

o Ngandjui _____

Managing Director

1/30/08

COMMERCIAL REAL ESTATE SERVICES

CBRE
CB RICHARD ELLIS

Maury E. Zanoff
Managing Director

CB Richard Ellis, Inc.
Capital Markets

750 9th Street, NW
Suite 900
Washington, DC 20001-4516

202 585 5645 Tel
202 585 5786 Fax

maury.zanoff@cbre.com
www.cbre.com/capitalmarkets

December 11, 2007

King Davidson
Development Associate
Clark Enterprises, Inc.
7500 Old Georgetown Road, 15th Floor
Bethesda, MD 20814

Re: Clark Enterprises

To whom it may concern:

Based upon Clark Enterprises' excellent credit and reputation in the lending community, we feel confident that they should not have difficulty in obtaining financing for their Renaissance Row apartment project located at 9th Street and Florida Avenue in Washington, DC.

Sincerely,

Maury E. Zanoff
Managing Director
CBRE Capital Markets

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Renaissance Row
Summary of Estimated Economic and Fiscal Impacts
CONSTRUCTION PERIOD

Economic Impacts	Direct	Indirect	Totals
Jobs (FTE)	170	148	318
Payroll	$ 5,089,684	$ 3,928,218	$ 9,017,901

Fiscal Impact to the District	
Income Tax (Direct)	$ 358,823
Income Tax (Indirect)	$ 282,313
Direct Sales Tax	$ 1,786,207
TOTAL	$ 2,427,342

Project Cost	$ 43,566,016

Estimated Income Taxes (Direct and Indirect Labor)

Type of Labor	Construction Value	Labor Hours per $1,000	Total Hours	Total FTE Jobs	Annual Earning/FTE	Direct Income Taxes
Direct Construction	$ 43,566,016	8	352,885	170	$ 5,089,684	######## #########

Type of Labor	Total Annual Earnings	Earnings Multiplier	Indirect Earnings Impact	Total Earnings Impact	Indirect Income Taxes
Indirect Construction	$ 5,089,684	1.7718	########## ###	$ 9,017,901	######## #########

Output Type	Total FTE Jobs	Employment Multiplier	Indirect Employment Impact	Total Employment Impact
Construction Labor	170	1.8728	148	318

Total Economic Impact

Output	Output Multiplier	Indirect and Induced Economic Impact	Total Economic Impact
$ 43,566,016	1.6929	$ 30,186,892	$ 73,752,908

Material Purchases

Type of Purchases	Per $1,000 Construction Cost	Expenditure
Regionally Purchased	$ 305	$ 13,287,635
Purchased Out of Region	$ 105	$ 4,574,432
Total Material Purchase		$ 17,862,067

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Renaissance Row
Summary of Estimated Economic and Fiscal Impacts
OPERATIONS PERIOD

FISCAL IMPACT TO THE DISTRICT	ANNUAL	20 YEAR TOTAL
Direct Sales Tax	$ 830,539	$ 23,487,372
Income Tax	$ 158,983	$ 4,495,990
Property Tax	$ 299,617	$ 8,473,073
TOTAL	$ 1,289,139	$ 36,456,435

SALES TAXES

Type	Gross Square Feet	Est. Sales per SF	Est. Annual Sales	Tax Rate	Est. Annual Sales Taxes	20 Year Total
General Retail/Entertainment	10,000	$ 350	$ 3,500,000	5.75%	$ 201,250	$ 5,691,286
Restaurant	10,000	$ 500	$ 5,000,000	10.00%	$ 500,000	$ 14,139,841
Grocery	7,495	$ 300	$ 2,248,500	5.75%	$ 129,289	$ 3,656,245
TOTAL	27,495		$ 10,748,500		$ 830,539	$ 23,487,372

INCOME TAXES

Employees (FTE)	Gross Square Feet	FTE per SF	No. of FTE	Annual Wages	Annual Tax Revenue	20 Year Total
General Retail/Entertainment	10,000	350	29	714,286	$ 51,857	$ 1,466,503
Restaurant	10,000	350	29	714,286	$ 51,857	$ 1,466,503
Grocery	7,495	350	21	535,357	$ 38,867	$ 1,099,144
TOTAL	27,495	350	79	1,963,929	$ 142,581	$ 4,032,151

Employees (FTE)	Percent	FTE per SF	No. of FTE	Annual Wages	Annual Tax Revenue	20 Year Total
Maintenance	60%	1000	3	109,200	$ 11,204	$ 316,843
Security	40%	1000	2	72,800	$ 5,198	$ 146,996
TOTAL			5	182,000	$ 16,402	$ 463,839

REAL ESTATE TAXES

Type	Assessed Value	Tax Rate	Annual RE Taxes	20 Year Total
Residential	$ 23,687,573	0.85	$ 201,344	$ 5,693,955
Retail	$ 5,312,034	1.85	$ 98,273	$ 2,779,119
Total	$ 28,999,607		$ 299,617	$ 8,473,073

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FIRST AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

THIS FIRST AMENDMENT (this "**Amendment**") is made effective as of July ___, 2007, between M Ghebretinsae and T Ghebretinsae (collectively, the "**Seller**"), and Moddie Turay Company, LLC, or its nominee (the "**Purchaser**").

RECITALS

1. Seller and Purchaser are parties to that certain Real Estate Purchase Agreement date January 25, 2007 (the "**Purchase Agreement**") with respect to certain real property located in the District of Columbia as more particularly described in the Purchase Agreement.

2. Purchaser and Seller have agreed to amend the Purchase Agreement to permit Purchaser the option to extend the Inspection Period, as defined in the Purchase Agreement, for up to an additional three (3) one month extensions upon payment of an extension fee as more particularly set forth herein.

3. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Purchase Agreement.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. The foregoing recitals are incorporated herein as if restated herein.

2. The Purchase Agreement is hereby amended by deleting the provisions of Section 4.1 (b) and inserting the following new language in substitution thereof:

> 4.1 (b) Purchaser, at its option, may extend the Inspection Period for up to an additional three (3) one month extensions, each such one month extension is exercisable by Purchaser by giving written notice to Seller prior to the expiration of the then current inspection Period, which notice shall include an extension fee (each an "**Extension Fee**", and collectively, the "**Extension Fees**") in the amount of . The Extension Fees shall be paid to Seller and shall be credited toward the Purchase Price at Closing. In the event of a default by Seller hereunder, Seller shall reimburse Purchaser for all Extension Fees paid by Purchaser, and this obligation shall survive termination hereof.

3. Except as set forth herein, the Purchase Agreement, as amended hereby, remains in full force and effect, and is hereby ratified and reaffirmed by the parties hereto.

4. This Amendment may be executed in one or more counterparts, each of which

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004929

FOIA CONFIEDENTIAL TREATMENT REQUESTED

shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

WITNESS the following duly authorized signatures and seals of the parties with intent to be legally bound:

PURCHASER:
Moddie Turay Company, LLC

By: _____ 7/30/07
Moddie Turay
President

SELLER:

_____ 7/31/07
M. Ghebretinsae

_____ 7/31/07
T Ghebretinsae

WMATA-INV 004930

MODDIE TURAY COMPANY
REAL ESTATE SERVICES

November 14, 2007

VIA HAND DELIVERY

M. Ghebretinsae
T. Ghebretinsae
1933 9th Street. NW. Suite 338
Washington, D.C. 20007

1933 \ 9th
1935 /

Re: Extension of Study Period/ Extension Payment

Dear Sir and Madam,

As we have previously agreed, this letter confirms the "Inspection Period" under that certain Real Estate Purchase Agreement dated as of January 25, 2007, as amended by that certain First Amendment to Real Estate Purchase Agreement and that certain Second Amendment to Real Estate Purchase Agreement (as amended, the "Purchase Agreement) by and between M. Ghebretinsae and T. Ghebretinsae (collectively, the "Seller") and Moddie Turay Company, LLC ("Purchaser") has been extended to allow for three additional one month extensions to January 31, 2008. Purchaser shall pay Seller an extension fee of for each one month extension, which extension fees shall be applied to the purchase price at closing.

Purchaser has sent Answer Title Company the extension fee of to extend the study period to November 30, 2007 (as evidenced by the statement from Answer Title). In the event of a default by Seller under the Purchase Agreement, the extension fees shall be paid to back Purchaser.

Please sign below to acknowledge our agreement set forth above. Thank you.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Very truly yours,

Moddie Turay

AGREED AND ACCEPTED:

11/21/07
M. Ghebretinsae

T. Ghebretinsae

Enclosure

WMATA-INV 004932

Yes! Organic Market
3809 12th Street, N.E.
Washington, DC 20017

September 27, 20007

Moddie Turay, President
Moddie Turay Company, LLC
3222 M ST NW, Suite 140
Washington, D.C. 20007

Re: Renaissance Row
Letter of Interest
Yes! Organic Market

Dear Moddie:

I have been briefed about your proposed project "Renaissance Row", and Yes! Organic Market is pleased to express interest in approximately 10,000 square feet at your company's development proposal to Washington Metropolitan Area Transit Authority (WMATA) to create a vibrant new mixed-use development that will activate Florida Avenue NW in the Shaw neighborhood. As discussed in our meeting, our preference would be to purchase the unit rather than to lease it. In any case, my preliminary interest in this project is genuine and considerable.

I am hopeful that I can know more about the progress of "Renaissance Row", and that I will be able to participate in an appropriate manner. To that end, I would ask that your office advise me at your earliest convenience of how I might become involved. I appreciate your taking the time to inform me, and I can assure you that, whatever information you further provide will be studied with the most serious consideration.

Sincerely,

Gary M. Cha
Owner

Dear Mr. Turay,

As the owner of Hank's Oyster Bar in Dupont Circle, I am very interested in expanding the number of neighborhood restaurants within the District. Your project, Renaissance Row, would be a perfect fit for creating more restaurants that service the communities you are building. I would be very interested in discussing a future partnership with you to build another much needed neighborhood restaurant in Shaw.

Thank you,

JAMIE LEEDS
CHEF/OWNER

HANKS OYSTER BAR
DC
1624 Q Street NW Washington DC 20009
T 202.462.HANK (4265) F 202.462.8888 info@hanksdc.com
OLD TOWN
1026 King St. (off Henry St.)
Alexandria, VA 22314
T. 703.739.HANK (4265)

TRYST INC
THE DINER
& OPEN CITY

September 24, 2007

Moddie Turay
Moddie Turay Company, LLC
3222 M ST NW
STE 140
Washington, DC 20007

Dear Mr. Turay:

I enjoyed your presentation on the Renaissance Row Project along Florida Avenue between 9th and 7th Streets NW. I think your plan for the area is spot-on and I would be interested in being a part of that vision. Our concept is to create "neighborhood gathering places" and your mixed use plan helps promote this idea.

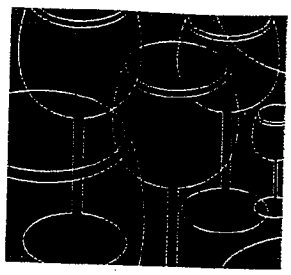
Please keep me abreast of your progress and continue to provide me with information. I look forward to hearing from you.

Sincerely,

Constantine Stavropoulos
President/Owner
Tryst, The Diner & Open City

2459 18TH STREET NW • WASHINGTON, DC • 20009
PHONE: 202-232-5500 • FAX: 202-363-6708

FOIA CONFIEDENTIAL TREATMENT REQUESTED



ARTVINES
WINE GALLERY ART BAR

October 4, 2007

Moddie Turay
Moddie Turay Company, LLC
3222 M ST NW
STE 140
Washington, DC 20007

Re: Letter of Interest for Renaissance Row

Dear Mr. Turay:

I'm very excited about your project, Renaissance Row, and am interested in being a part of it. Introducing ArtVines.

"Fine wine. Fine art. When people speak of the finer things in life, surely these are part of the conversation. A conversation as old as civilization. And as new as right now. Today, there's a new place to continue that conversation. A place dedicated to the appreciation and enjoyment of art and wine—together. Introducing ArtVines. Wine Gallery. Art Bar. Where palate meets palette. And the pleasure is all yours."

ArtVines, a wine bar and art gallery, would draw on Shaw's artist, student and residential community and boost its arts and wine education programs. I think ArtVines complements your retail program and would become a great neighborhood venue. ArtVines is positioned to become Washington's most unique wine bar/art gallery/special events environment. Please visit www.artvines.com.

Please keep me abreast of your progress and continue to provide me with information. I look forward to working with you to bring ArtVines to your exciting Renaissance Row development project.

Sincerely,

Horace Flournoy

Horace Flournoy
CEO/Founder
ArtVines LLC

2459 18TH STREET NW • WASHINGTON, DC • 20009
PHONE: 202-232-5500 • FAX: 202-363-6708

FOIA CONFIEDENTIAL TREATMENT REQUESTED

JOINT DEVELOPMENT SOLICITATION ISSUED AUGUST 24, 2007
PRESENTATION INSTRUCTIONS

These instructions are intended to provide guidance to Developers (and Development Teams) who have submitted Proposals to the Washington Metropolitan Area Transit Authority (WMATA) in response to the Joint Development Solicitation (JDS) issued on August 24, 2007, and have been invited to give a presentation to the WMATA Evaluation Team.

1. **Purpose**:
   The purpose of the oral presentations is to allow a Developer an opportunity to describe the key elements of its Proposal and to respond to questions from the WMATA Evaluation Team and jurisdictional representatives, approximately 8-12 attendees

2. **Organization of Presentations**:
   The presentation should be organized into two (2), 10-15-minute, segments. We have allotted an additional 15 minutes for questions after each presentation.

   Please note that the presentations and questions from those in attendance should be completed in approximately one (1) hour.

   The presentation should be structured in the following manner:

   a) Description of the Proposal highlighting relevant development experience of individual team development principals, Transit Oriented Development (TOD) principles, input received from both the local jurisdiction and community organizations, benefits to the local jurisdictions (taxes, jobs, etc.), anticipated schedule and timing of zoning requests, if appropriate. PLEASE DO NOT DISCLOSE ANY INFORMATION THAT YOU DO NOT WANT TO SHARE WITH THE APPLICABLE JURISDICTION. (Members of WMATA's Evaluation Team will be in attendance, and jurisdictional representatives are expected as well.)

   b) Proposed business relationship with WMATA, financial viability of the Proposal, and payments to WMATA. (Only members of WMATA's Evaluation Team will be in attendance.)

3. **Audio Visual Equipment, Handout Material and Other Aids**:
   Developers are encouraged to use maps, graphics and other visuals during their presentations. However, elaborate presentations are neither necessary nor encouraged.

   Equipment
   A slide projector, screen and/or easels will be available **upon request**. All other audio visual equipment must be provided by the Developer.

   Handouts
   Each Developer should ensure that ten (10) copies of any handout materials are available at the time of the presentation. **WMATA staff cannot be responsible for reproducing any handout materials**.

4. **Location**:
   All presentations will be held at the WMATA Headquarters Building, 600 Fifth Street, NW, Washington, DC. WMATA staff will escort you to the presentation room.

Moddie Turay Co., LLC
Clark Enterprises Inc.

Renaissance Row

VOLUME I

TECHNICAL INFORMATION

FOIA CONFIEDENTIAL TREATMENT REQUESTED

A

Transmittal Letter

"Good thoughts are no better than good dreams, unless they be executed."

~Ralph Waldo Emerson

MODDIE TURAY COMPANY

October 5, 2007

Gary Malasky
Contracting Officer
Office of Property Development and Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Re: Proposal for Shaw-Howard WMATA Property

Gentleman:

We are pleased to submit our response to WMATA's Joint Development Solicitation October 2007. Our response details our plan to develop Florida Avenue NW Parcels 1, 2, and 3 as a dynamic mixed-use project including retail, housing and other related uses.

As DC-based developers, we are committed to the long term growth of the Shaw community and look forward to developing a quality development that contributes to improving the cityscape and economic vitality of the District. Our project, Renaissance Row, will enhance the Shaw neighborhood by providing the much needed connectivity to the already successful U Street and activating Florida Avenue with national and local retailers to create pedestrian friendly streets.

We are joined by Sorg & Associates, a minority owned District based award winning architectural firm with projects throughout the District. The firm has designed numerous buildings in the Shaw and Logan Circle neighborhoods.

We appreciate the opportunity to respond to this solicitation, and look forward to meeting with you for more detailed discussions.

Very truly yours,

Moddie Turay
President, Moddie Turay Company, LLC

Rebecca Owen
Senior Vice President, Clark Enterprises, Inc.

2500 Q STREET, N.W., SUITE 338 WASHINGTON, D.C. 20007 202 413-4160 (F) 202 338-6014

FOIA CONFIEDENTIAL TREATMENT REQUESTED

B

Complete Proposal Form

"The man who has no imagination has no wings."

~Muhammad Ali

REPRESENTATIONS AND CERTIFICATIONS

REPRESENTATIONS

1. Developer's **existing** operation is as: *(check or complete all applicable boxes)*

[ ] an individual
[ ] a partnership
  [ ] general
  [ ] limited
  Formed under the laws of _____
[ ] a non-profit organization
[ ] a corporation, incorporated under the laws of _____
[x] a limited liability company (LLC) formed under the laws of Delaware
[ ] other, _____

2. Developer's **proposed** operation as set forth in its proposal is as: *(check or complete all applicable boxes)*

[ ] an individual
[ ] a partnership
  [ ] general
  [x] limited
  To be formed under the laws of _____
[ ] a non-profit organization
[ ] a corporation, incorporated under the laws of _____
[x] a limited liability company (LLC), to be formed under the laws of Delaware
[ ] other, _____

CERTIFICATIONS *(check applicable box)*

1. Debarred or Ineligible Contractors:

Developer certifies that its existing operation [ ] is, [x] is not included in the "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" maintained by the U.S. General Services Administration.

2. Contingent Fee:

a. Developer [ ] has, [x] has not, employed or retained any company or persons (other than a full-time, bonafide employee working solely for the Developer) to solicit or secure a Development Agreement; and

b. Developer [ ] has, [x] has not, paid or agreed to pay any company or person (other than a full-time, bona fide employee working solely for the Developer) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of a Development Agreement; and

c. Developer agrees to furnish information relating to the above as requested by WMATA's Contracting Officer.

3. Covenant Against Gratuities:

Neither Developer nor any of its employees, representatives or agents have offered or given gratuities or will offer or give gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or employee of WMATA with the view toward securing favorable treatment in the designation of a Selected Developer or in any determination made with respect to Developer selection, or in the negotiation, amendment or performance of the Development Agreement.

The undersigned Developer certifies that the foregoing is true.

October 5, 2007
Date

Moddie Turay Company, LLC
Developer

Authorized Representative

Exhibit A

SIGHT DRAFT

Date:_____

AT SIGHT, pay to the order of Washington Metropolitan Area Transit Authority, the sum of _____ Dollars (USD _____).

For Value Received, and charge to the account of [name of Applicant].

Drawn under [name of issuing bank] Irrevocable Standby Letter of Credit No. _____, dated _____[as amended by _____].

Washington Metropolitan Area Transit Authority, as Beneficiary under said Irrevocable Standby Letter of Credit No. _____, dated _____[as amended by _____], hereby certifies to you that:

[insert certification language]

TO: [name of issuing bank]
Address:
_____
_____
_____
Attn: Letter of Credit Department

Washington Metropolitan Area Transit Authority
By:_____
Print Name:_____
Title:_____
600 Fifth Street, NW
Washington, D.C. 20001

[If issuing bank is located outside of Washington, D.C., Maryland or Virginia, then a confirming bank in one of those jurisdictions is required; both banks must be members of the Federal Reserve System]

[Issuing Bank L/C Letterhead]

IRREVOCABLE STANDBY LETTER OF CREDIT

Letter of Credit No. HACH191980S

Issue Date: OCT 3, 07, 2007

APPLICANT:
Name: Renaissance Row LLC
Address: 7500 Old Georgetown RD 15th Floor, Bethesda MD 20814

Re: Issued in connection with
Joint Development Site: Shaw-Howard/Florida Avenue
Joint Development Solicitation (JDS) Dated: Oct 5 2007

BENEFICIARY:
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

Ladies and Gentlemen:

1. We hereby open in your favor, at the request and for the account of the above-identified Applicant, our Irrevocable Standby Letter of Credit No. HACH191984OS in an aggregate amount of One Hundred Thousand and 00/100's US Dollars (USD 100,000.00), to be available for payment of your drafts drawn at sight on us, and accompanied, in the case of each draft, by your written certification to us signed by any person purporting to act on your behalf, stating:

   Applicant as the Selected Developer for the above-referenced Joint Development Site pursuant to that certain Joint Development Solicitation (JDS) dated Oct 5 20007, and issued by Beneficiary has been terminated as the Selected Developer in accordance with **Section 5.2** of the JDS, and Beneficiary hereby certifies that the Sight Draft presented herewith constitutes an amount owed to Beneficiary under the JDS.

WACHOVIA

WACHOVIA BANK, NATIONAL ASSOCIATION
CONFIRMATION OF IRREVOCABLE STANDBY LETTER OF CREDIT
10/04/07

BENEFICIARY:
WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
600 FIFTH STREET NW
WASHINGTON, DC 20001, UNITED STATES

ISSUING BANK:
HARRIS, N.A., CHICAGO, ILLINOIS
C/O BANK OF MONTREAL
234 SIMCOE STREET, 3RD FLOOR
TORONTO, ONTARIO, CANADA M5T 1T4
ATTN: LETTER OF CREDIT DEPARTMENT

APPLICANT:
RENAISSANCE ROW LLC
C/O CEI REALTY, INC.
7500 OLD GEORGETOWN ROAD, 15TH FLOOR
BETHESDA, MD 20814 UNITED STATES

AMOUNT: USD 100,000.00
EXPIRATION DATE: 10/01/08
OUR LETTER OF CREDIT ADVICE NUMBER: SE447860W
ISSUING BANK LETTER OF CREDIT NUMBER: HACH191984OS

DEAR BENEFICIARY:

AT THE REQUEST OF THE ABOVE REFERENCED ISSUING BANK, WE HAVE BEEN INSTRUCTED TO ADVISE YOU OF THE OPENING OF THEIR IRREVOCABLE STANDBY LETTER OF CREDIT ISSUED IN YOUR FAVOR. THE AUTHENTICITY OF THIS LETTER OF CREDIT HAS BEEN REVIEWED BY US AND FOUND TO BE IN ORDER.

WE SUGGEST YOU REVIEW THE LETTER OF CREDIT IMMEDIATELY TO DETERMINE THAT THE TERMS AND CONDITIONS MEET THE REQUIRED TERMS OF YOUR SPECIFIC ARRANGEMENT. IF YOU FIND THE TERMS AND CONDITIONS OF THIS STANDBY LETTER OF CREDIT UNACCEPTABLE, PLEASE CONTACT YOUR CUSTOMER (THE APPLICANT) AND REQUEST THEM TO INSTRUCT THE ISSUING BANK TO AMEND THE CREDIT ACCORDINGLY. THIS WILL ELIMINATE DIFFICULTIES AND POSSIBLE DELAYS IN PAYMENT IN THE EVENT OF A DRAWING.

ALL DEMANDS FOR PAYMENT RELATING TO THIS STANDBY LETTER OF CREDIT MUST BE PRESENTED DIRECTLY TO OUR OFFICES LOCATED AT 401 LINDEN STREET, 1ST FLOOR, WINSTON-SALEM, NC 27101, ATTN: STANDBY LETTERS OF CREDIT, MAIL CODE: NC6034 QUOTING OUR REF. NO. SE447860W.

SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS, WE HEREBY CONFIRM THE ATTACHED LETTER OF CREDIT AND HEREBY ENGAGE WITH THE BENEFICIARY THAT ALL DRAFTS DRAWN AND PRESENTED TO US AT OUR OFFICES LISTED BELOW IN IN COMPLIANCE WITH THE TERMS OF THE LETTER OF CREDIT AND ON OR BEFORE THE EXPIRATION DATE OF OUR CONFIRMATION WILL BE DULY HONORED. OUR CONFIRMATION EXPIRES AT OUR OFFICE ON 10/01/08, BUT SHALL BE AUTOMATICALLY EXTENDED, WITHOUT WRITTEN

CONTINUED ON NEXT PAGE WHICH FORMS AN INTEGRAL PART OF THIS CONFIRMATION LETTER

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004948

WACHOVIA

AMENDMENT, IN EACH SUCCEEDING CALENDAR YEAR UNLESS WE HAVE SENT WRITTEN NOTICE TO YOU AT YOUR ADDRESS ABOVE BY EXPRESS COURIER AT LEAST SIXTY (60) CALENDAR DAYS PRIOR TO THE THEN CURRENT EXPIRATION DATE THAT WE ELECT NOT TO EXTEND OUR CONFIRMATION BEYOND THE DATE SPECIFIED IN SUCH NOTICE (THE "FINAL CONFIRMATION DATE"). ANY NOTICE WE MAY SEND TO YOU ADVISING OF OUR ELECTION NOT TO EXTEND OUR CONFIRMATION IN NO WAY AFFECTS THE ISSUING BANK'S OBLIGATION TO YOU UNDER THIS CREDIT UNLESS YOU ARE SO NOTIFIED TO THIS EFFECT. ANY NOTICE SENT TO YOU BY ISSUING BANK INDICATING THEIR ELECTION NOT TO EXTEND THE LETTER OF CREDIT HOWEVER, SHALL APPLY TO OUR CONFIRMATION AS WELL. IN THE EVENT THE ISSUER NOTIFIES YOU DIRECTLY, WACHOVIA BANK IS NOT OBLIGATED TO PROVIDE ADDITIONAL NOTIFICATION.

DOCUMENTS MAY BE PRESENTED AT EITHER OF OUR FOLLOWING LOCATIONS:

WACHOVIA BANK, N.A.
STANDBY L/C DEPT.
401 LINDEN STREET
WINSTON-SALEM, NC 27101

- OR -

WACHOVIA BANK, N.A.
INTERNATIONAL DIVISION
740 15TH STREET N.W.
WASHINGTON, DC 20005

IF DOCUMENTS ARE PRESENTED TO THE WASHINGTON ADDRESS THEY MUST ALSO BE FAXED BY THE BENEFICIARY TO 336-735-0952 THE SAME DAY IN ORDER TO BE DEEMED A PRESENTATION.

EXCEPT AS OTHERWISE STATED IN THE ABOVEMENTIONED LETTER OF CREDIT, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS, I.C.C. PUBLICATION NO. 600, REVISION 2007.

OUR CONFIRMATION IS CONTINGENT UPON YOUR ACCEPTANCE OF THE AMENDMENT ATTACHED HERETO.

SINCERELY,

AUTHORIZED SIGNATURE
WACHOVIA BANK, NATIONAL ASSOCIATION
STANDBY LETTERS OF CREDIT CENTER OF EXCELLENCE

ALL INQUIRIES REGARDING THIS CREDIT SHOULD BE DIRECTED TO OUR STANDBY CUSTOMER CARE PROFESSIONALS AT: 1-800-776-3862.

KKB

ENCLOSURE:

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 004949

---------- Instance Type and Transmission ----------

Copy received from SWIFT
Priority : Urgent
Message Output Reference : 1657 071004PNBPUS33CXXX0628967027
Correspondent Input Reference : 1556 071004HATRUS44AXXX7615112960

---------- Message Header ----------

Swift Output : FIN 707 Amendment to a Doc Credit
Sender : HATRUS44XXX
HARRIS N.A.
CHICAGO,IL
UNITED STATES US
Receiver : PNBPUS33SLC
WACHOVIA BANK, NA
(STANDBY LC'S)
WINSTON-SALEM,NC
UNITED STATES US

---------- Message Text ----------

20: Sender's Reference
HACH191984OS
21: Receiver's Reference
SE447860W
31C: Date of Issue
071003
30: Date of Amendment
071004
26E: Number of Amendment
1
59: Benefic'y (before amndmt)-Nm&Add
WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
600 FIFTH STREET NW
WASHINGTON, DC 20001 US
79: Narrative
PLACE OF EXPIRY HAS BEEN AMENDED TO:
WINSTON-SALEM, NC
THIS LETTER OF CREDIT IS NOW AVAILABLE WITH
WACHOVIA BANK NATIONAL ASSOCIATION , 401 LINDEN
STREET, WINSTON, SALEM NC 27101.
IN ITEM NO. 1, DRAFTS NOW DRAWN ON WACHOVIA BANK,
WINSTON, SALEM, NC INSTEAD OF READING 'US'.
IN ITEM NO. 3 AND 5, THE LETTER OF CREDIT NOW
EXPIRE IN WINSTON, SALEM, NC. INSTEAD OF
WASHINGTON, D.C.
UPON RECEIPT OF YOUR AUTHENTICATED SWIFT MESSAGE
STATING THAT YOU HAVE RECEIVED A DRAWING IN
COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS
LETTER OF CREDIT WE WILL EFFECT PAYMENT WITHIN 1
BUSINESS DAY (24 HOURS NOT INCLUDING SATURDAYS,
SUNDAYS, LEGAL HOLIDAYS, OR ANY DAY ON WHICH WE
ARE NOT OPEN FOR BUSINESS ON ACCOUNT OF ANY OTHER
REASON).
ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

ORIGINAL

Wachovia Bank N.A.
ORIGINAL
This document constitutes
the operative instrument
under our reference no.
SE447860W
To be quoted in all correspondence

---------- Message Trailer ----------

{CHK:E0D3A05EF3BD}

HARRIS Harris N.A., Chicago, Illinois

STANDBY/LETTERS OF CREDIT
C/O Bank of Montreal
234 Simcoe Street
3rd Floor
Toronto, Ontario M5T 1T4
Tel: 1-877-801-0414
Fax: 1-877-801-7787
SWIFT: HATRUS44

DOCUMENTARY COLLECTIONS
C/O Bank of Montreal
129 St Jacques Street, 10th Floor
Montreal, Quebec H2Y 1L6
Tel: 1-888-258-6378
Fax 1-888-258-6380
SWIFT: HATRUS44

To be quoted in all correspondence

Irrevocable Standby Letter of Credit No. HACH191984OS

Wachovia Bank N.A.
ORIGINAL
This document constitutes the operative instrument under our reference no.

Advising Bank:
WACHOVIA BANK NA
SLC UNIT, 401 LINDEN STREET, 1/FL
WINSTON-SALEM, N.C. 27101, United States

Beneficiary:
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
600 FIFTH STREET NW
WASHINGTON, DC 20001, United States

Date of Issue:
October 03, 2007

Date and Place of Expiry:
October 01, 2008 CHICAGO

Applicant:
RENAISSANCE ROW LLC
C/O CEI REALTY, INC.
7500 OLD GEORGETOWN ROAD, 15TH FLOOR, BETHESDA, MD 20814 United States

SLC Amount:
Not Exceeding USD 100,000.00 One Hundred Thousand and 00/100 United States Dollars

We issue our Irrevocable Standby Letter of Credit subject to the following terms and conditions.
This Standby Letter of Credit is available with WACHOVIA BANK NATIONAL ASSOCIATION, INTERNATIONAL DIVISION, 740 15TH STREET NW, WASHINGTON, DC 20005 United States by payment when accompanied by the following documents.

Wachovia Bank N.A.
ORIGINAL
This document constitutes the operative instrument under our reference no.
SE4478604J
To be quoted in all correspondence

Special Conditions:
Ladies and Gentlemen:

Re: Joint Development Site: Shaw-Howard/Florida Avenue
Joint Development Solicitation (JDS) dated October 5, 2007

1. We hereby open in your favor, at the request and for the account of the above-identified Applicant,

ORIGINAL

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004951

our Irrevocable Standby Letter of Credit No. HACH191984OS in an aggregate amount of One Hundred Thousand and 00/100's United States Dollars (USD100,000.00), to be available for payment of your drafts drawn at sight on us, and accompanied, in the case of each draft, by your written certification to us signed by any person purporting to act on your behalf, stating:

Applicant as the Selected Developer for the above-referenced Joint Development Site pursuant to that certain Joint Development Solicitation (JDS) dated October 5, 2007, and issued by Beneficiary has been terminated as the Selected Developer in accordance with Section 5.2 of the JDS, and Beneficiary hereby certifies that the Sight Draft presented herewith constitutes an amount owed to Beneficiary under the JDS.

2. Drafts drawn under this Letter of Credit (as same may have been or may be amended from time to time) shall be completely sufficient if in the form attached hereto as Exhibit A, and need not be endorsed on the Letter of Credit. We will accept any and all statements delivered pursuant to this Letter of Credit as conclusive, binding and correct, without having to investigate or being responsible for the accuracy, truthfulness, correctness or validity thereof and notwithstanding the claim of any person to the contrary.

3. This Letter of Credit shall expire, unless extended as provided herein, at 5:00 P.M. local time in Washington, D.C., on October 1, 2008. If such date is a Saturday, Sunday, legal holiday, or day on which we are not open for business on account of any other reason, the expiration date set forth above shall automatically be extended to our next regular business day.
It is a condition of this Letter of Credit that it will be automatically extended without amendment for an additional period of twelve (12) months from the present and each future expiration date, unless, not less than sixty (60) days prior to the then-relevant expiration date, we notify you by authenticated swift via the Confirming Bank that we elect not to extend this Letter of Credit for any additional period. Upon your receipt of such a notification, you may draw your sight draft on the Confirming Bank prior to the then-relevant expiration date for the unused balance of this credit, which need be accompanied only by your signed written statement that you received notification of our election not to extend.

4. All drafts drawn under this Letter of Credit must refer to the number and issue date of this Letter of Credit, and must be marked "Drawn under Harris N.A. Irrevocable Standby Letter of Credit No. HACH191984OS."

5. We agree to honor each draft drawn under and in compliance with the terms of this Letter of Credit, if duly presented to the Confirming Bank, Wachovia Bank National Association, International Division, 401 Linden Street, Winston, Salem NC 27101 or to Wachovia Bank National Association, International Division 740 15th Street NW, Washington, DC 20005 at or before 5:00 P.M. local time in Washington, D.C. If the documents are presented to the Washington, D.C. address a copy must be faxed by the Beneficiary to Wachovia Bank National Association at fax #333-735-0952 the same day in order to be deemed a presentation.

ORIGINAL

Wachovia Bank N.A.
ORIGINAL
This document constitutes
the operative instrument
under our reference no.
SE4478604
To be quoted in all correspondence

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004952

We agree to deliver payment in full of each such draft without any processing, check, or other fees whatsoever, to your offices as set forth hereinabove, Attn: General Counsel, not later than thirty-six (36) hours after the time of presentment (not including Saturdays, Sundays, legal holidays, or any day on which we are not open for business on account of any other reason) by our Cashier's or Teller's check payable solely to the order of the "Washington Metropolitan Area Transit Authority."

6. The original and/or any amendment of the Letter of Credit under which drafts are presented by you need not be presented with any draft drawn thereunder in order to constitute a valid presentment, unless such draft is a full and/or final draft under this Letter of Credit.

7. Partial drawings under this Letter of Credit are permitted.

8. This Letter of Credit shall be governed by the Uniform Customs and Practices for Documentary Credits, UCP 600 (2007. Rev.), published by the International Chamber of Commerce, and to the extent not so governed in accordance with the statute and case law of the District of Columbia.

Signing Officer
HACH191984OS

ANI DEVECI

Authorized Signing Officer

ORIGINAL

Wachovia Bank N.A.
ORIGINAL
This document constitutes
the operative instrument
under our reference no.
SE447860W
To be quoted in all correspondence

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004953

This is an integral part of Letter of Credit No. HACH191984OS

Exhibit A

SIGHT DRAFT

Date: _____

AT SIGHT, pay to the order of Washington Metropolitan Area-Transit Authority, the sum of ..... Dollars (USD.....).

For Value Received, and charge to the account of (name of Applicant).

Drawn under Harris N.A. Irrevocable Standby Letter of Credit No. HACH191984OS, dated October 3, 2007 [as amended by _____].

Washington Metropolitan Area Transit Authority, as Beneficiary under said Irrevocable Standby Letter of Credit No. HACH191984OS, dated October 3, 2007 [as amended by _____], hereby certifies to you that:

[insert certification language]

To: Harris N.A., Chicago, Illinois
c/o Bank of Montreal
234 Simcoe Street, 3rd Floor
Toronto, Ontario, Canada M5T 1T4
Attn: Letter of Credit Department

Washington Metropolitan Area Transit Authority
By:
Print Name:
Title:
600 Fifth Street, NW
Washington, D.C. 20001

ORIGINAL

Wachovia Bank N.A.
ORIGINAL
This document constitutes the operative instrument under our reference no.
SEQ47860W
To be quoted in all correspondence

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004954

Additional Conditions:

All banking charges are for the account of the applicant.

We undertake that documents drawn under and in strict conformity with the terms of this Standby Letter of Credit will be honored.

The credit is subject to the version of the ICC Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce, Paris, France, which is in effect on the date of issue.

Bank to Bank Information:

In the event we elect not to renew this Letter of Credit we will provide you at least 90 days notice prior to the then current expiration date via authenticated swift.
Upon receipt of your authenticated swift message stating that you have received a drawing in compliance with the terms and conditions of this Letter of Credit we will effect payment within 3 business days from receipt of your swift.

Please advise this Standby Letter of Credit to the beneficiary through WACHOVIA BANK NATIONAL ASSOCIATION, INTERNATIONAL DIVISION, 740 15TH STREET NW, WASHINGTON, DC 20005 adding your confirmation.

Instructions to the Next Advising Bank: Please advise this Standby Letter of Credit to the beneficiary adding your confirmation.

Unless otherwise instructed herein, all correspondence and inquiries regarding this transaction should be directed to our Customer Service Center at the above address, telephone: as indicated. Please indicate our reference number in all your correspondence or telephone inquiries.

Authorized Signature(s)

Wachovia Bank N.A.
ORIGINAL
This document constitutes the operative instrument under our reference no.
SE447860W
To be quoted in all correspondence

ORIGINAL

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 004955

c

Table of Contents

"In my mind's eye, I visualize how a particular sight and feeling will appear...It is an intuitive sense, an ability that comes from a lot of practice."

~Ansel Adams

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M. Impact on Tax Base
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P. Statement on No Governmental Contingencies
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V. Statement on No Criminal Indictments or Convictions
W. Statement on Willingness to Work with Disadvantaged Business Enterprises
X. Proposed Assemblage

EXHIBITS:

1. Letters of Interest
2. Letters of Support

D

Executive Summary

"Let us not be content to wait and see what will happen, but give us determination to make the right things happen."

~Peter Marshall

D. EXECUTIVE SUMMARY

Founded in 2005, the Moddie Turay Company (MTC) is a full service minority-owned real estate development company registered as a Local Small Disadvantaged Business Enterprise in the District of Columbia. The firm's vision was conceived during Mr. Turay's tenure of public service as the Special Assistant to Mayor Anthony A. Williams and launched while working as a Development Manager at Western Development Corporation on some of the most innovative mixed-use projects in the area. Mr. Turay's knowledge of Washington DC's political landscape coupled with pragmatic approaches to real estate development provides MTC with unparalleled advantages for developing urban mixed-use projects. Community development projects demand savvy and require working intimately with community stakeholders, government officials, local and national retailers, and lenders. The qualifications of the development team make MTC the right company for this important project.

Our development, Renaissance Row, along with the various other projects planned and/or under construction has the power to truly transform this historic neighborhood. The Shaw neighborhood is drastically changing with the new Radio One/NCRC mixed-use development scheduled to break ground shortly, the planned affordable and market rate housing on the parcels owned by the Housing Finance Agency and the planned mixed-use development led by a joint partnership of Howard University and Trammel Crow. These exciting developments will bring new activity and a needed boost to a neighborhood that has lain dormant and has experienced little economic development during the recent real estate boom. These projects are critical to attracting new investment; however the vacant lots between 7th Street and 9th Street on Florida Avenue owned by WMATA create a physical separation from the U Street Corridor. This break in retail continuity and pedestrian activity has prevented the Shaw community from having both a physical and economic connection to its adjacent and more prosperous neighborhoods. It is for this reason that we feel Renaissance Row is the project to connect Shaw to the U Street Corridor with the development of a new retail, entertainment and residential project. The WMATA parcels are not only vital to providing the much needed connection between the Shaw and U Street communities but also have the potential to spur similar growth further east toward New York Avenue.

Our vision, outlined in this proposal and active outreach in this community drive our excitement about the potential of these specific parcels. We are committed to the Shaw neighborhood and are eager to help create a vibrant landscape that will enrich this area of the District. Over the past year, we have worked diligently to acquire a parcel adjacent to the WMATA parcel 1 at 9th and U Street and currently have this adjacent parcel under contract This parcel is critical to any development plan and enables us to leverage the site owned by WMATA as part of a mixed-use project that maximizes street frontage along Florida Avenue. MTC has met with the D.C. Office of Economic Development, D.C. Office of Planning and Shaw community leaders to further ensure the compatibility of our development program with local needs.

The development team headed by Moddie Turay Company includes our equity/development partner Clark Enterprise Inc.; Established in 1972, CEI is the parent company to Clark Construction, the largest privately held construction company in the United States with over $2 billion in annual revenues. CEI is a diversified investment company headquartered in Bethesda, Maryland and is also one of the largest privately held companies in the nation, with holdings in real estate, commercial, heavy and residential construction and venture capital, private equity and other investments. As an investor,

developer, and asset manager, CEI maintains a large portfolio of commercial and residential projects, with current interests in over 5,000,000 square feet of office space (primarily located in the Washington, DC Metropolitan Area), 320,000 square feet of warehouse space, 1,100 hotel units, and 12,000 residential units. In addition, CEI has experienced working jointly with WMATA, most recently, Fort Totten Park Apartments at the Fort Totten Metro. Our team also includes, Sorg & Associates, an award winning minority owned architectural firm based in Washington DC with over 40 full-time professional staff members. Sorg & Associates have designed and provided delivery services for numerous projects in the Shaw neighborhood and are certified as a Local Small Disadvantaged Business Enterprise (LSDBE) in Washington D.C.

Our development program, which includes ground floor retailers (such as specialty food market, unique restaurant concepts, bookstore, hardware store, art gallery/wine bar) and over 100 residential units will enliven the neighborhood and provide the needed amenities, currently underrepresented in Shaw. Also included in our proposal is a Letter of Intent from Yes Organic Market, a Washington, D.C. based organic grocery store with over four well established locations in the District. Yes Organics' commitment to developing community focused healthy grocery store outlets in urban neighborhoods in Washington, D.C. such as Adams Morgan, Capitol Hill, Cleveland Park, and Brookland are unparalleled. We have also included a Letter of Interest from local restaurateur Constantine Stavropoulos, owner of Tryst Coffee House - Bar - Lounge (Adams Morgan), The Diner (Adams Morgan), and Open City (Woodley Park), which are some of the most innovative restaurant/lounge concepts in the District. Shaw residents have expressed a strong interest in having a local hardware store in the neighborhood and we are currently working with Central Safe and Locksmith Company to fill that need. Central Safe and Locksmith Company have operated their business in the Shaw neighborhood for over 61 years and are being displaced by the new convention center hotel and would like to continue serving the community with a hardware store at our location. Hanks Oyster Bar, with locations in Dupont Circle and Old Town Virginia has provided a Letter of Interest and would like to open a new restaurant concept at Renaissance Row. We are also excited about the push to create a Business Improvement District in the Shaw neighborhood and look forward to contributing our resources to this effort. Also included in our proposal are letters of support from ANC 2C01 and Shaw Main Streets. Our team is committed to the Shaw neighborhood and look forward to building a project for the community, not just in the community.

Overall, the development program is consistent with the themes introduced in the 2005 Office of Planning "Development Framework for a Cultural Destination District within Washington, DC's Greater Shaw/U Street" and promotes use of public transportation by having destination retail environment that will attract residents of all wards of the District. We are committed to activating the street with both local and national retailers to create a project that is pedestrian friendly and will and serve the needs of the community.

Renaissance Row offers an opportunity to reinterpret how people live, work, and play in the Shaw community including: Improving the quality of pedestrian/community experience; Incorporate Transit Oriented Development (TOD) best practices, which promote the use of public transportation, lower housing costs, reduce household transportation spending, and bring jobs, housing and services closer together.; Providing connectivity through the use of exciting retail destinations between Shaw-Howard Metro and the U Street/Cardozo metro station. Our development strategy, which will outline the retail philosophy, phasing and implementation, and

financial proposal, will demonstrate our commitment and focus on making this project a success. The MTC/Clark team has the experience needed to develop a world class mixed-use project on time and budget.

E

Development Team

"Teamwork is the ability to work together toward a common vision. The ability to direct individual accomplishments towards organizational objectives. It is the fuel that allows common people to attain uncommon objectives."

~Andrew Carnegie

E. DEVELOPMENT TEAM INFORMATION

DEVELOPER

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ARCHITECT

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CO-DEVELOPER AND FINANCIAL PARTNER

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King Davidson
Development Manager
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POTENTIAL PROJECT LENDERS

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HSBC Bank
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F. INDIVIDUAL EXPERIENCE

Moddie Turay, President

Moddie Turay, joined Western Development Corporation in January 2004. Mr. Turay was responsible for managing, researching, and preparing economic analysis for selected Western projects. Prior to joining Western, Mr. Turay served as the Special Assistant to Mayor Anthony A. Williams of Washington, DC. As a close advisor to the Mayor, Mr. Turay provided key support on numerous economic development initiatives and outreach to community stakeholders. Prior to joining the Executive Office, Mr. Turay served as Staff/Legislative Assistant to U.S. Congressman Bob Etheridge (NC) where he was responsible for monitoring legislation and facilitated large, wide-ranging issues involving Foreign and Corporate Affairs. Mr. Turay also coordinated community relations between North Carolina constituency and Washington DC office.

Franklin School, 13th & K Street, NW

As an equity partner/development manager, Moddie Turay was responsible for overseeing both the response to the RFP issued by the District of Columbia Government and the day to day management of the $25 million redevelopment of this federally historic designated 50,000 SF building. Mr. Turay managed the entire redevelopment process including overseeing architectural drawings, building measurements, economic analysis, tax credit analysis, the construction budget, and project development timeline. Mr. Turay was also responsible for recruiting hotel operator Soho House Hotel based in London, and restaurant and lounge operator Lotus restaurant/nightclub, based in New York. He was responsible coordinating hotel and restaurant strategy in order to create a Five Star rated hotel and 24 hour activity to the east end of downtown. This effort required numerous strategy meetings in New York with prospective operators, architects, and interior designers. This project is still under development and Mr. Turay continues his role as development manager.

Towson Commons, One West Pennsylvania Avenue, Towson, MD

As the equity partner and acquisition associate for the $42 million dollar, 322,753 SF mix-use office and retail development. Mr. Turay aided in the economic analysis for the purchase and planned $30 million dollar redevelopment and assisted in managing the due-diligence process as well as the coordination of efforts between GMAC and property manager Jones Lang LaSalle.

SE Stadium Town center, Nationals Ballpark Stadium Area

As the Assistant Project Manager, he assisted in the management of day to day activities which included zoning, economic analysis, and created the development plan with architects HOK and Design Development Group. The development program included an exciting mix of entertainment, housing, retail and public space uses to maximize the pedestrian experience on game and non-game days. Mr. Turay also acted as the liaison between Western Development and District Government Officials.

Adrian Donnelly, Vice President of Construction

As Vice President of Construction, Mr. Donnelly oversees all construction related activities for Moddie Turay Company. Services include program management, design management, design build, construction management and general contracting. In the past 7 years Mr. Donnelly has managed construction activity worth in excess of $300 million. This includes over 1,127 rooms (5 hotels), over 1.2 million SF of office, industrial and retail space (13 buildings).

Prior to joining MTC in 2006, Mr. Donnelly spent 3 years with The Buccini/Pollin Group (BPG), a privately-held, full service real estate acquisition, development and management company with offices in Washington DC, Wilmington, Delaware, and New York City. While Mr. Donnelly was with BPG he held the position of Senior Construction Manager/Developer.

Sheraton Meadowlands Renovation
Renovation of a 427 room, 22 story hotel in East Rutherford, NJ. Responsibilities included oversight quality control, budget, and schedule. Reviewed and updated budgets. Reviewed and approved change orders and applications for payment. This project is still under construction. Estimated value: $74 million

Full Service Hilton Hotel
A 250 room, 11 story hotel built in Linthicum, MD. Responsibilities of the project were to oversee the construction project concerning the quality, budget, and schedule. Reviewed and updated budgets. Reviewed and approved change orders and applications for payment. This project is still under construction. Estimated value: $54 million

Hilton Garden Inn/Homewood Suites
A 250 room 11 story Hotel built in Arundel Mills MD. Responsibilities of the project were to oversee the construction project concerning the quality, budget, and schedule. Reviewed and updated budgets. Reviewed and approved change orders and applications for payment. This project is still under construction. Estimated value: $34 million

Discovery Channel
A 155,000-SF build out of an existing tilt up concrete building. The build out included multi production facilities for their on air programming. This project consisted of two new generator systems, MEP upgrades, electrical upgrades, site work, raised flooring, new roof, and office build-outs. Estimated construction value: $23 Million

Nia Francis, Vice President of Development

Nia Francis has over 12 years of experience working in different aspects of the real estate industry. She has extensive public-private development experience.

Ballpark District – Anacostia Waterfront Corporation
Ms. Francis served as Project Director at the Anacostia Waterfront Corporation, focused on redeveloping publicly owned land around the new Nationals Ballpark. She also managed $2 Million in predevelopment projects for various public-private initiatives within the South Capitol/Ballpark Waterfront District. Specifically, she was responsible for understanding land use issues, performing financial analysis, and integrating social policies into the business negotiations for the redevelopment of a 6-acre waterfront site. In addition, she led a design team and permitting strategy for the future construction of a new commercial boat landing for the Ballpark District.

901 K Street – CarrAmerica Urban Development
Ms. Francis has been involved with retail, residential, industrial and office developments. Prior to joining the Anacostia Waterfront Corporation, she worked as a Development Manager at CarrAmerica where she obtained entitlements and concluded acquisition agreements for the development of a new office building located in East End.

Lower Manhattan Development – Mayor's Office of Lower Manhattan Development
Before moving to the District of Columbia, Ms. Francis worked in New York City on the transformation of Fulton Street and the South Street Seaport in Lower Manhattan into retail destinations outside of the World Trade Center. While working as a Vice President in the Mayor's Office of Lower Manhattan Development, she managed all predevelopment functions and negotiates ground lease terms with The Related Companies to reposition the South Street Seaport, owned by the City of New York, into a new destination including Cirque Du Soleil. Prior to her work in Lower Manhattan, she was a project manager at the NYC Economic Development Corporation, where she closed several land transactions and negotiated development agreements.

Before joining the Economic Development Corporation, she was a project manager at Bovis Lend Lease, and worked on various projects including a hotel renovation and school construction project.
Ms. Francis holds a bachelor's degree in Environmental Design and a concentration in Architecture from the University of Massachusetts and a Master's Degree in Real Estate Investment from New York University.

Rebecca L. Owen, Senior Vice President and General Counsel, Clark Enterprises

Rebecca L. Owen is Senior Vice President and General Counsel of Clark Enterprises, Inc., a position she has held since 1995. Clark Enterprises, headquartered in Bethesda, Maryland, is one of the nation's largest privately-held investment companies with diversified assets that range from real estate and technology to construction, including Clark Construction LLC. Ms. Owen is a member of Clark's business management team, with direct responsibility for real estate

transactions and development and for the legal affairs of the company and its investments. Also, she manages the real estate Acquisitions and Development Department which is responsible for all acquisition and development projects with the Clark Portfolio, including: Sourcing and underwriting new properties, acquisitions, joint ventures and sales; loans; entitlement, design management, construction management, and initial lease up; and all leases, management and service agreements.

Before joining Clark, Ms. Owen practiced real estate and general business law for 8 years with the law firm of Shaw Pittman of Washington, D.C. and with a law firm in Burlington, Vermont.

A summa cum laude, Phi Beta Kappa, 1984 graduate of Hamilton College, with a B.A. in economics, Ms. Owen also received a law degree in 1987 from The University of Chicago Law School. She belongs to the bar associations of the Commonwealth of Virginia, the District of Columbia and the State of Vermont. In addition, Ms. Owen is on the Board of Trustees of Columbia Equity Trust, L.P. and the Boys and Girls Clubs of Greater Washington. She recently served as a chairman of the Youth In Real Estate Luncheon 2007, which raised $300,000 for charity.

Jessica M. Hubley, Associate General Counsel-Transactions, Clark Enterprises

Jessica M. Hubley has been Assistant General Counsel and a LADR development team member at Clark Enterprises, Inc., since July 2006. Ms. Hubley coordinates and heads up the acquisition, sale, leasing and financing of real estate assets for CEI, as well as the formation of investment partnerships. Ms. Hubley is also actively involved in the development of real estate assets for CEI, including assessment of prospective projects, analysis of zoning matter and oversight of consultants and contractors. Prior to joining Clark, Ms. Hubley practiced real estate and general corporate law for five years at the law firm of Pillsbury Winthrop Shaw Pittman in Washington D.C. Noteworthy projects include (i) the construction financing for CityVista, an urban, mixed-use project located at Mount Vernon Square, involving a complex partnership composed of private developers and three LSDBE partners, ground leasing land from the District of Columbia government, (ii) the sale of The Mark Winkler Portfolio, (iii) the development and refinancing at University View, College Park, MD and (iv) the acquisition and development of Rolling Hills Apartments, Germantown, MD.

A summa cum laude, Phi Beta Kappa, a graduate of James Madison University, with a B.S. in biology, Ms. Hubley also received a law degree from Vanderbilt University School of Law.

King Davidson, Development Associate, Clark Enterprises

As a Development Associate, King Davidson assists in the acquisition and development of real estate assets for Clark Enterprises. Prior to joining CEI, Mr. Davidson worked for Opus East on many noteworthy projects, many of which were created under the basic fundamentals of vibrant, live-work-play, pedestrian-friendly environments.

Hastings Marketplace, Manassas, VA
144 unit mixed use project with street-level retail and Harris Teeter anchored center located in the City of Manassas.

100 M ST SE, Washington, DC
240,000 SF office building with street-level retail adjacent to Navy Yard Metro Station. Mr. Davidson worked with WMATA during the initial design and excavation phases of the project to make certain that there were no disturbances to the WMATA tunnels.

A graduate from Washington and Lee University with a degree in economics, Mr. Davidson is currently pursuing a Masters of Science in Real Estate at Johns Hopkins University.

Suman Sorg, Sorg & Associates

Suman Sorg's professional work reflects her commitment to design excellence and to the community in which she lives .

A thirty-year resident of the District of Columbia, Ms. Sorg received her Bachelor of Architecture degree from Howard University in 1970. After volunteering for two years in Africa with the Peace Corps, Ms. Sorg attended Cornell University for her Masters in Historic Preservation.

Ms. Sorg then worked with Harry Weese and Associates for several years, until she established Sorg and Associates in 1986. Her firm has grown rapidly over the last twenty years, and is now one of the top architectural firms in Washington, DC and one of the largest woman-owned firms on the East Coast. The firm has received a number of prestigious awards for design excellence over the years, including more than 20 from the American Institute of Architects (AIA) alone.

Sorg and Associates has projects across the country and around the world. Some of the most recent projects involve commercial and institutional office buildings, government buildings and embassies, housing developments, schools, recreational and fitness facilities, child-care centers, master plans, post offices, and theaters. Ms. Sorg serves as Chief Designer on almost all of the firm's projects.

Creating designs that fit into their contexts has always been Ms. Sorg's guiding philosophy. Nothing, she believes, exists in isolation. Every design reflects culture, history, and context. and all must be considered if a design is to be successful.

E-2 DEVELOPMENT TEAM INFORMATION

MTC/CEI has the requisite power and authority to enter into a Development Agreement and all final documentation as required by WMATA without the consent or joinder of any other party or authority.

F

Development Entity

"Beauty of whatever kind, in it's supreme development, invariably excites the sensitive soul to tears."

~Edgar Allen Poe

FOIA CONFIEDENTIAL TREATMENT REQUESTED

F. DEVELOPMENT ENTITY

1. MTC is a corporation owned by Moddie Turay. If selected as the developer of the site, MTC will form a single-purpose limited liability company to develop the project jointly with Clark. Segregation each project into a single-purpose entity is generally a requirement of obtaining institutional financing and serves other purposes related to accounting, project administration and liability issues.

2. The project will be managed and controlled solely by a joint venture between MTC and CEI. Ownership interests in the project will be held by MTC and CEI.

G

Site Plan

"Planning is bringing the future into the present so that you can do something about it now."

~Allen Lakein

FOIA CONFIEDENTIAL TREATMENT REQUESTED

G. SITE PLANS

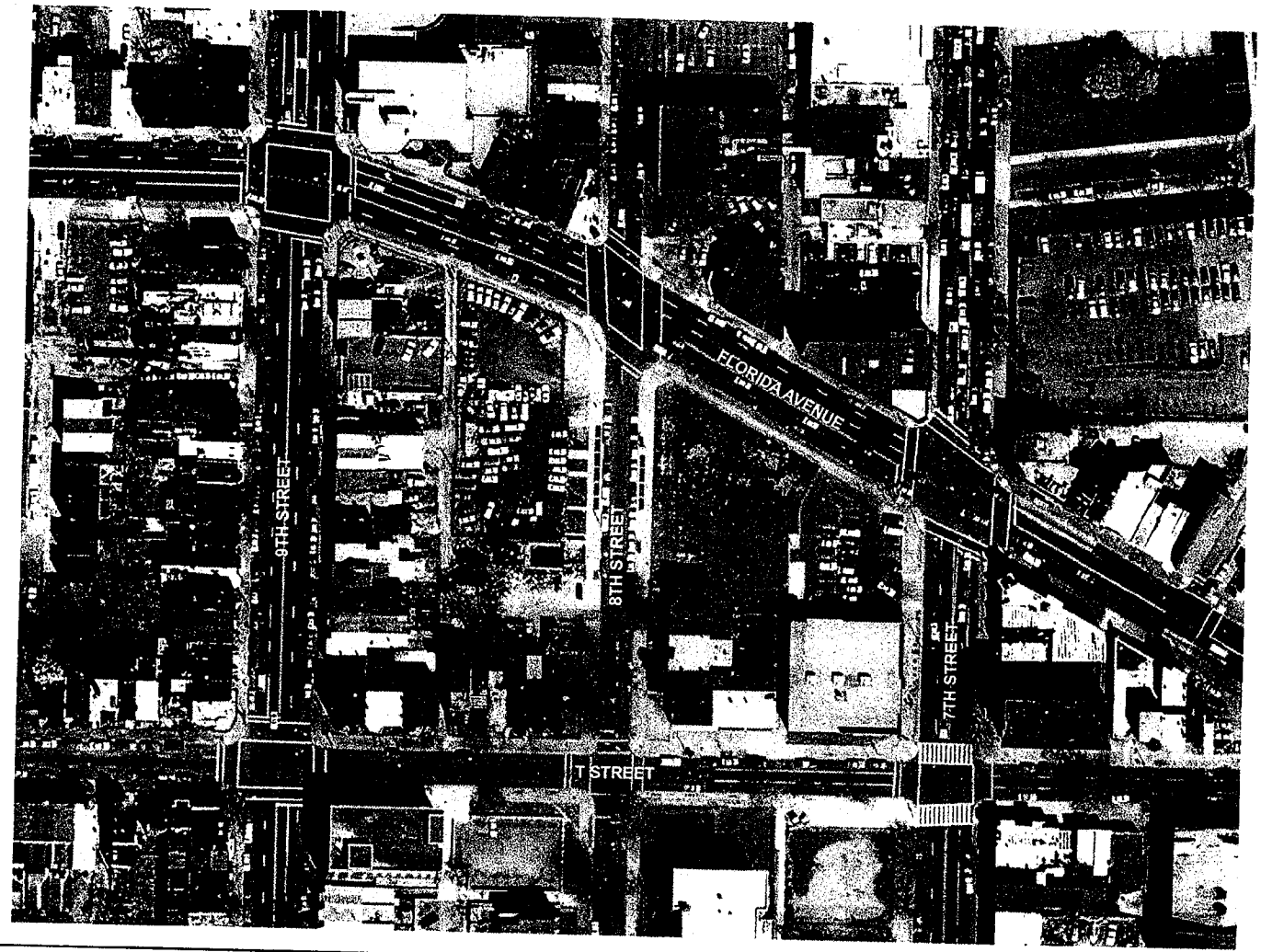
The enclosed site plans and elevation display approximately 27,000 sf of retail on the ground floor fronting all elevations of the buildings. The residential above is set back from the retail which pronounces the retail space and creates a stronger pedestrian street. The retail façade will vary in heights and elevations to create a dynamic storefront. The design aesthetic will include references from the surrounding historic context with a modern design context. The project is meant to celebrate its urban setting and not be a "cookie cutter" design that can as easily located in the suburbs.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT

Washington, DC

OCTOBER 2, 2007



SORG
ARCHITECTS

AERIAL MAP
SCALE: NTS

WMATA-INV 004979

FOIA CONFIDENTIAL TREATMENT REQUESTED

SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT

Washington, DC

SEPTEMBER 24, 2007

SORG
ARCHITECTS

SITE PLAN
SCALE: NTS

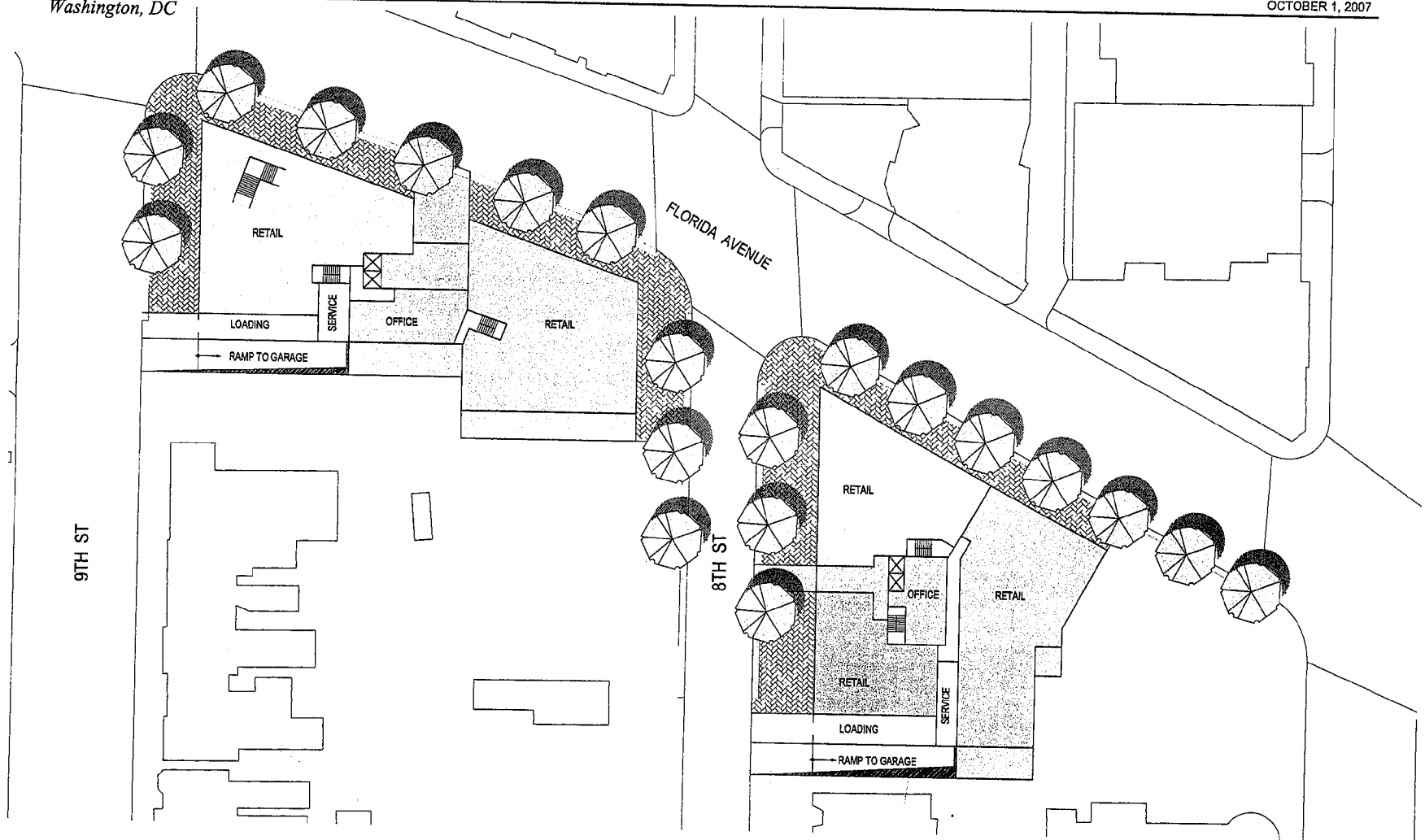
WMATA-INV 004980

FOIA CONFIEDENTIAL TREATMENT REQUESTED

SHAW-HOWARD/FLORIDA AVENUE JOINT DVELOPMENT

Washington, DC

OCTOBER 1, 2007



SORG ARCHITECTS

GROUND FLOOR PLAN

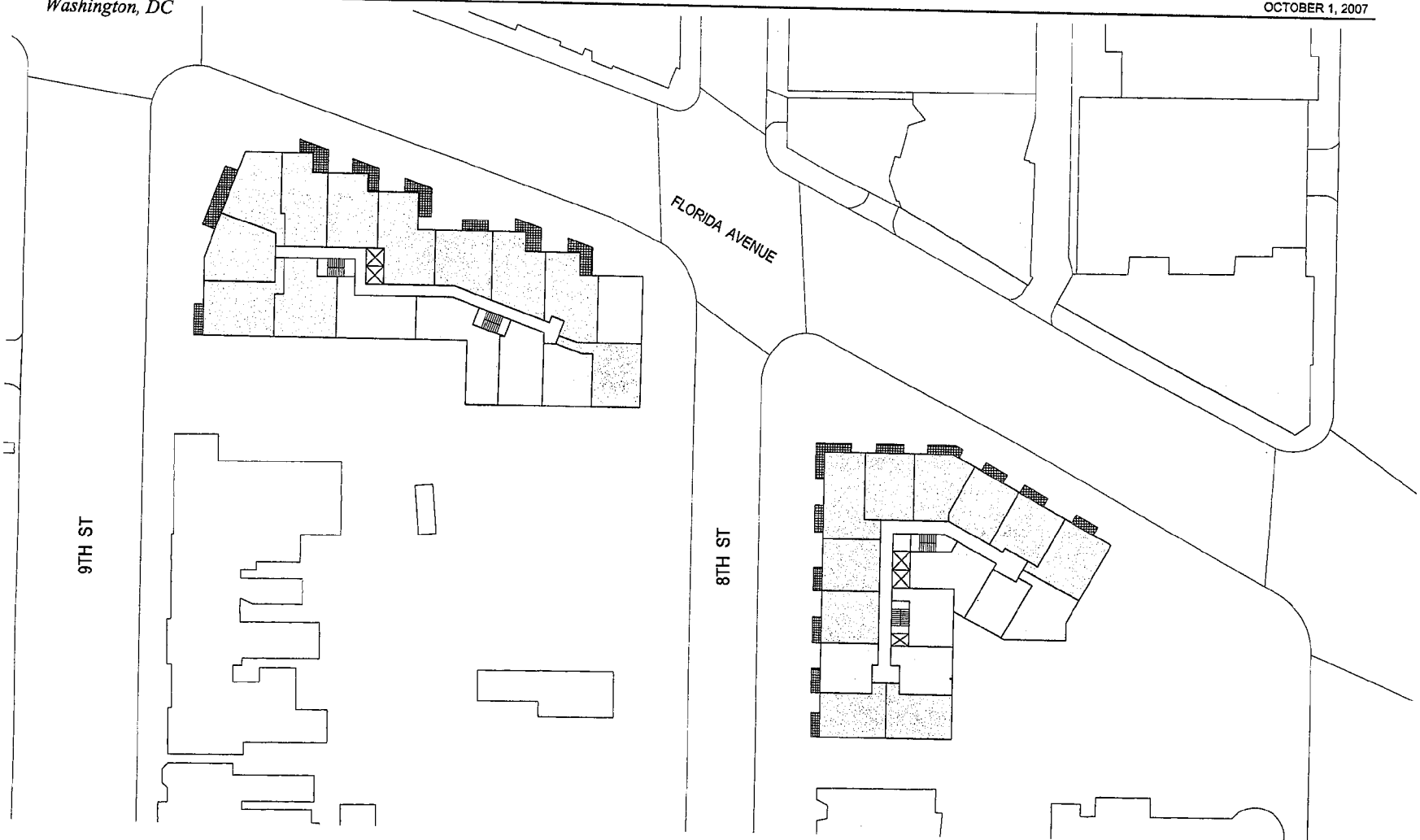
WMATA-INV 004981

FOIA CONFIEDENTIAL TREATMENT REQUESTED

SHAW-HOWARD/FLORIDA AVENUE JOINT DVELOPMENT

Washington, DC

OCTOBER 1, 2007



SORG
ARCHITECTS

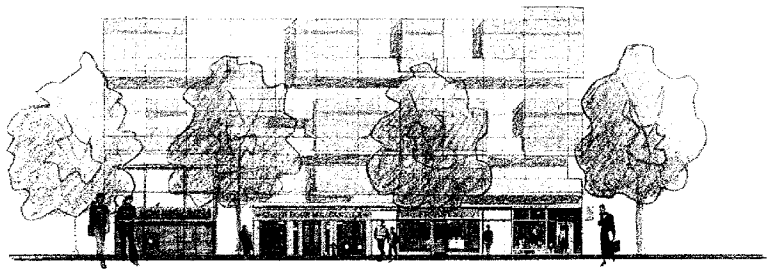
RESIDENTIAL FLOOR PLAN

WMATA-INV 004982

FOIA CONFIEDENTIAL TREATMENT REQUESTED

SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT OCTOBER 4, 2007

Washington, DC



8TH & FLORIDA AVENUE - NORTH ELEVATION

9TH & FLORIDA AVENUE - NORTH ELEVATION

SORG
ARCHITECTS

ELEVATIONS
SCALE: NTS

WMATA-INV 004983

H

Impact on WMATA

"Set your target and keep trying until you reach it."

~Napoleon Hill

H. IMPACT ON WMATA FACILITIES

MTC/CEI does not anticipate any impact on the WMATA facilities. The underground garage is located approximately 19' below the surface.

Project Schedule

"A goal is a dream with a deadline."

~Napoleon Hill

FOIA CONFIEDENTIAL TREATMENT REQUESTED

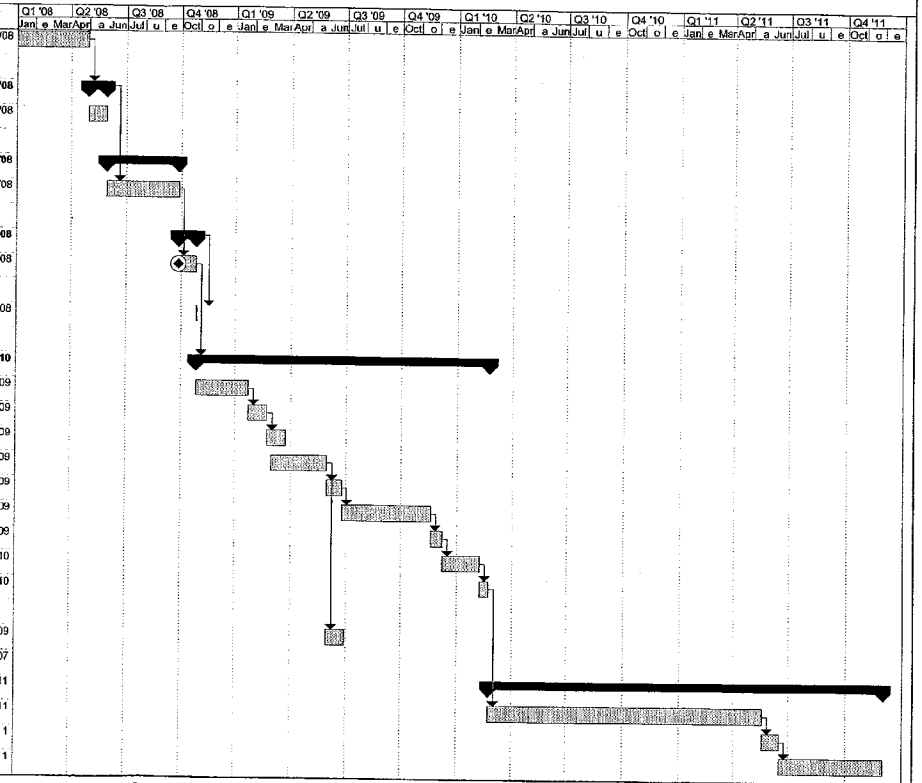
I. PROJECT SCHEDULE

Please find the project schedule on the following page in a Microsoft Project format.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

RENAISSANCE ROW PROJECTED DEVELOPMENT TIMELINE

ID	Task Name	Duration	Start	Finish
1	**Term Sheet Negotiations**	120 days	Tue 1/1/08	Tue 4/29/08
2				
3	**Approval of Selected Developer**	**30 days**	**Wed 4/30/08**	**Thu 5/29/08**
4	WMATA Board of Directors Approves Term Sheet	30 days	Wed 4/30/08	Thu 5/29/08
5				
6	**Development Agreement Execution**	**120 days**	**Fri 5/30/08**	**Fri 9/26/08**
7	Final Documentation Negotiations and Execution	120 days	Fri 5/30/08	Fri 9/26/08
8				
9	**Approval of Development Agreement**	**30 days**	**Sat 9/27/08**	**Sun 10/26/08**
10	Final Documentation and WMATA BOD	30 days	Sat 9/27/08	Sun 10/26/08
11				
12	**Agreement for Assemblage Parcels**	1 day?	Mon 10/27/08	Mon 10/27/08
13				
14	**Project Design and WMATA Approval**	**427 days**	**Mon 10/27/08**	**Sun 2/21/10**
15	Concept Plan Preparation and Approval	60 days	Mon 10/27/08	Thu 1/22/09
16	Development Plan Preparation and Approval	30 days	Fri 1/23/09	Sat 2/21/09
17	WMATA Approval	30 days	Sun 2/22/09	Mon 3/23/09
18	Schematic Design/Construction Document Preparation	90 days	Sun 3/1/09	Fri 5/29/09
19	WMATA Approval of 35% CD	25 days	Sat 5/30/09	Tue 6/23/09
20	Design Development/65% CD	120 days	Wed 6/24/09	Wed 11/18/09
21	WMATA Approval of 65% CD	20 days	Thu 11/19/09	Tue 12/8/09
22	100% Construction Documents	60 days	Wed 12/9/09	Sat 2/6/10
23	WMATA Approval of 100% CD	15 days	Sun 2/7/10	Sun 2/21/10
24				
25	**Project Financing Approval**	30 days	Sat 5/30/09	Sun 6/28/09
26	Local Permitting/Approvals (TBD)	0 days	Thu 1/25/07	Thu 1/25/07
27	**Project Construction and Operation**	**500 days**	**Mon 2/22/10**	**Thu 12/1/11**
28	Project Construction	18 mons	Mon 2/22/10	Thu 5/19/11
29	Initial Occupancy	1 mon	Fri 5/20/11	Thu 6/16/11
30	Stabilization	6 mons	Fri 6/17/11	Thu 12/1/11



Project: WMATA Proposal Project Sch
Date: Thu 10/4/07

Task | Progress | Summary | External Tasks | Deadline
Split | Milestone | Project Summary | External Milestone

WMATA-INV 004990

J

Zoning

"The world has the habit of making room for the man whose actions show that he knows where he is going."

~Napoleon Hill

FOIA CONFIEDENTIAL TREATMENT REQUESTED

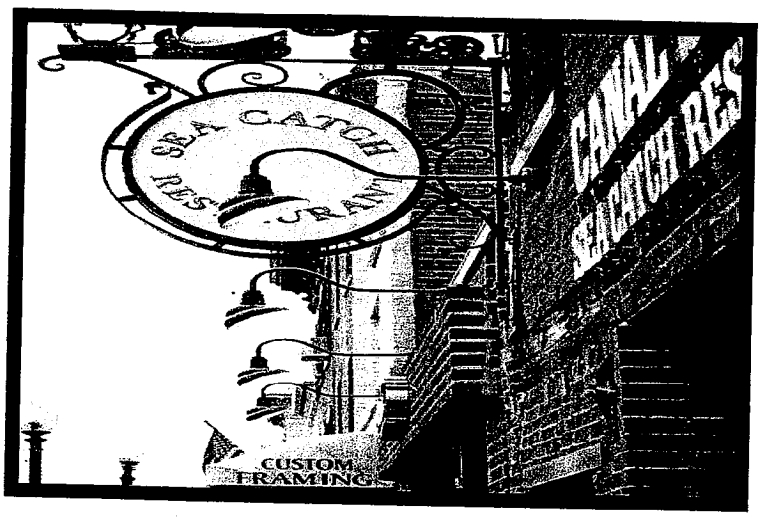
J. ZONING

The site is currently zoned A/C-2-B, a medium density community center zone that allows a maximum height of 65 feet with a 3.5 FAR total density. Non-residential density may be as much as 1.5 FAR of the total 3.5 FAR allowed. Residential lot occupancy is limited to 80 percent. This distract also has an Arts/Overlay Zone with incentives for the development of below-market rate housing, legitimate theater, arts, and related uses. Bonus density up to a maximum of 4.5 FAR can be obtained if residential and arts-related components are included in the project.

The proposed buildings will be approximately 153,000 square feet for an FAR of 4.5 and a height of 65 feet taking advantage of the Arts/Overlay Zone incentive bonus for development of below-market rate housing, legitimate theater, arts, and related uses.

K

Lease Terms



"Everybody wants to see a copy of the lease."

~Charles Collins

K. BUSINESS TERMS

MTC/CEI are proposing two alternatives to WMATA. First, we are proposing a 60 year ground lease and second an all-cash purchase. We are proposing to purchase or lease the entire WMATA offering – Parcels 1, 2 & 3 – representing 28,872 SF of land.

1. Ground Lease

We are proposing a 60 year ground lease with WMATA receiving **8.00% of the fair market value of the land** annually upon stabilization, adjusted every 10 years to using the three appraiser method. Prior to stabilization, we will pay a $10,000 per month compensation commencing upon closing of the Development Agreement and Ground Lease and concluding with stabilization of the property. We anticipate that this period will be approximately 16 months for design and pre-development, 18 months of construction and 6 months for the project to stabilize. Ownership issues upon the completion of the lease period will be negotiated to a mutually agreeable resolution. Please see Volume 2, Section D for more detail.

We also looked into a participating ground lease where WMATA would receive 5% of the Fair Market Value and 10% of their pro-rata share of the cash flow after all expenses. In the end, total compensation to WMATA would be approximately $100,000 less over the 15 year period in the participation alternative; therefore, we did not pursue that option.

2. Purchase

We are also proposing an all-cash offer of $50 per FAR square foot for the parcels 1, 2 and 3. Based upon a 4.5 FAR and the total square footage of 28,872 SF for the parcels, **the total purchase price will be $6,496,200**.

If we choose to pursue a Planned Unit Development (PUD), the maximum allowable FAR, in this case, will increase to 6.0. Pending site plan approval and successful commencement of construction, the purchase price will increase by the augmented useable square feet. If we proceed to construct the entire 6.0 FAR, **the increased amount will be $2,165,400 for a total purchase price of $8,661,600**. The additional amount, if any, will be paid 60 days following commencement of construction. Please see Volume 2, Section E for more detail.

While a ground lease will provide WMATA with a guaranteed income stream and with that certainty, a sale will give WMATA freedom and the ability to invest the cash received in other worthwhile projects in the District to maximize their long term return.

L

Market Analysis & Strategy

"Strategy without tactics is the slowest route to victory. Tactics without strategy is the noise before defeat."

~Sun Tzu

L. MARKET ANALYSIS AND STRATEGY

The Shaw neighborhood is undergoing a renaissance. Following this section is a table outlining selected developments in the pipeline that are nearby or have similar development programs. By 2011, the area will have 1300 new residential units, over 300,000 square feet of retail, and some office and hotel development. Nearly 2 million square feet will be developed in the Shaw neighborhood in 3 to 4 years. Renaissance Row will complement these developments however it retail format and architectural statement will make it a unique project, setting it apart from the other projects.

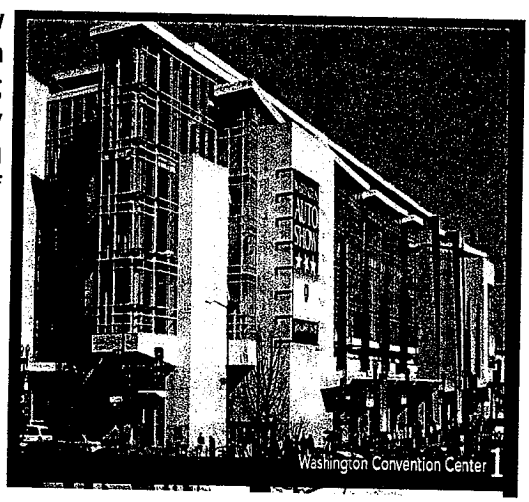
AMENITIES & ATTRACTIONS

METRO COUNTS (weekday) Shaw/Howard Univ: 6,576 Mt. Vernon Sq./7th Street/Convention Center: 6,660

- 185 development projects valued at over $7.6 billion are under construction or have been completed since 2001, including 9,739 residential units within a half-mile.
- The Warehouse Theater and Arts complex has two live performance theaters and a screening room.
- Proximity to downtown sporting events at the Verizon Center, Chinatown, museums, theaters and art galleries.
- New 2.3 million sq. ft. Washington Convention Center, hosting major trade shows and public events and attracting as many as 40,000 people per day. The Center also includes 44,000 sq. ft. of retail space.
- Adjacent to the U Street dining and entertainment corridor.
- More than 95,400 employees within a 10-minute walk.

The Shaw neighborhood is one of the most historic neighborhoods in the Washington Metropolitan Area and was once the center of entertainment and cultural outlets for African Americans. The WMATA parcels along Florida Avenue allow the Shaw neighborhood to have a physical connection of walkable streets with restaurants, cafes, and art related uses that Logan Circle, Dupont Circle, Adams Morgan and U Street currently share. These neighborhoods have successfully evolved over the years in large part due there connectivity of pedestrian friendly streets and architecture from one neighborhood to the next. The WMATA parcels along Florida Avenue will allow a similar opportunity for Shaw to provide a pedestrian flow to the above successful neighborhoods. The development of the Howard Town Center, Radio One Headquarters, O Street Market, Howard Theater and WMATA parcels prove the Shaw neighborhood will once again go through a glorious Renaissance.

The Convention Center and the New Convention Center Hotel – the Convention Center already draws people to the neighborhood; the new hotel (which reportedly must open by 2010 or the convention center will start losing bookings) will keep convention foot traffic north of Massachusetts Avenue, thus helping our retail, galleries and restaurants. Based on my Internet research, it seems that construction is expected to commence in 2008. The Fenty administration is accountable for getting this project up and going.


Washington Convention Center 1

Proximity – The ability to easily access the Downtown corporate scene as well as the Capital and governmental areas. Another asset, in terms of the location is the fact that it's Metro accessible via the Yellow and Green Lines. The interstate,

museums, U Street, 14th Street, the Circulator, etc. make the area a naturally appealing spot in which to reside. Given Shaw's close proximity to just about everything in the area, especially transportation-wise, it indeed makes Shaw a prime neighborhood to reside in.

More Accountability Regarding Vacant Structures - Historically bad stewards of vacant properties (like Shiloh Baptist Church) are being held accountable for their real estate holdings. Efforts are underway to make sure that property taxes on vacant
structures are collected and maximized, which will hopefully prompt the less esteemed neighbors to action.

Development Trends in D.C. – Development in the Shaw area is definitely promising. From the west, we are faced with Logan Circle, which is already a desirable place to be with its safe and beautiful atmosphere. Compared to what Logan was ten years ago, there is now is a significant difference and the eastern movement of renewal is apparent. From the south, Chinatown and Gallery Place are booming, and expansion to the north is natural, especially with the convention center and the metro aiding growth. To an extent, saturation of these hot real estate markets seems to be a necessary predicate to Shaw's development boom.

Big Projects Underway in Shaw – several large projects planned for Shaw, like the O Street Market and the Broadcast One Center, will be catalysts for growth and renewal. Some of these large projects are going to move forward soon (e.g., the O Street Market and an Assisted Living facility for seniors). Once these projects are on line and brimming with residents and businesses, ancillary development will surely occur. The Exchange at 9th and N is another example of a catalyst project. It's well under construction and set to open in early 2008. It will likely do a lot for the 1300 block of 9th.

SHAW

POPULATION	0-0.5 mi	0-1 mi	0-3 mi
Population	19,603	61,847	308,342
Male	54.9%	52.0%	49.0%
Female	45.1%	48.0%	51.0%
HOUSEHOLDS			
Households	4,564	15,487	139,456
Average Household Size	2.1	1.9	2.0
Owner-occupied	37.2%	30.1%	39.6%
INCOME			
Per Capita	$27,478	$32,944	$38,423
Median HH Disposable	$30,229	$32,643	$38,550
Average Household	$59,120	$64,494	$80,552
Median Household	$38,367	$42,043	$50,581
CONSUMER EXPENDITURES ($000)			
Apparel	$26,948	$62,501	$358,723
Computers & Accessories	$2,065	$7,617	$44,021
Entertainment & Recreation	$24,284	$89,295	$524,924
Food at Home	$39,352	$145,031	$828,065
Home Improvement	$12,847	$46,253	$300,786
Household Furnishings	$14,129	$51,867	$306,847
Pets	$3,456	$11,602	$68,506
Meals at Restaurants	$25,600	$94,681	$539,501
Vehicle Maint. & Repair	$8,233	$30,572	$174,402
Television, Radio & Sound	$8,754	$32,410	$184,991
Travel	$23,128	$48,128	$289,291
Average Spent per HH	$10.1	$22.0	$27.2
AGE			
Age 0-4	5.2%	4.5%	4.6%
Age 5-9	4.4%	4.1%	4.2%
Age 10-14	5.7%	5.1%	4.9%
Age 15-24	14.3%	13.8%	14.9%
Age 25-34	22.7%	23.0%	21.0%
Age 35-44	17.3%	17.4%	16.0%
Age 45-54	13.2%	12.9%	13.1%
Age 55-64	8.2%	9.2%	10.2%
Age 65+	9.0%	10.0%	11.1%
Median Age	33.9	34.8	35.2

2007 NEIGHBORHOOD PROFILES

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Change in the Local Political Environment - The political environment in Shaw has already changed considerably over the past few years. The contrast in leadership that Kevin Chapple has brought to that of his predecessors and the increasing number of responsible, active, concerned, invested, and impassioned citizens create an environment that fosters development. The surge in Shaw blogs, and the increased accountability/information sharing produced by such, evidence the change in the political atmosphere.

In General... Shaw is leaning towards a future which includes higher property values, less crime, better schools, ethnic diversity, and growth.

On the following page, please find a chart outlining a development pipeline for projects located in the close proximity to Renaissance Row.

M

Impact on Tax Base

"Great teamwork is the only way we create the breakthroughs that define our careers."

~Pat Riley

M. IMPACT ON TAX BASE

Renaissance Row includes approximately 130 residential units and 27,000 sf of retail and restaurants would provide the following specific benefits to the DC tax base:

1. Since the site is currently incurring any tax income, 100% of the increment will be a new benefit to the District totaling approximately $5 - $6mm. This includes property, sales and income taxes for both the construction and operating periods.

2. As outlined in the table on the following page, the sales and income are approximately $2-3mm of the total tax income benefits.

3. MTC/CEI estimates that the project would create on average approximately 250 new jobs, both during construction and operating periods.

4. Other economic benefits which are difficult to quantify at this stage include: increased spending and tax revenues from increased business and residential activity; and increased fare collection from Metro and Metrobus.

N

Statement on Community Organization Meetings

"I am of the opinion that my life belongs to the community and as long as I live, it is my privilege to do for it whatever I can."

~George Bernard Shaw

FOIA CONFIEDENTIAL TREATMENT REQUESTED

N. STATEMENT ON COMMUNITY ORGANIZATION MEETINGS

Per WMATA's, request MTC contacted ANC Vice Chairman Myla Moss of ANC 1B and participated in a Town Hall Meeting to discuss our proposal for the WMATA parcels on September 18th . The community members expressed their concerns and need for active store fronts, which is at the heart of our proposal. MTC had a follow-up meeting with Myla Moss on October 2 and with ANC member Phil Spaulding on Oct 4 to further discuss our development plan and architectural design.

MTC contacted Alexander Padro, Executive Director of Shaw Main Streets and Chairman of ANC 2C01. Shaw Main Streets is a non-profit organization facilitating a community-driven process to revitalize the 7th and 9th Street commercial corridors of the Shaw area following a comprehensive four-point strategy of organization, public outreach and marketing, physical improvements, and economic development. We have had several meetings with Mr. Padro, where we discussed our vision and provided him with a copy of our proposal for his review. Included in Exhibit 2 of our proposal are letters of support from Alexander Padro on behalf of ANC 2CO1 and Shaw Main Streets, further demonstrating our commitment to the Shaw neighborhood and its residents.

MTC intends to maintain contact with ANC 1B, Shaw Main Streets, and other pertinent community groups and leaders in order build upon the present dialogue and incorporate both Transit Oriented Development principles and the community needs. MTC truly believes in engaging the community and creating a process whereby their input can be incorporated into our development program.

Statement on Local Jurisdiction Meetings

"Tell me and I'll forget. Show me and I'll remember. Involve me and I'll understand."

~Confucius

O. STATEMENT ON LOCAL JURISDICTION MEETINGS

Per WMATA's request, our development team met with Geraldine Gardner and the DC Office of Planning Development review committee on September 25, 2007 to discuss our project.

MTC has also had numerous meetings with senior staff members in the Executive Office of Economic Development to discuss the project and hear their concerns. We have met with Neil Albert, Deputy Mayor of Economic Development and Greg O'Dell, former Chief Investment Officer in the Office of Economic Development.

MTC has met with Council Member Kwame Brown, Chairman of the Committee on Economic Development regarding our proposal.

P

Statement on No Governmental Contingencies

"The greatest problem in communication is the illusion that it has been accomplished."

~George Bernard Shaw

P. STATEMENT ON NO GOVERNMENTAL CONTINGENCIES

REQUIRED STATEMENT ON NO GOVERNMENTAL CONTINGENCIES

The project's feasibility is not contingent upon any local, state or federal government action or financial support other than the issuance of permits and approvals that are required of projects of this nature.

Q

Statement on Compatibility with Land Use Requirements and Law

"The first and most important step towards success is feeling that we can succeed."

~Nelson Boswell

Q. COMPATIBILITY WITH LAND USE REQUIREMENTS

REQUIRED STATEMENT ON COMPATIBILITY WITH LAND USE REQUIREMENTS

1. The project is compatible with local land use requirements.
2. The project will conform to all applicable federal, state, and local laws, regulations and ordinances including all federal and relevant local environmental regulations.

R

WMATA Daily Transit Ridership Analysis

"If a city has a rapid mass transportation, it will hold together and renew itself."

~Sidney Waldron

R. WMATA DAILY TRANSIT RIDERSHIP ANALYSIS

MTC's projected development plan of Renaissance Row in the Greater Shaw/U Street neighborhood characterizes a significant amplification in functional square foot density over the current use and as such implies an augment in the number and type of daily riders on the WMATA facilities. In accordance with the "2005 Development Related Ridership Survey Final Report," the following analysis foresees increases in Ridership resulting from both residential, general retail, including a grocery store, and retail dining as a result of MTC's projected Renaissance Row.

Residential tenants of Renaissance Row are likely to use Metro as their primary source of transit.. According to the 2005 Survey, 17-67% of the Transit share range is composed by that of residential land usage, with an average of 45%. Retail is not lagging too far behind with an average of between 19-57% and average of 37%.

With an emphasis on Residential, 55% of all work and/or school trips used Metro as well as 67% of trips to the District. "Residents living in areas with a comparatively higher density housing and dense street networks are less likely to use their car, and more likely to use transit and Metrorail.

As for retail, 36% of retail patrons and employees used Metro to access the retail site of which, 28% used Metrorail. Based on these numbers above from the 2005 Development Related Ridership Survey Final Report, it can be inferred that with the implementation of this mixed-use retail development project, it is highly likely that the number and type of daily riders on the WMATA facilities is likely to increase.

Residential and retail will definitely bring in commuters, but so will the grocery store. On average, a small format grocery such as Yes Organic Market will bring in 800-1000 people per day. And last but not least, the dining options in Renaissance Row will attract a diverse crowd that will draw on residents throughout the District. The table below shows the projected diners on a daily basis, followed by a table that gives the projected number of grocery shoppers daily, monthly and annually.

Dinner, 6-11pm	
Number of Seats	147
Average Occupancy	80%
Average Number of Turns	2.25
Total Number of Diner Patrons	**265**
Lunch, 11-2pm	
Number of Seats	147
Average Occupancy	60%
Average Number of Turns	1.25
Total Number of Lunch Patrons	**110**
Total Number of Daily Patrons	**375**

Average Customers	Grocery Store Customers		
	Daily	Monthly	Yearly
800-1000	800	24000	288000

Given the aforementioned statistics, the implementation of Renaissance in the Shaw neighborhood will be a significant impact on Metro ridership, for example, the grocery store in itself will bring in approximately 11,000 Metrorail users per year, benefiting both WMATA and the Renaissance Row Retailers in an effort to make this a successful development.

S

Statement on No Prior Relationship with WMATA

"It seems essential, in relationships and all tasks, that we concentrate only on what is most significant and important."

~Soren Kierkegaard

S. STATEMENT ON NO PRIOR RELATIONSHIPS WITH WMATA

REQUIRED STATEMENT ON NO PRIOR RELATIONSHIPS WITH WMATA:

Neither MTC or CEI, nor any of its principals, officers or other members of the development team, has any past current or anticipated contractual or financial relationship with WMATA or its staff or Board Members except as noted below.

CEI, along with Clark Affiliates, is ground leasing land from WMATA to develop Fort Totten Apartments at the Fort Totten Metro. This does not create conflict of Interest with WMATA.

T

Previous Projects

"Leadership is the capacity to translate vision into reality."

~Warren G. Bennis

T. PREVIOUS PROJECTS

The following pages are 3 successful examples of past mixed-use projects.

Capitol View
(425 3rd Street SW / Square 537)
Washington, DC

May 2007

PROJECT SUMMARY

Description	High-Rise, Class-A Office Building
Owner	Square 537 Associates LLC (Clark Ownership = 100%)
Building Size	252,391 GSF 232,337 RSF (92% Efficient)
Site Size	21,845 SF (0.50 Acres)
Parking	188 spaces (1 per 1,236 RSF)

PROJECT TEAM

Developer	Clark Enterprises, Inc
Design Team	Shalom Baranes – Architect Tadjer-Cohen-Edelson – Structural Girard Engineering – MEP Edwards & Kelcey – Civil SmithGroup – Tenant Architect (test fits)
Contractor	Clark Construction Group
Leasing	CBRE – Office Madison Retail Group – Retail
Prop. Mgr.	CBRE

BUDGET / COST

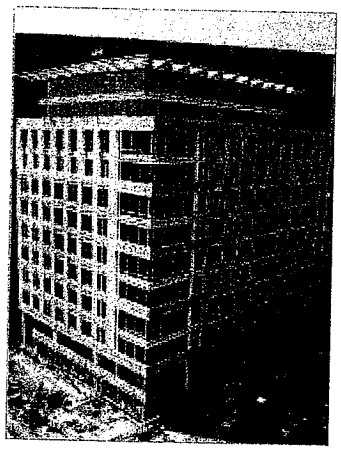
Budget	**Original**	**per RSF**
Land	$25,898,556	$ 111
Direct Costs/TI	$51,775,097	$ 223
Indirect Costs	$10,634,321	$ 46
Financing	$6,090,582	$ 26
Total Budget	**$94,398,556**	**$ 406**
Cost		
Projected Final Cost	$94,398,556	$0 Variance from Budget

CONSTRUCTION LOAN TERMS

Lender	Bank of America
Loan Amount	$68,500,000
Interest Rate	200 bps over 1-month LIBOR. Swap fixes interest at 6.8475%.
Maturity	12/16/08
Payments	Interest only, with principal due on maturity.

LEASE TERMS

Lease Type	Triple Net
Rate	$28-$37/RSF (Blended at $34.23)
TI Allowance	$55-65/SF (10 yr); $45/SF (5 yr) (Blended at $58.43/SF)
Escalators	2.5% annually $2.25 bumps every 5 years
OPEX	$19.17/SF (component of NNN rate)



Description

Capitol View is a newly completed, trophy office building located on the corner of 3rd and E Streets in Southwest DC. The Class A, 232,000 RSF building designed by Shalom Baranes Associates offers 6,500 SF of retail, rooftop penthouse with conference/party room and two open-air terraces with dramatic views of the Capitol and the Potomac River. Tenants will also enjoy the 24 hour lobby attendant, on-site management office, and fitness center with locker rooms and showers. The building is located ½ block from Federal Center Metro station and only 4 blocks from the Rayburn House Office Building and the U.S. Capitol grounds.

Development & Construction

- The building delivered in August 2007.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Fort Totten Park Apartments

Northeast Washington, DC

May 2007

PROJECT SUMMARY

Description	Market-Rate Apartments and Retail Space
Owner	Clark Realty Capital LLC (50%) Clark Enterprises, Inc. (50%)
Ground Lessor	Washington Metropolitan Area Transit Authority (WMATA); 99-year ground lease
Site Size	Approximately 6.8 Acres (both phases)
Project Size	328,128 GSF; 255,830 NSF

PROJECT TEAM

Developer	Clark Realty Capital (Tracy Thomm)
Design Team	Burt Hill Kosar Rittlemann Associates – Architect and MEP Engineer ICOR – Environmental Engineer VIKA Incorporated – Civil Engineer Shermo Engineering, LLC – Structural Engineer
Contractor	Clark Realty Builders, LLC
Apt. Leasing	Clark Realty Management LLC
Retail Leasing	Transwestern Commercial Services
Property Mgr.	Clark Realty Management, LLC

BUDGET/COST

Budget	Original	Per NSF
Loan	$ 44,300,000	$ 173
Mezzanine Loan	$ 3,143,000	$ 12
Required Equity	$ 3,068,921	$ 12
Land Value	$ 6,000,000	$ 23
Total Sources	**$ 56,511,921**	**$ 221**
Land	$ 7,176,333	$ 28
Hard Costs	$ 37,725,343	$ 147
Soft Costs	$ 6,558,797	$ 26
Financing	$ 5,051,448	$ 20
Total Uses	**$ 56,511,921**	**$ 221**

Cost Update (includes upsized loan estimate)

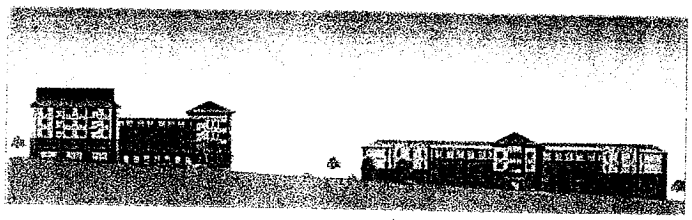
Projected Final Cost	**$ 60,711,921**	7% Variance from Budget

CONSTRUCTION LOAN TERMS

Lender	Union Bank of California
Loan Amount	$44,300,000
Interest Rate	30 day LIBOR + 250 bps
Maturity	03/28/10

MEZZANINE LOAN TERMS

Lender	Merrill Lynch & Co., Inc.
Loan Amount	$3,143,000
Interest Rate	30 day LIBOR + 400 bps
Maturity	03/28/10



Description

Fort Totten Park will have three buildings containing 308 units, 5,000 square feet of retail space and 312 parking spaces adjacent to the Fort Totten Metro. The project is jointly owned (50/50) by Clark Enterprises and Clark Realty Capital, under a 99-year ground lease with WMATA. A second phase is planned.

Designed by Burt Hill Kosar Rittleman Associates, Washington, DC, the wood and steel framed and concrete elevator community includes an on-site concierge, property management and leasing staff, a fully equipped fitness center, business center, party room with bamboo floors, pool with sun deck, and retail with café seating. Apartments include 8'6" ceilings, individual controlled HVAC, upgraded sound attenuation, wall-to-wall carpeting, bath/shower combination units, and full-size washer/dryers. Some apartments feature vaulted ceilings, full size and Juliet balconies, and upgraded finishes which include granite countertops, stainless steel appliances, and porcelain tile flooring in the kitchens.

Floor Plans are divided among 9 studio, 97 one-bed/one-bath, 77 one-bed/one-bath with dens, and 125 two-bed/two-bath apartments

Development & Construction

- Construction Commenced in December 2005 and is projected for completing November of 2007.
- The second phase of the project will include 72 units and a 232-space structured parking garage.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

University View Apartments
College Park, MD

May 2007

PROJECT SUMMARY

Description	High-Rise, Apartment Building
Owner	8400 Baltimore Avenue LLC (Clark Ownership = 50.0%)
Building Size	352 Residential Units
Parking	404 spaces

PROJECT TEAM

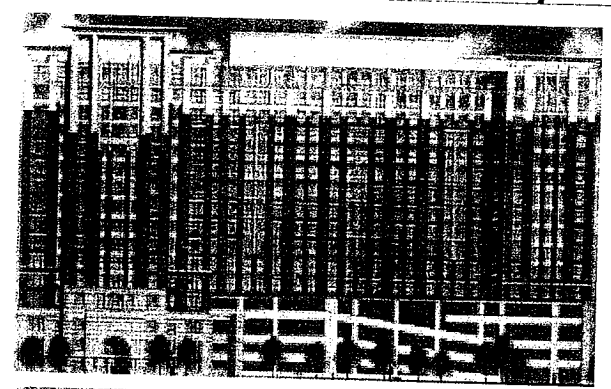
Developer	WG Group, LLC
Contractor	Clark Construction Group

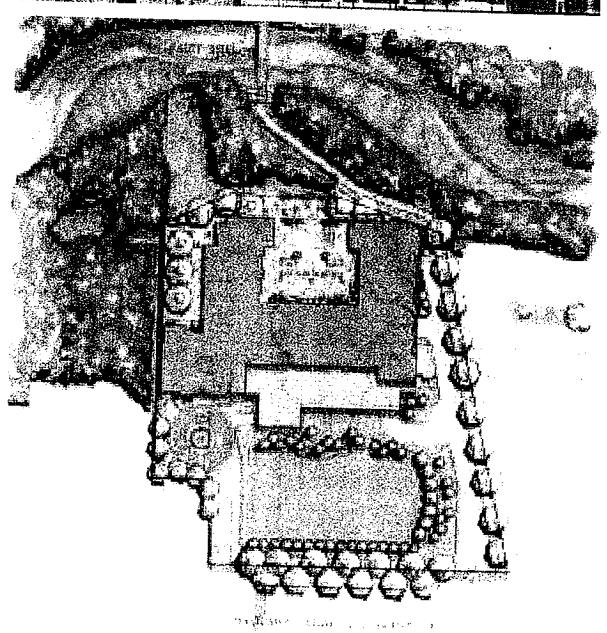
CONSTRUCTION LOAN TERMS

Lender	Bank of America
Loan Amount	$56,000,000
Interest Rate	190 bps over 1-month LIBOR.
Maturity	12/2/04
Payments	Interest only, with principal due on maturity.

PERMANENT LOAN TERMS

Lender	Bank of America
Loan Amount	$80,750,000
Interest Rate	5.538% Fixed
Maturity	1/1/17
Payments	Interest only, with principal due on maturity.





Description

The sixteen-story building consists of a 13 story residential pedestal on top of a 3-story garage. The residential tower has 352 residential units with 1054 beds. The units are designed in a suite format to accommodate the University of Maryland student population. The residential units consist of three main types - 177 two bed / two bath suites, 99 four bed / two bath suites and 76 four bed / 4 bath suites. In addition to residential units, the project has a three story-parking garage with 404 structured parking spaces, a fourth floor outdoor pool and deck, a health club and study area. Physically, the project consists of concrete superstructure with a 13-story post tension residential pedestal on top of a 3-story cast in place parking garage.

Development & Construction

- The building delivered in May 2006 and is currently 99% leased.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

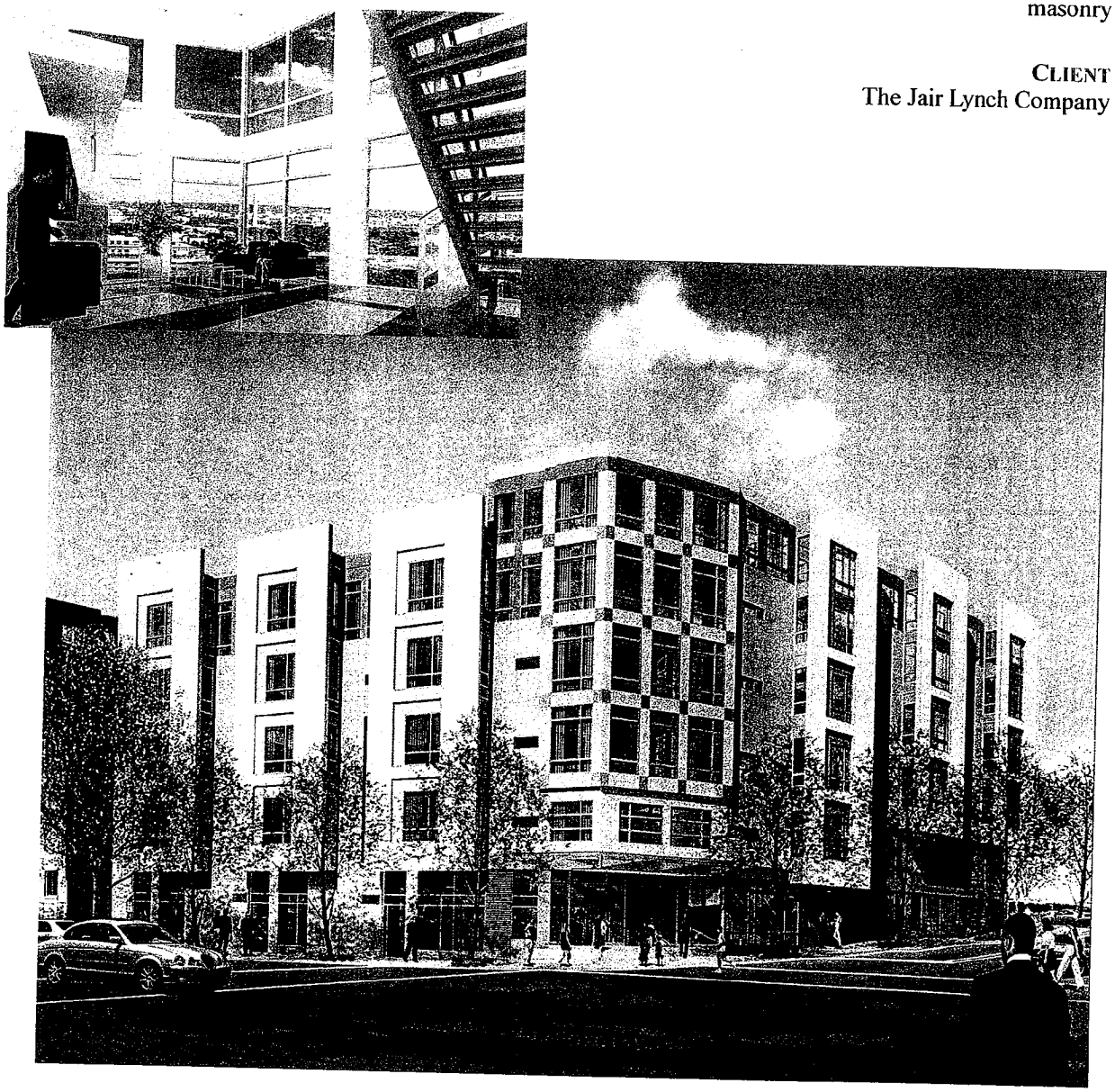
THE SOLEA

WASHINGTON, D.C.

Located at the intersection of 14th Street, NW and Florida Avenue along a main throughfare for people entering Washington from the North and South, the Solea serves as a gateway to the city and the 14th Street Arts District. Currently under construction, the building's ground floor faces the vibrant streetscape with a café, bookstore, and live/work spaces for artists. It contains 49 units that combine affordable and market rate apartments in a range of sizes, as well as an underground parking garage that serves both residential and retail units.

The building itself blends elements of historical buildings (brick veneer and bay type windows) with a more modern approach to design. It is U-shaped, with a landscaped courtyard in the center and strong urban edges along Florida Avenue and 14th Street. The inverted corner where the two streets meet is visually defined by a series of balconies whose light metal material contrasts with the building's brick masonry

CLIENT
The Jair Lynch Company



SORG

FOIA CONFIEDENTIAL TREATMENT REQUESTED

THE BEAUREGARD CONDOMINIUM

WASHINGTON, D.C.

Developed as workforce housing and designed to serve a younger urban clientele, the Beauregard Condominium is located in a rapidly transforming area of Washington, D.C. The building is 49,000 SF and includes 43 condominium apartments, some as large as 2,200 SF. The ground floor, including the building's entrance, is partly recessed below grade, creating an "English basement" level with terraces. Underground parking provides 25 parking spaces for residents.

As one of the few industrial zoned areas in the northwest quadrant of the city, the area surrounding the U Street corridor, especially to the north, has long been at the core of artistic innovation in Washington. The alternating use of black and maroon ironspot brick serves to contrast different formal elements of the design and to ground the building within the interplay of industrial and residential uses found in the neighborhood. The projecting bays respond to the artistic character of the neighborhood and reference the single family homes that comprise some of the Beauregard's immediate context. Similarly, the setbacks of the upper floors serve to lessen the height impact, while also providing outdoor spaces for many of the apartments.

Construction Cost: $14 million.

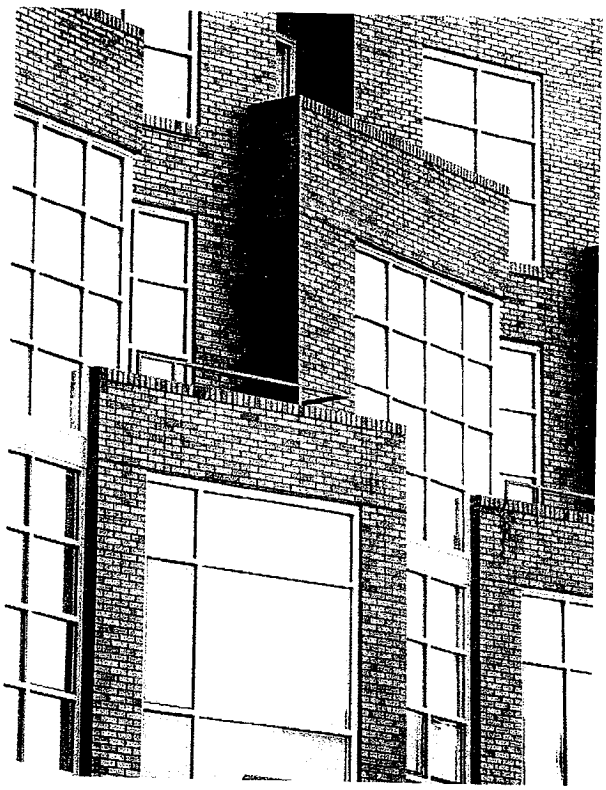
CLIENT
Robertson Development

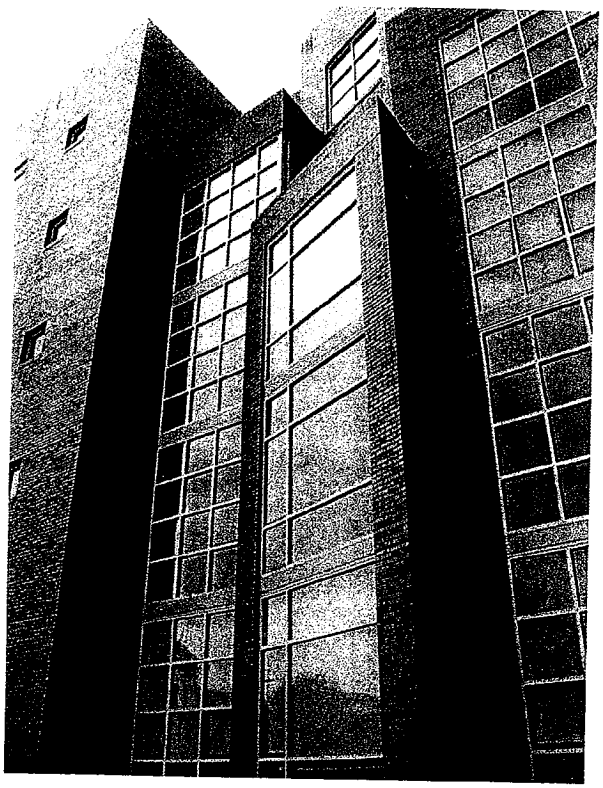
SORG

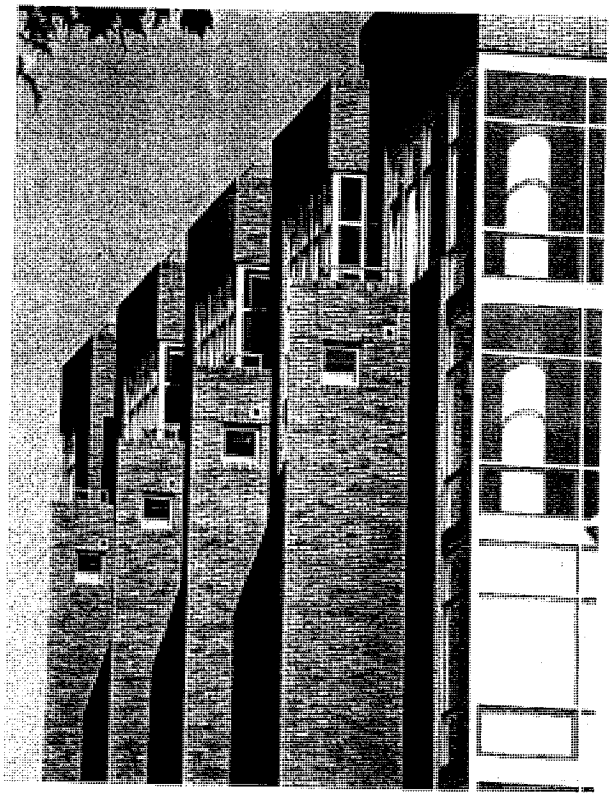
FOIA CONFIEDENTIAL TREATMENT REQUESTED

THE BEAUREGARD CONDOMINIUM

WASHINGTON, D.C.







SORG

FOIA CONFIEDENTIAL TREATMENT REQUESTED

THE VISIO & THE MURANO

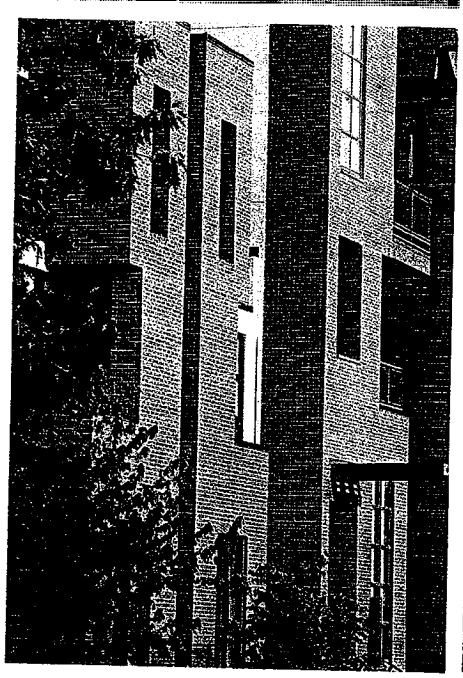
WASHINGTON, D.C.

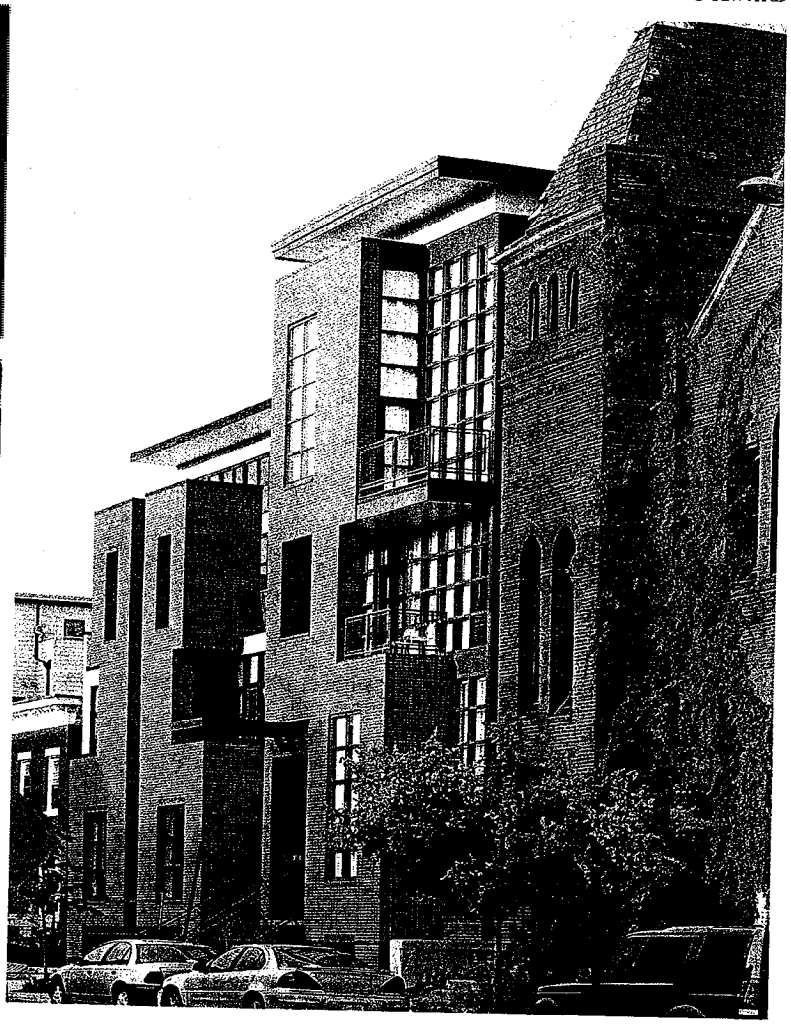
The Visio and Murano are situated on one of the quieter streets of the Greater U-Street Corridor, an area that is becoming Washington's center for contemporary and cutting-edge music and visual arts, while maintaining a strong residential character and a rich, quasi-industrial fabric. The neighborhood surrounding the project is mixed in use and in scale. The Visio and Murano are conceived as a modern interpretation of traditional Washington "infill" row housing. An antithesis to the proverbial "glass box," this modernism speaks to the consumer and to the buildings' unique urban surroundings.

The Visio and Murano's height, mass and proportion as well as materials and "cut-away" elements are subtle and elegantly highlight the context of the buildings but do not mimic any particular style. Designed as a two phase development, the Visio consists of 8 units on four floors. Mezzanines on the top two floors give the upper units 19' ceilings in living spaces. The Murano houses 8 additional units that span the length of the building. The buildings have a total of 22,000 SF.

CLIENT
Robertson Development

2006 AIA DC CHAPTER WASHINGTONIAN RESIDENTIAL DESIGN AWARDS
2006 AIA POTOMAC VALLEY CHAPTER AWARD FOR ARCHITECTURAL EXCELLENCE
2006 BUILDER'S CHOICE DESIGN AND PLANNING AWARD





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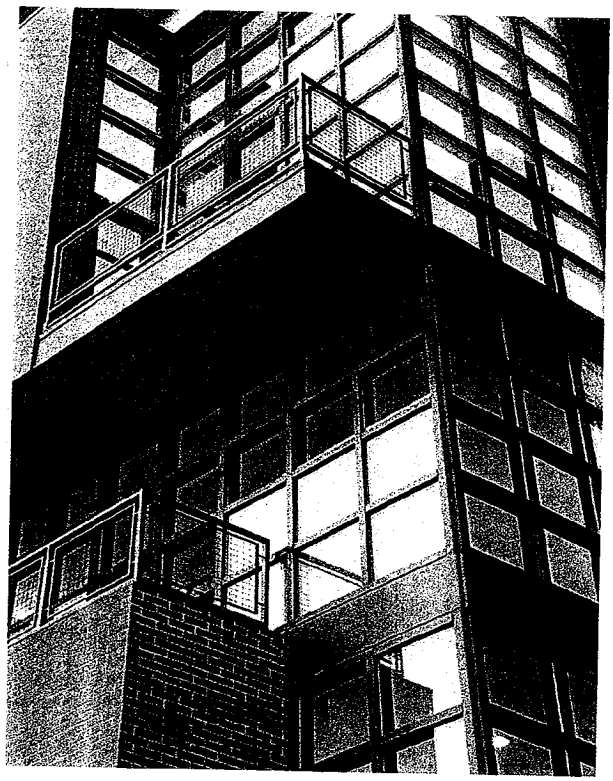
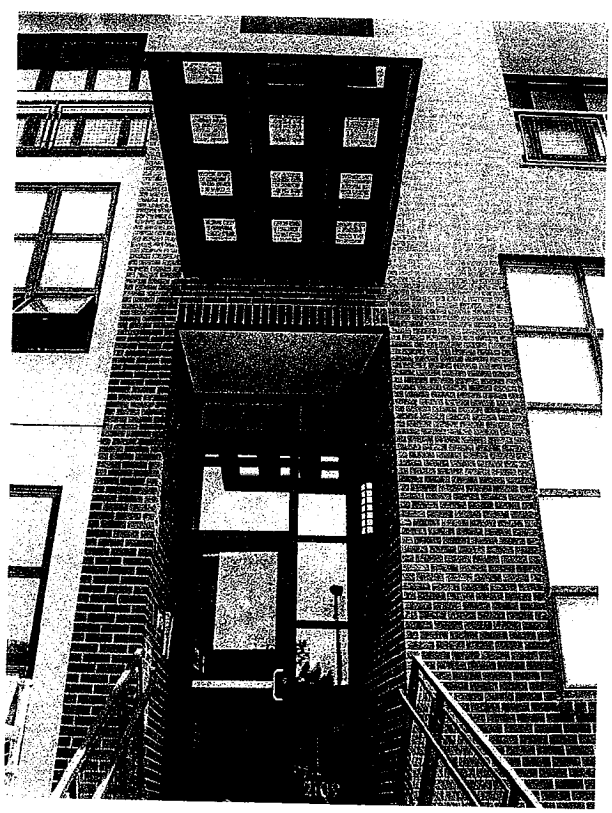
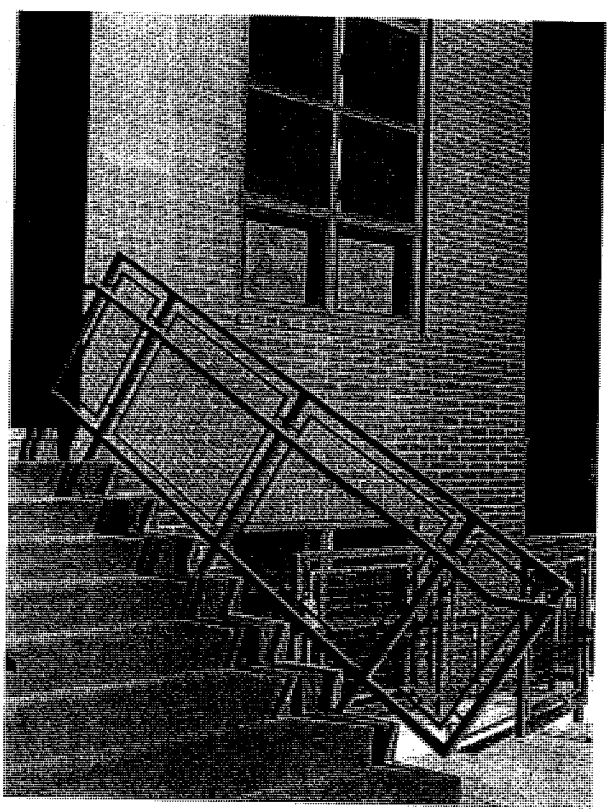
FOIA CONFIEDENTIAL TREATMENT REQUESTED

THE VISIO & THE MURANO

WASHINGTON, D.C.







SORG

FOIA CONFIEDENTIAL TREATMENT REQUESTED

U

Statement on No Defaulted Projects

"Nothing succeeds like the appearance of success."

~Christopher Lasch

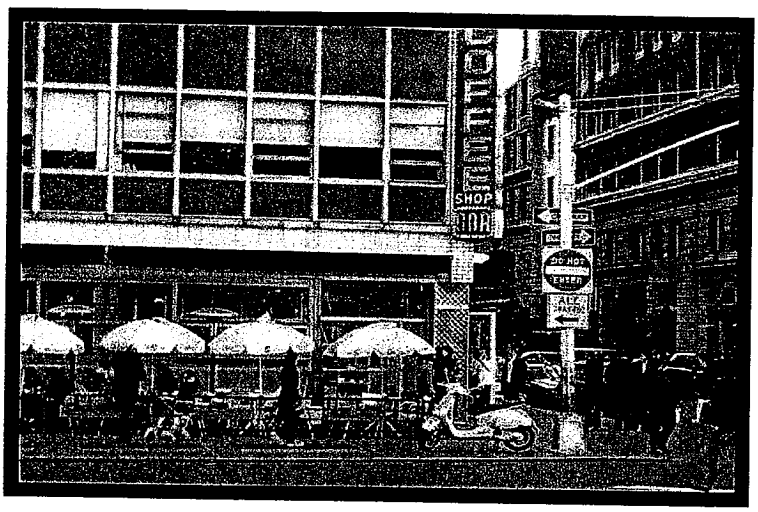
U. STATEMENT ON NO DEFAULATED PROJECTS

REQUIRED STATEMENT ON NO DEFAULTED PROJECTS:

There have not been any projects on which MTC or CEI, any affiliate, or any member of the development team has defaulted or declared bankruptcy.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Statement on No Criminal Indictments or Convictions



"It is not the criminal things which are hardest to confess, but the ridiculous and shameful."

~Jean-Jacques Rousseau

V. STATEMENT ON NO CRIMINAL INDICTMENTS OR CONVICTIONS

REQUIRED STATEMENT ON NO CRIMINAL INDICTMENTS OR CONVICTIONS:

No member of the development team has been criminally indicted or convicted of a felony or fraud.

W

Statement on Willingness to Work with Disadvantaged Business Enterprises

"Our teamwork, with each us from different disciplines, is what made the creation of this product possible."

~Paul Meyer

W. STATEMENT ON WILLINGNESS TO WORK WITH DISADVANTAGED BUSINESS ENTERPRISES

REQUIRED STATEMENT ON WILLINGNESS TO WORK WITH DISADVANTAGED BUSINESS ENTERPRISES:

MTC and CEI are willing to include Disadvantaged Business Enterprises in the project. MTC (Lead Developer) and Sorg & Associates (Architect) are registered as a minority-owned Local Small Disadvantaged Business Enterprise (LSDBE) in the District of Columbia.

X

Proposed Assemblage

"Patience, persistence and perspiration make an unbeatable combination for success."

~Napoleon Hill

X. PROPOSED ASSEMBLAGE

Our plan is primarily comprised of two neighboring lots and the WMATA parcels which enables us to maximize the street frontage along Florida Avenue and have contiguous retail areas. We are negotiations for several additional lots. Upon selection for the WMATA parcels, our team will aggressively pursue the assemblage necessary to complete Plan 2 as outlined in this proposal below. Upon contract execution, MTC will start the design and entitlement approvals immediately.

Our team has worked over the past year with neighboring private landowners, Howard University, HOK and Sorg & Associates on how best to maximize the WMATA parcels and adjoining private parcels. We currently have a key parcel adjacent to the parcel 1, owned by WMATA, under a purchase agreement with closing scheduled in 2007. Also, we are pursuing site control of other parcels necessary to meet development potential as proposed in the Duke Ellington Plan and further leverage additional vacant parcels along 9th Street. Plan 1 includes the WMATA parcels and the adjoining land we have under a purchase agreement. Plan 2, includes the WMATA parcels, the adjoining private land and the parcel owned by Howard University. MTC is prepared to execute Plan 1 because we believe it accomplishes the goal of creating a mixed-use, project that will activate the street wall along Florida Avenue. However, we will aggressively pursue the land assemblage necessary to accomplish Plan 2 which delivers a program that is aligned with what was envisioned in the Duke Ellington Plan and makes a greater impact on the community. Our team is committed to the development of this neighborhood and spent a considerable amount of resources before an RFP was ever issued to bring our vision to reality. Our team is excited about the potential impact of this project and is ready to execute on our proposal.

PLAN 1

Phase I: Phase I will include developing Project A, located on Florida Avenue between 8th and 9th Streets (WMATA Parcel 1, 2), into a mixed-use project with 68 residential units and 13,648 square feet of retail on the ground floor. It includes one parcel currently controlled by our team adjoining the WMATA parcel along 9th Street. It is essential that the first phase of the project establishes Renaissance Row as a neighborhood draw. A specialty grocery store in this phase will serve as an anchor, establishing the development as a neighborhood destination.

Phase II: Phase II will include developing Project B, located on Florida Avenue between 7th and 8th Streets (WMATA Parcel 3), into a mixed-use project with 62 residential units and 12,634 square feet of retail. Construction for Phase II will begin three months after start of construction of Phase I. Phase II will capitalize on the interest in the project and the area, completing the mixed-use program with entertainment uses such as unique restaurant/lounge concept and local retailers.

PLAN 2

Phase I: Include assembling all the necessary parcels surrounding WMATA to develop the plan outlined in the Duke Ellington Plan with the addition of parcels located on 9th Street. Phase I will include developing the parcels located on Florida Avenue between 8th and 9th Streets, into a mixed-use project with 113 residential units and 19,000 SF of retail on the ground floor.

Phase II: Phase II will include developing the parcels between 7th and 8th Streets, into a mixed-use project with 115 residential units and 24,000 SF of small and mid-size retail. Construction for Phase Two will begin three months after start of construction of Phase 1. Phase I will establish the project as a neighborhood draw and attract residents and retailers to become part of the project.

MTC is actively working with Howard University for acquisition of its lot located at the corner of 7th and Florida Avenue (CVS site). We have also been in serious discussion with all other property owners needed to accomplish Plan 2. By assembling the WMATA parcels and Howard University parcels, we will meet the full development program as envisioned in the Duke Ellington plan. In addition it adds a critical mass of activity needed to make the greatest amount of impact, contributes to the urban design of the neighborhood and encourages more economic activity.

Our team has the resources and capabilities to make this vision a reality and are uniquely positioned to purchase the parcels and enter into the design phase. From the design phase, our approach is poised to navigate through the entitlements and construction phases smoothly, efficiently and quickly.

We are excited about the opportunity to develop Renaissance Row and have invested significant resources in project planning and analysis. We believe this project will serve as an opportunity to build a stronger community that truly promotes positive human interaction in the Shaw neighborhood and once again establishes this historic area as a primary attraction in Washington, DC.

Exhibit I: Letters of Interest

"I am not interested in shooting new things– I am interested in seeing new things."

~Ernst Haas

TRYST INC
THE DINER
& OPEN CITY

September 24, 2007

Moddie Turay
Moddie Turay Company, LLC
3222 M ST NW
STE 140
Washington, DC 20007

Dear Mr. Turay:

I enjoyed your presentation on the Renaissance Row Project along Florida Avenue between 9th and 7th Streets NW. I think your plan for the area is spot-on and I would be interested in being a part of that vision. Our concept is to create "neighborhood gathering places" and your mixed use plan helps promote this idea.

Please keep me abreast of your progress and continue to provide me with information. I look forward to hearing from you.

Sincerely,

Constantine Stavropoulos
President/Owner
Tryst, The Diner & Open City

2459 18TH STREET NW • WASHINGTON, DC • 20009
PHONE: 202-232-5500 • FAX: 202-363-6708

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Yes! Organic Market
3809 12th Street, N.E.
Washington, DC 20017

September 27, 20007

Moddie Turay, President
Moddie Turay Company, LLC
3222 M ST NW, Suite 140
Washington, D.C. 20007

Re: Renaissance Row
Letter of Interest
Yes! Organic Market

Dear Moddie:

I have been briefed about your proposed project "Renaissance Row", and Yes! Organic Market is pleased to express interest in approximately 10,000 square feet at your company's development proposal to Washington Metropolitan Area Transit Authority (WMATA) to create a vibrant new mixed-use development that will activate Florida Avenue NW in the Shaw neighborhood. As discussed in our meeting, our preference would be to purchase the unit rather than to lease it. In any case, my preliminary interest in this project is genuine and considerable.

I am hopeful that I can know more about the progress of "Renaissance Row", and that I will be able to participate in an appropriate manner. To that end, I would ask that your office advise me at your earliest convenience of how I might become involved. I appreciate your taking the time to inform me, and I can assure you that, whatever information you further provide will be studied with the most serious consideration.

Sincerely,

Gary M. Cha
Owner

October 5, 2007

Moddie Turay
Moddie Turay Company, LLC
3222 M ST NW, Suite 140
Washington, D.C. 20007

Re: Renaissance Row/Letter of Interest

Dear Mr. Turay,

As the owner of Hank's Oyster Bar in Dupont Circle, I am very interested in expanding the number of neighborhood restaurants within the District. Your project, Renaissance Row, would be a perfect fit for creating more restaurants that service the communities you are building. I would be very interested in discussing a future partnership with you to build another much needed neighborhood restaurant in Shaw.

Sincerely,

Jamie Leeds
Chef/Owner

HANKS OYSTER BAR DC 1624 Q Street NW Washington DC 20009 T
202.462.HANK (4265) F 202.462.8888

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ARTVINES
WINE GALLERY ART BAR

October 4, 2007

Moddie Turay
Moddie Turay Company, LLC
3222 M ST NW
STE 140
Washington, DC 20007

Re: Letter of Interest for Renaissance Row

Dear Mr. Turay:

I'm very excited about your project, Renaissance Row, and am interested in being a part of it. Introducing ArtVines.

"Fine wine. Fine art. When people speak of the finer things in life, surely these are part of the conversation. A conversation as old as civilization. And as new as right now. Today, there's a new place to continue that conversation. A place dedicated to the appreciation and enjoyment of art and wine—together. Introducing ArtVines. Wine Gallery. Art Bar. Where palate meets palette. And the pleasure is all yours."

ArtVines, a wine bar and art gallery, would draw on Shaw's artist, student and residential community and boost its arts and wine education programs. I think ArtVines complements your retail program and would become a great neighborhood venue. ArtVines is positioned to become Washington's most unique wine bar/art gallery/special events environment. Please visit www.artvines.com.

Please keep me abreast of your progress and continue to provide me with information. I look forward to working with you to bring ArtVines to your exciting Renaissance Row development project.

Sincerely,

Horace Flournoy

Horace Flournoy
CEO/Founder
ArtVines LLC

2459 18TH STREET NW • WASHINGTON, DC • 20009
PHONE: 202-232-5500 • FAX: 202-363-6708

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Z

Exhibit II: Letters of Support

"We deceive ourselves when we fancy that only weakness needs support. Strength needs it fare more."

~Anne Sophie Swetchine

ALEXANDER M.
PADRO
COMMISSIONER
ANC 2C01

September 30, 2007

GARY MALASKY
OFFICE OF PROPERTY DEVELOPMENT AND MANAGEMENT
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
600 FIFTH ST NW
WASHINGTON DC 20001

Dear Mr. Malasky:

I am writing to offer my enthusiastic endorsement of the proposal for redevelopment of the WMATA parcels on the 700 and 800 blocks of Florida Avenue, NW, by the Moddie Turay Company, and to urge the WMATA Board of Directors to select this development plan from among the competing bids.

Over the seven years that I have been an Advisory Neighborhood Commissioner in Shaw, I have been frustrated by the failure to move forward with the redevelopment of public and quasi-public real estate assets in the neighborhood. The development of these lots will help stimulate the further investment needed to complete the revitalization of this historically vibrant commercial district.

Among the considerations in my decision to support the Moddie Turay Company's proposal for Renaissance Row was their agreement to include space for a longtime business in the neighborhood, which faces displacement due to other development. Central Safe and Lock, located at 1104 9th Street, NW, has been in operation for over 60 years. They are tenants in a building that the District of Columbia Government has initiated eminent domain proceedings against for incorporation into the new Marriott Convention Center Hotel. The community is eager to retain this business in our neighborhood, and the owner wishes to take this opportunity to establish a full service hardware store at Renaissance Row. This is one of the top 10 types of businesses that neighborhood residents have indicated they want to see open, in new business preference surveys conducted by Shaw Main Streets, the neighborhood's commercial revitalization organization.

Further, the Moddie Turay Company has parcels adjacent to those held by WMATA under contract and negotiation, making it possible to create a larger development, including increased parking, than if the parcels are developed independently.

1519 8TH STREET, NW, WASHINGTON, DC 20001-3205 • 202-518-3794
E-MAIL: PADROANC2C@AOL.COM • WEBSITE: WWW.MEMBERS.AOL.COM/PADROANC2C

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Lastly, the involvement of architect Suman Sorg of Sorg & Associates in the project represents an opportunity for the creation of an iconic architectural statement on these important blocks. Sorg, a graduate of adjacent Howard University School of Architecture, has completed award-winning projects in nearby LeDroit Park, and also designed the extremely popular Kennedy Recreation Center building at 1401 7th Street, NW. Sorg worked very effectively and successfully with the community in the design of the recreation center, giving me the utmost confidence that Renaissance Row would consist of world-class buildings sensitive to the neighborhood's historic context. This would result in the creation of a true architectural statement defining the eastern gateway to the U Street entertainment district, and the northern terminus of central Shaw's 7th and 9th Street commercial district.

Please do not hesitate to contact me with any questions about my support for the Moddie Turay Company's proposal.

Sincerely,

Alexander M. Padro
Commissioner, ANC 2C01

FOIA CONFIEDENTIAL TREATMENT REQUESTED

SHAW
MAIN STREETS

October 1, 2007

Gary Malasky
Office of Property Development and Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Dear Mr. Malasky:

By this letter, the Board of Directors of Shaw Main Streets, Inc., the commercial revitalization and historic preservation nonprofit serving central Shaw, urges the Board of Directors of the Washington Metropolitan Area Transit Authority to give the highest consideration to those proposals for the redevelopment of the WMATA parcels on the 700 and 800 blocks of Florida Avenue, NW, to those proposals that offer to provide retail space for existing Shaw businesses that find it necessary to relocate.

We are aware of at least two developers that have offered to work with existing business owners in order to ensure their ability to have these businesses retained in the neighborhood, if their proposals are selected. These are Lakritz & Adler, who have agreed to provide a new home to the Warehouse Café & Bar, which recently ended its operations at 1021 7th Street, NW, due to rising tax assessments at that location. The second is the Moddie Turay Company, which has agreed to provide space for a full service hardware store to be operated by Central Safe & Lock, which has been located a t1104 9th Street, NW, for approximately 60 years. Central Lock is facing displacement as a result of eminent domain being used to acquire the building they rent space in, as part of the development of the new Convention Center Hotel.

To the extent that other developers similarly offer to relocate existing Shaw businesses, we encourage you to take that factor into account in your evaluation of their proposals, in addition to the aforementioned developers' bids.

The Board of Shaw Main Streets thanks the WMATA Board for moving forward with these important property dispositions, which will have a significant impact on the implementation of the DC Office of Planning's "Duke" Uptown Destination District Plan, and looks forward to the selection of a proposal that will help keep at least one current Shaw business in our neighborhood.

Sincerely,

Timothy C. Mack
Chair
Board of Directors
Shaw Main Streets, Inc.

1426 9th Street, NW, Washington, DC 20001-3330 • 202-265-SHAW • Fax: 202-265-7529
info@ShawMainStreets.com • www.ShawMainStreets.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Moddie Turay Co., LLC
Clark Enterprises Inc.

Renaissance Row

VOLUME II

ECONOMIC INFORMATION

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Table of Contents

"Good thoughts are no better than good dreams, unless they be executed."

~Ralph Waldo Emerson

FOIA CONFIEDENTIAL TREATMENT REQUESTED

VOLUME II: ECONOMIC INFORMATION

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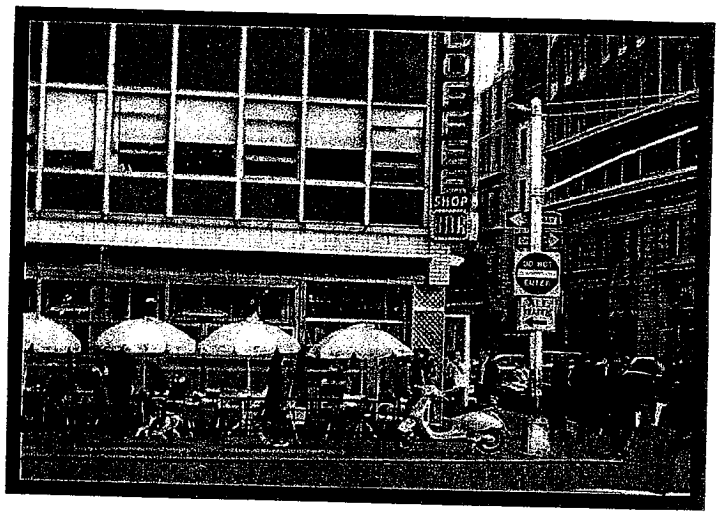
B. EXECUTIVE SUMMARY
C. ESTIMATED FAIR MARKET VALUE
D. PROPOSED BUSINESS RELATIONSHIP (IF A SALE)
E. PROPOSED BUSINESS RELATIONSHIP (IF A LEASE)
F. SOURCES AND USES
G. ASSUMPTIONS AND PROFORMA
H. TAX IMPACT
I. DEVELOPER'S BALANCE SHEETS
J. DEVELOPER'S FINANCIAL CREDITWORTHINESS

Executive Summary



"The man who has no imagination has no wings."

~Muhammad Ali

B. Executive Summary

MTC/Clark estimates that the total budget for the proposed Project will be approximately $44mm. The Project will be capitalized with approximately (i) $11mm of equity, representing 25% of the total capitalization, (ii) $33mm of senior debt, representing 75% of the total capitalization. The Sources and Uses are summarized in a later section.

MTC/Clark is proposing either a sale of the WMATA land for a price of approximately $6.5 million which was derived through the analysis represented in Section C of Volume 2 of this proposal, or a lease of the land for an annual payment of 8.0% of Fair Market Value. Alternatively, we explored the potential of a participating ground lease, see Section D, number 6 of Volume 2, but concluded that it will be a considerably inferior deal for WMATA.

Once completed, the Project is expected to stabilize by November 2010.

MTC/Clark estimates that the Project will generate tax revenues of approximately $5-6mm per year. The Project will further enhance the economy of the District by adding 300 new jobs to support operations of the project. The analysis to support these conclusions can be found in Section H of Volume 2 of this proposal.

Estimate Fair Market Value

"In my mind's eye, I visualize how a particular sight and feeling will appear...It is an intuitive sense, an ability that comes from a lot of practice."

~Ansel Adams

FOIA CONFIEDENTIAL TREATMENT REQUESTED

C. Fair Market Value

MTC/CEI arrived at the Fair Market Value for this site based on comparable market land value and research performed our respective brokerage firms.

Proposed Business Relationship (if a Lease)

"Let us not be content to wait and see what will happen, but give us determination to make the right things happen."

~Peter Marshall

D. Lease - Business Relationship

MTC/Clark has proposed two different alternatives for the business relationship with WMATA. This alternative is a lease:

1. Upon designation as the Selected Developer and approval of the Term Sheet, MTC/Clark will pay WMATA a nonrefundable option fee of $100,000 for the right to negotiate a Development Agreement.

2. Upon Ground Lease and Development Agreement execution, we will pay a $10,000 per month compensation until stabilization of the property ("Pre-Development Rent"). MTC/Clark does not intend to pay WMATA any pre-development fees during the interval period after the Development Agreement is executed and the Ground Lease is executed. It is estimated that the time between the execution of the Development Agreement and the execution of the Ground Lease will be approximately six months. We anticipate that once the Ground Lease is executed, there will be 16 months of design, 18 months of construction and 6 months for the project to stabilize.

   no rent between Dev Agmt + Ground Lease

3. We are proposing a 60 year ground lease with WMATA receiving 8.0% of the fair market value of the land annually, adjusted every 10 years to appraised value using the "three appraiser method". The fair market value of the land currently is $50 per FAR SF or $6,496,200. This value will be escalated by 2.5% annually until stabilization, projected to be December 2011.

   The pro forma does NOT show this

   Assuming a December 2011 stabilization date, WMATA will receive $279,828 per year for 10 years. The property will be reappraised every 10 years and the new ground lease payments will be 8.0% of the updated fair market value.

   = 1/2 value @ 4%

4. Our goal is to have the project stabilized by December 2011. Based on positive market indications and our prior positive experiences with WMATA, we anticipate and feel confident that the project will be stabilized by this date; however, if the project is not stabilized by that time, we will continue to pay Pre-Development Rent until the project stabilizes. In that scenario, fair market value would escalate by 2.5% until stabilization.

   If we choose to pursue a Planned Unit Development (PUD), the maximum allowable FAR would increase to a 6.0 and the fair market value would increase to $8,661,600. The projected stabilization date would be increased 18 months to June 2013 due to the permitting process. In that scenario, the fair market value will be escalated by 2.5% annually until stabilization in June 2013.

   Which would prolong the market period

5. WMATA and MTC/Clark shall enter into a mutually acceptable Remediation Agreement (or a Remediation Amendment to the ground lease) whereby MTC may elect to advance all necessary costs for undertaking and completing a remediation plan under the supervision of WMATA, and WMATA may pay its portion of the cost of remediation as an offset against base rent payments as they become due and owing under the lease until all amounts advanced by Tenant by the Remediation Amendment have been paid in full.

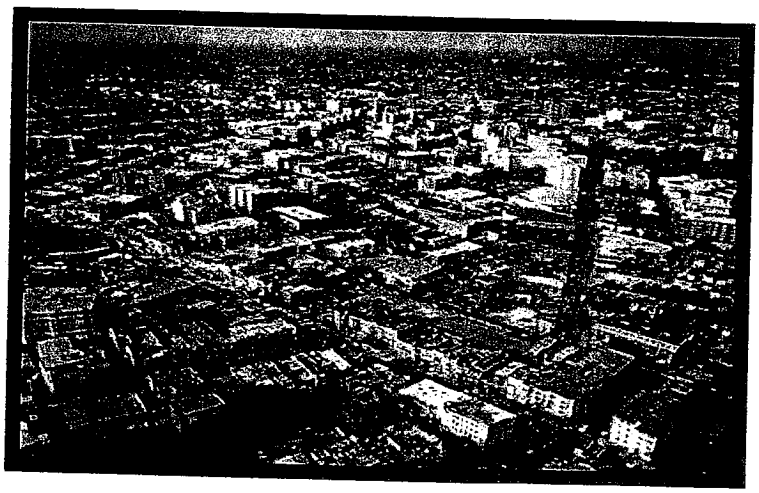
6. MTC/Clark anticipates paying WMATA 8% of fair market value annually; therefore, we do not intend to give WMATA a participating share of the gross income from the Project. We explored a participating ground lease where WMATA would receive 5% of the fair market value and 10% of their pro-rata share

of the cash flow after all expenses. In the end, the developer would achieve the same returns as the purchase or non-participating ground lease; however, the total compensation to WMATA would be approximately $100,000 less over the same period in the participation alternative. Consequently, we did not pursue that option.

7. MTC/Clark anticipate paying WMATA 8% of fair market value annually; therefore, we do not intend to give WMATA a share of the proceeds from a capital event such as the assignment of the leasehold interest, transfer of interest in the Developer's business entity, refinancing or sale of the Project.

8. MTC/Clark has not identified any additional payments to WMATA in excess of the payments outlined above.

Proposed Business Relationship (if a Sale)



"Teamwork is the ability to work together toward a common vision. The ability to direct individual accomplishments towards organizational objectives. It is the fuel that allows common people to attain uncommon objectives."

~Andrew Carnegie

E. Sale - Business Relationship

MTC/Clark has proposed two different alternatives for the business relationship with WMATA. This alternative is a sale:

1. Upon designation as the Selected Developer and approval of the Term Sheet, MTC/Clark will pay WMATA a nonrefundable option fee of $100,000 for the right to negotiate a Development Agreement.

2. MTC/Clark does not intend to pay WMATA any pre-development fees during the interval period after the Development Agreement is executed and the sale of the land is completed. It is estimated that the time between these dates will be approximately six months.

3. The proposed purchase price for the site is $6,496,200. below appr. value of $7.5M

   a. Based on our previous positive experiences with WMATA, we fully anticipate the sale will be completed by the projected date. Therefore, MTC/Clark does not anticipate purchase price escalations, but will categorize this issue as "to be discussed further with WMATA."

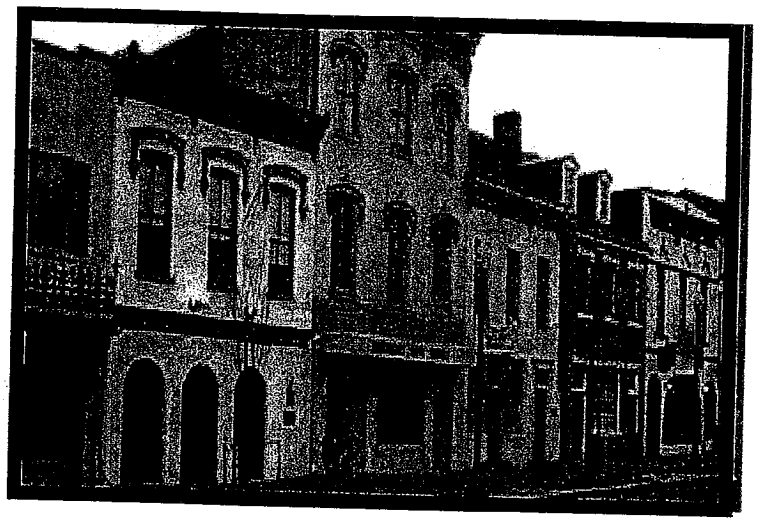
   b. MTC/Clark is willing to adjust the purchase price by $50 per additional approved square footage.

4. Environmental remediation costs will be credited against the purchase price and will reduce the purchase price dollar for dollar.

5. MTC/Clark intends to develop the site to its maximum capacity and does not anticipate that there will be any remaining development rights in excess of the proposed development. However, if we choose to pursue a Planned Unit Development (PUD), the maximum allowable FAR would increase to a 6.0 and the purchase price would potentially increase to $8,661,600 if we are able to develop to the maximum allowable density after the PUD, and we proceed to construct the entire 6.0 FAR.

6. MTC/Clark has not identified any additional payments to WMATA in excess of the proposed purchase price.

Sources and Uses



"Beauty of whatever kind, in it's supreme development, invariably excites the sensitive soul to tears."

~Edgar Allen Poe

F. Summary Table
Sources and Uses
9/18/2007
Ground Lease Scenario

Sources and Uses

Sources of Funds:

		Total
Equity	25.0%	10,891,504
Debt	75.0%	32,674,512
	100.0%	$ 43,566,016

Uses of Funds

	Per Unit	Total
Land	$ 9,260	$ 1,496,570
Net GMP/HC Cont.	$ 174,537	$ 28,208,283
Soft Costs	$ 54,905	$ 8,873,592
Development Fee	$ 10,412	$ 1,682,778
Pre Devel Rent	$ 2,475	$ 400,000
Financing Costs	$ 2,022	$ 326,745
Interest Expense	$ 15,951	$ 2,578,048
	$ 269,562	$ 43,566,016

Proforma Assumptions

"Planning is bringing the future into the present so that you can do something about it now."

~Allen Lakein

G. Proforma Assumptions

The proforma is included on the following pages.

WMATA Sources and Uses Assumptions Backup
9/18/2007
Ground Lease Scenario

Basic Assumptions

Number of Units	
Units	130
Total	130
GSF Per Unit	1,009
NSF as a % of GSF	80%
Average Net Sq. Ft. per Unit	807
Residential - Net Rentable Sq. Ft.	104,936
Retail - Net Rentable Sq. Ft.	26,282

Financing Assumptions

Construction Loan:	
Loan Amount	32,674,512
LTC/Amount	75.0%
Initial Base Rate	7.00%
Permanent Loan (2012):	
Start Month	Month 25
Cap Rate Used	6.50%
Project Value	$49,953,616
Loan to Value	69.59%
Rate	6.75%
Amortization	30 Years
Loan Amount	$34,764,991
Monthly Payment	$225,485
Annual Debt Service	$2,705,821
Stabilized NOI for Perm Loan (2013)	$3,246,985
DSCR	1.20
Closing Costs/Fees	1.0%
Refinancing (2021):	
Start Month	Month 144
Cap Rate Used	7.00%
Project Value	$62,903,341
Loan to Value	70.14%
Rate	7.00%
Amortization	30 Years
Loan Amount	$44,122,625
Monthly Payment	$293,549
Annual Debt Service	$3,522,587
Stabilized NOI for Perm Loan (2022)	$4,403,234
DSCR	1.25
Closing Costs/Fees	1.0%
Ground Lease (WMATA):	
Market Value (Escalated 3 years)	$ 6,995,697
Escalations	2.5%

Sources and Uses

Sources of Funds:

		Total
Equity	25.0%	10,891,504
Debt	75.0%	32,674,512
	100.0%	$ 43,566,016

Uses of Funds

	Per Unit	Total
Land	$ 9,260	$ 1,496,570
Net GMP/HC Cont.	174,537	28,208,283
Soft Costs	54,905	8,873,592
Development Fee	10,412	1,682,778
Pre Devel Rent	2,475	400,000
Financing Costs	2,022	326,745
Interest Expense	15,951	2,578,048
	$ 269,562	$ 43,566,016

Operating Assumptions

Revenue Assumptions:

Apartments:	
Month Renting Begins	19
Rent Per Sq. Ft. (Current)	$2.65
Rent increase per year	3.0%
Prelease (Units preleased at delivery)	20
Absorption (Units Rented/Month)	16
Multifamily Rental Vacancy	5.13%
Parking:	
Month Parking Space Sales Begin	19
Parking Revenues/Space (Current)	$150
Number of Spaces	62
Absorption (Leased/Month)	10
Retail:	
Retail Annual NNN Rent (Current)	$50.00
Retail rent increase per year	2.0%
Absorption	6,000
Retail Vacancy	5.00%

Expense Assumptions:

Gross Operating Expenses	$ 11,790
Deduct for Retail Tenant Contribution	$ -
Net Operating Cost per Unit Per Year (Current)	$ 11,790
Fixed vs. Variable Expenses	50%
Phased-in Fixed Expenses	40%
Operating Cost Increase per Year	3.0%
Reserves per unit	$250

Residential Operating Expenses ($/unit)	
Payroll	$ 4,624.00
Marketing	$ 558.00
Administration	$ 442.00
Maintenance Contracts	$ -
R&M	$ 605.00
Utilities	$ 372.00
Taxes & Ins.	$ 3,636.00
CDA Assessment	$ -
Fees	$ 1,553.00
Total	**11,790.00**
Retail Reimbursements	
Net Operating Cost/Unit/Year	**$11,790.00**

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005075

FOIA CONFIEDENTIAL TREATMENT REQUESTED

15 Year Cash Flow
Ground Lease Scenario

Year	ALL YEARS TOTAL	1 2007	2 2008	3 2009	4 2010	5 2011	6 2012	7 2013	8 2014	9 2015	10 2016	11 2017	12 2018	13 2019	14 2020	15 2021
Available Units at BOP					130	130	14	-	-	-	-	-	-	-	-	-
Total Units Rented					-	116	14	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP					130	14	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented					-	116	130	130	130	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP					62	62	2	-	-	-	-	-	-	-	-	-
Total Rented in Period					-	60	2	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP					62	2	-	-	-	-	-	-	-	-	-	-
Cumulative Spaces Rented					-	60	62	62	62	62	62	62	62	62	62	62
Remaining Retail SF					26,282	26,282	-	-	-	-	-	-	-	-	-	-
Total SF Rented in Period					-	26,282	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP					26,282	-	-	-	-	-	-	-	-	-	-	-
Cumulative SF Rented					-	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Average Residential Rent/SF		$ 2.65	$ 2.73	$ 2.81	$ 2.90	$ 2.98	$ 3.07	$ 3.16	$ 3.26	$ 3.36	$ 3.46	$ 3.56	$ 3.67	$ 3.78	$ 3.89	$ 4.01
Average Retail Rent/SF		$ 50.00	$ 51.50	$ 53.05	$ 54.64	$ 56.28	$ 57.96	$ 59.70	$ 61.49	$ 63.34	$ 65.24	$ 67.20	$ 69.21	$ 71.29	$ 73.43	$ 75.63
Average Parking Rent/Space		$ 150.00	$ 154.50	$ 159.14	$ 163.91	$ 168.83	$ 173.89	$ 179.11	$ 184.48	$ 190.02	$ 195.72	$ 201.59	$ 207.64	$ 213.86	$ 220.28	$ 226.89
Construction Costs																
Land Costs																
WMATA Option Fee		$ 100,000														
1933-35 9th ST Purchase		$ 1,500,000														
Hard Costs:																
GMP						$ 14,756,373	$ 7,378,187									
Escalations						$ 2,656,147	1,328,074									
Hard Cost Contingency						$ 1,393,002	$ 696,501									
Soft Costs:																
Architecture & Engineering			$ 195,891	$ 195,891	$ 522,376	$ 391,782										
Civil, Design and Submission Fees					$ 200,000											
Site Development Bonds, Fees and Permits					$ 200,000											
Dry Utility Relocation and New Service					$ 1,052,750											
Building Permit Fees					$ 147,238											
Furniture, Fixtures and Equipment						$ 713,000										
Predevelopment / Feasibility			$ 314,049	$ 157,025	$ 157,025											
Retail Commissions						$ 657,050										
Retail Tenant Improvement Allowance						$ 1,971,150										
Connection Fees						$ 500,000										
Marketing					$ 100,000	$ 400,000										
Project Legal		$ 108,675	$ 31,050	$ 31,050	$ 31,050	$ 108,675										
Builders Risk Insurance					$ 43,680	$ 43,680										
Real Estate Taxes			$ 5,418	$ 5,418	$ 5,418	$ 19,866										
Title Insurance & Other			$ 564,386													
Development Fee			$ 252,417	$ 252,417	$ 913,748	$ 264,196										
Financing Costs					$ 326,745											
Ground Lease Payments ($10,000 per month)			$ 40,000	$ 120,000	$ 120,000	$ 120,000										
Interest Expense					$ 669,763	$ 1,908,286										
Total		$ 1,708,675	$ 1,403,211	$ 761,800	$ 23,295,315	$ 16,500,446										
NET REVENUES																
Rental Revenues	$ 51,346,810	-	-	-	-	1,122,778	3,921,364	4,039,005	4,160,175	4,284,981	4,413,530	4,545,936	4,682,314	4,822,783	4,967,467	5,116,491
Parking Revenues	$ 1,715,949	-	-	-	-	36,278	131,144	135,079	139,131	143,305	147,604	152,032	156,593	161,291	166,130	171,114
General MF Rental and Parking Vacancy Allowance	$ (2,662,660)	-	-	-	-	-	(207,894)	(214,131)	(220,554)	(227,171)	(233,986)	(241,006)	(248,236)	(255,683)	(263,354)	(271,254)
Retail Revenues	$ 17,608,101	-	-	-	-	497,724	1,422,424	1,450,873	1,479,890	1,509,488	1,539,678	1,570,471	1,601,881	1,633,918	1,633,918	1,633,918
General Retail Vacancy Allowance	$ (867,140)	-	-	-	-	(11,621)	(71,121)	(72,544)	(73,995)	(75,474)	(76,984)	(78,524)	(80,094)	(81,696)	(81,696)	(81,696)
Total Revenues	$ 67,141,060	-	-	-	-	1,645,160	5,195,918	5,338,282	5,484,647	5,635,128	5,789,842	5,948,910	6,112,458	6,280,614	6,422,465	6,568,573

WMATA-INV 005076

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Year		ALL YEARS TOTAL	1 2007	2 2008	3 2009	4 2010	5 2011	6 2012	7 2013	8 2014	9 2015	10 2016	11 2017	12 2018	13 2019	14 2020	15 2021
	Operating Expense/Unit/Year		-	-	-	-	(5,945)	(13,255)	(13,653)	(14,063)	(14,484)	(14,919)	(15,367)	(15,828)	(16,302)	(16,791)	(17,295)
	Operating Expenses		-	-	-	-	(772,892)	(1,723,195)	(1,774,890)	(1,828,137)	(1,882,981)	(1,939,471)	(1,997,655)	(2,057,584)	(2,119,342)	(2,182,911)	(2,248,328)
	Replacement Reserves	(405,617)	-	-	-	-	(30,766)	(35,514)	(36,579)	(37,676)	(38,807)	(39,971)	(41,170)	(42,405)	(43,677)	(44,988)	(46,337)
8.00%	Ground Lease - Howard	(2,929,823)	-	-	-	-	-	(46,638)	(279,828)	(279,828)	(279,828)	(279,828)	(279,828)	(279,828)	(279,828)	(279,828)	(286,359)
	NET RENTAL INCOME	$ 41,240,607	-	-	-	-	841,502	3,390,572	3,246,985	3,339,006	3,433,512	3,530,572	3,630,257	3,732,640	3,837,797	3,914,759	3,987,498
	REFINANCE CASH FLOW																
	Gross Loan Proceeds	$ 11,448,113	-	-	-	-	-	2,090,479	-	-	-	-	-	-	-	-	9,357,634
	Less: Cost of Refinance	$ 788,876	-	-	-	-	-	347,650	-	-	-	-	-	-	-	-	441,226
	Net Proceeds	$ 10,659,236	-	-	-	-	-	1,742,829	-	-	-	-	-	-	-	-	8,916,407
	DISPOSITION CASH FLOW																
	Gross Sale Price	$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Less: Cost of Sales	$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Net Proceeds	$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	EQUITY ACCOUNT																
	Beginning Balance		-	1,708,675	3,111,886	3,873,686	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
	Equity Infusion		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Equity Funding	$ 10,891,504	1,708,675	1,403,211	761,800	7,017,818	-	-	-	-	-	-	-	-	-	-	-
	Ending Balance (Profit)		1,708,675	3,111,886	3,873,686	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
	CONSTRUCTION DEBT																
	Beginning Balance		-	-	-	-	19,327,641	-	-	-	-	-	-	-	-	-	-
	Loan Draw	30,096,464	-	-	-	18,657,878	11,438,586	-	-	-	-	-	-	-	-	-	-
	Interest	2,578,048	-	-	-	669,763	1,908,286	-	-	-	-	-	-	-	-	-	-
	Principal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Total Amount Due to Loan		-	-	-	19,327,641	32,674,512	-	-	-	-	-	-	-	-	-	-
	PERMANENT DEBT																
	Beginning Balance		-	-	-	-	-	34,764,991	34,764,991	34,764,991	34,764,991	34,764,991	34,764,991	34,764,991	34,764,991	34,764,991	34,764,991
	Monthly Payment		-	-	-	-	-	2,346,637	2,346,637	2,346,637	2,346,637	2,346,637	2,346,637	2,346,637	2,346,637	2,346,637	2,346,637
0%	WMATA Participation		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Cash Flow Available From Operations		-	-	-	-	841,502	3,390,572	3,246,985	3,339,006	3,433,512	3,530,572	3,630,257	3,732,640	3,837,797	3,914,759	3,987,498
	Cash Flow Available From Sale / Refinance		-	-	-	-	-	1,742,829	-	-	-	-	-	-	-	-	8,916,407
	Cash Flow Available After Debt Service		-	-	-	-	841,502	2,786,764	900,348	992,369	1,086,875	1,183,935	1,283,620	1,386,003	1,491,160	1,568,122	10,557,269
	EQUITY CASH FLOW																
	Contributions	$ 3,873,686	1,708,675	1,403,211	761,800	7,017,818	-	-	-	-	-	-	-	-	-	-	-
	Loan Paydown	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Refinance Cash Flow	8,916,407	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Disposition Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	8,916,407
	Operating Cash Flow	43,866,531	-	-	-	-	1,645,160	2,849,281	3,246,985	3,339,006	3,433,512	3,530,572	3,630,257	3,732,640	3,837,797	3,914,759	3,987,498
	Total	$ 60,672,150	(1,708,675)	(1,403,211)	(761,800)	(7,017,818)	1,645,160	2,849,281	3,246,985	3,339,006	3,433,512	3,530,572	3,630,257	3,732,640	3,837,797	3,914,759	12,903,906
	RETURN CALCULATIONS																
	IRR (15 year)	13.60%	$ (1,708,675)	$ (1,403,211)	$ (761,800)	$ (7,017,818)	$ 841,502	$ 2,786,764	$ 900,348	$ 992,369	$ 1,086,875	$ 1,183,935	$ 1,283,620	$ 1,386,003	$ 1,491,160	$ 1,568,122	$ 20,421,577
	Return on Investment (ROI)																
	Avg 15 year ROI	6.61%	0%	0%	0%	0%	4%	0%	7%	8%	8%	8%	8%	9%	9%	9%	30%
	Return on Equity (ROE)																
	Avg 15 year ROE	16.17%	0%	0%	0%	0%	8%	26%	8%	9%	10%	11%	12%	13%	14%	14%	116%

WMATA-INV 005077

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Fee, Income, Reserves Breakout
Ground Lease Scenario

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Developer Fee	$ -	$ 252,417	$ 913,748	$ 264,186	$ 264,186	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
*4% of Hard Costs (excluding land)															
Replacement Reserves	$ -	$ -	$ -	$ (30,766)	$ (35,514)	$ (36,579)	$ (37,676)	$ (38,807)	$ (39,971)	$ (41,170)	$ (42,405)	$ (43,677)	$ (44,988)	$ (46,337)	$ (47,727)
Per Dwelling Unit	$ -	$ -	$ -	$ (236.66)	$ (273.18)	$ (281.38)	$ (289.82)	$ (298.51)	$ (307.47)	$ (316.69)	$ (326.19)	$ (335.98)	$ (346.06)	$ (356.44)	$ (367.13)
Per GSF	$ -	$ -	$ -	$ (0.20)	$ (0.23)	$ (0.24)	$ (0.25)	$ (0.25)	$ (0.26)	$ (0.27)	$ (0.28)	$ (0.29)	$ (0.30)	$ (0.30)	$ (0.31)
Cash Flow After Debt Service Available to Partners	$ -	$ -	$ -	$ -	$ 841,502	$ 2,786,764	$ 900,348	$ 992,369	$ 1,086,875	$ 1,183,935	$ 1,283,620	$ 1,386,003	$ 1,491,160	$ 1,598,122	$ 10,557,269

WMATA-INV 005078

FOIA CONFIDENTIAL TREATMENT REQUESTED

15 Year Cash Flow Backup
Ground Lease Scenario

Month	ALL MONTHS	YEAR												0	1	2	3	4	5	6	7	8	9
Year	TOTAL	1 2010	2 2011	3 2012	4 2013	5 2014	6 2015	7 2016	8 2017	9 2018	10 2019	11 2020	12 2021		2010 Jan	Feb	Mar	Apr	May	June	July	Aug	Sep
Available Units at BOP		130	130	14	-	-	-	-	-	-	-	-	-	130	130	130	130	130	130	130	130	130	130
Total Units Rented		-	116	14	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP		130	14	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented		-	116	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP		62	62	2	-	-	-	-	-	-	-	-	-	62	62	62	62	62	62	62	62	62	62
Total Rented in Period		-	60	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP		62	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Spaces Rented		-	60	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62
Remaining Retail SF		26,282	26,282	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total SF Rented in Period		-	26,282	-	-	-	-	-	-	-	-	-	-	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Remaining to Rent at EOP		26,282	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative SF Rented		-	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Average Residential Rent/SF														-	-	-	-	-	-	-	-	-	-
Average Retail Rent/SF														$ 2.90	$ 2.93	$ 2.91	$ 2.92	$ 2.92	$ 2.93	$ 2.94	$ 2.95	$ 2.95	
Average Parking Rent/Space														$ 53.06	$ 53.96	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	
														$ 163.91	$ 164.31	$ 164.72	$ 165.12	$ 165.53	$ 165.94	$ 166.35	$ 166.76	$ 167.17	
NET REVENUES																							
Rental Revenues	$ 35,992,866	$ -	$ 1,127,778	$ 3,921,184	$ 4,089,005	$ 4,160,175	$ 4,281,981	$ 4,413,230	$ 4,545,936	$ 4,682,314	$ 4,822,785	$ 4,967,487	$ 5,116,491	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Parking Revenues	1,202,458	-	36,278	131,144	135,079	139,131	143,305	147,604	152,032	156,593	161,291	166,130	171,114	-	-	-	-	-	-	-	-	-	-
Seasonal MF Rental and Parking Vacancy Allowance	(1,848,661)	-	-	(207,894)	(214,131)	(220,554)	(227,171)	(233,986)	(241,006)	(248,236)	(255,683)	(263,354)	(271,254)	-	-	-	-	-	-	-	-	-	-
Retail Revenues	12,706,346	-	497,724	1,422,424	1,450,873	1,479,890	1,509,488	1,539,678	1,570,471	1,601,881	1,633,918	1,633,918	1,633,918	-	-	-	-	-	-	-	-	-	-
General Retail Vacancy Allowance	(622,052)	-	(11,621)	(71,121)	(72,544)	(73,995)	(75,474)	(76,984)	(78,524)	(80,094)	(81,696)	(81,696)	(81,696)	-	-	-	-	-	-	-	-	-	-
Total Revenues	$ 47,430,958	$ -	$ 1,645,160	$ 5,196,918	$ 5,388,282	$ 5,484,647	$ 5,626,128	$ 5,789,842	$ 5,948,910	$ 6,112,458	$ 6,280,614	$ 6,422,465	$ 6,568,573	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Operating Expense/Unit/Year												$ -	$ -										
Operating Expenses	(16,096,116)	-	(772,892)	(1,723,195)	(1,774,890)	(1,828,137)	(1,882,981)	(1,939,471)	(1,997,655)	(2,057,584)	(2,119,312)	$ (2,182,891)	$ (2,248,378)	-	12,326	12,356	12,387	12,417	12,448	12,479	12,509	12,540	12,571
Replacement Reserves		-	(30,766)	(35,514)	(36,579)	(37,676)	(38,807)	(39,971)	(41,170)	(42,405)	(43,677)	(44,988)	(46,337)	-	-	-	-	-	-	-	-	-	-
6.00% Ground Lease - WMATA		-	-	(46,638)	(279,828)	(279,828)	(279,828)	(279,828)	(279,828)	(279,828)	(279,828)	$ (279,828)	$ (286,359)	-	-	-	-	-	-	-	-	-	-
NET RENTAL INCOME	$ 29,329,409	$ -	$ 841,502	$ 3,390,572	$ 3,296,985	$ 3,339,006	$ 3,433,512	$ 3,530,572	$ 3,630,257	$ 3,732,640	$ 3,837,797	$ 3,914,759	$ 3,987,498	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
REFINANCE CASH FLOW																							
Gross Loan Proceeds	$ 2,090,479	$ -	$ -	$ -	$ 2,090,479	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 9,357,634	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less- Cost of Refinance	$ 347,650	$ -	$ -	$ -	$ 347,650	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 441,226	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ 1,742,829	$ -			$ 1,742,829							$ -	$ 8,916,407	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
DISPOSITION CASH FLOW																							
Gross Sale Price	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Sales	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
EQUITY ACCOUNT																							
Beginning Balance		-	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504		1,496,570	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
Equity Infusion	-	-	-	-	-	-	-	-	-	-	-	-	-										
Equity Funding	10,891,504	-	-	-	-	-	-	-	-	-	-	-	-										
Ending Balance (Profit)		10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	1,496,570	9,394,934								
CONSTRUCTION DEBT														1,496,570	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
Beginning Balance		-	19,327,641	32,674,512	-	-	-	-	-	-	-	-	-	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
Loan Draw	30,096,464	18,657,878	11,438,586	-	-	-	-	-	-	-	-	-	-	-	1,500,000	2,938,573	4,385,538	5,840,944	7,304,839	8,777,274	10,258,298	11,747,961	13,246,314
Interest	2,578,098	669,763	1,908,286	-	-	-	-	-	-	-	-	-	-	1,500,000	1,429,823	1,429,823	1,429,823	1,429,823	1,429,823	1,429,823	1,429,823	1,429,823	1,429,823
Principal		-	-	-	-	-	-	-	-	-	-	-	-	-	8,750	17,142	25,582	34,072	42,612	51,201	59,840	66,530	77,270
Total Amount Due to Loan		19,327,641	32,674,512	32,674,512	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
PERMANENT DEBT														1,500,000	2,938,573	4,385,538	5,840,944	7,304,839	8,777,274	10,258,298	11,747,961	13,246,314	14,753,407
Beginning Balance		$ -	$ -	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Monthly Payment		$ -	$ -	$2,346,637	$2,346,637	$2,346,637	$2,346,637	$2,346,637	$2,346,637	$2,346,637	$2,346,637	$2,346,637	$2,346,637	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
9% WMATA Participation (% of Cash Flow after Debt Service)		$ -	$ -	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available From Operations		$ -	$ 841,502	$ 3,390,572	$ 3,296,985	$ 3,339,006	$ 3,433,512	$ 3,530,572	$ 3,630,257	$ 3,732,640	$ 3,837,797	$ 3,914,759	$ 3,987,498	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available From Sale / Refinance		$ -	$ -	$ 1,742,829	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 8,916,407	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available after Debt Service		$ -	$ 841,502	$ 2,786,764	$ 550,348	$ 992,369	$ 1,086,875	$ 1,183,935	$ 1,283,620	$ 1,386,003	$ 1,491,160	$ 1,568,122	$ 10,557,266	-	-	-	-	-	-	-	-	-	-
EQUITY CASH FLOW																							
Contributions	$ 10,891,504	$ 10,891,504	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ (5,499,127)	$ 9,394,934	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Loan Paydown	-	-	-	-	-	-	-	-	-	-	-	-	-										
Refinance Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	-										
Disposition Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	-										
Operating Cash Flow	28,657,863	-	1,645,160	2,849,281	2,991,645	3,138,011	3,288,491	3,443,205	3,602,273	3,765,821	3,933,977	3,793,565	3,287,988										
Total	$ 32,553,670	$ 10,891,504	$ 1,645,160	$ 2,849,281	$ 2,991,645	$ 3,138,011	$ 3,288,491	$ 3,443,205	$ 3,602,273	$ 3,765,821	$ 3,933,977	$ 3,793,565	$ 3,287,988	$ (5,499,127)	$ 9,394,934	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -

WMATA-INV 005079

FOIA CONFIDENTIAL TREATMENT REQUESTED

15 Year Cash Flow Backup
Ground Lease Scenario

Month			10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Year		ALL MONTHS	2010			2011																							
		TOTAL	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	25 Jan	26 Feb	27 Mar	28 Apr	29 May	30 June	31 July	32 Aug
Available Units at BOP			130	130	130	130	130	130	130	130	130	130	94	78	62	46	30	14	-	-	-	-	-	-	-	-
Total Units Rented			-	-	-	-	-	-	-	-	-	36	16	16	16	16	16	14	-	-	-	-	-	-	-	-
Total Remaining Available EOP			130	130	130	130	130	130	130	130	130	94	78	62	46	30	14	-	-	-	-	-	-	-	-	-
Cumulative Units Rented			-	-	-	-	-	-	-	-	-	36	52	68	84	100	116	130	130	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP			62	62	62	62	62	62	62	62	62	62	52	42	32	22	12	2	-	-	-	-	-	-	-	-
Total Rented in Period			-	-	-	-	-	-	-	-	-	10	10	10	10	10	10	2	-	-	-	-	-	-	-	-
Remaining to Rent at EOP			62	62	62	62	62	62	62	62	62	52	42	32	22	12	2	-	-	-	-	-	-	-	-	-
Cumulative Spaces Rented			-	-	-	-	-	-	-	-	-	10	20	30	40	50	60	62	62	62	62	62	62	62	62	62
Remaining Retail SF			26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	20,282	14,282	8,282	2,282	-	-	-	-	-	-	-	-	-	-
Total SF Rented in Period			-	-	-	-	-	-	-	-	-	6,000	6,000	6,000	6,000	2,282	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP			26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	20,282	14,282	8,282	2,282	-	-	-	-	-	-	-	-	-	-	-
Cumulative SF Rented			-	-	-	-	-	-	-	-	-	6,000	12,000	18,000	24,000	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Average Residential Rent/SF			$ 2.96	$ 2.97	$ 2.98	$ 2.98	$ 2.99	$ 3.00	$ 3.00	$ 3.01	$ 3.02	$ 3.03	$ 3.03	$ 3.04	$ 3.05	$ 3.06	$ 3.06	$ 3.07	$ 3.08	$ 3.09	$ 3.09	$ 3.10	$ 3.11	$ 3.12	$ 3.13
Average Retail Rent/SF			$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 54.12	$ 54.12	$ 54.12	$ 54.12	$ 54.12	$ 54.12	$ 54.12	$ 54.12
Average Parking Rent/Space			$ 167.58	$ 168.00	$ 168.41	$ 168.83	$ 169.24	$ 169.66	$ 170.08	$ 170.50	$ 170.92	$ 171.34	$ 171.76	$ 172.19	$ 172.61	$ 173.04	$ 173.46	$ 173.89	$ 174.32	$ 174.75	$ 175.18	$ 175.61	$ 176.05	$ 176.48	$ 176.92
NET REVENUES																										
Rental Revenues		$ 35,992,856	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 87,902	$ 127,370	$ 186,372	$ 206,768	$ 246,750	$ 286,947	$ 322,371	$ 323,166	$ 323,963	$ 324,762	$ 325,563	$ 326,366	$ 327,171	$ 327,978
Parking Revenues		1,202,458	-	-	-	-	-	-	-	-	-	1,713	3,435	5,166	6,904	8,652	10,408	10,781	10,808	10,834	10,861	10,888	10,915	10,942	10,969
General MF Rental and Parking Vacancy Allowance		(1,840,661)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(17,091)	(17,133)	(17,175)	(17,217)	(17,260)	(17,303)	(17,345)	(17,388)
Retail Revenues		12,706,346	-	-	-	-	-	-	-	-	-	26,530	53,060	79,591	106,121	116,211	116,211	118,535	118,535	118,535	118,535	118,535	118,535	118,535	118,535
Ground Retail Vacancy Allowance		(622,052)	-	-	-	-	-	-	-	-	-	-	-	-	-	(5,811)	(5,811)	(5,927)	(5,927)	(5,927)	(5,927)	(5,927)	(5,927)	(5,927)	(5,927)
Total Revenues		$ 47,430,948	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 116,206	$ 183,866	$ 251,728	$ 319,793	$ 365,812	$ 407,755	$ 428,670	$ 429,450	$ 430,231	$ 431,015	$ 431,800	$ 432,587	$ 433,376	$ 434,167
Operating Expense/Unit/Year			12,602	12,633	12,664	12,696	12,727	12,758	12,790	12,821	12,853	12,885	12,916	12,948	12,980	13,012	13,044	13,077	13,109	13,141	13,173	13,206	13,239	13,271	13,304
Operating Expenses		(18,096,116)	-	-	-	-	-	-	-	-	-	(69,792)	(136,928)	(140,273)	(140,619)	(140,966)	(141,314)	(141,662)	(142,011)	(142,362)	(142,713)	(143,065)	(143,418)	(143,771)	(144,126)
Replacement Reserves			-	-	-	-	-	-	-	-	-	(2,564)	(2,564)	(2,564)	(2,564)	(2,564)	(2,564)	(2,959)	(2,959)	(2,959)	(2,959)	(2,959)	(2,959)	(2,959)	(2,959)
8.00% Ground Lease - WMATA			-	-	-	(2,564)	(2,564)	(2,564)	(2,564)	(2,564)	(2,564)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
NET RENTAL INCOME		$ 29,329,909	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 46,414	$ 43,938	$ 111,455	$ 179,174	$ 224,846	$ 266,442	$ 287,008	$ 287,439	$ 287,870	$ 288,302	$ 288,735	$ 289,170	$ 289,605	$ 290,042
REFINANCE CASH FLOW																										
Gross Loan Proceeds		$ 2,090,479	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Refinance		$ 347,650	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds		$ 1,742,829	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
DISPOSITION CASH FLOW																										
Gross Sale Price		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Sales		$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Proceeds		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
EQUITY ACCOUNT																										
Beginning Balance			10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
Equity Infusion		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equity Funding		10,891,504	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Balance (Profit)			10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
CONSTRUCTION DEBT			7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
Beginning Balance			14,753,407	16,269,292	17,794,619	19,327,641	20,870,288	22,421,775	23,982,392	25,552,112	27,130,990	28,719,077	30,316,428	31,923,097	32,109,315	32,296,619	32,485,016	32,674,512	-	-	-	-	-	-	-	-
Loan Draw		30,096,464	1,429,823	1,429,823	1,429,823	1,429,823	1,429,823	1,429,823	1,429,823	1,429,823	1,429,823	1,429,823	1,429,823	1,429,823	-	-	-	-	-	-	-	-	-	-	-	-
Interest		2,576,046	86,062	94,904	103,798	112,746	121,743	130,794	139,897	149,054	158,264	167,528	176,846	186,218	187,304	188,397	189,496	-	-	-	-	-	-	-	-
Principal		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Amount Due to Loan			16,269,292	17,794,619	19,327,641	20,870,288	22,421,775	23,982,392	25,552,112	27,130,990	28,719,077	30,316,428	31,923,097	32,109,315	32,296,619	32,485,016	32,674,512	32,674,512	-	-	-	-	-	-	-	-
PERMANENT DEBT																										
Beginning Balance			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Monthly Payment			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
0% WMATA Participation (% of Cash Flow after Debt Service)			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available From Operations			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available From Sale / Refinance			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 116,206	$ 183,866	$ 251,728	$ 319,793	$ 365,812	$ 407,755	$ 428,670	$ 429,450	$ 430,231	$ 431,015	$ 431,800	$ 432,587	$ 433,376	$ 434,167
Cash Flow Available After Debt Service			-	-	-	-	-	-	-	-	-	116,206	183,866	251,728	319,793	365,812	407,755	1,975,946	233,897	234,678	235,462	236,247	237,034	237,823	238,614
EQUITY CASH FLOW																										
Contributions		$ 10,891,504	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Loan Paydown		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Refinance Cash Flow		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Disposition Cash Flow		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Operating Cash Flow		28,657,863	-	-	-	-	-	-	-	-	-	116,206	183,866	251,728	319,793	365,812	407,755	233,117	233,897	234,678	235,462	236,247	237,034	237,823	238,614
Total		$ 32,553,670	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 116,206	$ 183,866	$ 251,728	$ 319,793	$ 365,812	$ 407,755	$ 233,117	$ 233,897	$ 234,678	$ 235,462	$ 236,247	$ 237,034	$ 237,823	$ 238,614

WMATA-INV 005080

15 Year Cash Flow Backup
Ground Lease Scenario

Month / Year	ALL MONTHS TOTAL	33 Sep	34 Oct	35 Nov	36 Dec	Jan	Feb	Mar	Apr	May	June	July
Available Units at BOP		-	-	-	-	-	-	-	-	-	-	-
Total Units Rented		-	-	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP		-	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented		130	130	130	130	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP		-	-	-	-	-	-	-	-	-	-	-
Total Rented in Period		-	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP		-	-	-	-	-	-	-	-	-	-	-
Cumulative Spaces Rented		62	62	62	62	62	62	62	62	62	62	62
Remaining Retail SF		-	-	-	-	-	-	-	-	-	-	-
Total SF Rented in Period		-	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP		-	-	-	-	-	-	-	-	-	-	-
Cumulative SF Rented		26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Average Residential Rent/SF		$ 3.13	$ 3.14	$ 3.15	$ 3.16	$ 3.16	$ 3.17	$ 3.18	$ 3.19	$ 3.20	$ 3.20	$ 3.21
Average Retail Rent/SF		$ 54.12	$ 54.12	$ 54.12	$ 54.12	$ 55.20	$ 55.20	$ 55.20	$ 55.20	$ 55.20	$ 55.20	$ 55.20
Average Parking Rent/Space		$ 177.35	$ 177.79	$ 178.23	$ 178.67	$ 179.11	$ 179.55	$ 179.99	$ 180.44	$ 180.88	$ 181.33	$ 181.77
NET REVENUES												
Rental Revenues	$ 35,992,866	$ 328,787	$ 329,598	$ 330,411	$ 331,226	$ 332,043	$ 332,861	$ 333,682	$ 334,505	$ 335,330	$ 336,157	$ 336,986
Parking Revenues	1,202,458	10,996	11,023	11,050	11,077	11,105	11,132	11,160	11,187	11,215	11,242	11,270
General MF Rental and Parking Vacancy Allowance	(1,848,661)	(17,431)	(17,474)	(17,517)	(17,560)	(17,603)	(17,647)	(17,690)	(17,734)	(17,778)	(17,822)	(17,866)
Retail Revenues	12,706,346	118,535	118,535	118,535	118,535	120,906	120,906	120,906	120,906	120,906	120,906	120,906
General Retail Vacancy Allowance	(622,052)	(5,927)	(5,927)	(5,927)	(5,927)	(6,045)	(6,045)	(6,045)	(6,045)	(6,045)	(6,045)	(6,045)
Total Revenues	$ 47,430,958	$ 434,961	$ 435,756	$ 436,553	$ 437,351	440,405	441,207	442,012	442,819	443,628	444,439	445,252
Operating Expense/Unit/Year		13,337	13,370	13,403	13,436	13,469	13,502	13,535	13,569	13,602	13,636	13,669
Operating Expenses	(16,006,116)	(144,481)	(144,838)	(145,195)	(145,553)	(145,912)	(146,272)	(146,633)	(146,994)	(147,357)	(147,720)	(148,084)
Replacement Reserves		(2,959)	(2,959)	(2,959)	(2,959)	(3,048)	(3,048)	(3,048)	(3,048)	(3,048)	(3,048)	(3,048)
8.00% Ground Lease - WMATA				(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)
NET RENTAL INCOME	$ 29,329,409	$ 290,479	$ 290,918	$ 268,039	$ 268,479	271,174	271,617	272,061	272,506	272,952	273,400	273,848
REFINANCE CASH FLOW												
Gross Loan Proceeds	$ 2,090,479	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less- Cost of Refinance	$ 347,650	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ 1,742,829	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
DISPOSITION CASH FLOW												
Gross Sale Price	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Sales	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
EQUITY ACCOUNT												
Beginning Balance		10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
Equity Infusion	-											
Equity Funding	10,891,504											
Ending Balance (Profit)		10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
CONSTRUCTION DEBT		#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!
Beginning Balance												
Loan Draw	30,096,464											
Interest	2,578,048											
Principal												
Total Amount Due to Loan		-	-	-	-	-	-	-	-	-	-	-
PERMANENT DEBT												
Beginning Balance		$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991
Monthly Payment		$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553
0% WMATA Participation (% of Cash Flow after Debt Service)		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available From Operations		$ 434,961	$ 435,756	$ 436,553	$ 437,351	$ 440,405	$ 441,207	$ 442,012	$ 442,819	$ 443,628	$ 444,439	$ 445,252
Cash Flow Available From Sale / Refinance		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available After Debt Service		239,407	240,202	240,999	241,798	244,851	245,654	246,459	247,266	248,075	248,886	249,699
EQUITY CASH FLOW												
Contributions	$ 10,891,504	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Loan Paydown	-	-	-	-	-	-	-	-	-	-	-	-
Refinance Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-
Disposition Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-
Operating Cash Flow	28,657,863	239,407	240,202	240,999	241,798	244,851	245,654	246,459	247,266	248,075	248,886	249,699
Total	$ 32,553,670	$ 239,407	$ 240,202	$ 240,999	$ 241,798	$ 244,851	$ 245,654	$ 246,459	$ 247,266	$ 248,075	$ 248,886	$ 249,699

Month / Year	Aug	Sep	Oct	Nov	Dec	49 Jan	50 Feb	51 Mar	52 Apr	53 May	2014 54 June	55 July
Available Units at BOP	-	-	-	-	-	-	-	-	-	-	-	-
Total Units Rented	-	-	-	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented	130	130	130	130	130	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP	-	-	-	-	-	-	-	-	-	-	-	-
Total Rented in Period	-	-	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Spaces Rented	62	62	62	62	62	62	62	62	62	62	62	62
Remaining Retail SF	-	-	-	-	-	-	-	-	-	-	-	-
Total SF Rented in Period	-	-	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative SF Rented	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Average Residential Rent/SF	$ 3.22	$ 3.23	$ 3.24	$ 3.24	$ 3.25	$ 3.26	$ 3.27	$ 3.28	$ 3.28	$ 3.29	$ 3.30	$ 3.31
Average Retail Rent/SF	$ 55.20	$ 55.20	$ 55.20	$ 55.20	$ 55.20	$ 56.31	$ 56.31	$ 56.31	$ 56.31	$ 56.31	$ 56.31	$ 56.31
Average Parking Rent/Space	$ 182.22	$ 182.67	$ 183.12	$ 183.57	$ 184.03	$ 184.48	$ 184.94	$ 185.39	$ 185.85	$ 186.31	$ 186.77	$ 187.23
NET REVENUES												
Rental Revenues	$ 337,817	$ 338,651	$ 339,486	$ 340,323	$ 341,162	$ 342,004	$ 342,847	$ 343,693	$ 344,540	$ 345,390	$ 346,242	$ 347,096
Parking Revenues	11,298	11,326	11,354	11,382	11,410	11,438	11,466	11,494	11,523	11,551	11,580	11,608
General MF Rental and Parking Vacancy Allowance	(17,910)	(17,954)	(17,998)	(18,042)	(18,087)	(18,132)	(18,176)	(18,221)	(18,266)	(18,311)	(18,355)	(18,402)
Retail Revenues	120,906	120,906	120,906	120,906	120,906	123,324	123,324	123,324	123,324	123,324	123,324	123,324
General Retail Vacancy Allowance	(6,045)	(6,045)	(6,045)	(6,045)	(6,045)	(6,166)	(6,166)	(6,166)	(6,166)	(6,166)	(6,166)	(6,166)
Total Revenues	446,066	$ 446,883	$ 447,702	$ 448,523	$ 449,346	$ 452,468	$ 453,295	$ 454,124	$ 454,955	$ 455,788	$ 456,623	$ 457,461
Operating Expense/Unit/Year	13,703	13,737	13,771	13,805	13,839	13,873	13,907	13,941	13,976	14,010	14,045	14,079
Operating Expenses	(148,450)	(148,816)	(149,183)	(149,551)	(149,920)	(150,289)	(150,660)	(151,032)	(151,404)	(151,777)	(152,152)	(152,527)
Replacement Reserves	(3,048)	(3,048)	(3,048)	(3,048)	(3,048)	(3,140)	(3,140)	(3,140)	(3,140)	(3,140)	(3,140)	(3,140)
8.00% Ground Lease - WMATA	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)
NET RENTAL INCOME	274,298	$ 274,748	$ 275,200	$ 275,653	$ 276,107	$ 278,860	$ 279,316	$ 279,774	$ 280,232	$ 280,692	$ 281,153	$ 281,615
REFINANCE CASH FLOW												
Gross Loan Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less- Cost of Refinance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
DISPOSITION CASH FLOW												
Gross Sale Price	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Sales	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
EQUITY ACCOUNT												
Beginning Balance	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
Equity Infusion												
Equity Funding												
Ending Balance (Profit)	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
CONSTRUCTION DEBT	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
Beginning Balance												
Loan Draw												
Interest												
Principal												
Total Amount Due to Loan	-	-	-	-	-	-	-	-	-	-	-	-
PERMANENT DEBT												
Beginning Balance	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991
Monthly Payment	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553
0% WMATA Participation (% of Cash Flow after Debt Service)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available From Operations	$ 446,066	$ 446,883	$ 447,702	$ 448,523	$ 449,346	$ 452,468	$ 453,295	$ 454,124	$ 454,955	$ 455,788	$ 456,623	$ 457,461
Cash Flow Available From Sale / Refinance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available After Debt Service	250,513	251,330	252,149	252,970	253,793	256,915	257,742	258,571	259,402	260,235	261,070	261,907
EQUITY CASH FLOW												
Contributions	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Loan Paydown	-	-	-	-	-	-	-	-	-	-	-	-
Refinance Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-
Disposition Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-
Operating Cash Flow	250,513	251,330	252,149	252,970	253,793	256,915	257,742	258,571	259,402	260,235	261,070	261,907
Total	$ 250,513	$ 251,330	$ 252,149	$ 252,970	$ 253,793	$ 256,915	$ 257,742	$ 258,571	$ 259,402	$ 260,235	$ 261,070	$ 261,907

229,000/year

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

15 Year Cash Flow Backup
Ground Lease Scenario

Month		56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79
Year	ALL MONTHS TOTAL	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	2016 Jan	Feb	Mar	Apr	May	June	July
Available Units at BOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Units Rented		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented		130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Rented in Period		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Spaces Rented		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining Retail SF		62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62
Total SF Rented in Period		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative SF Rented		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Average Residential Rent/SF		26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Average Retail Rent/SF		$ 3.32	$ 3.32	$ 3.33	$ 3.34	$ 3.35	$ 3.36	$ 3.37	$ 3.37	$ 3.38	$ 3.39	$ 3.40	$ 3.41	$ 3.42	$ 3.42	$ 3.43	$ 3.44	$ 3.45	$ 3.46	$ 3.47	$ 3.47	$ 3.48	$ 3.49	$ 3.50	$ 3.51
Average Parking Rent/Space		$ 56.31	$ 56.31	$ 56.31	$ 56.31	$ 56.31	$ 57.43	$ 57.43	$ 57.43	$ 57.43	$ 57.43	$ 57.43	$ 57.43	$ 57.43	$ 57.43	$ 57.43	$ 57.43	$ 57.43	$ 58.58	$ 58.58	$ 58.58	$ 58.58	$ 58.58	$ 58.58	$ 58.58
		$ 187.69	$ 188.15	$ 189.62	$ 189.08	$ 189.55	$ 190.02	$ 190.48	$ 190.95	$ 191.42	$ 191.90	$ 192.37	$ 192.84	$ 193.32	$ 193.80	$ 194.28	$ 194.75	$ 195.23	$ 195.72	$ 196.20	$ 196.68	$ 197.17	$ 197.65	$ 198.14	$ 198.63
NET REVENUES																									
Rental Revenues	$ 15,902,866	$ 347,952	$ 348,810	$ 349,670	$ 350,533	$ 351,397	$ 352,264	$ 353,133	$ 354,004	$ 354,877	$ 355,752	$ 356,629	$ 357,509	$ 358,391	$ 359,274	$ 360,161	$ 361,048	$ 361,939	$ 362,832	$ 363,727	$ 364,624	$ 365,523	$ 366,424	$ 367,328	$ 368,234
Parking Revenues	1,202,458	11,837	11,866	11,894	11,923	11,952	11,981	11,810	11,839	11,868	11,898	11,927	11,956	11,986	12,015	12,045	12,075	12,105	12,134	12,164	12,194	12,224	12,255	12,285	12,315
General MF Rental and Parking Vacancy Allowance	(1,848,661)	(18,447)	(18,492)	(18,538)	(18,584)	(18,630)	(18,676)	(18,722)	(18,768)	(18,814)	(18,860)	(18,907)	(18,954)	(19,000)	(19,047)	(19,094)	(19,141)	(19,188)	(19,236)	(19,283)	(19,331)	(19,378)	(19,426)	(19,474)	(19,522)
Retail Revenues	12,706,346	123,324	123,324	123,324	123,324	123,324	125,791	125,791	125,791	125,791	125,791	125,791	125,791	125,791	125,791	125,791	125,791	125,791	128,306	128,306	128,306	128,306	128,306	128,306	128,306
General Retail Vacancy Allowance	(622,052)	(6,166)	(6,166)	(6,166)	(6,166)	(6,166)	(6,290)	(6,290)	(6,290)	(6,290)	(6,290)	(6,290)	(6,290)	(6,290)	(6,290)	(6,290)	(6,290)	(6,290)	(6,415)	(6,415)	(6,415)	(6,415)	(6,415)	(6,415)	(6,415)
Total Revenues	$ 47,430,558	$ 458,300	$ 459,141	$ 459,985	$ 460,830	$ 461,678	$ 464,871	$ 465,722	$ 466,576	$ 467,432	$ 468,290	$ 469,150	$ 470,013	$ 470,877	$ 471,744	$ 472,613	$ 473,483	$ 474,356	$ 477,622	$ 478,499	$ 479,378	$ 480,260	$ 481,144	$ 482,030	$ 482,918
Operating Expense/Unit/Year		14,144	14,149	14,184	14,219	14,254	14,289	14,324	14,360	14,395	14,431	14,466	14,502	14,538	14,573	14,609	14,645	14,682	14,718	14,754	14,790	14,827	14,863	14,900	14,937
Operating Expenses	(19,096,116)	(152,903)	(153,289)	(153,658)	(154,037)	(154,417)	(154,798)	(155,180)	(155,562)	(155,946)	(156,331)	(156,716)	(157,103)	(157,490)	(157,879)	(158,268)	(158,658)	(159,050)	(159,442)	(159,835)	(160,229)	(160,625)	(161,021)	(161,418)	(161,816)
Replacement Reserves		(3,140)	(3,140)	(3,140)	(3,140)	(3,140)	(3,234)	(3,234)	(3,234)	(3,234)	(3,234)	(3,234)	(3,234)	(3,234)	(3,234)	(3,234)	(3,234)	(3,234)	(3,331)	(3,331)	(3,331)	(3,331)	(3,331)	(3,331)	(3,331)
8.00% Ground Lease - WMATA		(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)
NET RENTAL INCOME	$ 28,329,499	$ 282,078	$ 282,542	$ 283,007	$ 283,474	$ 283,942	$ 286,754	$ 287,224	$ 287,695	$ 288,167	$ 288,641	$ 289,115	$ 289,591	$ 290,068	$ 290,546	$ 291,026	$ 291,505	$ 291,988	$ 294,851	$ 295,345	$ 295,830	$ 296,317	$ 296,804	$ 297,293	$ 297,783
REFINANCE CASH FLOW																									
Gross Loan Proceeds	$ 2,090,479	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Refinance	$ 347,650	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ 1,742,829	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
DISPOSITION CASH FLOW																									
Gross Sale Price	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Sales	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
EQUITY ACCOUNT																									
Beginning Balance		10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
Equity Infusion	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equity Funding	10,891,504	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Balance (Profit)		10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
CONSTRUCTION DEBT		7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
Beginning Balance		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Loan Draw	30,096,464	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest	2,579,048	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Principal		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Amount Due to Loan		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
PERMANENT DEBT																									
Beginning Balance		$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991
Monthly Payment		$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553
0% WMATA Participation (% of Cash Flow after Debt Service)		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available From Operations		$ 458,300	$ 459,141	$ 459,985	$ 460,830	$ 461,678	$ 464,871	$ 465,722	$ 466,576	$ 467,432	$ 468,290	$ 469,150	$ 470,013	$ 470,877	$ 471,744	$ 472,613	$ 473,483	$ 474,356	$ 477,622	$ 478,499	$ 479,378	$ 480,260	$ 481,144	$ 782,030	$ 482,918
Cash Flow Available From Sale / Refinance		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available After Debt Service		262,747	263,588	264,432	265,277	266,125	269,317	270,169	271,023	271,879	272,737	273,597	274,460	275,324	276,191	277,059	277,930	278,803	282,069	282,946	283,825	284,707	285,591	286,477	287,365
EQUITY CASH FLOW																									
Contributions	$ 10,891,504	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Loan Paydown	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Refinance Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Disposition Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Operating Cash Flow	28,657,863	262,747	263,588	264,432	265,277	266,125	269,317	270,169	271,023	271,879	272,737	273,597	274,460	275,324	276,191	277,059	277,930	278,803	282,069	282,946	283,825	284,707	285,591	286,477	287,365
Total	$ 39,549,367	$ 262,747	$ 263,588	$ 264,432	$ 265,277	$ 266,125	$ 269,317	$ 270,169	$ 271,023	$ 271,879	$ 272,737	$ 273,597	$ 274,460	$ 275,324	$ 276,191	$ 277,059	$ 277,930	$ 278,803	$ 282,069	$ 282,946	$ 283,825	$ 284,707	$ 285,591	$ 286,477	$ 287,365

WMATA-INV 005082

15 Year Cash Flow Backup
Ground Lease Scenario

Month / Year	ALL MONTHS TOTAL	80 Aug	81 Sep	82 Oct	83 Nov	84 Dec
Available Units at BOP		-	-	-	-	-
Total Units Rented		-	-	-	-	-
Total Remaining Available EOP		-	-	-	-	-
Cumulative Units Rented		130	130	130	130	130
Remaining Parking Spaces to Sell at BOP		-	-	-	-	-
Total Rented in Period		-	-	-	-	-
Remaining to Rent at EOP		-	-	-	-	-
Cumulative Spaces Rented		62	62	62	62	62
Remaining Retail SF		-	-	-	-	-
Total SF Rented in Period		-	-	-	-	-
Remaining to Rent at EOP		-	-	-	-	-
Cumulative SF Rented		26,282	26,282	26,282	26,282	26,282
Average Residential Rent/SF		$ 3.52	$ 3.53	$ 3.54	$ 3.54	$ 3.55
Average Retail Rent/SF		$ 58.58	$ 58.58	$ 58.58	$ 58.58	$ 58.58
Average Parking Rent/Space		$ 199.12	$ 199.61	$ 200.10	$ 200.60	$ 201.09
NET REVENUES						
Rental Revenues	$ 35,992,866	$ 369,142	$ 370,053	$ 370,965	$ 371,880	$ 372,797
Parking Revenues	1,202,458	12,345	12,376	12,406	12,437	12,468
General MF Rental and Parking Vacancy Allowance	(1,848,661)	(19,570)	(19,619)	(19,667)	(19,715)	(19,764)
Retail Revenues	12,706,346	128,306	128,306	128,306	128,306	128,306
General Retail Vacancy Allowance	(622,052)	(6,415)	(6,415)	(6,415)	(6,415)	(6,415)
Total Revenues	$ 47,430,958	$ 483,809	$ 484,701	$ 485,596	$ 486,493	$ 487,392
Operating Expense/Unit/Year		14,974	15,011	15,048	15,085	15,122
Operating Expenses	(16,096,116)	(162,215)	(162,615)	(163,016)	(163,418)	(163,821)
Replacement Reserves		(3,331)	(3,331)	(3,331)	(3,331)	(3,331)
8.00% Ground Lease - WMATA		(23,319)	(23,319)	(23,319)	(23,319)	(23,319)
NET RENTAL INCOME	$ 29,329,409	$ 298,275	$ 298,767	$ 299,261	$ 299,756	$ 300,252
REFINANCE CASH FLOW						
Gross Loan Proceeds	$ 2,090,479	$ -	$ -	$ -	$ -	$ -
Less- Cost of Refinance	$ 347,650	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ 1,742,829	$ -	$ -	$ -	$ -	$ -
DISPOSITION CASH FLOW						
Gross Sale Price	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Sales	$ -	-	-	-	-	-
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ -
EQUITY ACCOUNT						
Beginning Balance		10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
Equity Infusion		-	-	-	-	-
Equity Funding	10,891,504					
Ending Balance (Profit)		10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
CONSTRUCTION DEBT						
Beginning Balance		7.00%	7.00%	7.00%	7.00%	7.00%
Loan Draw	30,096,464	-	-	-	-	-
Interest	2,578,048	-	-	-	-	-
Principal		-	-	-	-	-
Total Amount Due to Loan		-	-	-	-	-
PERMANENT DEBT						
Beginning Balance		$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991
Monthly Payment		$195,553	$195,553	$195,553	$195,553	$195,553
0% WMATA Participation (% of Cash Flow after Debt Service)		$ -	$ -	$ -	$ -	$ -
Cash Flow Available From Operations		$ 483,809	$ 484,701	$ 485,596	$ 486,493	$ 487,392
Cash Flow Available From Sale / Refinance		$ -	$ -	$ -	$ -	$ -
Cash Flow Available After Debt Service		288,255	289,148	290,043	290,940	291,839
EQUITY CASH FLOW						
Contributions	$ 10,891,504	$ -	$ -	$ -	$ -	$ -
Loan Paydown	-	-	-	-	-	-
Refinance Cash Flow	-	-	-	-	-	-
Disposition Cash Flow	-	-	-	-	-	-
Operating Cash Flow	28,657,863	288,255	289,148	290,043	290,940	291,839
Total	$ 32,553,670	$ 288,255	$ 289,148	$ 290,043	$ 290,940	$ 291,839

Month / Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
Available Units at BOP	-	-	-	-	-	-	-	-	-	-	-	-
Total Units Rented	-	-	-	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented	130	130	130	130	130	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP	-	-	-	-	-	-	-	-	-	-	-	-
Total Rented in Period	-	-	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Spaces Rented	62	62	62	62	62	62	62	62	62	62	62	62
Remaining Retail SF	-	-	-	-	-	-	-	-	-	-	-	-
Total SF Rented in Period	-	-	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative SF Rented	26,282	26,282	26,282	26,282	26,282	26,282	26,282	25,282	26,282	26,282	26,282	26,282
Average Residential Rent/SF	$ 3.56	$ 3.57	$ 3.58	$ 3.59	$ 3.60	$ 3.61	$ 3.61	$ 3.62	$ 3.63	$ 3.64	$ 3.65	$ 3.66
Average Retail Rent/SF	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75
Average Parking Rent/Space	$ 201.59	$ 202.08	$ 202.58	$ 203.08	$ 203.58	$ 204.09	$ 204.59	$ 205.09	$ 205.60	$ 206.11	$ 206.61	$ 207.12
NET REVENUES												
Rental Revenues	$ 373,717	$ 374,630	$ 375,562	$ 376,489	$ 377,417	$ 378,348	$ 379,281	$ 380,217	$ 381,154	$ 382,094	$ 383,037	$ 383,981
Parking Revenues	12,498	12,529	12,560	12,591	12,622	12,653	12,685	12,716	12,747	12,779	12,810	12,842
General MF Rental and Parking Vacancy Allowance	(19,813)	(19,862)	(19,911)	(19,960)	(20,009)	(20,058)	(20,100)	(20,157)	(20,207)	(20,257)	(20,307)	(20,357)
Retail Revenues	130,873	130,873	130,873	130,873	130,873	130,873	130,873	130,873	130,873	130,873	130,873	130,873
General Retail Vacancy Allowance	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)
Total Revenues	$ 490,731	$ 491,635	$ 492,541	$ 493,449	$ 494,359	$ 495,272	$ 496,187	$ 497,104	$ 498,023	$ 498,945	$ 499,869	$ 500,795
Operating Expense/Unit/Year	15,159	15,197	15,234	15,272	15,309	15,347	15,385	15,423	15,461	15,499	15,537	15,576
Operating Expenses	(164,225)	(164,630)	(165,036)	(165,443)	(165,851)	(166,260)	(166,670)	(167,081)	(167,493)	(167,907)	(168,321)	(168,736)
Replacement Reserves	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)
8.00% Ground Lease - WMATA	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)
NET RENTAL INCOME	$ 303,187	$ 303,686	$ 304,186	$ 304,687	$ 305,189	$ 305,693	$ 306,197	$ 306,703	$ 307,211	$ 307,719	$ 308,229	$ 308,740
REFINANCE CASH FLOW												
Gross Loan Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less- Cost of Refinance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
DISPOSITION CASH FLOW												
Gross Sale Price	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Sales	-	-	-	-	-	-	-	-	-	-	-	-
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
EQUITY ACCOUNT												
Beginning Balance	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
Equity Infusion	-	-	-	-	-	-	-	-	-	-	-	-
Equity Funding												
Ending Balance (Profit)	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
CONSTRUCTION DEBT												
Beginning Balance	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
Loan Draw	-	-	-	-	-	-	-	-	-	-	-	-
Interest	-	-	-	-	-	-	-	-	-	-	-	-
Principal	-	-	-	-	-	-	-	-	-	-	-	-
Total Amount Due to Loan	-	-	-	-	-	-	-	-	-	-	-	-
PERMANENT DEBT												
Beginning Balance	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991
Monthly Payment	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553
0% WMATA Participation (% of Cash Flow after Debt Service)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available From Operations	$ 490,731	$ 491,635	$ 492,541	$ 493,449	$ 494,359	$ 495,272	$ 496,187	$ 497,104	$ 498,023	$ 498,945	$ 499,869	$ 500,795
Cash Flow Available From Sale / Refinance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available After Debt Service	295,178	296,082	296,988	297,896	298,806	299,719	300,634	301,551	302,470	303,392	304,316	305,242
EQUITY CASH FLOW												
Contributions	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Loan Paydown	-	-	-	-	-	-	-	-	-	-	-	-
Refinance Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-
Disposition Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-
Operating Cash Flow	295,178	296,082	296,988	297,896	298,806	299,719	300,634	301,551	302,470	303,392	304,316	305,242
Total	$ 295,178	$ 296,082	$ 296,988	$ 297,896	$ 298,806	$ 299,719	$ 300,634	$ 301,551	$ 302,470	$ 303,392	$ 304,316	$ 305,242

Month / Year	97 Jan	98 Feb	99 Mar	100 Apr	101 May	102 June	2018 103 July
Available Units at BOP	-	-	-	-	-	-	-
Total Units Rented	-	-	-	-	-	-	-
Total Remaining Available EOP	-	-	-	-	-	-	-
Cumulative Units Rented	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP	-	-	-	-	-	-	-
Total Rented in Period	-	-	-	-	-	-	-
Remaining to Rent at EOP	-	-	-	-	-	-	-
Cumulative Spaces Rented	62	62	62	62	62	62	62
Remaining Retail SF	-	-	-	-	-	-	-
Total SF Rented in Period	-	-	-	-	-	-	-
Remaining to Rent at EOP	-	-	-	-	-	-	-
Cumulative SF Rented	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Average Residential Rent/SF	$ 3.67	$ 3.68	$ 3.69	$ 3.70	$ 3.70	$ 3.71	$ 3.72
Average Retail Rent/SF	$ 60.95	$ 60.95	$ 60.95	$ 60.95	$ 60.95	$ 60.95	$ 60.95
Average Parking Rent/Space	$ 207.64	$ 208.15	$ 208.66	$ 209.18	$ 209.69	$ 210.21	$ 210.73
NET REVENUES							
Rental Revenues	$ 384,928	$ 385,878	$ 386,829	$ 387,783	$ 388,740	$ 389,698	$ 390,660
Parking Revenues	12,873	12,905	12,937	12,969	13,001	13,033	13,065
General MF Rental and Parking Vacancy Allowance	(20,407)	(20,458)	(20,508)	(20,559)	(20,609)	(20,660)	(20,711)
Retail Revenues	133,490	133,490	133,490	133,490	133,490	133,490	133,490
General Retail Vacancy Allowance	(6,675)	(6,675)	(6,675)	(6,675)	(6,675)	(6,675)	(6,675)
Total Revenues	$ 504,210	$ 505,141	$ 506,074	$ 507,009	$ 507,947	$ 508,887	$ 509,829
Operating Expense/Unit/Year	15,614	15,653	15,691	15,730	15,769	15,808	15,847
Operating Expenses	(169,152)	(169,569)	(169,987)	(170,407)	(170,827)	(171,248)	(171,670)
Replacement Reserves	(3,534)	(3,534)	(3,534)	(3,534)	(3,534)	(3,534)	(3,534)
8.00% Ground Lease - WMATA	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)
NET RENTAL INCOME	$ 311,739	$ 312,253	$ 312,768	$ 313,284	$ 313,801	$ 314,320	$ 314,840
REFINANCE CASH FLOW							
Gross Loan Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	-
Less- Cost of Refinance	$ -	$ -	$ -	$ -	$ -	$ -	-
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	-
DISPOSITION CASH FLOW							
Gross Sale Price	$ -	$ -	$ -	$ -	$ -	$ -	-
Less: Cost of Sales	-	-	-	-	-	-	-
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	-
EQUITY ACCOUNT							
Beginning Balance	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
Equity Infusion	-	-	-	-	-	-	-
Equity Funding							
Ending Balance (Profit)	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
CONSTRUCTION DEBT							
Beginning Balance	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
Loan Draw	-	-	-	-	-	-	-
Interest	-	-	-	-	-	-	-
Principal	-	-	-	-	-	-	-
Total Amount Due to Loan	-	-	-	-	-	-	-
PERMANENT DEBT							
Beginning Balance	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991
Monthly Payment	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553
0% WMATA Participation (% of Cash Flow after Debt Service)	$ -	$ -	$ -	$ -	$ -	$ -	-
Cash Flow Available From Operations	$ 504,210	$ 505,141	$ 506,074	$ 507,009	$ 507,947	$ 508,887	509,829
Cash Flow Available From Sale / Refinance	$ -	$ -	$ -	$ -	$ -	$ -	-
Cash Flow Available After Debt Service	308,657	309,588	310,521	311,456	312,394	313,334	314,276
EQUITY CASH FLOW							
Contributions	$ -	$ -	$ -	$ -	$ -	$ -	-
Loan Paydown	-	-	-	-	-	-	-
Refinance Cash Flow	-	-	-	-	-	-	-
Disposition Cash Flow	-	-	-	-	-	-	-
Operating Cash Flow	308,657	309,588	310,521	311,456	312,394	313,334	314,276
Total	$ 308,657	$ 309,588	$ 310,521	$ 311,456	$ 312,394	$ 313,334	314,276

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 005083

FOIA CONFIEDENTIAL TREATMENT REQUESTED

15 Year Cash Flow Backup
Ground Lease Scenario

Month			104	105	106	107	108																						
Year		ALL MONTHS	Year	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct
Available Units at BOP		TOTAL	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Units Rented			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented			130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Rented in Period			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Spaces Rented			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining Retail SF			62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62
Total SF Rented in Period			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative SF Rented			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Average Residential Rent/SF			26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Average Retail Rent/SF			$ 3.73	$ 3.74	$ 3.75	$ 3.76	$ 3.77	$ 3.78	$ 3.79	$ 3.80	$ 3.81	$ 3.82	$ 3.83	$ 3.83	$ 3.84	$ 3.85	$ 3.86	$ 3.87	$ 3.88	$ 3.89	$ 3.90	$ 3.91	$ 3.92	$ 3.93	$ 3.94	$ 3.95	$ 3.96	$ 3.97	$ 3.98	$ 3.99
Average Parking Rent/Space			$ 60.95	$ 60.95	$ 60.95	$ 60.95	$ 60.95	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17
			$ 211.25	$ 211.77	$ 212.29	$ 212.81	$ 213.34	$ 213.86	$ 214.39	$ 214.92	$ 215.45	$ 215.98	$ 216.51	$ 217.05	$ 217.58	$ 218.12	$ 218.66	$ 219.20	$ 219.74	$ 220.28	$ 220.82	$ 221.37	$ 221.91	$ 222.46	$ 223.01	$ 223.56	$ 224.11	$ 224.67	$ 225.22
NET REVENUES																													
Rental Revenues		$ 35,992,866	$ 391,623	$ 392,589	$ 393,557	$ 394,528	$ 395,501	$ 396,476	$ 397,454	$ 398,434	$ 399,417	$ 400,402	$ 401,389	$ 402,379	$ 403,372	$ 404,367	$ 405,364	$ 406,364	$ 407,366	$ 408,370	$ 409,378	$ 410,387	$ 411,399	$ 412,414	$ 413,431	$ 414,451	$ 415,473	$ 416,497	$ 417,524
Parking Revenues		1,202,488	13,099	13,130	13,162	13,194	13,227	13,260	13,292	13,325	13,358	13,391	13,424	13,457	13,490	13,523	13,557	13,590	13,624	13,657	13,691	13,725	13,759	13,793	13,827	13,861	13,896	13,930	13,965
General MF Rental and Parking Vacancy Allowance		(1,848,661)	(20,762)	(20,813)	(20,865)	(20,916)	(20,968)	(21,019)	(21,071)	(21,123)	(21,175)	(21,228)	(21,280)	(21,332)	(21,385)	(21,438)	(21,491)	(21,544)	(21,597)	(21,650)	(21,703)	(21,757)	(21,811)	(21,864)	(21,918)	(21,972)	(22,027)	(22,082)	(22,137)
Retail Revenues		(2,706,346	133,490	133,490	133,490	133,490	133,490	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160
General Retail Vacancy Allowance		(622,067)	(6,675)	(6,675)	(6,675)	(6,675)	(6,675)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)
Total Revenues		$ 47,430,958	$ 510,774	$ 511,721	$ 512,570	$ 513,622	$ 514,576	$ 518,068	$ 519,027	$ 519,988	$ 520,951	$ 521,917	$ 522,885	$ 523,856	$ 524,829	$ 525,804	$ 526,782	$ 527,762	$ 528,745	$ 529,730	$ 530,717	$ 531,707	$ 532,699	$ 533,694	$ 534,691	$ 535,691	$ 536,693	$ 537,697	$ 538,704	$ 539,713
Operating Expense/Unit/Year			15,886	15,915	15,944	16,003	16,043	16,082	16,122	16,162	16,202	16,242	16,282	16,322	16,362	16,403	16,443	16,484	16,524	16,565	16,606	16,647	16,688	16,729	16,770	16,812	16,853	16,895	16,937
Operating Expenses		(16,096,116)	(172,094)	(172,518)	(172,944)	(173,370)	(173,798)	(174,226)	(174,656)	(175,087)	(175,519)	(175,952)	(176,386)	(176,821)	(177,257)	(177,694)	(178,132)	(178,571)	(179,012)	(179,453)	(179,896)	(180,340)	(180,784)	(181,230)	(181,677)	(182,125)	(182,574)	(183,025)	(183,476)
Replacement Reserves			(3,534)	(3,534)	(3,534)	(3,534)	(3,534)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)	(3,640)
8.00% Ground Lease - WMATA			(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,315)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)
NET RENTAL INCOME		$ 29,329,409	$ 315,361	$ 315,883	$ 316,407	$ 316,932	$ 317,459	$ 320,523	$ 321,052	$ 321,582	$ 322,114	$ 322,646	$ 323,181	$ 323,716	$ 324,253	$ 324,791	$ 325,331	$ 325,872	$ 326,414	$ 326,957	$ 327,502	$ 328,048	$ 328,596	$ 329,145	$ 329,695	$ 330,247	$ 330,800	$ 331,355	$ 331,911	$ 332,469
REFINANCE CASH FLOW																													
Gross Loan Proceeds		$ 2,090,479	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less- Cost of Refinance		$ 347,650	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds		$ 1,742,829	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
DISPOSITION CASH FLOW																													
Gross Sale Price		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Sales		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
EQUITY ACCOUNT																													
Beginning Balance			10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
Equity Infusion			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equity Funding		10,891,504	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Balance (Profit)			10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
CONSTRUCTION DEBT			7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
Beginning Balance			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Loan Draw		30,095,464	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest		2,578,048	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Principal			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Amount Due to Loan			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
PERMANENT DEBT																													
Beginning Balance			$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991
Monthly Payment			$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553
0% WMATA Participation (% of Cash Flow after Debt Service)			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available From Operations			$ 510,774	$ 511,721	$ 512,570	$ 513,622	$ 514,576	$ 518,068	$ 519,027	$ 519,988	$ 520,951	$ 521,917	$ 522,885	$ 523,856	$ 524,829	$ 525,804	$ 526,782	$ 527,762	$ 528,745	$ 529,730	$ 530,717	$ 531,707	$ 532,699	$ 533,694	$ 534,691	$ 535,691	$ 536,693	$ 537,697	$ 538,704	$ 539,713
Cash Flow Available From Sale / Refinance			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available After Debt Service			315,221	316,168	317,117	318,068	319,022	322,515	323,474	324,435	325,398	326,364	327,332	328,303	329,276	330,251	331,229	332,209	333,192	334,177	335,164	336,154	337,146	338,141	339,138	340,138	341,140	342,144	343,151
EQUITY CASH FLOW																													
Contributions		$ 10,891,504	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Loan Paydown			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Refinance Cash Flow			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Disposition Cash Flow			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Operating Cash Flow		28,657,853	315,221	316,168	317,117	318,068	319,022	322,515	323,474	324,435	325,398	326,364	327,332	328,303	329,276	330,251	331,229	332,209	333,192	-	-	-	-	-	-	-	-	-	-
Total		$ 32,553,670	$ 315,221	$ 316,168	$ 317,117	$ 318,068	$ 319,022	$ 322,515	$ 323,474	$ 324,435	$ 325,398	$ 326,364	$ 327,332	$ 328,303	$ 329,276	$ 330,251	$ 331,229	$ 332,209	$ 333,192											

WMATA-INV 005084

FOIA CONFIDENTIAL TREATMENT REQUESTED

15 Year Cash Flow Backup
Ground Lease Scenario

Month	ALL MONTHS TOTAL	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Year		2007					2008						2009						2010						2011
Available Units at BOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Units Rented		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented		130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Rented in Period		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Spaces Rented		62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62
Remaining Retail SF		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total SF Rented in Period		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative SF Rented		26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Average Residential Rent/SF		$ 3.96	$ 3.97	$ 3.98	$ 3.99	$ 4.00	$ 4.01	$ 4.02	$ 4.03	$ 4.04	$ 4.05	$ 4.06	$ 4.07	$ 4.08	$ 4.09	$ 4.10	$ 4.11	$ 4.12	$ 4.13	$ 4.14	$ 4.15	$ 4.16	$ 4.17	$ 4.18	$ 4.19
Average Retail Rent/SF		$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17
Average Parking Rent/Space		$ 224.11	$ 224.66	$ 225.22	$ 225.77	$ 226.33	$ 226.89	$ 227.45	$ 228.01	$ 228.57	$ 229.14	$ 229.70	$ 230.27	$ 230.83	$ 231.40	$ 231.97	$ 232.55	$ 233.12	$ 233.70	$ 234.27	$ 234.85	$ 235.43	$ 236.01	$ 236.59	$ 237.17
NET REVENUES																									
Rental Revenues	$ 35,962,896	$ 415,473	$ 416,498	$ 417,525	$ 418,554	$ 419,587	$ 420,622	$ 421,659	$ 422,699	$ 423,741	$ 424,786	$ 425,834	$ 426,884	$ 427,937	$ 428,992	$ 430,050	$ 431,111	$ 432,174	$ 433,240	$ 434,309	$ 435,380	$ 436,454	$ 437,530	$ 438,609	$ 439,691
Parking Revenues	1,292,498	13,895	13,929	13,964	13,998	14,032	14,067	14,102	14,137	14,171	14,206	14,241	14,277	14,312	14,347	14,382	14,418	14,453	14,488	14,525	14,561	14,597	14,633	14,669	14,705
General RF Rental and Parking Vacancy Allowance	(1,848,661)	(22,027)	(22,081)	(22,135)	(22,190)	(22,245)	(22,300)	(22,355)	(22,410)	(22,465)	(22,520)	(22,576)	(22,632)	(22,687)	(22,743)	(22,799)	(22,856)	(22,912)	(22,969)	(23,025)	(23,082)	(23,139)	(23,196)	(23,253)	(23,310)
Retail Revenues	12,706,346	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160
General Retail Vacancy Allowance	(622,052)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)
Total Revenues	$ 47,490,986	$ 536,693	$ 537,698	$ 538,705	$ 539,714	$ 540,726	$ 541,741	$ 542,758	$ 543,778	$ 544,800	$ 545,824	$ 546,851	$ 547,881	$ 548,913	$ 549,948	$ 550,985	$ 552,025	$ 553,068	$ 554,113	$ 555,160	$ 556,210	$ 557,263	$ 558,318	$ 559,376	$ 560,437
Operating Expense/Unit/Year		16,853	16,895	16,936	16,978	17,020	17,062	17,104	17,146	17,188	17,231	17,273	17,316	17,359	17,401	17,444	17,487	17,530	17,574	17,617	17,661	17,704	17,748	17,792	17,835
Operating Expenses	(16,096,116)	(182,574)	(183,035)	(183,496)	(183,959)	(184,382)	(184,837)	(185,293)	(185,750)	(186,208)	(186,667)	(187,127)	(187,589)	(188,052)	(188,515)	(188,980)	(189,446)	(189,914)	(190,382)	(190,852)	(191,322)	(191,794)	(192,267)	(192,741)	(193,217)
Replacement Reserves		(3,749)	(3,749)	(3,749)	(3,749)	(3,749)	(3,861)	(3,861)	(3,861)	(3,861)	(3,861)	(3,861)	(3,861)	(3,861)	(3,861)	(3,861)	(3,861)	(3,861)	(3,861)	(3,861)	(3,861)	(3,861)	(3,977)	(3,977)	(3,977)
8.00% Ground Lease - WMATA		(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(25,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)
NET RENTAL INCOME	$ 29,329,409	$ 330,800	$ 331,354	$ 331,910	$ 332,467	$ 333,025	$ 333,585	$ 334,146	$ 334,709	$ 335,273	$ 335,838	$ 336,405	$ 336,973	$ 337,543	$ 338,114	$ 338,686	$ 339,260	$ 333,304	$ 363,731	$ 364,309	$ 364,888	$ 365,469	$ 366,051	$ 366,635	$ 367,220
REFINANCE CASH FLOW																			$ 363,731	$ 364,309	$ 364,888	$ 365,469	$ 366,051	$ 366,635	$ 367,220
Gross Loan Proceeds	$ 2,090,409	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 9,357,634	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less- Cost of Refinance	$ 347,880	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 441,226	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ 1,742,529	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 8,916,407	$ -	$ -	$ -	$ -	$ -	$ -	$ -
DISPOSITION CASH FLOW																									
Gross Sale Price	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Sales	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
EQUITY ACCOUNT																									
Beginning Balance		10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
Equity Infusion		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equity Funding	10,891,504	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Balance (Profit)		10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
CONSTRUCTION DEBT		7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
Beginning Balance		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Loan Draw	30,096,464	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest	2,578,048	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Principal		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Amount Due to Loan		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
PERMANENT DEBT																									
Beginning Balance		$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$34,764,991	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625
Monthly Payment		$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$293,549	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190
0% WMATA Participation (% of Cash Flow after Debt Service)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash Flow Available From Operations		$ 536,693	$ 537,698	$ 538,705	$ 539,714	$ 540,726	$ 541,741	$ 542,758	$ 543,778	$ 544,800	$ 545,824	$ 546,851	$ 547,881	$ 548,913	$ 549,948	$ 550,985	$ 552,025	$ 553,068	$ 554,113	$ 555,160	$ 556,210	$ 557,263	$ 558,318	$ 559,376	$ 560,437
Cash Flow Available from Sale / Refinance		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 8,916,407	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available After Debt Service		341,140	342,145	343,152	344,161	345,173	346,188	347,205	348,225	349,247	350,271	351,298	352,328	353,360	354,395	355,432	356,472	9,175,026	306,923	306,970	308,021	309,073	310,129	311,187	312,247
EQUITY CASH FLOW																									
Contributions	$ 10,891,504																								
Loan Paydown	-																								
Refinance Cash Flow	-																								
Disposition Cash Flow	-																								
Operating Cash Flow	28,657,863																								
Total	$ 39,553,370																								

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15 Year Cash Flow Backup
Ground Lease Scenario

Month / Year	ALL MONTHS TOTAL	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	169 Jan	170 Feb	171 Mar	172 Apr	173 May	174 Jun	15 175 Jul
Available Units at BOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Units Rented		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented		130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Rented in Period		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining to Remt at EOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Spaces Rented		62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62
Remaining Retail SF		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total SF Rented in Period		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining to Remt at EOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative SF Rented		26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Average Residential Rent/SF		$ 4.20	$ 4.21	$ 4.22	$ 4.23	$ 4.24	$ 4.25	$ 4.26	$ 4.27	$ 4.28	$ 4.29	$ 4.31	$ 4.32	$ 4.33	$ 4.34	$ 4.35	$ 4.36	$ 4.37	$ 4.38	$ 4.39	$ 4.40	$ 4.41	$ 4.42	$ 4.43	$ 4.45
Average Retail Rent/SF		$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17
Average Parking Rent/Space		$ 237.76	$ 238.35	$ 238.93	$ 239.52	$ 240.11	$ 240.71	$ 241.30	$ 241.89	$ 242.49	$ 243.09	$ 243.69	$ 244.29	$ 244.89	$ 245.50	$ 246.10	$ 246.71	$ 247.32	$ 247.93	$ 248.54	$ 249.15	$ 249.77	$ 250.38	$ 251.00	$ 251.62
NET REVENUES																									
Rental Revenues	$ 35,992,866	$ 440,775	$ 441,862	$ 442,952	$ 444,044	$ 445,140	$ 446,237	$ 447,338	$ 448,441	$ 449,547	$ 450,656	$ 451,767	$ 452,882	$ 453,998	$ 455,118	$ 456,241	$ 457,366	$ 458,494	$ 459,625	$ 460,758	$ 461,894	$ 463,034	$ 464,176	$ 465,320	$ 466,468
Parking Revenues	1,202,458	14,741	14,777	14,814	14,850	14,887	14,924	14,961	14,997	15,034	15,072	15,109	15,146	15,183	15,221	15,258	15,296	15,334	15,371	15,409	15,447	15,485	15,524	15,562	15,600
General MF Rental and Parking Vacancy Allowance	(1,848,661)	(23,368)	(23,426)	(23,483)	(23,541)	(23,599)	(23,658)	(23,716)	(23,774)	(23,833)	(23,892)	(23,951)	(24,010)	(24,069)	(24,128)	(24,188)	(24,248)	(24,307)	(24,367)	(24,427)	(24,488)	(24,548)	(24,609)	(24,669)	(24,730)
Retail Revenues	12,706,346	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160	136,160
General Retail Vacancy Allowance	(622,052)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)	(6,808)
Total Revenues	$ 47,430,958	$ 561,500	$ 562,566	$ 563,634	$ 564,705	$ 565,779	$ 566,855	$ 567,934	$ 569,016	$ 570,100	$ 571,187	$ 572,277	$ 573,370	$ 574,465	$ 575,562	$ 576,663	$ 577,766	$ 578,872	$ 579,981	$ 581,092	$ 582,206	$ 583,323	$ 584,443	$ 585,565	$ 586,690
Operating Expense/Unit/Year		17,879	17,923	17,968	18,012	18,056	18,101	18,146	18,190	18,235	18,280	18,325	18,370	18,416	18,461	18,507	18,552	18,598	18,644	18,690	18,736	18,782	18,829	18,875	18,922
Operating Expenses	(16,096,116)	(193,693)	(194,171)	(194,650)	(195,130)	(195,611)	(196,093)	(196,577)	(197,062)	(197,548)	(198,035)	(198,524)	(199,013)	(199,504)	(199,996)	(200,489)	(200,984)	(201,479)	(201,976)	(202,474)	(202,974)	(203,474)	(203,976)	(204,479)	(204,984)
Replacement Reserves		(3,977)	(3,977)	(3,977)	(3,977)	(3,977)	(4,097)	(4,219)	(4,219)	(4,219)	(4,219)	(4,219)	(4,219)	(4,219)	(4,219)	(4,219)	(4,219)	(4,219)	(4,346)	(4,346)	(4,346)	(4,346)	(4,346)	(4,346)	(4,346)
8.00% Ground Lease - WMATA		(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)
NET RENTAL INCOME	$ 29,329,409	$ 367,807	$ 368,395	$ 368,985	$ 369,576	$ 370,168	$ 370,762	$ 371,357	$ 371,954	$ 372,553	$ 373,152	$ 373,754	$ 374,356	$ 374,961	$ 375,566	$ 376,174	$ 376,782	$ 377,393	$ 378,004	$ 378,618	$ 379,232	$ 379,849	$ 380,466	$ 381,086	$ 381,707
REFINANCE CASH FLOW		$ 367,807	$ 368,395	$ 368,985	$ 369,576	$ 370,168	$ 370,762	$ 371,357	$ 371,954	$ 372,553	$ 373,152	$ 373,754	$ 374,356	$ 374,961	$ 375,566	$ 376,174	$ 376,782	$ 377,393	$ 378,004	$ 378,618	$ 379,232	$ 379,849	$ 380,466	$ 381,086	$ 381,707
Gross Loan Proceeds	$ 2,090,479	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less- Cost of Refinance	$ 347,650	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ 1,742,829	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
DISPOSITION CASH FLOW																									
Gross Sale Price	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Sales	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
EQUITY ACCOUNT																									
Beginning Balance		10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
Equity Infusion	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equity Funding	10,891,504																								
Ending Balance (Profit)		10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
CONSTRUCTION DEBT		7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
Beginning Balance		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Loan Draw		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest	30,096,464	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Principal	2,578,048	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Amount Due to Loan		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
PERMANENT DEBT																									
Beginning Balance		$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625	$44,122,625
Monthly Payment		$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190	$248,190
0% WMATA Participation (% of Cash Flow after Debt Service)		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available From Operations		$ 561,500	$ 562,566	$ 563,634	$ 564,705	$ 565,779	$ 566,855	$ 567,934	$ 569,016	$ 570,100	$ 571,187	$ 572,277	$ 573,370	$ 574,465	$ 575,562	$ 576,663	$ 577,766	$ 578,872	$ 579,981	$ 581,092	$ 582,206	$ 583,323	$ 584,443	$ 585,565	$ 586,690
Cash Flow Available From Sale / Refinance		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available After Debt Service		313,310	314,376	315,445	316,516	317,589	318,666	319,745	320,826	321,911	322,998	324,087	325,180	326,275	327,373	328,473	329,576	330,682	331,791	332,902	334,016	335,133	336,253	337,375	338,500
EQUITY CASH FLOW																									
Contributions	$ 10,891,504																								
Loan Paydown	-																								
Refinance Cash Flow	-																								
Disposition Cash Flow	-																								
Operating Cash Flow	28,657,863																								
Total	$ 32,553,670																								

C:\Documents and Settings\murray\Desktop\Renaissance Row\Volume 2 print - FG.xls

Cash Flow Backup

8

Financial Analysis

"Set your target and keep trying until you reach it."

~Napoleon Hill

H. Tax Impact

Tax impact spreadsheets are included on the following pages.

Renaissance Row
Summary of Estimated Economic and Fiscal Impacts
Construction Period

Economic Impacts	Direct	Indirect	Totals
Jobs (FTE)	179.63	157	336.40
Payroll	$ 8,392,373	$ 6,477,233	$ 14,869,606

Fiscal Impact to the District	
Income Tax	
Direst Sales Tax	$ 282,523
Indirect Sales Tax	$ 1,891,241
TOTAL	$ 2,173,763

Project Cost	
	$ 46,127,820

Estimated Earning Impacts

Type of Labor	Construction Value	Labor Hours per $1,000	Total Hours	Total FTE Jobs	Average Earnings/Hr	Total Annual Earning/FTE Jobs
Construction	$ 46,127,820	8.1	373,635.34	179.63	$ 22.46	$ 8,392,373

Total Economic Impact

Output	Output Multiplier	Indirect and Induced Economic Impact	Total Economic Impact
$ 46,127,820	1.6929	$ 31,961,966	$ 78,089,786

Total Construction Period Employment Impacts

Output Type	Total FTE Jobs	Employment Multiplier	Indirect Employment Impact	Total Employment Impact
Construction Labor	180	1.8728	157	336

Total Earnings Impacts 3090.12

Output Type	Total Annual Earnings	Earnings Multiplier	Indirect Earnings Impact	otal Earnings Impact
Construction Labor	$ 8,392,373	1.7718	$ 6,477,233	$ 14,869,606

Material Purchases

Type of Purchases	Per $1,000 Construction Cost	Expenditure
Regionally Purchased	$ 305	$ 14,068,985
Purchased Out of Region	$ 105	$ 4,843,421
Total Material Purchase		$ 18,912,406

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Renaissance Row
Summary of Estimated Economic and Fiscal Impacts
Operations Period

Economic Impacts	Direct	Indirect	Totals
Jobs (FTE)	-	-	-
Payroll	$ -	$ -	$ -

Fiscal Impact to the District	
Income Tax	$ 28,225
Direst Sales Tax	$ 830,539
Indirect Sales Tax	
TOTAL	$ 858,764

RETAIL PROGRAM			
Type	Gross Square Feet	Estimated Sales per SF	Total Est. Annual Sales
General Retail/Entertainment	10,000	$ 350	$ 3,500,000
Restaurant	10,000	$ 500	$ 5,000,000
Grocery	7,495	$ 300	$ 2,248,500
TOTAL	27,495		$ 10,748,500

Employees (FTE)	Gross Square Feet	FTE per 1,000 SF	No. of Employees	Annual Hours	Annual Wages
General Retail/Entertainment	4,000	3	12	24,960	$ 274,560
Restaurant	3,000	7	21	43,680	$ 480,480
Grocery	5,000	5	25	52,000	$ 572,000
TOTAL	12,000	15	58	120,640	$ 1,327,040

RESIDENTIAL PROGRAM	
No. of Units	127
No. of Units per Employees	25
Estimated Total No. of FTEs	5.08

Employees (FTE)	Percent	No. of FTE	Annual Hours	Annual Wages
Maintenance	60%	3.05	6,340	$ 95,098
Security	40%	2.03	4,227	$ 63,398
TOTAL		5.08	10,566	$ 158,496

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Balance Sheet

"A goal is a dream with a deadline."

~Napoleon Hill

I. Developer Balance Sheets

Clark Enterprises, Inc., one of the largest privately held companies in the nation, is a diversified investment company with holdings in real estate; commercial, heavy and residential construction; and venture capital, private equity and other investments. Since it was established in 1972, CEI has distinguished itself as a leader among real estate owners, investors and developers in the Washington, DC area. Clark maintains a sizeable portfolio of commercial and residential projects with current interests in over 100 projects aggregating over 5,000,000 square feet of office space, 300,000 square feet of warehouse space, 1,100 hotel units, and 14,000 residential units, all primarily located in the Washington, D.C. metropolitan area. Clark is involved in all aspects of ownership, development and management of its properties. Real estate subsidiaries include the residentially-oriented Clark Realty Capital, L.L.C. and the commercially-oriented Clark Real Estate Advisors L.L.C.

In addition, CEI is the parent company of the Clark Construction Group, Inc., the nation's largest privately-held building contractor with over $2 billion in annual revenues. Further, CEI and its subsidiary, CNF Investments LLC, are significant investors in private and public equities and alternative investments, directly and through commingled funds. Its undertakings reflect a diversified investment strategy, including a wide range of market opportunities from start-up businesses to established Fortune 500 companies.

CEI has not included its balance sheets or income statements at this time due to confidentiality reasons. Please let us know if the proposal cannot be considered in light of our desire to maintain strict confidentiality so that we can work together to formulate a potential solution.

Statement about Finacial Creditworthiness

"The world has the habit of making room for the man whose actions show that he knows where he is going."

~Napoleon Hill

FOIA CONFIEDENTIAL TREATMENT REQUESTED

J. Credit Worthiness

Enclosed are credit references demonstrating our credit worthiness.

CLARK ENTERPRISES, INC.

Jessica M. Hubley
Assistant General Counsel
Direct Dial: (301) 657-7155
Direct Facsimile: (301) 654-2564
EMail: jessica.hubley@clarkus.com

October 1, 2007

VIA U.S. MAIL

Rebecca Greenspan
Senior Vice President
Bank of America, N.A.
8300 Greensboro Drive
Suite 300
McLean, Virginia
22102-3604

Dear Becca:

We recently provided your contact information as a credit reference for us in connection with our response to a Joint Development Solicitation issued by the Washington Metropolitan Area Transit Authority (WMATA). We appreciate your serving as a reference for us. Please accept this letter as our authorization to you to provide any credit information that may be requested by WMATA or its agents.

Please let me know if you have any questions or if you require any further information. Thank you.

Very truly yours,

Jessica Hubley

Jessica Hubley

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005095

CLARK ENTERPRISES, INC.

Jessica M. Hubley
Assistant General Counsel
Direct Dial: (301) 657-7155
Direct Facsimile: (301) 654-2564
EMail: jessica.hubley@clarkus.com

October 1, 2007

VIA U.S. MAIL

Donna Register
Senior Client Account Manager
Wachovia Bank, N.A.
Real Estate Financial Services
1753 Pinnacle Drive
5th Floor, South Tower
McLean, VA 22102

Dear Donna:

We recently provided your contact information as a credit reference for us in connection with our response to a Joint Development Solicitation issued by the Washington Metropolitan Area Transit Authority (WMATA). We appreciate your serving as a reference for us. Please accept this letter as our authorization to you to provide any credit information that may be requested by WMATA or its agents.

Please let me know if you have any questions or if you require any further information. Thank you.

Very truly yours,

Jessica Hubley

Jessica Hubley

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005096

CLARK ENTERPRISES, INC.

Jessica M. Hubley
Assistant General Counsel
Direct Dial: (301) 657-7155
Direct Facsimile: (301) 654-2564
EMail: jessica.hubley@clarkus.com

October 1, 2007

VIA U.S. MAIL

David Mistic
Vice President, Real Estate & Construction
Harris Bank N.A.
111 West Monroe Street
10th Floor West
Chicago, IL 60603

Dear David:

We recently provided your contact information as a credit reference for us in connection with our response to a Joint Development Solicitation issued by the Washington Metropolitan Area Transit Authority (WMATA). We appreciate your serving as a reference for us. Please accept this letter as our authorization to you to provide any credit information that may be requested by WMATA or its agents.

Please let me know if you have any questions or if you require any further information. Thank you.

Very truly yours,

Jessica Hubley

Jessica Hubley

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005097

MTC
Moddie Turay Company

December 17, 2007

Mr. Joel R. Washington, Director
Station Area Planning and Asset Manager
Washington Area Metropolitan Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Re: SHAW-HOWARD FLORIDA AVENUE JOINT DEVELOPMENT SITE

Dear Mr. Washington:

Thank you for reviewing my proposal. I hope the following responses address your questions and provide clarifications on our proposal.

I. Technical Information

1. What is the experience of the team in actually carrying out a residential development? This was not apparent from your proposal.

Our development team has significant residential development experience in the Washington DC Metropolitan Area and nationwide. Clark's portfolio of projects includes some of the most prominent in the market and reflects the company's extensive knowledge of the residential real estate industry. Clark has acted as the developer and co-developer in numerous joint ventures with qualified development partners, such as Moddie Turay Company, LLC (MTC). Clark has decided to form an ongoing strategic partnership with MTC based on MTC's principal's significant experience in managerial roles, while at Western Development Corporation, on some of the most complex mixed-use projects in the Washington DC Metropolitan Area.

MTC also has significant experience working with District officials and community members. Clark offers unparalleled resources to meet the needs of any joint venture. Clark has, in-house and at the ready disposal of our development team, substantial expertise to bring to every phase of the development process. Further, Clark is not only the largest, private general contractor in the United States, but also one of the largest residential developers in the Washington Metropolitan Area. In the past seven years, Clark has developed (or has under development) more than $6 billion of real estate, including numerous large-scale residential real estate developments. Clark will provide the equity for the project and act as the co-developer and general contractor in the joint venture with MTC, providing all of the necessary development services needed to create a world-class mixed-use project along Florida Avenue.

Below are some examples of our most recent residential projects:

Moddie Turay Company
moddie@moddieturay.com

3222 M St., NW, Suite 140
Washington, DC 20007

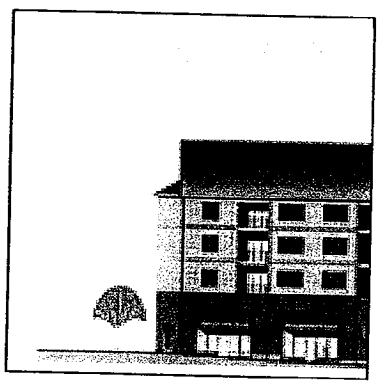
(P): 202.413.4160
(F): 202.342.1458

FOIA CONFIEDENTIAL TREATMENT REQUESTED

MTC
Moddie Turay Company

Fort Totten Park Apartments
308-Unit, Transit-Oriented Development

Phase I at Fort Totten is a joint-development project with Clark and Washington Metropolitan Area Transit Authority (WMATA). This 308-unit luxury apartment community is located directly adjacent to Fort Totten Metro transit station. The four- story buildings feature hardi-plank "Italianate train station" architecture, garage and surface parking, and 5,000 square feet of retail. Residences have a variety of features, including private terraces or balconies, washer/dryers, and loft-style studios. Community amenities include a swimming pool, a fitness center, a room for parties and event, and a lounge.



Address: Galloway and Third ST, NE WDC
Architect: Burt Hill Kosar Rittelmann Associates
Completion: December 2007
Clark's Role: Developer, Manager

3883 Connecticut Avenue:
Nine-Story, 157-Unit Class A Apartment Community

3883 Connecticut Avenue is a luxury, nine-story apartment community offering 157 homes with state-of-the-art amenities in the upper northwest section of Washington, DC, in the desirable Cleveland Park neighborhood. The apartment are pre-wired for high-speed Internet access in each kitchen, living room, bedroom, and den, and they will also offer multiple phone lines and cable television jacks. Interior amenities include full-size washers/dryers, dishwashers, granite kitchen countertops, ceramic title entry foyers, and optional soaker tubs. Recreational amenities include a rooftop pool, fully-equipped fitness center, business center, and multipurpose room. The building also features a grand lobby, 24-hour doorman, and concierge service. Parking is provided in three-level underground garage.

Address: 3883 Connecticut Avenue, WDC
Architect: Weihe Partnership
Completion: August 2002
Clark's Role: Owner, Developer, General Contractor, Property Manager

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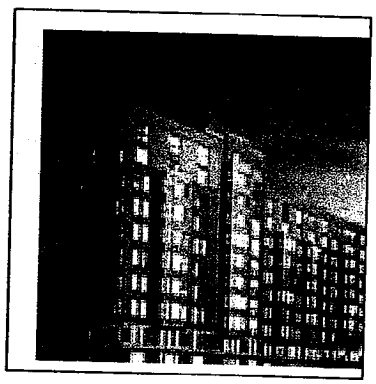
FOIA CONFIEDENTIAL TREATMENT REQUESTED

MTC
Moddie Turay Company

The Clarendon
292 Luxury Apartment Units

The Clarendon is a unique 292-unit luxury community incorporating unusual architectural features, as it integrates a 12-Story tower with a four-story building and has a public street passing through its center.

The Clarendon offer more than 60 distinct floor plans, including industrial-style loft units. Select apartments offer balconies, private terraces, oversized windows, French doors, sliding glass doors, fireplaces, and granite kitchen countertops. In addition, each apartment is pre-wired for high-speed internet access and satellite television. Community amenities include a courtyard pool with sundeck, underground parking, a business center, 24-hour fitness center, and concierge services.



Address: 1200 N. Herndon Street, Arlington, VA
Architect: Torti Gallas and Partners
Completion: March 2005
Clark's Role: Owner, Developer, General Contractor, Property Manager

2. **What is the contractual arrangement between Moddie Turay Company and Clark Enterprises? Has an agreement been worked out?**

Clark and the Moddie Turay Company have formed a joint venture under the legal entity, Renaissance Row LLC, and are currently in the final stages of negotiating the joint venture terms. An agreement is expected to be signed by the end of December. The arrangement provides that Clark will fund 100% of the total equity for the project. Clark and Moddie Turay Company will jointly develop the project and will use resources of both companies.

3. **What, if any, zoning approvals or variances will you be seeking Parcels 1 or 3?**

We are confident that we can build what we have presented based on our preliminary evaluation of the current zoning. However, as we proceed with the entitlement process and as our project is refined, we may determine that may require a variance. At this time, we do not anticipate needing a variance. However, if we are selected, we will remain in consultation with our land use counsel.

4. **Assess the market for rental apartments in the area now the conversions of condominium projects to rental product are occurring. Is the market becoming oversaturated with rentals and would you expect to experience difficulty in obtaining financing for your project?**

Moddie Turay Company
moddie@moddieturay.com
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Apartment vacancy in the District of Columbia is forecasted at 3.1% with effective rent increasing 5% from last year. Clark is the owner of over 5,000 apartment units in the Washington Metropolitan Area. We feel the Shaw neighborhood is a growth area that can sustain the current in flux of condominium conversions and speaks directly to our long term investment strategy to acquire, develop and own high quality, well-located real estate opportunities in the Washington Metropolitan area. Since its inception in 1972, Clark has become one of the nation's largest privately held companies and based on Clark's track record, we do not anticipate difficulties in obtaining financing for Renaissance Row with any number of Clark's long term banking relationships. *See the attached letter from Maury Zanoff, CBRE, which confirms our ability to obtain financing.*

5. **Do you have prospective tenants for retail components of your project?**

Renaissance Row, LLC provided letters of interest from prospective tenants in our proposal, and we have re-attached them to this response for your review. The following are local retailers we believe will greatly contribute to our vision of creating a first class mixed use project with a neighborhood feel that will speak to the past present and future Shaw neighborhood.

Tryst: We have a letter of interest from the owner, Constantine Stavropoulos, of Tryst Coffeehouse, Open City restaurant, and the Diner. All three of his establishments are wildly successful neighborhood and DC staples. Constantine is extremely excited about creating what he calls "neighborhood gathering places" at Renaissance Row.

Yes! Organic Market: Yes! Organic Grocery has six locations in Washington DC and considers the Shaw neighborhood a key area for its growth. An organic grocery such as Yes! is a great addition to the retail mix and will further promote a neighborhood feel. The concept for this location will be relatively similar to Dean & Deluca in Georgetown with wine and spirits, prepared foods and outdoor seating that will help activate the streetscape.

Hank's Oyster Bar: With locations in Dupont Circle and Old Town Alexandria, Hank's is a well-established neighborhood restaurant with a strong following and great food. The owner, Jamie Leeds, established her reputation for serving creative American comfort foods at 15 Ria and continues her artistry with New England style beach fare.

Art Vines: Art Vines is a new Art Gallery/Lounge Bar concept scheduled to open in downtown on 7th St NW in the spring of 2008. This venue would be a home run for the 24/7 environment we want to create at Renaissance Row and will promote local artists and serve as a gathering place for both wine and art enthusiasts.

6. **You appear to close the alley between 8th and 9th streets. Do you regard this as feasible? Can you obtain agreement from adjacent property owners?**

Yes, we do regard this as feasible. It is called for in the Duke Ellington Plan and thus supported by the regulatory agencies. We also believe we can obtain agreements from the adjacent property owners. Also, as an alternative strategy, we could re-configure the site plan to create an alley throughput to transverse the WMATA property if alley access is necessary.

7. **Calculations of annual property, sales and any other taxes to the local jurisdiction are missing from your proposal.**

Moddie Turay Company
moddie@moddieturay.com
3222 M St., NW, Suite 140
Washington, DC 20007
(P): 202.413.4160
(F): 202.342.1458

MTC
Moddie Turay Company

The calculations of annual property, sales and any other taxes to the local jurisdictions are included as an attachment.

II. Economic Information

1. **Note that your valuation of the site is considerably below WMATA's appraisal and needs to be increased substantially or your offer cannot be considered.**

   Please see the answer to question number 3.

2. **WMATA expects escalation in the sale or rent amount from today's values if closing is delayed beyond a year. Please indicate how you would satisfy this requirement.**

   In the scenario of an out-right sale, we propose that the land value escalate 2.5% annually until closing. In the scenario of a ground lease, we propose that the land value escalate 2.0% until stabilization.

3. **Please be more precise about how you derived fair market value indicated as $6,496,200.**

   The land market has significantly changed since the condo run up of values in 2005 and the credit crunch during the past year. Accordingly, we value the WMATA land at $50 per FAR SF. We arrived at this number by analyzing comparable land sales in the surrounding neighborhood and adjusting to account for the market differences in the Shaw neighborhood as compared to the more mature U Street area. An example is set forth below:

   a. 2400 14th Street – located at 14th and Florida near the 14th and U ST market. The land traded to Level 2 Development on 3/7/2006 for $13,270,000 or $55 per FAR SF. Rental rates are $2.90-3.00 per SF in the 14th and U ST market. We are projecting slightly lower rents for the WMATA site of $2.65 per SF based on market information. As such, the land should be valued at less than $55 per FAR SF.

   The land is zoned Arts Overlay/C-2-B. With the Arts Overlay, we can build up to a 4.5 FAR. This results in a fair market value of $6,496,200 at $50 per FAR SF. Should we decide to pursue a Planned Unit Development, the FAR will increase up to 6.0. Accordingly, this results in an increased fair market value of $8,661,600 at $50 per FAR SF.

   If we purchase the land out-right from WMATA, we are prepared to pay $6,496,200 upon closing and up to an additional $2,165,400 upon rezoning for a total of $8,661,600.

   If WMATA would prefer a ground lease, we are prepared to value the land up to an above-market number of $65 per FAR SF with 2.0% annual escalations until stabilization. This equates to a fair market value of $8,445,060 by-right and up to $11,260,080 if we pursue a Planned Unit Development.

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MTC
Moddie Turay Company

4. **The pro forma rent, $279,000 annually does not seem to square with your statement that you will pay 8% of land value. Nor does escalation, stated as 2.5% annually, appear to take place in the pro forma.**

   The pro forma has been adjusted to reflect the ground rent based upon 8% of the land value (please find our pro forma attached). We are prepared to value the land up to an above-market number of $65 per FAR SF with 2.0% annual escalations until stabilization, projected to be December 2011. In this scenario, the ground lease payment would be $716,957 annually. Thereafter, the fair market value will be adjusted every 10 years to appraised value using the "three appraiser method."

5. **Schedule: since rent does not start until stabilization, please indicate the outside date for stabilization.**

   Based on positive market indicators and our past positive experiences with WMATA, we anticipate the project will be stabilized by December 2011. The fair market value of the land will be escalated by 2.0% annually until stabilization. In the event the project is not stabilized by December 2012, we will pay WMATA one-half of the stabilized ground rental amount due and owing to WMATA as set forth above (payable monthly beginning in December 2012). The land value will continue to escalate by 2.0% annually until stabilization is reached.

6. **WMATA also expects and receives participations in capital events and in cash flow (or, alternatively to cash flow, revaluation of the project in which rent values do not fall below the previous year). Please provide in your proposal.**

   We propose that WMATA receives participations in the amount of 3% of gross proceeds upon certain "capital events" to be further defined. We do not propose that WMATA receive a participation in operating cash flow; however, as noted above, we have increased the fair market value of the land resulting in substantially larger ground lease payment.

7. **Is it expected that Clark Enterprises will provide the equity for this project? Do you have alternative equity sources?**

   Yes, Clark Enterprises or an affiliate thereof will provide the equity for this project. At this time, we do not anticipate other equity sources will be necessary.

8. **Please submit the balance sheet that the proposal indicates will be provided under separate cover.**

   Please see the attached statement of net worth from Clark Enterprises, Inc.

Thank you for your consideration and allowing me to give a presentation of our proposal.

Sincerely,

Moddie Turay

Moddie Turay Company
moddie@moddieturay.com

3222 M St., NW, Suite 140
Washington, DC 20007

(P): 202.413.4160
(F): 202.342.1458

MTC
Moddie Turay Company

Attachments:

a. CBRE Letter
b. Fiscal Impact Calculations
c. Statement of Net Worth
d. Pro forma

Moddie Turay Company
moddie@moddieturay.com

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Washington, DC 20007

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COMMERCIAL REAL ESTATE SERVICES

CBRE
CB RICHARD ELLIS

Maury E. Zanoff
Managing Director

CB Richard Ellis, Inc.
Capital Markets

750 9th Street, NW
Suite 900
Washington, DC 20001-4516

202 585 5645 Tel
202 585 5786 Fax

maury.zanoff@cbre.com
www.cbre.com/capitalmarkets

December 11, 2007

King Davidson
Development Associate
Clark Enterprises, Inc.
7500 Old Georgetown Road, 15th Floor
Bethesda, MD 20814

Re: Clark Enterprises

To whom it may concern:

Based upon Clark Enterprises' excellent credit and reputation in the lending community, we feel confident that they should not have difficulty in obtaining financing for their Renaissance Row apartment project located at 9th Street and Florida Avenue in Washington, DC.

Sincerely,

Maury E. Zanoff
Managing Director
CBRE Capital Markets

Renaissance Row
Summary of Estimated Economic and Fiscal Impacts
CONSTRUCTION PERIOD

Economic Impacts	Direct	Indirect	Totals
Jobs (FTE)	170	148	318
Payroll	$ 5,089,684	$ 3,928,218	$ 9,017,901

Fiscal Impact to the District	
Income Tax (Direct)	$ 358,823
Income Tax (Indirect)	$ 282,313
Direct Sales Tax	$ 1,786,207
TOTAL	$ 2,427,342

Project Cost	$ 43,566,016

Estimated Income Taxes (Direct and Indirect Labor)

Type of Labor	Construction Value	Labor Hours per $1,000	Total Hours	Total FTE Jobs	Annual Earning/FTE	Direct Income Taxes
Direct Construction	$ 43,566,016	8	352,885	170	$ 5,089,684	######## ########

Type of Labor	Total Annual Earnings	Earnings Multiplier	Indirect Earnings Impact	Total Earnings Impact	Indirect Income Taxes
Indirect Construction	$ 5,089,684	1.7718	########## ###	$ 9,017,901	######## ########

Output Type	Total FTE Jobs	Employment Multiplier	Indirect Employment Impact	Total Employment Impact
Construction Labor	170	1.8728	148	318

Total Economic Impact

Output	Output Multiplier	Indirect and Induced Economic Impact	Total Economic Impact
$ 43,566,016	1.6929	$ 30,186,892	$ 73,752,908

Material Purchases

Type of Purchases	Per $1,000 Construction Cost	Expenditure
Regionally Purchased	$ 305	$ 13,287,635
Purchased Out of Region	$ 105	$ 4,574,432
Total Material Purchase		$ 17,862,067

Renaissance Row
Summary of Estimated Economic and Fiscal Impacts
OPERATIONS PERIOD

FISCAL IMPACT TO THE DISTRICT	ANNUAL	20 YEAR TOTAL
Direct Sales Tax	$ 830,539	$ 23,487,372
Income Tax	$ 158,983	$ 4,495,990
Property Tax	$ 299,617	$ 8,473,073
TOTAL	$ 1,289,139	$ 36,456,435

SALES TAXES

Type	Gross Square Feet	Est. Sales per SF	Est. Annual Sales	Tax Rate	Est. Annual Sales Taxes	20 Year Total
General Retail/Entertainment	10,000	$ 350	$ 3,500,000	5.75%	$ 201,250	$ 5,691,286
Restaurant	10,000	$ 500	$ 5,000,000	10.00%	$ 500,000	$ 14,139,841
Grocery	7,495	$ 300	$ 2,248,500	5.75%	$ 129,289	$ 3,656,245
TOTAL	27,495		$ 10,748,500		$ 830,539	$ 23,487,372

INCOME TAXES

Employees (FTE)	Gross Square Feet	FTE per SF	No. of FTE	Annual Wages	Annual Tax Revenue	20 Year Total
General Retail/Entertainment	10,000	350	29	714,286	$ 51,857	$ 1,466,503
Restaurant	10,000	350	29	714,286	$ 51,857	$ 1,466,503
Grocery	7,495	350	21	535,357	$ 38,867	$ 1,099,144
TOTAL	27,495	350	79	1,963,929	$ 142,581	$ 4,032,151

Employees (FTE)	Percent	FTE per SF	No. of FTE	Annual Wages	Annual Tax Revenue	20 Year Total
Maintenance	60%	1000	3	109,200	$ 11,204	$ 316,843
Security	40%	1000	2	72,800	$ 5,198	$ 146,996
TOTAL			5	182,000	$ 16,402	$ 463,839

REAL ESTATE TAXES

Type	Assessed Value	Tax Rate	Annual RE Taxes	20 Year Total
Residential	$ 23,687,573	0.85	$ 201,344	$ 5,693,955
Retail	$ 5,312,034	1.85	$ 98,273	$ 2,779,119
Total	$ 28,999,607		$ 299,617	$ 8,473,073

CLARK ENTERPRISES, INC.

December 12, 2007

PERSONAL & CONFIDENTIAL

Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington DC 20001
Attention: Joel R. Washington

Re: Clark Enterprises, Inc. Certification of Minimum Net Worth

Dear Mr. Washington,

Enclosed is a certification of Minimum Net Worth for Clark Enterprises, Inc. as of June 30, 2007.

These statements are confidential, corporate information. They are to be used only by you and are not to be distributed unless prior, written notice is given to myself and/or Clark Enterprises, Inc., and Clark Enterprises, Inc. has had an opportunity to object to such distribution in appropriate proceedings. Please note that within the Clark organization, this information is to be discussed only with Rebecca Owen, Larry Nussdorf or myself. Please let me if you have any questions regarding this statement.

Sincerely,
Clark Enterprises, Inc.

Dawn H. Silva
Assistant Vice President

Enclosures
cc: Rebecca Owen

7500 Old Georgetown Road · 15th Floor · Bethesda, Maryland 20814-6195
T: 301-657-7100 · F: 301-657-7263 · www.clarkenterprisesinc.com

CLARK

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Clark Enterprises, Inc.

This statement is provided to WMATA to certify that Minimum Net Worth of Clark Enterprises, Inc. as of June 30, 2007 was a minimum of $75,000.000.

By: Dawn H. Silva Date: 12/12/07

Dawn H. Silva
Assistant Vice-President of Clark Enterprises, Inc.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

F. Summary Table
Sources and Uses
9/18/2007
Ground Lease Scenario

Sources and Uses

Sources of Funds:		Total	Uses of Funds	Per Unit	Total
Equity	25.0%	10,891,504	Land	$ 9,260	$ 1,496,570
Debt	75.0%	32,674,512	Net GMP/HC Cont.	$ 174,537	$ 28,208,283
	100.0%	$ 43,566,016	Soft Costs	$ 54,905	$ 8,873,592
			Development Fee	$ 10,412	$ 1,682,778
			Pre Devel Rent	$ 2,475	$ 400,000
			Financing Costs	$ 2,022	$ 326,745
			Interest Expense	$ 15,951	$ 2,578,048
				$ 269,562	$ 43,566,016

WMATA-INV 005110

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA Sources and Uses Assumptions Backup
9/18/2007
Ground Lease Scenario

Basic Assumptions

Number of Units	
Units	130
Total	130
GSF Per Unit	1,009
NSF as a % of GSF	80%
Average Net Sq. Ft. per Unit	807
Residential - Net Rentable Sq. Ft.	104,936
Retail - Net Rentable Sq. Ft.	26,282

Financing Assumptions

Construction Loan:	
Loan Amount	32,674,512
LTC/Amount	75.0%
Initial Base Rate	7.00%
Permanent Loan (2012):	
Start Month	Month 25
Cap Rate Used	6.50%
Project Value	$43,756,604
Loan to Value	69.59%
Rate	6.75%
Amortization	30 Years
Loan Amount	$30,452,209
Monthly Payment	$197,512
Annual Debt Service	$2,370,149
Stabilized NOI for Perm Loan (2013)	$2,844,179
DSCR	1.20
Closing Costs/Fees	1.0%
Refinancing (2021):	
Start Month	Month 144
Cap Rate Used	7.00%
Project Value	$63,543,119
Loan to Value	70.14%
Rate	7.00%
Amortization	30 Years
Loan Amount	$44,571,388
Monthly Payment	$296,535
Annual Debt Service	$3,558,415
Stabilized NOI for Perm Loan (2022)	$4,448,018
DSCR	1.25
Closing Costs/Fees	1.0%
Ground Lease (WMATA):	
Market Value (Escalated 3 years)	$ 8,961,965
Escalations	2.0%

Operating Assumptions

Revenue Assumptions:	
Apartments:	
Month Renting Begins	19
Rent Per Sq. Ft. (Current)	$2.65
Rent increase per year	3.0%
Prelease (Units preleased at delivery)	20
Absorption (Units Rented/Month)	16
Multifamily Rental Vacancy	5.13%
Parking:	
Month Parking Space Sales Begin	19
Parking Revenues/Space (Current)	$150
Number of Spaces	62
Absorption (Leased/Month)	10
Retail:	
Retail Annual NNN Rent (Current)	$50.00
Retail rent increase per year	2.0%
Absorption	6,000
Retail Vacancy	5.00%
Expense Assumptions:	
Gross Operating Expenses	$ 11,562
Deduct for Retail Tenant Contribution	$ -
Net Operating Cost per Unit Per Year (Current)	$ 11,562
Fixed vs. Variable Expenses	50%
Phased-in Fixed Expenses	40%
Operating Cost Increase per Year	3.0%
Reserves	$250 per unit

12/17/2007

Sources and Uses

Sources of Funds:		Total	Uses of Funds	Per Unit	Total
Equity	25.0%	10,891,504	Land	$ 9,260	$ 1,496,570
Debt	75.0%	32,674,512	Net GMP/HC Cont.	174,537	28,208,283
	100.0%	$43,566,016	Soft Costs	54,905	8,873,582
			Development Fee	10,412	1,682,778
			Pre Devel Rent	2,475	400,000
			Financing Costs	2,022	326,745
			Interest Expense	15,951	2,578,048
				$ 269,562	$ 43,566,016

Residential Operating Expenses ($/unit)	
Payroll	$ 4,500.00
Marketing	$ 550.00
Administration	$ 440.00
Maintenance Contracts	$ -
R&M	$ 600.00
Utilities	$ 372.00
Taxes & Ins.	$ 3,600.00
CDA Assessment	$ -
Fees	$ 1,500.00
Total	**11,562.00**
Retail Reimbursements	
Net Operating Cost/Unit/Year	**$11,562.00**

WMATA-INV 005111

WMATA Sources and Uses Assumptions Backup
9/18/2007
Ground Lease Scenario

	Per Unit	Per GFA	Total
Land:	$ 9,260	$ 9.83	$ 1,496,570
Hard Costs:			
GMP	136,956	145.36	22,134,560
Escalations	24,652	26.16	3,984,221
Hard Cost Contingency	12,929	13.72	2,089,502
Soft Costs:			
Architecture & Engineering	8,080	8.58	1,305,939
Civil, Design and Submission Fees	1,237	1.31	200,000
Site Development Bonds, Fees and Permits	1,237	1.31	200,000
Dry Utility Relocation and New Service	6,514	6.91	1,052,750
Building Permit Fees	911	0.97	147,238
Furniture, Fixtures and Equipment	4,412	4.68	713,000
Predevelopment / Feasibility	3,886	4.12	628,098
Retail Commissions	4,065	4.31	657,050
Retail Tenant Improvement Allowance	12,196	12.94	1,971,150
Monetary Proffers	-	-	-
Connection Fees	3,094	3.28	500,000
Marketing	3,094	3.28	500,000
Project Legal	1,921	2.04	310,500
Accounting	-	-	-
Builders Risk Insurance	541	0.57	87,360
Real Estate Taxes	223	0.24	36,120
Title Insurance & Other	3,492	3.71	564,386
Development Fee	10,412	11.05	1,682,778
Financing Costs	2,022	2.15	326,745
Ground Lease Payments ($10,000 per month)	2,475	2.63	400,000
Interest Expense	15,951	16.93	2,578,048
Total	$ 269,562	$ 286.10	$ 43,566,016

	Units	Gross Floor Area	Net Rentable Square Feet
Residential Units	130	122,484	104,936
Retail		29,790	26,282
		152,274	131,218

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005112

G. WMATA Assumptions
9/18/2007
Ground Lease Scenario

Financing

Construction Loan	
Loan Rate	7.00%
Term	24 months
Amount	$32,674,512
LTC	75%
% Equity	25%
Permanent Loan	
Loan Rate	6.75%
Term	120 months
Amount	$30,452,209
LTV	89.59%

Revenues

Office Rent		N/A	
Retail Rent (current)	$	50.00	RSF
Residential Rent (current)	$	2.85	RSF
Parking	$	150.00	per space
Other Revenues	$	-	

Construction Costs

Total Hard Costs		$28,208,283	
Total Soft Costs		$13,881,163	
% of Hard Costs		49%	
Cost of Improvements	$	260,302	per residential unit
Costs of Improvements	$	276.27	per Retail RSF
Cost per structured space	$	40,300	
Cost per surface space	$	4,030	
Land Value per FAR SF (current)	$	65.00	of Land Value (annually)
Ground Rent to WMATA		8.00%	

Operating Costs

Operating Expenses (current)	$	1,503,060	
Per GSF	$	9.87	
Precentage of Revenue		32%	

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

15 Year Cash Flow
Ground Lease Scenario

Year	ALL YEARS TOTAL	1 2007	2 2008	3 2009	4 2010	5 2011	6 2012	7 2013	8 2014	9 2015	10 2016	11 2017	12 2018	13 2019	14 2020	15 2021
Available Units at BOP					130	130	14	-	-	-	-	-	-	-	-	-
Total Units Rented					-	116	14	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP					130	14	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented					-	116	130	130	130	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP					62	62	2	-	-	-	-	-	-	-	-	-
Total Rented in Period					-	60	2	-	-	-	-	-	-	-	-	-
Remaining to Remt at EOP					62	2	-	-	-	-	-	-	-	-	-	-
Cumulative Spaces Rented					-	60	62	62	62	62	62	62	62	62	62	62
Remaining Retail SF					26,282	26,282	-	-	-	-	-	-	-	-	-	-
Total SF Rented in Period					-	26,282	-	-	-	-	-	-	-	-	-	-
Remaining to Remt at EOP					26,282	-	-	-	-	-	-	-	-	-	-	-
Cumulative SF Rented					-	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Average Residential Rent/SF		$ 2.65	$ 2.73	$ 2.81	$ 2.90	$ 2.98	$ 3.07	$ 3.16	$ 3.26	$ 3.36	$ 3.46	$ 3.56	$ 3.67	$ 3.78	$ 3.89	$ 4.01
Average Retail Rent/SF		$ 50.00	$ 51.50	$ 53.05	$ 54.64	$ 56.28	$ 57.96	$ 59.70	$ 61.49	$ 63.34	$ 65.24	$ 67.20	$ 69.21	$ 71.29	$ 73.43	$ 75.63
Average Parking Rent/Space		$ 150.00	$ 154.50	$ 159.14	$ 163.91	$ 168.83	$ 173.89	$ 179.11	$ 184.48	$ 190.02	$ 195.72	$ 201.59	$ 207.64	$ 213.86	$ 220.28	$ 226.89
Construction Costs																
Land Costs																
WMATA Option Fee		$ 100,000														
1933-35 9th ST Purchase		$ 1,500,000														
Hard Costs:																
GMP					$ 14,756,373	$ 7,378,187										
Escalations					$ 2,656,147	1,328,074										
Hard Cost Contingency					$ 1,393,002	$ 696,501										
Soft Costs:																
Architecture & Engineering			$ 195,891	$ 195,891	$ 522,376	$ 391,782										
Civil, Design and Submission Fees					$ 200,000											
Site Development Bonds, Fees and Permits					$ 200,000											
Dry Utility Relocation and New Service					$ 1,052,750											
Building Permit Fees					$ 147,238											
Furniture, Fixtures and Equipment						$ 713,000										
Predevelopment / Feasibility			$ 314,049	$ 157,025	$ 157,025											
Retail Commissions						$ 657,050										
Retail Tenant Improvement Allowance						$ 1,971,150										
Connection Fees						$ 500,000										
Marketing					$ 100,000	$ 400,000										
Project Legal		$ 108,675	$ 31,050	$ 31,050	$ 31,050	$ 108,675										
Builders Risk Insurance					$ 43,680	$ 43,680										
Real Estate Taxes			$ 5,418	$ 5,418	$ 5,418	$ 19,866										
Title Insurance & Other			$ 564,386													
Development Fee			$ 252,417	$ 252,417	$ 913,748	$ 264,196										
Financing Costs					$ 326,745											
Ground Lease Payments ($10,000 per month)			$ 40,000	$ 120,000	$ 120,000	$ 120,000										
Interest Expense					$ 669,763	$ 1,908,286										
Total		$ 1,708,675	$ 1,403,211	$ 761,800	$ 23,295,315	$ 16,500,446										
NET REVENUES																
Rental Revenues	$ 51,346,810	-	-	-	-	1,122,778	3,921,364	4,039,005	4,160,175	4,284,981	4,413,530	4,545,936	4,682,314	4,822,783	4,967,467	5,116,491
Parking Revenues	$ 1,715,949	-	-	-	-	36,278	131,144	135,079	139,131	143,305	147,604	152,032	156,593	161,291	166,130	171,114
General MF Rental and Parking Vacancy Allowance	$ (2,662,660)	-	-	-	-	-	(207,894)	(214,131)	(220,554)	(227,171)	(233,986)	(241,006)	(248,236)	(255,683)	(263,354)	(271,254)
Retail Revenues	$ 17,608,101	-	-	-	-	497,724	1,422,424	1,450,873	1,479,890	1,509,488	1,539,678	1,570,471	1,601,881	1,633,918	1,633,918	1,633,918
General Retail Vacancy Allowance	$ (867,140)	-	-	-	-	(11,621)	(71,121)	(72,544)	(73,995)	(75,474)	(76,984)	(78,524)	(80,094)	(81,696)	(81,696)	(81,696)
Total Revenues	$ 67,141,060	-	-	-	-	1,645,160	5,195,918	5,338,282	5,484,647	5,635,128	5,789,842	5,948,910	6,112,458	6,280,614	6,422,465	6,568,573

WMATA-INV 005114

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Year		ALL YEARS TOTAL	1 2007	2 2008	3 2009	4 2010	5 2011	6 2012	7 2013	8 2014	9 2015	10 2016	11 2017	12 2018	13 2019	14 2020	15 2021
	Operating Expense/Unit/Year		-	-	-	-	(5,830)	(12,999)	(13,389)	(13,791)	(14,204)	(14,630)	(15,069)	(15,521)	(15,987)	(16,467)	(16,961)
	Operating Expenses	(22,401,463)	-	-	-	-	(757,945)	(1,689,871)	(1,740,567)	(1,792,784)	(1,846,567)	(1,901,964)	(1,959,023)	(2,017,794)	(2,078,328)	(2,140,678)	(2,204,898)
	Replacement Reserves	(485,617)	-	-	-	-	(30,766)	(35,514)	(36,579)	(37,676)	(38,807)	(39,971)	(41,170)	(42,405)	(43,677)	(44,988)	(46,337)
8.00%	Ground Lease - Howard	(7,459,159)	-	-	-	-	-	(119,493)	(716,957)	(716,957)	(716,957)	(716,957)	(716,957)	(716,957)	(716,957)	(716,957)	(730,041)
NET RENTAL INCOME		$ 37,668,787	-	-	-	-	856,448	3,351,041	2,844,179	2,937,230	3,032,797	3,130,949	3,231,759	3,335,302	3,441,651	3,519,843	3,587,296
REFINANCE CASH FLOW																	
	Gross Loan Proceeds	$ 11,896,876	-	-	-	-	-	(2,222,303)	-	-	-	-	-	-	-	-	14,119,179
	Less- Cost of Refinance	$ 750,236	-	-	-	-	-	304,522	-	-	-	-	-	-	-	-	445,714
	Net Proceeds	$ 11,146,640	-	-	-	-	-	(2,526,825)	-	-	-	-	-	-	-	-	13,673,465
DISPOSITION CASH FLOW																	
	Gross Sale Price	$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Less: Cost of Sales	$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Net Proceeds	$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
EQUITY ACCOUNT																	
	Beginning Balance		-	1,708,675	3,111,886	3,873,686	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
	Equity Infusion		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Equity Funding	$ 10,891,504	1,708,675	1,403,211	761,800	7,017,818	-	-	-	-	-	-	-	-	-	-	-
	Ending Balance (Profit)		1,708,675	3,111,886	3,873,686	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504	10,891,504
CONSTRUCTION DEBT																	
	Beginning Balance		-	-	-	-	19,327,641	-	-	-	-	-	-	-	-	-	-
	Loan Draw	30,096,464	-	-	-	18,657,878	11,438,586	-	-	-	-	-	-	-	-	-	-
	Interest	2,578,048	-	-	-	669,763	1,908,286	-	-	-	-	-	-	-	-	-	-
	Principal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Total Amount Due to Loan		-	-	-	19,327,641	32,674,512	-	-	-	-	-	-	-	-	-	-
PERMANENT DEBT																	
	Beginning Balance		-	-	-	-	-	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209	30,452,209
	Monthly Payment		-	-	-	-	-	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524	2,055,524
3%	WMATA Participation on Capital Event Proceeds		-	-	-	-	-	-	-	-	-	-	-	-	-	-	410,204
	Cash Flow Available From Operations		-	-	-	-	856,448	3,351,041	2,844,179	2,937,230	3,032,797	3,130,949	3,231,759	3,335,302	3,441,651	3,519,843	3,587,296
	Cash Flow Available From Sale / Refinance		-	-	-	-	-	(2,526,825)	-	-	-	-	-	-	-	-	13,673,465
	Cash Flow Available After Debt Service		-	-	-	-	856,448	(1,231,309)	788,655	881,706	977,273	1,075,425	1,176,235	1,279,777	1,386,127	1,464,319	14,795,033
EQUITY CASH FLOW																	
	Contributions	$ 3,873,686	1,708,675	1,403,211	761,800	7,017,818	-	-	-	-	-	-	-	-	-	-	-
	Loan Paydown	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Refinance Cash Flow	13,673,465	-	-	-	-	-	-	-	-	-	-	-	-	-	-	13,673,465
	Disposition Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Operating Cash Flow	40,565,623	-	-	-	-	1,645,160	3,140,394	2,844,179	2,937,230	3,032,797	3,130,949	3,231,759	3,335,302	3,441,651	3,519,843	3,587,296
	Total	$ 62,319,316	(1,708,675)	(1,403,211)	(761,800)	(7,017,818)	1,645,160	3,140,394	2,844,179	2,937,230	3,032,797	3,130,949	3,231,759	3,335,302	3,441,651	3,519,843	17,260,761
RETURN CALCULATIONS																	
			$(1,708,675)	$ (1,403,211)	$ (761,800)	$ (7,017,818)	$ 856,448	$(1,231,309)	$ 788,655	$ 881,706	$ 977,273	$ 1,075,425	$1,176,235	$1,279,777	$1,386,127	$ 1,464,319	$20,503,503
	IRR (15 year)	9.89%															
	Return on Investment (ROI)		0%	0%	0%	0%	4%	0%	7%	7%	7%	7%	7%	8%	8%	8%	40%
	Avg 15 year ROI	6.79%															
	Return on Equity (ROE)		0%	0%	0%	0%	8%	-11%	7%	8%	9%	10%	11%	12%	13%	13%	158%
	Avg 15 year ROE	15.86%															

WMATA-INV 005115

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Fee, Income, Reserves Breakout
Ground Lease Scenario

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Developer Fee *4% of Hard Costs (excluding land)	$ -	$ 252,417	$ 913,748	$ 264,196	$ 264,196	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Replacement Reserves	$ -	$ -	$ -	$ (30,766)	$ (35,514)	$ (36,579)	$ (37,676)	$ (38,807)	$ (39,971)	$ (41,170)	$ (42,405)	$ (43,677)	$ (44,988)	$ (46,337)	$ (47,727)
Per Dwelling Unit	$ -	$ -	$ -	$ (236.66)	$ (273.18)	$ (281.38)	$ (289.82)	$ (298.51)	$ (307.47)	$ (316.69)	$ (326.19)	$ (335.98)	$ (346.06)	$ (356.44)	$ (367.13)
Per GSF	$ -	$ -	$ -	$ (0.20)	$ (0.23)	$ (0.24)	$ (0.25)	$ (0.25)	$ (0.26)	$ (0.27)	$ (0.28)	$ (0.29)	$ (0.30)	$ (0.30)	$ (0.31)
Cash Flow After Debt Service Available to Partners	$ -	$ -	$ -	$ -	$ 856,448	$(1,231,309)	$ 788,655	$ 881,705	$ 977,273	$ 1,075,425	$ 1,176,235	$ 1,279,777	$ 1,386,127	$ 1,464,319	$14,795,033

WMATA-INV 005116

Yes! Organic Market
3809 12th Street, N.E.
Washington, DC 20017

September 27, 20007

Moddie Turay, President
Moddie Turay Company, LLC
3222 M ST NW, Suite 140
Washington, D.C. 20007

Re: Renaissance Row
Letter of Interest
Yes! Organic Market

Dear Moddie:

I have been briefed about your proposed project "Renaissance Row", and Yes! Organic Market is pleased to express interest in approximately 10,000 square feet at your company's development proposal to Washington Metropolitan Area Transit Authority (WMATA) to create a vibrant new mixed-use development that will activate Florida Avenue NW in the Shaw neighborhood. As discussed in our meeting, our preference would be to purchase the unit rather than to lease it. In any case, my preliminary interest in this project is genuine and considerable.

I am hopeful that I can know more about the progress of "Renaissance Row", and that I will be able to participate in an appropriate manner. To that end, I would ask that your office advise me at your earliest convenience of how I might become involved. I appreciate your taking the time to inform me, and I can assure you that, whatever information you further provide will be studied with the most serious consideration.

Sincerely,

Gary M. Cha
Owner

TRYST INC
THE DINER
& OPEN CITY

September 24, 2007

Moddie Turay
Moddie Turay Company, LLC
3222 M ST NW
STE 140
Washington, DC 20007

Dear Mr. Turay:

I enjoyed your presentation on the Renaissance Row Project along Florida Avenue between 9th and 7th Streets NW. I think your plan for the area is spot-on and I would be interested in being a part of that vision. Our concept is to create "neighborhood gathering places" and your mixed use plan helps promote this idea.

Please keep me abreast of your progress and continue to provide me with information. I look forward to hearing from you.

Sincerely,

Constantine Stavropoulos
President/Owner
Tryst, The Diner & Open City

2459 18TH STREET NW • WASHINGTON, DC • 20009
PHONE: 202-232-5500 • FAX: 202-363-6708

FOIA CONFIEDENTIAL TREATMENT REQUESTED

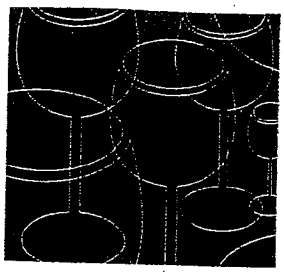
Dear Mr. Turay,

As the owner of Hank's Oyster Bar in Dupont Circle, I am very interested in expanding the number of neighborhood restaurants within the District. Your project, Renaissance Row, would be a perfect fit for creating more restaurants that service the communities you are building. I would be very interested in discussing a future partnership with you to build another much needed neighborhood restaurant in Shaw.

Thank you,

JAMIE LEEDS
CHEF/OWNER

HANKS OYSTER BAR
DC
1624 Q Street NW Washington DC 20009
T 202.462.HANK (4265) F 202.462.8888 info@hanksdc.com
OLD TOWN
1026 King St. (off Henry St.)
Alexandria, VA 22314
T. 703.739.HANK (4265)



ARTVINES
WINE GALLERY ART BAR

October 4, 2007

Moddie Turay
Moddie Turay Company, LLC
3222 M ST NW
STE 140
Washington, DC 20007

Re: Letter of Interest for Renaissance Row

Dear Mr. Turay:

I'm very excited about your project, Renaissance Row, and am interested in being a part of it. Introducing ArtVines.

"Fine wine. Fine art. When people speak of the finer things in life, surely these are part of the conversation. A conversation as old as civilization. And as new as right now. Today, there's a new place to continue that conversation. A place dedicated to the appreciation and enjoyment of art and wine—together. Introducing ArtVines. Wine Gallery. Art Bar. Where palate meets palette. And the pleasure is all yours."

ArtVines, a wine bar and art gallery, would draw on Shaw's artist, student and residential community and boost its arts and wine education programs. I think ArtVines complements your retail program and would become a great neighborhood venue. ArtVines is positioned to become Washington's most unique wine bar/art gallery/special events environment. Please visit www.artvines.com.

Please keep me abreast of your progress and continue to provide me with information. I look forward to working with you to bring ArtVines to your exciting Renaissance Row development project.

Sincerely,

Horace Flournoy

Horace Flournoy
CEO/Founder
ArtVines LLC

2459 18TH STREET NW • WASHINGTON, DC • 20009
PHONE: 202-232-5500 • FAX: 202-363-6708

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

COMPARISON OF SHAW HOWARD/FLORIDA AVENUE LEASE PROPOSALS		
Category	Banneker 60 year lease	Moddie Turay 60.year lease
Development Summary	104 du's, 11,750 sf retail, 47 below grade pkg. 127,692 gsf (excludes garage) 4.5 MOR FAR on site size of 28,892 sf Total Dev. Cost $35.6M	130 du's, 26,282 retail, 62 below grade pkg. (includes closed alley and 2 adj. lots) 4.5 MOR FAR on site size of 31,892 sf plus closed alley. Total Dev. Cost $43.6M
Non-Refundable Option Fee-amount, start, duration	$100,000 upon Selected Developer/Term Sheet approval 2/08	$100,000 upon Selected Developer/Term Sheet Approval
Land Value and derivation (Appraisal: $7.5M in 2007)	$8.2M, year 2010, based on residual land value	$8.8-9M, year 2011, based on $65/sf 2008 escalated 2%/year to 2011 (WMATA land only)
Pre-development Rent	$100,000/yr. from Agreement execution through construction thru yr. 2 of stabilization 6/08-11/10 (11/10 = outside rent start date) [Note: 11/10 = 50% stabilization on pro forma 3% escalation occurs 18 months later]	$120,000/year ($10,000/month) upon execution of agreement thru stabilization 12/11 willing to agree on mutually acceptable outside rent commencement date
Construction Period Rent	see above ($100,000/yr.)	see above ($10,000/month)
Base rent: (Appraisal: $525,000)	$500,000 in 12/10 (6% residual land value)	@ $700,822 (8% land value) in12/11
Escalation of base rent from 2008 to start of payment	None (base rent is the projected rent though it is below appraiser's current rent)	2%/yr. on 2008 $65 base land value
Escalation of base rent if delay from schedule	Increase pre-development rent 3% if projected closing (3/09) is delayed beyond a year	Increase pre-devel. rent to ½ stabilized rent if no full rent start by 12/11
Annual Base Rent escalation	3%	none
Periodic Rent revaluation	not addressed	adjust every 10 years- 3 appraiser method
Cash Flow Participation	share of gross income to be negotiated	not addressed
Capital event participation	share of net proceeds (after all project and sale-related expenses)	5% net proceeds (to be defined) but not construction loan takeout
Density increase payments	not addressed	based on increased FAR land value if PUD
NPV with residual	$14 M with residual	$11.8 M with residual

WMATA-INV 005121

FOIA CONFIDENTIAL TREATMENT REQUESTED

FLORIDA AVENUE PROPOSALS EVALUATION 1-08				
	POSSIBLE POINTS	BANNEKER	LAKRITZ ADLER	MODDIE TURAY
TECHNICAL CRITERIA	50 Total	42	45	45
1 ReflectsTOD Principles	10	10	10	10
2 Market Viability	10	7	8	7
3 Prior Team Experience	10	7	8	9
4 Innovation/Creativity	5	3	4	4
5 Compatibility with Local Land Use Plan	5	5	5	5
6 Benefits to Local Jurisdiction	10	10	10	10
ECONOMIC CRITERIA	50 Total	35	20	30
1 Financial Benefits to WMATA	35	25	10	20
2 Financial Viability of Proposal	5	5	5	5
3 Enhanced Ridership	10	5	5	5
TOTAL POINTS	100	77	65	75

WMATA-INV 005122

FOIA CONFIEDENTIAL TREATMENT REQUESTED

	Dev Selection	Agrmt Execution												
	Oct-07	2008 1 April	2009	2010	2011									
Banneker lease			$500,000	$500,000	$500,000			"with agreed upon increases"						
Donatelli sale			$6,173,000					no offer made; uses assessment or third						
								party appraisal; assessment used here						
Lakritz Adler sale			$6,675,000					w.conditions $60/FARsf (P2) and $52(P3) over 4.5						
Lakritz Adler lease			$283,400					20% esc.every 10 yrs. Bonus PUD rent $2.88&$1.98/sf						FAR
Metropolis sale			$12,992,400					4.5 FAR; no rezoning i; schedule not given						
								closing post bldg permits						
Moddie Turay sale			$6,496,200	or $8,661,600				based on 4.5 or 6 FAR						
lease		$60,000	$60,000	$60,000				at 4.5FAR, 2.2% gross income, at at 6 FAR, 1.7%						
PN Hoffman sale			$700,000											
SED Center lease		$21,125	$42,250	$43,015.00	$43,957			2% escalation per year						
Symmetry sale			$7,500,000					$75 "per FAR sf of yield"						
lease			$350,000	360,500	$371,315			3% esc. lease = 4.7%land value						
Trammell Crow Co.				$8,441,000										
lease				$590,870				7% land value; 25%escalation year21, CPI						
Assumptions on Value														
Parcel 1 3800 sf x 6FAR x $95 = $2,166,000														
Parcel 2 8600 sf x 6FAR x $95 =$4,902,000														
Parcel 3 16,472sf x6FAR x$95 =$9,389,000 WMATA			Appraisal = $6,260,000 based on 4		FAR for parcel 3 only									
total 28,872 sf	total $14,557,000 x 80% = $11,645,000													
	at 4.5 FAR can	have max. 129,924 sf. At 6 FAR		can have max. 173,232 sf										
Assumptions on Zoning & Building Permits														
C-2-B Arts Overlay permits 3.5 FAR (1.5 nonres.), 4.0 FAR with 3.0 res, 4.5 FAR with .5 res aff. Hsg., 6.0 an						FAR and 90' with PUD		PUD and 4.0 or more res.						
	Assume 18 mo.	for rezoning and	12 mo for bldg permit after agreement execution			,Closing after permits,		HPRB review needed						
Assume all payments at end of year														
Current assessed value: parcel 1 $1,052,000, parcel 2 $2,389,000, parcel 3 $2,732,000 total $6,173,000														

WMATA-INV 005123

TENTATIVE DEVELOPER SELECTION RECOMMENDATION
SHAW-HOWARD/FLORIDA AVENUE PROPERTIES

The Evaluation Committee met on November 30, 2007 to review the three proposals received and ranked the developers: in order of preference

- Banneker
- Moddie Turay
- Lakritz Adler

Before making a tentative selection, the Committee thought it prudent to interview the teams, since the principals were not known to the Committee. Interviews were held on Dec 17 and 19. Prior to that a list of questions/clarifications was sent to each team.

As a result of the interviews, the relative position of the teams has not changed. However, the point scores were lowered for the Banneker team, which lost its most experienced member, Donatelli Development. They were raised for Moddie Turay, which bolstered its experience rating based on the representations from their partner, Clark Enterprises, and also improved its financial offer. However, it was unclear what entity from Clark Enterprises would participate in this project raising the possibility of delays as actors changed. Lakritz Adler chose to retain its financial offer that did not meet WMATA'a appraisal threshold despite being given the opportunity to do so.

Table 1 shows the evaluation criteria scoring. Table 2 compares Banneker and Moddie Turay. The Committee recommends the tentative selection of the Banneker team. It recognizes that this is the least experienced team. However, its principals are eager to move to the next step in development, and they have the participation of other experienced team members, including MacFarlane partners for equity, Tompkins builders, et al.

In the term sheet negotiations, WMATA will attempt principally to increase the initial base rent, establish more stringent pre-development and base rent increases if there are delays, secure periodic rent revaluation or participation in gross income as a proxy for revaluation, and establish unit values for increased density should it occur.

Shaw-Howard/Florida Avenue

This solicitation was issued in August 2007 pursuant to the August 2007 Proposal Submission Requirements (the "Solicitation") and the 2005 Joint Development Policies and Guidelines (the "Guidelines"), which were included as Attachment D to the Solicitation. Three proposals were received. A development team led by Banneker Ventures was selected as the Selected Developer and a term sheet was approved by the Board in June 2008. The Board authorized negotiation of a development agreement to be presented to the Board within 150 days of term sheet approval per the Solicitation (Section 3.3-C). Over the course of 2009 and 2010, the Board granted a number of extensions to allow staff and the Selected Developer to renegotiate a term sheet to present to the Board[1]. In March 2010, the Board elected to table the proposal, allowing Banneker Ventures' designation as the Selected Developer to expire pursuant to Section 3.3-C of the Solicitation.

The situation related above falls into the Failure of Joint Development Negotiations category described in the accompanying memorandum. As noted in the memorandum, the Solicitation provides two alternative paths if negotiations fail. The first is to provide additional time for further negotiations. This was done on more than one occasion, and the Board considered the results unsatisfactory. The second path is to re-advertise the Joint Development Site.

[1] The extensions resulted at various times from the Board's request to incorporate an affordable housing component in the proposed project; from staff's need to evaluate changes in the composition of the development team; from a developer proposal to construct a building straddling Metro and adjacent land creating complications in the event of a ground lease default; and from developer-proposed financial changes to the approved term sheet that the Board considered unacceptable.

Shaw-Howard/Florida Avenue Proposal Teams

Banneker Ventures, LLC-	developer
District Development Group-	co-developer
Donatelli Development, Inc.-	co-developer
Torti Gallas & Partners, Inc.-	architect
MacFarlane Partners-	equity partners
Tompkins Builders-	general contractor

Moddie Turay Company, LLC-	developer
Clark Enterprises, Inc.-	co-developer and financial partner
Sorg & Associates-	architect
Squire Sanders & Dempsey	attorney

LaKritz \ Adler Development	lead developer
CORE Architects	lead architect
DANAC Corporation	co-developer (office)/equity partner
Milestone Capital Corporation	co-developer (hotel)/equity partner
Warehouse Theater	venture partner/anchor tenant

2005 Duke Development Framework for Greater Shaw/U Street

WMATA sites between 8th and 9th
active ground floor retail and office and residential above

WMATA site between 7th and 8th (Combined with CVS property)
retail/arts on ground floor
Housing units on upper stories
below grade parking on two levels

building height of 65 feet to cornice rising to 90 feet with a one-to-one setback from cornice
optimize density with constraint of parking (limited to two levels down by Metro tunnels)
achieve significant architecture expression at corner of Fl and 7th
Locate residential entries along 7th and 8th

M E M O R A N D U M

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Sites - Tentative Developer Selection

DATE: January 29, 2008

FROM: Rosalyn Doggett

THRU: Joel R. Washington JRW

TO: Nat Bottigheimer

WMATA received 3 proposals for its Shaw-Howard/Florida Avenue joint development sites: Parcel 1, 3,800 sf on Florida Avenue at 9th St, NW; Parcel 2, 8,600 sf on Florida Avenue between 8th and 9th streets, NW, and Parcel 3, 16,500 sf on Florida Avenue between 7th and 8th streets. In accordance with the Source Selection Plan for the Shaw-Howard/Florida Avenue Joint Development Sites, an Evaluation Team composed of Rosalyn Doggett, Chair, John Magarelli and Marc Biondi met a number of times to rate proposals from each of three teams. Two meetings were held before interviews with the teams, and two were held after interviews and additional due diligence. The development teams are led by:

Banneker Ventures
Lakritz Adler
Moddie Turay Company

The Evaluation Team recommends tentative selection of Banneker Ventures and preparation and negotiation of a term sheet with that team. If negotiations are unsuccessful, the Evaluation Team recommends turning next to the Moddie Turay Company for negotiation of a term sheet.

The Lakritz Adler proposal does not meet the threshold test in the Source Selection Plan of providing WMATA with net present value of rent over a 60-year lease that meets WMATA's current fair market value appraisal for the site ($7.5 million as of August 2007). The failure to meet appraisal value, alone, eliminates the team from further consideration. Further, Lakritz Adler offers one-half or less of the present value offered by the other two teams so it is thought that the deficit cannot be made up through negotiation even if there were other reasons to select the team, which there do not appear to be.

Washington Metropolitan Area Transit Authority

FOIA CONFIEDENTIAL TREATMENT REQUESTED

The net present values of the offers over a sixty-year lease period are:

Banneker	$14 million
Moddie Turay	$11.8 million
Lakritz Adler	$ 6 million

Banneker Ventures has been recommended because it provides greater rental present value to WMATA, approximately $2.2 million more than its remaining competitor.

Both teams propose 4 to 5 story residential development over retail for all three parcels that comprise the joint development site, at a matter-of-right FAR of 4.5. Moddie Turay proposes combining Parcel 1 with two small adjacent parcels totaling 3,000 sf, which it controls, and utilizing the air rights over an alley proposed to be closed between Parcels 1 and 2; however its financial offer is not contingent on the two parcels being incorporated or the alley closing. Banneker proposes 103 dwelling units and 12,000 sf of retail whereas, utilizing the combined properties and alley closing, Moddie Turay proposes 130 dwelling units and 26,000 sf of retail. Otherwise, there is little difference in design concept between the two teams.

The Evaluation Team ranked the teams according to the evaluation criteria in the Source Selection Plan. These final rankings are shown in the accompanying table, which lists the evaluation criteria underlined below.

The Team found that both proposals reflect TOD principles since they are on a walkable street within blocks of two different Green Line Metro stations (Shaw-Howard and U Street-Cardozo-African American Civil War Memorial), maximize matter-of-right density and provide a mix of uses that will contribute to the ongoing revitalization of the area. The Banneker proposal includes a modest amount of affordable housing and represents that its building will be "green." Both proposals are equally viable in the market provided that the apartment market remains strong in the area. Each proposes some ground floor arts/retail uses that would be an asset to the community if realized. Their proposals conform to the District of Columbia's Duke Plan (except that the plan advocates even taller buildings if possible through a PUD; lack of space for underground parking may be a constraint, however). Also, the Office of Planning has since indicated that it will support by-right development. Both provide similar benefits to the local jurisdiction in terms of property and sales taxes.

The Moddie Turay proposal is slightly more creative in that it combines Parcel 1 with adjoining property, making a larger and more regular development parcel. However, it is not clear from talking to District planning and regulatory officials that the developer can accomplish either the alley closing

or the demolition of two structures which "contribute" to the historic district in which they are located. There may be issues with combining the adjoining fee property with leased WMATA property; also a sales price has not yet been agreed upon between Moddie Turay and the adjoining property owner. Price and historic preservation negotiations could delay project execution. Neither project will have an impact on WMATA facilities though construction over the Metro tunnel which runs partially beneath each parcel will need to be coordinated by JDAC. Once more detailed designs are prepared it is possible that the teams may need to seek a variance for required parking because of limitations in construction over the Metro tunnel.

There is little difference in experience. The Banneker team members (led by Omar Karim) include the District Development Group and, recently added, Metropolis Development, which has replaced Donatelli Development as a team member. Metropolis Development has extensive experience in developing new and adaptive residential buildings with ground floor retail in the Shaw neighborhood, including the Langston Lofts condominium project at 14th and V streets, a WMATA joint development site. The other teams members are less experienced but are obtaining approvals for a Silver Spring residential building at the present time. The Banneker Team architect, Torti Gallas, is experienced in residential and retail design on nearby U Street and over Metro tunnels. Moddie Turay and his company staff appear to have somewhat less experience but have an experienced local architect, Suman Sorg, and have teamed with Clark Enterprises represented by General Counsel Rebecca Owen who stated in interviews that Clark will deploy the necessary personnel to build the project for which the Moddie Turay Company will be project manager. Ms. Owen added that this could be either Clark Realty Capital, Clark's housing arm (which has participated in Fort Totten and Huntington but elected not to follow through on its contract for Western Bus Garage) or new personnel hired by Clark Enterprises, the parent company. Clark Enterprises clearly has construction expertise; however Banneker has stated that it intends to use Tompkins Builders, a local firm with Metro-related experience.

Financial benefit to WMATA was discussed earlier, and Banneker's offer is clearly superior in that regard. In terms of financial viablility, neither proposal has obvious flawed market or financial assumptions though Banneker depends on rent increases, which appear to be achievable, to subsidize affordable housing. Clark would more likely have access to financial sources. However, lender references for both teams indicated an interest in financing projects on these sites. Equity for Banneker would be provided by MacFarlane Partners, who are active team participants, and Clark will furnish its own equity, which it has the resources to do. Both teams provide modest enhancement to Metro Ridership.

It should be noted that WMATA requested both lease and sale proposals and received both. Net present value analysis showed that the lease proposals generate more revenue for WMATA over 60 years than the sale proposals. Since the Board's preference is to lease, the sale proposals were not considered further.

The accompanying table summarizes the land use and financial elements of the two finalist lease proposals. Both have financial elements that would likely need to be strengthened or provided in negotiations, for example, capital event participation for both teams; bonus density rent provisions and slightly higher base rent for Banneker; and annual base rent escalation for Moddie Turay. It is conceivable that negotiations could change the relative positions of the teams.

But for the present, it appears fair to start with the Banneker team since its financial offer is superior and its proposal does not have the potential complications of combining property with an adjacent owner. The Moddie Turay team, though close in ranking, has no clear superiority overall.

Rosalyn Doggett, Chair

John Magarelli

FL Ave EOI's Supplemental Information on
"The developer's background showing its ability to perform; and
the developer's prior experience"

1. Banneker: principals have shown "involvement" with numerous projects; howefer, actual track record for
   Banneker = 52 unit condo in Silver Spring, 64 unit condo in Memphis
   District Development Group (co-developer- 50%) = school renovations
   and small office and semi-industrial buildings

We did not ask for evidence of financial muscle and they have provided none; however they did subsequently send a letter of interest from a bank and have sent supplemental materials to Nat who has not opened them as they arrived after the deadling.

2. Donatelli
   Cited past residential projects, two of which have been with Metro. They are a known quantity.

3. Lakritz Adler

Has not done major projects. Currently developing in Shaw the new construction Moderno, 35 units, the 45,000 sf new construction Beauregard (11/V), Murano new constr 16-unit(10th/V) and recently completed the Visio , Veritas 2031 FL 12,500 sf historic retail with restaurant and office, Temperance Hall 6,000 sf neigh restaurant once block south of GA/Petworth station. Projects to date are smaller. This would be a step up for them.

No financial info given; none asked for.

4. Metropolis- known quantity in terms of track record and ability to complete a project of this size, e.g. Langston Lofts.

5. Moddie Turay- does not appear to have developed anything yet as its own company. Needs a partner. Provides a letter of interest from Clark Enterprises.

6. PN Hoffman. known quantity in terms of track record and ability to complete a project of this size.

7. SED- would rely on pro bono services of Ray Ritchey, an experienced and capable developer for a relatively small 4-story building. Pro forma shows a $2M construction hard cost. SED has net assets of $300,000 to $400,000. Ability to finance not shown.

8. Symmetry. Developer Nicole Totah completed a new construction office condo at 1430 K St. of under 200,000 sf. Developer's father and partner Sami Totah has built several million sf of commercial and residential. Type of development not specified. Financial wherewithal not supplied.

9. Trammell Crow Company. A known quantity with ability to perform.

6/22

Joint Development Selection Criteria — Integrity and Business Ethics

- Florida Ave. solicitation provided for termination of selected developer if found not to have satisfactory record of integrity and business ethics.
  - post-selection rather than qualification/responsibility criteria
  - joint development guidelines can be amended to include as a selection criteria

- Federal statute requires that government contractors have a satisfactory record of integrity and business ethics as a matter of contractor responsibility. WMATA uses Federal Acquisition Regulation (FAR) as guidance in standard procurement, but joint development has its own guidelines.

- FAR requires a certificate from offerors and their principals that they (in summary):
  - are not ineligible for award of Federal contracts;
  - are not currently indicted for and have not within the past three years been convicted of or had a judgment entered regarding malfeasance in public contracting or certain dishonesty crimes (embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, tax evasion and other federal tax crimes, receiving stolen property); and
  - do not have an unsatisfied tax delinquency of greater than $3,000

- The offeror's certification responses are a matter of responsibility. Thus, an inability to certify as to no convictions, judgments or delinquencies does not necessarily preclude award. A failure to respond, on the other hand, bars award.
  - The contractor may be terminated for default if it knowingly provides an erroneous certification.

- In 2000, the agencies responsible for FAR revisions (FAR council) issued a final rule to further define what constitutes a "satisfactory record of integrity and business ethics" as persuasive evidence (such as adjudications) of noncompliance with labor, employment, environmental and consumer protection laws.
  - A broad coalition including the U.S. Chamber of Commerce, National Association of Manufacturers and the Association of General Contractors brought suit primarily alleging the rule lacked adequate justification or guidelines to prevent arbitrary and abusive implementation. Other industry associations and congressional representatives also sought suspension of the rule.
  - The FAR council responded by staying the rule.

- Possible Approach for Joint Development
  - Use FAR and local procurement integrity and business ethics standards to evaluate developer integrity and business ethics. Local standards are similar to the FAR in some respects, supplement the FAR in other respects and are summarized in the attached appendix.
  - Require self-certification by the developer, its principals and members (including principals of any member that is an entity) and any other entities in which any of the foregoing have been members or principals during the three years prior to the offer.

- Attached is a draft certificate for developer responsibility, including the criteria of integrity and business ethics. It adapts FAR and local integrity and business ethics standards to joint development. It also synthesizes local standards that go beyond the FAR in items 4 and 5. Item 5 is narrowly-tailored to joint development since a similar but broader provision proved troublesome for the FAR council.

Draft Certification Regarding Responsibility Matters

The offeror hereby certifies to the best of its knowledge and belief that the offeror, any "principal" (as defined at 49 C.F.R. Part 29) of the offeror, any member of the offeror (including a principal of any member that is an entity) or any other entities in which the foregoing have been principals or members during the past three years:

1. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from award of contracts by any Federal agency or any agency of any political subdivision in WMATA's Transit Zone;

2. has not within the past three years been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a Federal, state or local contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal, state or local criminal tax laws, or receiving stolen property;

3. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in the previous paragraph;

4. is not in arrears or in default of payment of any money or obligation due the Federal government or any political subdivision in WMATA's Transit Zone; and

5. has no adjudicated violations and has not paid penalties relating to the housing, building and licensing laws, regulations, codes and ordinances of any political subdivision in WMATA's Transit Zone during the past three years .

An offeror that is unable to certify to the statements in this certification shall attach an explanation to this proposal. An offeror that fails to execute this certification or fails to provide adequate information for WMATA to evaluate its inability to certify to the statements in this certification may be ineligible for award.

This certification is a material representation of fact upon which reliance will be placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to WMATA, WMATA may terminate the contract resulting from this solicitation for default.

The offeror shall provide immediate written notice to WMATA if at any time it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Signature: _____

Title: _____

Date: _____

Appendix: Summary of Local Integrity and Business Ethics Standards

Local procurement guidelines provide these standards to evaluate offeror integrity and business ethics as part of the responsibility determination:

- Arlington County: "the moral and business integrity and reliability which will assure good faith performance," Purch. Manual Sec. 1-201;
- District of Columbia: "a satisfactory record of integrity and business ethics" & "compliance with the applicable District licensing and tax laws and regulations," 27 DCMR 2200.4;
- Fairfax County: "character, integrity, reputation, judgment, experience & efficiency" & "previous and existing compliance . . . with laws and ordinances relating to the contract or services" & "whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent," Purch. Res. Art. 2;
- Montgomery County: "previous and existing compliance by the offeror with laws and ordinances relating to the contract and services" & may deny award "to any offeror who is in default of payment of any money due the County," Proc. Reg. Sec. 6.3;
- Prince Georges' County: "integrity and reliability which will assure good-faith performance," Pub. L.L. Subtitle 10A-101.

DEVELOPMENT OPPORTUNITY
SHAW/U STREET DISTRICT
WASHINGTON, DC

OPPORTUNITY TO COMPETE AGAINST AN UNSOLICITED PROPOSAL

The Washington Metropolitan Area Transit Authority (WMATA) has received an unsolicited proposal for a joint development project for the three parcels shown below. In accordance with the *WMATA Joint Development Policies and Guidelines, Revised July 21, 2005,* which governs WMATA's Joint Development Program (view by clicking **here**), WMATA must advertise such proposals and is providing the following information to developers interested in submitting a proposal.

The three parcels are situated two blocks northwest of the Shaw-Howard University Metrorail station. The properties are on the south side of Florida Avenue, NW between 7th and 9th streets. The properties are in the Shaw neighborhood which has undergone and is continuing to experience significant redevelopment. This area is considered one of the most attractive real estate markets in the Washington metropolitan area. In addition to close proximity to the Metrorail station, the properties are situated approximately one block southwest of Howard University Hospital, less than one mile north of Washington's new Convention Center, and less than two miles north of the White House.

Parcel 1 contains approximately 3,800 square feet and has 57 feet of frontage on 9th Street and 70 feet of frontage on Florida Avenue, NW. Parcels 1 and 2 are separated by a public alley.

Parcel 2 contains approximately 8,600 square feet and has 74.5 feet of frontage on 8th Street, NW and 100 feet of frontage on Florida Avenue, NW.

Parcel 3 contains approximately 16,472 square feet and has 124 feet of frontage on Florida Avenue, NW and 177 feet of frontage on 8th Street, NW. Parcel 3 is separated from

Parcel 2 by 8th Street, NW.

Parcels1, 2 and 3 are zoned A/C-2-B, a medium density community center zone that allows a maximum height of 65 feet with a 3.5 FAR total density. Non-residential density may be as much as 1.5 FAR of the total 3.5 FAR allowed. Residential lot occupancy is limited to 80 percent. This district also has an Arts Overlay Zone with incentives for the development of below-market rate housing, legitimate theater, arts, and related uses. Bonus density up to a maximum of 4.5 FAR can be obtained if residential and arts-related components are included in the project.

The properties being offered are encumbered by an underground tunnel with an upper limit of approximately 19 feet below the surface. WMATA will reserve the requisite areas and interests to protect the underground tunnel including a permanent, exclusive and irrevocable easement for vertical and horizontal support.

WMATA will hold a Pre-Proposal Conference on **Monday, April 30, 2007 at 1 p.m.** at WMATA Headquarters, 600 Fifth Street, NW, Washington, DC in the lobby level meeting room. This Pre-Proposal Conference is intended to give developers the opportunity to ask questions about the three available properties and to discuss WMATA's requirements. Interested developers and other parties are encouraged to attend, but attendance is not mandatory.

The Closing Date for submitting proposals is **3 p.m on Thursday, May 31, 2007**. Proposals must state:

(1) what the developer will construct on the property;
(2) the consideration WMATA will receive and when;
(3) the project schedule;
(4) the developer's background showing its ability to perform; and
(5) the developer's prior experience.

Proposals must be submitted in a sealed package, addressed and mailed or delivered in person to:

Mr. Gary Malasky
Contracting Officer
Office of Property Development and Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Developers may propose a lease or sale or both as alternatives. Typically, WMATA has leased property for commercial use and sold property for condominium development. However, WMATA's preference is to lease, rather than sell its property. If a sale is proposed, the proposal must demonstrate that a sale is more advantageous to WMATA than a long-term lease.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Minutes

1331st Meeting of the Board of Directors
June 26, 2008

Mr. Zimmerman called the meeting to order at 11:10 a.m. Present were:

Directors
Mr. Chris Zimmerman
Mr. Jim Graham
Mr. Peter Benjamin
Mrs. Catherine Hudgins
Mr. Emeka Moneme
Ms. Elizabeth Hewlett

Alternate Directors
Mr. Marion Barry
Mr. Jeff McKay
Mr. Anthony Giancola
Mr. Gordon Linton

Staff
Mr. John Catoe
Mr. Gerald Francis
Ms. Helen Lew
Ms. Carol O'Keeffe
Mr. Shiva Pant
Mr. Chuck Woodruff
Mrs. Leen'da Chambliss

Public Comment Period:

There were no speakers during the public comment period.

Approval of Agenda:

The agenda was approved as submitted by unanimous consent.

Approval of Minutes:

The minutes of the May 22, 2008 meeting were approved as submitted.

Washington Metropolitan Area Transit Authority

600 Fifth Street, NW
Washington, D.C. 20001
202/962-1234

By Metrorail:
Judiciary Square-Red Line
Gallery Place-Chinatown
Red, Green and Yellow Lines

A District of Columbia, Maryland and Virginia Transit Partnership

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005139

Report by Planning, Development and Real Estate Committee

E. Florida Avenue Developer Selection

Mrs. Hudgins referred the Board to the request to select Banneker Ventures as the developer of the Shaw-Howard U/Florida Avenue joint development site, approve the term sheet and authorize negotiation of the development agreement. The final agreement will reflect the inclusion of an affordable housing component and staff will provide documentation to the Board that clarifies the roles and responsibilities of the members of the development team.

Mr. Graham requested that his comments from the committee meeting be included as part of the record for the Board meeting. In his comments, Mr. Graham noted the importance of providing affordable housing; requested clarification on the Board's policy on business ethics and integrity requirements relating to joint development projects; and raised concerns about the financial viability of the project, as proposed.

Mrs. Hudgins moved, seconded by Mr. Moneme, approval of this action. This motion was unanimously approved.

Ayes: 6 - Mr. Zimmerman, Mr. Graham, Mr. Benjamin, Mrs. Hudgins, Mr. Moneme and Ms. Hewlett

A. Policy Concerning Use of WMATA Property for Non-WMATA Transit Projects

Mrs. Hudgins referred the Board to the request to approve a resolution for a policy allowing no-cost transfers of WMATA-owned real property to local jurisdictions and state governments for reimbursable and other transit projects.

Mrs. Hudgins moved, seconded by Mr. Benjamin, approval of this action. This motion was unanimously approved.

Ayes: 6 - Mr. Zimmerman, Mr. Giancola, Mr. Benjamin, Mrs. Hudgins, Mr. Moneme and Ms. Hewlett

A copy of the approved Resolution (2008-29) has been made a part of the official file.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005140

Rosalyn Doggett - RE: Re: 8th & Florida Flea Market

From: <MossM@adea.org>
To: <rdoggett@wmata.com>
Date: 9/7/2007 4:30 PM
Subject: RE: Re: 8th & Florida Flea Market

Rosalyn,

FYI--Developer Town Hall Meeting regarding 8th & U Street parcels Tuesday September 18, 2007 @ 6:00 pm @ 1200 U. Street True Reformer Bldg. To date only three developers have contacted me. Not sure if that is the final number on the WMATA short list, if not please encourage the others to contact me to ensure they are on the agenda. I have already informed the three developers about the meeting and will announce publicly on Monday.

Regards,

Myla

From: Rosalyn Doggett [mailto:rdoggett@wmata.com]
Sent: Friday, August 24, 2007 5:12 PM
To: Moss, Myla
Subject: RE: Re: 8th & Florida Flea Market

Myla, I will call you Monday afternoon to give you an update.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005141

Rosalyn Doggett - RE: Re: 8th & Florida Flea Market

From: <MossM@adea.org>
To: <rdoggett@wmata.com>
Date: 9/10/2007 10:21 AM
Subject: RE: Re: 8th & Florida Flea Market

Three respondents:

Moddie Turay & Clark Enterprise

Lakrtiz Adler

Banneker Ventures

From: Rosalyn Doggett [mailto:rdoggett@wmata.com]
Sent: Monday, September 10, 2007 8:14 AM
To: Moss, Myla
Subject: RE: Re: 8th & Florida Flea Market

list is larger
let me know who responded; I will remind others

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005142

From: Gary Malasky
To: mjmenjoy@yahoo.com
Date: 6/25/2007 3:47:47 PM
Subject: Fwd: WMATA Parcels

Ms. Moss--

Thank you for your message. I wanted to let you know that there is a new contracting officer, Nat Bottigheimer, and I have forwarded your email to him. Any future emails are more appropriately sent to him.

Gary Malasky

Gary Malasky
Managing Director
Property Development and Management
Washington Metropolitan Area Transit Authority
600 Fifth Street NW
Washington, DC 20001
202-962-1504
gmalasky@wmata.com

>>> myla moss <mjmenjoy@yahoo.com> 06/25/07 3:23 PM >>>

myla moss <mjmenjoy@yahoo.com> wrote: Date: Mon, 25 Jun 2007 11:59:03 -0700 (PDT)
From: myla moss <mjmenjoy@yahoo.com>
Subject: WMATA Parcels
To: gmalasky@wmata.com

June 28, 2007

Gary Malasky
Contracting Officer
Office of Property Development and Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

RE: Banneker-District Development Team Proposal to Develop Florida Avenue Parcels

Dear Mr. Malasky:

We have been in communication with officials from Washington Metropolitan Area Transit Authority (WMATA) concerning the development of the Florida Avenue Parcels (710 and 716 Florida Avenue, NW and Square 393, Lots 44 and 45).

As we previously expressed, our community is very interested in hosting a forum that will allow the development teams responding to WMATA's Request for Proposals to present their concepts to our community and, in turn, allow community members to ask questions of these developers and to voice their support for one or more of the concepts. That said, we appreciate WMATA's interest in first vetting the proposals and so we will honor WMATA's request to postpone the community forum initially scheduled for

next week to provide WMATA with the opportunity to review the proposals. We look forward to working with you to reschedule this forum for a mutually agreeable date in July or August.

We want, however, to take this opportunity to let you know that Myla Moss has met with the Banneker Ventures, LLC and District Development Group, LLC team and found their proposal to be very impressive. For the following reasons, we strongly request that the Banneker Ventures, LLC and District Development Group, LLC team proposal be sent to the commission for review:

The Banneker-District Development Team has vast experience with similar projects on WMATA-owned parcels.
The Banneker-District Development Team is led by two LSDBE businesses with significant connections to the Shaw/Georgia Avenue neighborhood.
The Banneker-District Development Team has already received 163 signatures of support from residents living within ANC 1B (See attached petition).
The Banneker-District Development Team concept provides tangible benefits to WMATA and the Shaw Community.

Thank you, in advance, for your careful consideration of the proposal submitted by the Banneker-District Development Team. We will continue to coordinate with WMATA officials to ensure that those residents who will be most impacted by this development have an opportunity to hear directly from interested development teams.

Yours,

Myla Moss
ANC 1B01 Commissioner
Vice Chairman ANC 1B

Deairich 'Dee' Hunter
ANC 1B04Commissioner
Chairman ANC 1B

Park yourself in front of a world of choices in alternative vehicles.
Visit the Yahoo! Auto Green Center.

Boardwalk for $500? In 2007? Ha!
Play Monopoly Here and Now (it's updated for today's economy) at Yahoo! Games.

CC: Bottigheimer, Nat ; Doggett, Rosalyn

From: Nat Bottigheimer
To: Doggett, Rosalyn
Date: 4/1/2008 10:42:08 AM
Subject: 7th and Florida question

Roz-

In prep for mtg with Mr. Graham tomorrow at 2:30, could I get info on process we used to vet the proposers' financial capacity/strength and ability to deliver as proposed?

Is it possible that appraised value of property would be lower now than when conducted last year? I.e. That a different, lower threshold level would have been appropriate?

If at any point in future the winning firm falters, do we go to the second ranked team at that point?

Thanks very much,

Nat

CC: O'Keeffe, Carol B., Heppen, Bruce P., Washington, Joel R.

How to present a term sheet to Exec Committee on 4/2/

Lakritz has not done office + hotel in the past

Lakritz Networth - 7/31/07 = $4.2 M (including $1.6 M from investors)
Milestone Hotels 12/31/06 = -$7.5M
Danac = no info.

Checked Bank References
all soft - but all OK

Banneker 11/31/07 = $430K Net Worth

Marc - Did you get?

From: Rosalyn Doggett
To: Carol B. O'Keeffe; Nat Bottigheimer
Subject: Florida Avenue-- Board Requests

At the Board's Executive Session on April 24, a number of iterms were requested by the Board with respect to the Florida Avenue developer selection/term sheet process. As I understood them, they are:

1. Information on any background checks that were done on the teams, specifically money owed to the District of Columbia by an individual who is employed by Banneker Ventures.

2. Financial proposals for the projects from each proposer and, in fact, each proposal, presumably as updated during the course of requests for clarification from WMATA, in interviews and in updates from teams.

3. Financial statements for each team member, including individuals within firms.

4. The process and timing for including Metropolis as a member of the Banneker team after Donatelli dropped out.

(There was discussion of why the present value of the Banneker offer greatly exceeded the appraisal but no specific information was requested. There was also discussion of including a disclosure statement in future solicitations. Finally, there was a request for financial information on the proposal being recommended; this had been prepared but was not distributed).

On item 1 above, I have requested information from Banneker about the payment of money owed to the city and am told it will be sent today. On item 4 above, I can provide the letter requesting that Metropolis be included on the Banneker team.

However, I am seeking guidance on two issues.

Item 2. If we assemble packages on each proposal for each Board member, is there any information that should be withheld?

Item 3. The JDS requests financial statements for firms, and these were included in original proposals or supplements. Is it appropriate to ask each proposer for individuals' financial statements? I do not believe that those statements are germane to the selection process. I am also not sure under what circumstances such statements should be forwarded to Board members.

CC: Joel R. Washington Marc Borbi

From: Rosalyn Doggett
To: Nat Bottigheimer
Date: 4/1/2008 4:08:12 PM
Subject: Re: 7th and Florida question

Nat, in answer to your questions about teams' ability to perform, additional appraisals and fallback, I offer the following:

1. We asked for and received examples of projects completed by each development team, balance sheets and bank references. I called the bank references for the Banneker and Moddie Turay teams; the comments were favorable about wanting to finance the proposed project though in most cases I was speaking to banks who had not yet done business with the lead team members. Banneker brought in representatives of well regarded MacFarlane Partners as equity investors. Moddie Turay had heavyweight Clark Enterprises as an equity investor. Of the Banneker team, Metropolis Development has delivered a number of housing/retail projects and completed a joint development at 14th and V. Of the Moddie Turay team, Clark Enterprises represented that it could find capability within its organization to develop the project; for example, Clark Realty Capital did the Fort Totten joint development but did not participate in this proposal response.

I did not investigate Lakritz Adler in depth as they did not meet appraisal numbers in their offer to us. Note, however, that Lakritz Adler was proposing office and hotel. They have only developed housing to date and were relying on partners, Milestone Hotels and Danac, for hotel and office expertise.

2. It is possible that future appraisals would be lower if sales in late 2007 or early 2008 were included; I am certainly not sure and would defer to Malcolm Marshall on this. We are now in a market trough which is not favorable for us as seller or lessor. However, Malcolm and I spoke to our appraisers about a month ago asking if their appraisal was too high, especially if affordable housing were included in a Florida Avenue project. They replied that their appraisal was possibly too low for an all market-rate project since a couple of comparables that they used in their appraisal actually included affordable housing which they did not correct for. Note also that we just reappraised the Navy Yard chiller site and the price went up slightly.

3. After the Board developer selection occurs, we would inform the other two competitors that they were not selected and return their deposits. If we could not negotiate a contract with the selected developer for any reason, then we would readvertise per JD Guidelines. If the developer could not perform once under contract, then we would also readvertise.

Please let me know if you need any additional information or detail.

>>> Nat Bottigheimer 4/1/2008 10:42 AM >>>
Roz-

In prep for mtg with Mr. Graham tomorrow at 2:30, could I get info on process we used to vet the proposers' financial capacity/strength and ability to deliver as proposed?

Is it possible that appraised value of property would be lower now than when conducted last year? I.e. That a different, lower threshold level would have been appropriate?

If at any point in future the winning firm falters, do we go to the second ranked team at that point?

Thanks very much,

Nat

CC: Bruce P. Heppen; Carol B. O'Keeffe; Joel R. Washington; Malcolm Marshall

From: Leenda M. Chambliss
To: Bellamy, Michelle A.; Bottigheimer, Nat; Doggett, Rosalyn ; Mohsberg, Sid
Date: 6/20/2008 10:08:52 AM
Subject: PDRE E - Florida Avenue.pdf - Adobe Acrobat Professional

Attached is the PDRE item for Florida Avenue. I am inclined to wait to post this item, depending on the outcome of the meeting with Mr. Graham and the subsequent Exec session. Please advise.

- Leen'da

Leen'da Chambliss
Office of the Secretary
202-962-2511
202-962-1133 (fax)
lchambliss@wmata.com

CC: Pena, Danise

From: John A. Magarelli
To: Biondi, Marc E.; Doggett, Rosalyn ; Washington, Joel R.
Date: 1/28/2008 2:16:08 PM
Subject: Re: Florida Ave tenative developer selection

Daily ridership computations:

Banneker: 434

Lakritz: 866 Combined properties

Moddie: 681 Combined properties

John

>>> Rosalyn Doggett 01/28/08 1:50 PM >>>
Please find the memo and tables revised per our meeting today.

Marc, I will await your review with Carol before passing around for signatures.

John, please e-mail me your ridership calculations.

From: Marc E. Biondi
To: Rosalyn Doggett
Date: 10/15/2007 9:28:58 AM
Subject: FL Ave — Benneker

Ros,

In addition to the issues you noted for Benneker's application, please note:

1. The transmittal letter does not include the statement that the offer is open for 180 days or the statement that the developer intends to negotiate in good faith.

2. The requirements of J. Zoning are actually found in Section G, but I think we can live with that?? yes

3. Section E in Volume 2 merely states that if a sale is desired, it would be negotiated with pricing handled by 3rd party appraiser process. This Group proposes a Lease, so this lack of detail on a sale is okay, right? yes

4. Volume 2, Section I, Balance Sheets are allegedly being forwarded under separate cover.

Marc

Marc Biondi
Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Direct Dial: 202-962-1011
Fax: 202-962-2550
mebiondi@wmata.com

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CC: Joel R. Washington; Kasondra K. Johnston

Shaw-Howard/Florida Avenue Proposal Teams

Banneker Ventures, LLC- Omar A. Karim	developer/development manager
District Development Group- Phinis Jones Joshua Kern	co-developer/co-development manager
Donatelli Development, Inc.- Christopher J. Donatelli Larry Clark	co-developer/construction manager
Torti Gallas & Partners, Inc.-	architect
MacFarlane Partners-	equity partners
Tompkins Builders-	general contractor
Moddie Turay Company, LLC- Moddie Turay Adrian Donnelly Nia Francis	developer
Clark Enterprises, Inc.- Rebecca L. Owen Jessica Hubley King Davidson	co-developer and financial partner
Sorg & Associates- Suman Sorg	architect
Squire Sanders & Dempsey Michael S. Kosmas	attorney
LaKritz \ Adler Development Joshua A. Adler Robb LaKritz	lead developer
CORE Architects	lead architect
DANAC Corporation	co-developer (office)/equity partner
Milestone Capital Corporation Sander Mednick Michael L. Wachtell	co-developer (hotel)/equity partner
Warehouse Theater	venture partner/anchor tenant

10/11/07

SHAW HOWARD FLORIDA AVENUE 10-5-07 PROPOSAL DISTRIBUTION

Minimum 10 proposals received from each proposer
Banneker Ventures/District Development Group/Donatelli Development (15 proposals)
LaKritz Adler (10 proposals)
Moddie Turay/Clark Enterprises (10 proposals)

Proposal Security from each proposer is a $100,000 Letter of Credit from

Banneker- Bank of America ~~(original coming by Fed Ex 10/12)~~ rec'd 10/11
Lakritz- BB & T
Moddie- Wachovia/Harris Bank

Originals are/will be in our "LAND" safe.

CD of pro forma information, as requested, received only from Lakritz; need to get others

Marc Biondi is checking proposals for legal sufficiency

RPD will do a summary of teams (conflict of interest requirement) and basic land use proposal by 10/12

We need to do a source selection plan to satisfy PRMT requirements (as we did for the chiller plant site). Marc is the lawyer. But for the three voting members, assuming we use the same evaluation criteria as in the chiller site)- do you want those to be me, Kasondra and John Magarelli?

Original proposals are in Doggett office
Full sets distributed so far to :
Doggett, Biondi, Johnston

Full sets will be delivered to Bolan Smart, Robinson/Bushnaq, Magarelli, DC Office of Planning/DMPED (or we will meet with them)

Storage of other proposal copies is in Kasondra Johnston's former cubicle across from my office.

FOIA CONFIDENTIAL TREATMENT REQUESTED

8/2/07 Doggett Johnston Hill

FLAVE PROPERTIES EVALUATION OF EOI RESPONSES.

Team	Plan	WMATA Return	Schedule	Ability to Perform	Track Record	Total
Banneker	20	25	5	may need third is busy partner from what they've done 5	10	65
Donatelli	described only 20	10	not given 10**	10	20	60
Lakritz Adler	20	needs impr. 10	5	may need partner city questions 5	10	50
Metropolis	20	25	10	10	20	85
Moddie Turay	20	needs impr. 10	5	needs partner Expiration Clerk 5	never headed up needs Comm 10	50
P N Hoffman	too low 0	too low 0	5	10	20	35
SED Center	too low limited use 0	10	10	needs partner 5	5	30
Symmetry	20	25	5	dedicated res 5	10	65
Trammell Crow Co.	wrong use 0	20	10	10	20	60*

Rating system:

Plan	30 points
WMATA return	30 points
Schedule	10 points (Partly subsumed under WMATA return)
Ability to Perform	10 points
Track Record	20 points

Internal rating system:

Outstanding	total points
Good	2/3 points
Adequate	1/3 points
Inadequate	0 points

* wrong use = threshold issue

** could get points based on ability to perform, but not given

WMATA-INV 005153

Rosalyn Doggett - Re: Navy Chiller

From: Rosalyn Doggett
To: pam.dubois@bolansmart.com
Date: 7/25/2007 2:25 PM
Subject: Re: Navy Chiller
CC: Elisa L. Hill; Kasondra K. Johnston

Here are a few clarifications
Overlay requirements for Uptown Arts and Inclusionary Zoning are murky, so far, (to me)

In general offers per FAR sf seem to be
Banneker/Donatelli (would have to make assumptions and impute)
Lakritz $52 (imputed)
Mtrop. $100 (stated)
Moddie $50 (stated)
PN Hoff ? $30 (imputed)
SED $65 (stated)
Symmetry $75 (stated)
Trammell $57 or, for Parcel 3 only $75 (imputed)
>>> <pam.dubois@bolansmart.com> 07/25/07 10:01 AM >>>
Great, thanks.

On Wed, 25 Jul 2007 8:59:21 -0500 (EST), Rosalyn
Doggett<rdoggett@wmata.com> wrote:
> Thank you, I and Elisa will look.
>
> I have been assembling a little more information on the Florida Avenue
> properties and will get it to you in roughly an hour.
>
> >>> <pam.dubois@bolansmart.com> 07/25/07 9:56 AM >>>
>
> Hi Roz,
>
> Sorry for the delay in getting this to you but more attention to the
cash
> flows was required. See attached and call us with any questions.
Thanks,
>
> Pam
>

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005154

Supplemental Information Florida Avenue EOI's 7/25/07

1 Banneker
-
2.Donatelli
-
3.Lakritz Adler
- lease payment would not start until 2011 per proposal (this is a correction to the table)
- development for Parcel 1 would be 4,400 sf, no theater beneath (theater is on Parcel 2)

4.Metropolis
-
5.Moddie Turay
- the $8,661,000 sf proposal is based on a successful PUD application
-states offer is $50/FAR sf

6.P N Hoffman
-
7.SED Center
-
8.Symmetry
- offering $15/sf for "yield" over 110,000 sf

9.Trammell Crow Company
- offer is 25% escalation after year 21 and CPI increase thereafter

Uptown Arts Overlay
Can get up to 4.5 (as opposed to 4.0 which can be achieved with residential and 50% ground floor retail/arts) with bonus for certain types of retail, a theater, or affordable housing (as defined in Inclusionary Zoning orders of May 18, 2006 and Feb 12, 2007 for Uptown Arts and which requires 8% set aside for C-2-B matter of right or 50% inclusionary zoning bonus density whichever is greater)

Howard Parcel = @ 20,000 sf

Florida Avenue Expressions of Interest Summary
Bolan Smart Associates
July 2007

Common Assumptions

1. If bidding on all three parcels, assume as one transaction.
2. Timing / Schedule: matter-of-right developments assume to close in FY09 and PUD developments in FY10.
3. Minimum development requirements should maximize the 4.5 Matter of Right FAR including 0.5 FAR of affordable housing for the three parcels totaling 130,014 square feet.
4. PUD development proposals should maximize the 6.0 FAR for the three parcels totaling 173,352 square feet. (Note: Same discount rates have been applied despite higher density scenarios that may be speculative.)
5. Based on FY08 tax assessed values, the value ranges from $60-80 per FAR based on the 3.5 to 4.5 FAR by right development possibilities (actual will vary based on what densities are achieved and deal structure proposed).
6. WMATA discount rate of 5.73% is used for NPV calculations using FY09 closing date at starting point.
7. Please note that this analysis is based on information conveyed to us by WMATA. Bolan Smart did not review the actual submitted bidder EOIs.

Donatelli (see BSA Table 1)

1. Sale assumed at closing in FY09 for all three parcels based on FY08 proposed tax assessment values totaling $7,947,280. At matter of right development of 4.5 FAR or 130,014 square feet, price equates to approximately $61 per FAR (NPV of $7,947,280).

Metropolis (see BSA Table 1)

1. Sale assumed at closing in FY09 based on 4.5 FAR approximating 129,924 sf (130 dwelling units, 12,000 sf retail) resulting in a NPV of $12,992,400 equating to almost $100 per FAR.

Banneker (see BSA Table 1)

1. 99-year lease based on a 4.5 FAR of 128,102 sf (104 dwelling units, 11,757 sf retail, below grade theater on Parcel 1 and 43 parking spaces).
2. Predevelopment rent payments of $500,000 commencing after closing in FY09. Base rent stipulated to be based on agreed upon increases (assumed at 2% per annum beginning in FY12). Total NPV of $13,122,380 equates to $102 per FAR.

Lakritz / Adler (see BSA Table 2)

1. Sale or lease. Sale at $60 per FAR for Parcel 2 and $52 per FAR for Parcel 3 over a 4.5 FAR.
2. Lease payments / rent commences in FY11 escalating 20% every 10 years plus a bonus PUD rent of $2.88 and $1.98/ FAR sf over 4.5 FAR. (Note: Not enough information provided to model sale or lease scenarios primarily due to the fact that we couldn't figure out proposed the FAR scenarios and no rent information was provided).

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Moddie Turay (see BSA Table 2)

1. Sale or lease. FAR of 4.5 or 6.0 (128 condos and 24,930 sf retail). Proposed price at $50 per FAR and assuming closing in FY09, the NPV is $8,727,600 resulting in a yield to WMATA of just under $67 per FAR. Option payment in FY08 included in the analysis.
2. Lease payments at 4.5 FAR set at 2.2% of gross income and 1.7% at a 6.0 FAR. Gross income, lease term and escalators not specified. *(Note: Can't have condos under lease scenario.)*

Symmetry (see BSA Table 2)

1. Sale or lease. Sale based on $75 per FAR up to 110,000 sf, thereafter offering a yield of $15 per FAR to WMATA. Based on a 4.5 FAR, NPV is in the $10 million range, or in the margin of $80 per FAR.
2. Lease payments set at 4.7% of the land value escalating at 3%. Based on a 4.5 FAR with 110,000 sf residential and 20,769 sf retail. Assuming a 60-year lease term, the NPV is $12,440,345 equating to $95 per FAR.

PN Hoffman (see BSA Table 3)

1. Sale based slightly more than a 1.0 FAR (comprised of 18,000 sf of office space and 14,000 sf of retail uses assumed for all three parcels) assumed to close in FY09 yields an NPV of $700,000 equates to close to $21 per FAR.

SED Center (see BSA Table 3)

1. Lease based on slightly more than a 3.0 FAR (proposed for Parcel 1 only but analysis assumes inclusion of all three for modeling purposes) with 50% rent commencing in FY09 until construction starts. Base rent set at $43,000 with a 2% escalator. Assuming a 60-year lease term. The NPV equates to approximately $2,585,150 yielding about $28 per FAR.

Trammell Crow (see BSA Table 3)

1. Sale or lease based on a 5.0 FAR of medical office space (PUD process required) so closing / predevelopment rent commences in FY10. Rent set at 7% of land value (assumed FY08 assessments for current land value) beginning in FY10, a 25% bump in year 20 increasing at CPI (assumed at 2%) thereafter. Sale at $8,441,000 yields $57 per FAR to WMATA vs the lease yield of $83 per FAR (NPV of $12,265,807).

Recommendations / Next Steps

1. Send out rejection letters to PN Hoffman and SED Center based on low FAR and offer per FAR of less than $30 and Trammell Crow based on medical office use (non-conforming with the Duke Cultural Destination Plan and Arts Overlay District and possible parking issues).
2. Request more comprehensive proposal submissions from the remaining six bidders incorporating the following parameters into their response as part of other things you may require and/or specifics from the actual EOI:

    a. Purchase or lease of all three parcels unless bidder offer illustrates differentials in parcel values (assuming a WMATA economic advantage and willingness to undertake multiple dispositions).

b. Describe development concept as it relates to the District's Duke Cultural Destination District / ARTS overlay.

c. Submit mindful proposals that maximize the development potential of the sites given the matter-of-right zoning and optimizing density assumptions.

d. Under a lease scenario, clearly illustrate treatment and timing of assumed WMATA cash flows regarding deposits, option fees, predevelopment rent, participation rent and fixed or floating rent commencement dates, etc. over a 60-year lease term.

e. Address parking requirements.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BSA Table 1
Florida Avenue / Shaw - July 2007 Proposals

			1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	16 2024		60 2068		99 2107
Donatelli - sale																						
Revenues																						
Option Fee																						
Predevelopment Rent																						
Purchase Price			$7,947,280																			
Base Rent																						
Total Gross Revenue			$7,947,280																			
WMATA Participation		not applicable																				
Terminal Value		not applicable																				
Cash Flow			$7,947,280																			
NPV	5.73%	discount rate	$7,947,280																			
Metropolis - sale																						
Revenues																						
Option Fee																						
Predevelopment Rent																						
Purchase Price			$12,992,400																			
Base Rent																						
Total Gross Revenue			$12,992,400																			
WMATA Participation		not applicable																				
Terminal Value		not applicable																				
Cash Flow			$12,992,400																			
NPV	5.73%	discount rate	$12,992,400																			
Banneker - lease																						
Revenues																						
Option Fee																						
Predevelopment Rent			$500,000	$500,000	$500,000																	
Purchase Price																						
Base Rent	2.00%	term rent escalator				$510,000	$520,200	$530,604	$541,216	$552,040	$563,081	$574,343	$585,830	$597,546	$609,497	$621,687	$634,121	$646,803		$1,545,894		$3,346,467
Total Gross Revenue			$500,000	$500,000	$500,000	$510,000	$520,200	$530,604	$541,216	$552,040	$563,081	$574,343	$585,830	$597,546	$609,497	$621,687	$634,121	$646,803		$1,545,894		$3,346,467
Base Rent Adjustment																						
Implied Initial Land Value	$7,947,280	FY08 tax assessment																				
	3.00%	annual compounded increase																				
Terminal Value	$143,968,187	on land only																				$143,968,187
Cash Flow			$500,000	$500,000	$500,000	$510,000	$520,200	$530,604	$541,216	$552,040	$563,081	$574,343	$585,830	$597,546	$609,497	$621,687	$634,121	$646,803		$1,545,894		$3,346,467
NPV																						
Base Rent	5.73%	discount rate	$12,543,429																			
With Residual	5.73%	discount rate	$13,122,380																			

Bolan Smart / 8/1/2007

WMATA-INV 005159

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BSA Table 2
Florida Avenue / Shaw - July 2007 Proposals

			1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	16 2024	60 2068
Lakritz Adler - sale and lease																			
Revenues																			
Option Fee																			
Predevelopment Rent																			
Purchase Price																			
Base Rent																			
Total Gross Revenue																			
WMATA Participation																			
Terminal Value																			
Cash Flow																			
NPV	5.73%	discount rate																	
Moddie Turay - sale																			
Revenues																			
Option Fee			$60,000																
Predevelopment Rent																			
Purchase Price			$8,667,600																
Base Rent																			
Total Gross Revenue			$8,667,600																
WMATA Participation		not applicable																	
Terminal Value		not applicable																	
Cash Flow			$8,667,600																
NPV	5.73%	discount rate	$8,727,600																
Symmetry - lease																			
Revenues																			
Option Fee																			
Predevelopment Rent			$373,522	$384,728															
Purchase Price																			
Base Rent	3.00%	term rent escalator			$396,270	$408,158	$420,402	$433,015	$446,005	$459,385	$473,167	$487,362	$501,983	$517,042	$532,553	$548,530	$564,986	$581,935	$2,136,548
Total Gross Revenue			$373,522	$384,728	$396,270	$408,158	$420,402	$433,015	$446,005	$459,385	$473,167	$487,362	$501,983	$517,042	$532,553	$548,530	$564,986	$581,935	$2,136,548
Base Rent Adjustment																			
Implied Initial Land Value	$7,947,280	FY08 tax assessment																	
	3.00%	annual compounded increase																	
Terminal Value	$45,458,466	on land only																	$45,458,466
Cash Flow			$373,522	$384,728	$396,270	$408,158	$420,402	$433,015	$446,005	$459,385	$473,167	$487,362	$501,983	$517,042	$532,553	$548,530	$564,986	$581,935	$2,136,548
NPV																			
Base Rent	5.73%	discount rate	$10,834,437																
With Residual	5.73%	discount rate	$12,440,345																

WMATA-INV 005160

FOIA CONFIEDENTIAL TREATMENT REQUESTED

BSA Table 3
Florida Avenue / Shaw - July 2007 Proposals

		1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	16 2024	60 2068
PN Hoffman - sale																		
Revenues																		
Option Fee																		
Predevelopment Rent																		
Purchase Price																		
Base Rent		$700,000																
Total Gross Revenue		$700,000																
WMATA Participation	not applicable																	
Terminal Value	not applicable																	
Cash Flow		$700,000																
NPV	5.73% discount rate	$700,000																
SED Center - lease																		
Revenues																		
Option Fee																		
Predevelopment Rent		$21,500	$21,930															
Purchase Price																		
Base Rent	2.00% term rent escalator			$44,737	$45,632	$46,545	$47,475	$48,425	$49,393	$50,381	$51,389	$52,417	$53,465	$54,534	$55,625	$56,738	$57,872	$138,318
Total Gross Revenue		$21,500	$21,930	$44,737	$45,632	$46,545	$47,475	$48,425	$49,393	$50,381	$51,389	$52,417	$53,465	$54,534	$55,625	$56,738	$57,872	$138,318
Implied Initial Land Value	$7,947,280 FY08 assessed values 3.00% annual compounded increase																	
Terminal Value	$45,458,466 on land only																	$45,458,466
Cash Flow		$21,500	$21,930	$44,737	$45,632	$46,545	$47,475	$48,425	$49,393	$50,381	$51,389	$52,417	$53,465	$54,534	$55,625	$56,738	$57,872	$138,318
NPV																		
with base rent	5.73% discount rate	$979,241																
with residual	5.73% discount rate	$2,585,150																
Trammell Crow - lease																		
Revenues																		
Option Fee																		
Predevelopment Rent																		
Purchase Price																		
Base Rent	2.00% term rent escalator	$0	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$1,505,335
Total Gross Revenue		$0	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$1,505,335
Base Rent Adjustment																		
Implied Initial Land Value	$7,947,280 FY08 assessed values 3.00% annual compounded increase																	
Terminal Value	$45,458,466 on land only																	$45,458,466
Cash Flow		$0	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$556,310	$1,505,335
NPV																		
Base Rent	5.73% discount rate	$10,659,698																
With Residual	5.73% discount rate	$12,265,807																

WMATA-INV 005161

Pam. Eric 7/23

Pam says FY 2008 assessments are much higher

	Dev Selection	Agrmt Execution	MOR	PUD									
	Oct-07	2008 1 April	2009	2010	2011								
Banneker lease			$500,000	$500,000	$500,000			"with agreed upon increases"					
Donatelli sale			$6,173,000					no offer made; uses assessment or third					
								party appraisal; assessment used here					
Lakritz Adler sale			$6,675,000					w.conditions $60/FARsf (P2) and $52(P3) over 4.5					
Lakritz Adler lease			$283,400					20% esc.every 10 yrs. Bonus PUD rent $2.88&$1.98/sf					FAR
Metropolis sale			$12,992,400					4.5 FAR; no rezoning i; schedule not given					
								closing post bldg permits					
Moddie Turay sale			$6,496,200	or $8,661,600	successful PUD			based on 4.5 or 6 FAR					
lease		$60,000	$60,000	$60,000	(no scheme given)			at 4.5FAR, 2.2% gross income, at	at 6 FAR, 1.7%				
PN Hoffman sale			$700,000										
SED Center lease		$21,125	$42,250	$43,015.00	$43,957			2% escalation per year					
Symmetry sale			$7,500,000					$75 "per FAR sf of yield", $15/sf above 110,000sf					
lease			$350,000	360,500	$371,315			3% esc.	lease = 4.7%land value				
Trammell Crow Co.				$8,441,000									
lease				$590,870				7% land value; 25%escalation year21, CPI					

Assumptions on Value

Parcel 1 3800 sf x 6FAR x $95 = $2,166,000

Parcel 2 8600 sf x 6FAR x $95 =$4,902,000

Parcel 3 16,472sf x6FAR x$95 =$9,389,000 WMATA Appraisal = $6,260,000 based on 4 FAR for parcel 3 only

total 28,872 sf total $14,557,000 x 80% = $11,645,000

at 4.5 FAR can have max. 129,924 sf. At 6 FAR can have max. 173,232 sf

Assumptions on Zoning & Building Permits

C-2-B Arts Overlay permits 3.5 FAR (1.5 nonres.), 4.0 FAR with 3.0 res, 4.5 FAR with ~~5 res aff. Hsg.~~ 6.0 an FAR and 90' with PUD PUD and 4.0 or more res.

Assume 18 mo. for rezoning and 12 mo for bldg permit after agreement execution ,Closing after permits, HPRB review needed

Assume all payments at end of year

Current assessed value: parcel 1 $1,052,000, parcel 2 $2,389,000, parcel 3 $2,732,000 total $6,173,000

(1) Arts Overlay

(2) All PUD's

((3) Size of Howard site)

(4) Inc Zoning %

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

	Dev Selection	Agrmt Execution					
	Oct-07	2008 1 April	2009	2010	2011		
Banneker lease			$500,000	$500,000	$500,000		"with agreed upon increases"
Donatelli sale			$6,173,000				no offer made; uses assessment or third
							party appraisal; assessment used here
Lakritz Adler sale			$6,675,000				w.conditions $60/FARsf (P2) and $52(P3) over 4.5
Lakritz Adler lease			$283,400				20% esc.every 10 yrs. Bonus PUD rent $2.88&$1.98/sf FAR
Metropolis sale			$12,992,400				4.5 FAR; no rezoning i; schedule not given
							closing post bldg permits
Moddie Turay sale			$6,496,200	or $8,661,600			based on 4.5 or 6 FAR
lease		$60,000	$60,000	$60,000			at 4.5FAR, 2.2% gross income, at at 6 FAR, 1.7%
PN Hoffman sale			$700,000				
SED Center lease		$21,125	$42,250	$43,015.00	$43,957		2% escalation per year
Symmetry sale			$7,500,000				$75 "per FAR sf of yield", $15/sf above 110,000 sf combined
lease			$350,000	360,500	$371,315		3% esc. lease = 4.7%land value
Trammell Crow Co.				$8,441,000			
lease				$590,870			7% land value; 25%escalation year21, CPI
Assumptions on Value							
Parcel 1 3800 sf x 6FAR x $95 = $2,166,000							
Parcel 2 8600 sf x 6FAR x $95 =$4,902,000							
Parcel 3 16,472sf x6FAR x$95 =$9,389,000 WMATA			Appraisal = $6,260,000 based on 4				FAR for parcel 3 only
total 28,872 sf	total $14,557,000 x 80% = $11,645,000						x 4.5
	at 4.5 FAR can	have max. 129,924 sf. At 6 FAR		can have max. 173,232 sf			
Assumptions on Zoning & Building Permits							
C-2-B Arts Overlay permits 3.5 FAR (1.5 nonres.), 4.0 FAR with 3.0 res, 4.5 FAR with .5 res aff. Hsg., 6.0 an						FAR and 90' with PUD	PUD and 4.0 or more res.
	Assume 18 mo.	for rezoning and	12 mo for bldg permit after agreement execution			,Closing after permits,	HPRB review needed
Assume all payments at end of year							
Current assessed value: parcel 1 $1,052,000, parcel 2 $2,389,000, parcel 3 $2,732,000 total $6,173,000							

WMATA-INV 005163

FL AVE PROPERTIES EOI RESPONSES.

Team	Res or Hotel	Office sf	Retail sf	Arts &/or Education	Parking
Banneker 4.5 FAR 99 yr lease	104 du 116,345 sf		11,757 s	Below grade theater Parcel 1	43
Donatelli Sale or lease Parcel 3 only but could do all 3	not given		ground floor		"underground"
Lakritz Adler Sale or lease; assembly with Parcel 2 Neighbor (11,327 sf) or not; 4.5 or 6 FAR	Parcel 3 96,000 sf Springhill Suites Hotel w. PUD larger hotel with assembly with Howard U site next door	24,500 5 story at 4.5 FAR 47,900 w. assembly & 4.5 FAR 96,000 w. assembly and PUD all Parcel 2	5,000 Parcel 2 11,600 Parcel 2 8,600 Parcel 2 4,400 Parcel 1 8,000 Parcel 3	~~Below ground Warehouse Theater Parcel 1~~ 30,000 sf arts charter sch. Parcel 2 30,000 sf arts charter sch& 3,000 sf Community (Warehouse) Theater Parcel 2	Parcel 1 - 0 Parcel 2 - 9 or 44 Parcel 3- 34
Metropolis 4.5 FAR sale	117,924 sf , @130 du		12,000		underground Parcel 3
Moddie Turay 4.5 FAR ; would like to assemble Sale or lease	128 condos		24,930		not addressed
P N Hoffman @1 FAR		18,000	14,000		27
SED Center Parcel 1 only, slightly over 3 FAR				12,500 sf total ground floor art gallery educ. center & office above	not addressed
Symmetry 4.0 Based on price or 4.5 FAR Sale or Lease; would like to assemble	110,000 sf or less		20,769		not addressed
Trammell Crow Co. @ 5 FAR sale or lease need to agree to 4 FAR		148,000			not addressed

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FL AVE PROPERTIES EOI RESPONSES.

Team	Res or Hotel	Office sf	Retail sf	Arts &/or Education	Parking
Banneker 4.5 FAR 99 yr lease	104 du 116,345 sf		11,757 s	Below grade theater Parcel 1	43
Donatelli Sale or lease Parcel 3 only but could do all 3	not given		ground floor		"underground"
Lakritz Adler Sale or lease; assembly with Parcel 2 Neighbor (11,327 sf) or not; 4.5 or 6 FAR	Parcel 3 96,000 sf Springhill Suites Hotel w. PUD larger hotel with assembly with Howard U site next door	24,500 5 story at 4.5 FAR 47,900 w. assembly & 4.5 FAR 96,000 w. assembly and PUD all Parcel 2	5,000 Parcel 2 11,600 Parcel 2 8,600 Parcel 2 4,400 Parcel 1 8,000 Parcel 3	Below ground Warehouse Theater Parcel 1 30,000 sf arts charter sch. Parcel 2 30,000 sf arts charter sch& 3,000 sf Community Theater Parcel 2	Parcel 1 - 0 Parcel 2 - 9 or 44 Parcel 3- 34
Metropolis 4.5 FAR sale	117,924 sf , @130 du		12,000		underground Parcel 3
Moddie Turay 4.5 FAR ; would like to assemble Sale or lease	128 condos		24,930		not addressed
P N Hoffman @1 FAR		18,000	14,000		27
SED Center Parcel 1 only, slightly over 3 FAR				12,500 sf total ground floor art gallery educ. center & office above	not addressed
Symmetry 4.0 Based on price or 4.5 FAR Sale or Lease; would like to assemble	110,000 sf or less		20,769		not addressed
Trammell Crow Co. @ 5 FAR sale or lease		148,000			not addressed

WMATA-INV 005165

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FL AVE PROPERTIES EOI RESPONSES.

Team	Res or Hotel	Office sf	Retail sf	Arts &/or Education	Parking
Banneker 4.5 FAR 99 yr lease	104 du 116,345 sf		11,757 s	Below grade theater Parcel 1	43
Donatelli Sale or lease Parcel 3 only but could do all 3	not given		ground floor		"underground"
Lakritz Adler Sale or lease; assembly with Parcel 2 Neighbor (11,327 sf) or not; 4.5 or 6 FAR	Parcel 3 96,000 sf Springhill Suites Hotel w. PUD larger hotel with assembly with Howard U site next door	24,500 5 story at 4.5 FAR 47,900 w. assembly & 4.5 FAR 96,000 w. assembly and PUD all Parcel 2	5,000 Parcel 2 11,600 Parcel 2 8,600 Parcel 2 4,400 Parcel 1 8,000 Parcel 3	Below ground Warehouse Theater Parcel 1 30,000 sf arts charter sch. Parcel 2 30,000 sf arts charter sch& 3,000 sf Community Theater Parcel 2	Parcel 1 - 0 Parcel 2 - 9 or 44 Parcel 3- 34
Metropolis 4.5 FAR sale	117,924 sf., @130 du		12,000		underground Parcel 3
Moddie Turay 4.5 FAR ; would like to assemble Sale or lease	128 condos		24,930		not addressed
P N Hoffman @1 FAR		18,000	14,000		27
SED Center Parcel 1 only, slightly over 3 FAR				12,500 sf total ground floor art gallery educ. center & office above	not addressed
Symmetry 4.0 Based on price or 4.5 FAR Sale or Lease; would like to assemble	110,000 sf or less		20,769		not addressed
Trammell Crow Co. @ 5 FAR sale or lease		148,000			not addressed

WMATA-INV 005166

FOIA CONFIEDENTIAL TREATMENT REQUESTED

$/FARsf

	Dev Selection Oct-07	Agrmt Execution 2008 1 April	~~Zoning PUD~~	~~Bldg Permits~~ 2009	2010	~~Closing~~ 2011	
Banneker lease				$500,000	$500,000	$500,000	"with agreed upon increases"
Donatelli							no offer made; uses assessment or third party appraisal; assessment used here
$52 Lakritz Adler							
$100 Metropolis sale				$12,992,400			4.5 FAR; no rezoning i ; schedule not given closing post bldg permits
$50 Moddie Turay sale sale with PUD							
$130 PN Hoffman sale				$700,000			
$65 SED Center lease			$21,125	$42,250	$43,015	$43,957	2% escalation per year
$75 Symmetry ~~Sale~~ lease				$7,500,000 $350,000	360,500	$371,315	$75 "per FAR sf of yield" 3% esc. lease = 4.7%land value
$57 Trammell Crow ~~Co.~~ Sale lease					$8,441,000 $590,870		7% land value; 25%escalation year 7, CPI thereafter

Assumptions on Value
Parcel 1 3800 sf x 6FAR x $95 = $2,166,000
Parcel 2 8600 sf x 6FAR x $95 =$4,902,000
Parcel 3 16,472sf x6FAR x$95 =$9,389,040 Appraisal = $6,260,000 based on 4FAR
total 28,872 sf total $14,557,000 x 80% = $11,645,000

Jmm 4.5 FAR = 129,924 - ground = 22% x 10% = 2.2
6.0 FAR = 173,232 - ground = 16.7% x 10% = 1.7,

Assumptions on Zoning & Building Permits
C-2-B Arts Overlay permits 3.5 FAR (1.5 nonres.), 4.0 FAR with 3.0 res, 4.5 FAR with .5 res aff. Hsg., 6.0 an ; 6.0 FAR and 90' with PUD and 4.0 or more res.
Assume 18 mo. for rezoning and 12 mo for bldg permit after agreement execution
Assume all payments at end of year

Assessment: 1
2
3

WMATA-INV 005167

From: "Gardner, Geraldine (OP)" <geraldine.gardner@dc.gov>
To: "Rosalyn Doggett" <rdoggett@wmata.com>
Date: 10/24/2007 10:45:10 AM
Subject: RE: Tradeoff negotiations

Thanks Rosalyn - this is very interesting.

By the way, did you need anything from our office about the 7th/U St. disposition? Only two firms, Moddie Turay and LaKritz/Adler, came in to discuss their proposals with OP. If you need any information, please let me know.

Also on Brookland, we are scoping a feasibility study for the decking now. The plan is paused until we have a more realistic assessment of the decking. We're hoping to have this analysis complete in 6-8 weeks.

Thanks
Geraldine

Geraldine I. Gardner
Associate Director for Neighborhood Planning
DC Office of Planning
801 N. Capitol St. NE, 4th Fl.
Washington, DC 20002
*Note New Phone (202) 442- 8970 (P)
(202) 442-7638 (F)
Geraldine.Gardner@dc.gov
P Please consider the environment before printing this e-mail

-----Original Message-----
From: Rosalyn Doggett [mailto:rdoggett@wmata.com]
Sent: Monday, October 22, 2007 1:29 PM
To: emccarthy@nixonpeabody.com; Cheryl Cort
Cc: Gardner, Geraldine (OP)
Subject: Tradeoff negotiations

This is the presentation that I mentioned at our NCAC/APA Awards Committee meeting on Saturday at OP.

I thought that it was effective in explaining in simple terms - for Braddock Road (or, Geraldine, for Brookland, e.g.)-- the tradeoffs in negotiating development projects and the fact that project economics cannot yield infinite community benefits

From: "Woody, Derrick (EOM)" <derrick.woody@dc.gov>
To: <rdoggett@wmata.com>
Date: 10/24/2007 12:42:53 PM
Subject: Re: Florida Avenue Proposals

Here goes:

Derrick Lanardo Woody
Coordinator-Great Streets Initiative
Office of the Deputy Mayor for
Planning and Economic Development
1350 Pennsylvania Avenue NW
Suite 317
Washington, DC 20004
derrick.woody@dc.gov
202.727.2981 direct
202.727.6365 main
202.286.8814 cell
202.727.6703 fax

----- Original Message -----
From: Rosalyn Doggett <rdoggett@wmata.com>
To: Woody, Derrick (EOM)
Sent: Wed Oct 24 12:39:30 2007
Subject: Florida Avenue Proposals

I would like to send you the three proposals we received on Florida Ave.
Can you send me your address?

Thanks, Roz

Maria -

Please also have a set delivered to Derrick

Thanks

Roz

From: "Woody, Derrick (EOM)" <derrick.woody@dc.gov>
To: <rdoggett@wmata.com>
Date: 11/16/2007 1:18:47 PM
Subject: Re: Shaw Parcels - DMPED Comments

Thanks, Ros. I recall that our concern about the Trammell Crow proposal then was the direct association with Howard University offices. That is significantly watered down in the LaKritz proposal and dare I say unlikely to be an HU campus extension.

Derrick Lanardo Woody
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1350 Pennsylvania Avenue NW
Suite 317
Washington, DC 20004
derrick.woody@dc.gov
202.727.2981 direct
202.727.6365 main
202.286.8814 cell
202.727.6703 fax

----- Original Message -----
From: Rosalyn Doggett <rdoggett@wmata.com>
To: Woody, Derrick (EOM)
Cc: Gardner, Geraldine (OP); Bolden, Tarek (OP)
Sent: Fri Nov 16 10:49:11 2007
Subject: Re: Shaw Parcels - DMPED Comments

Thanks, Derrick. We met a little earlier with OP comments in hand and agreed that we need to do a little more due diligence. This gives time to pass your comments on to the evaluation team.

I cannot help but remember, though, that we rejected the Trammell Crow proposal earlier this year on your advice in part because it had office! However, I understand that that was then and this is now....

>>> "Woody, Derrick (EOM)" <derrick.woody@dc.gov> 11/16/2007 10:19 AM >>>
Ros,

Happy Friday! I think you stated something about needing our comments on the BAFO submissions for the three proposals this morning or today. In the interest of time, given a crowded schedule today, I am forwarding some of DMPED's observations and concerns directly to you and including OP staff so that they can incorporate the following into the memo they are preparing on our joint behalf:

A. The LaKritz Adler proposal substantially exceeds the others in content, preparedness, and potential economic and community impact. The projected number of jobs, new daytime and nighttime customers, ridership counts, and construction period and post construction tax benefits are carefully quantified and represent significant public returns. Additionally, the proposals detailed understanding of the subsurface

construction needs above a metro tunnel give DMPED a greater confidence that the team may be able to pull the project off without a public subsidy as indicated in their proposal. We will be continuously mindful of this assertion. Their proposal is bolstered by their contract for the adjacent 8th Street NW parcel and its inclusion in their proposal. LaKritz should, however, be held to a strict "do or die" performance schedule in which specific milestones must be reached (within reason) by specific dates or the terms renegotiated or penalties begin to apply. The District is interest strongly in seeing development finally happen on these strategically located parcels. As for the discussion about transfer of the arts uses to other locations, DMPED strongly advises that this transfer not happen as the District is interested in filling in "the gap" between the Howard Theatre and the Lincoln Theatre with not just retail but other arts, entertainment and cultural uses that help to enliven the attractiveness of the area as a destination for a diverse cross section of stakeholders. LaKritz, as with any other selected, should also be required to enter into a First Source Agreement with the Department of Employment Services (DOES) to ensure that District residents are offered positions as a priority throughout all phases of the development cycle and a Certified Business Enterprise Agreement (CBE) with the Department of Small and Local Business Development (DSLBD) to ensure sufficient participation and monitoring of local enterprise participation. Architecturally, the District is not interested in a "K Street - MidTown" aesthetic. While CORE is a reputable firm, the portfolio samples have left a great deal to be desired aesthetically. LaKritz should significantly augment its team with local architectural designers with a more eclectic and exciting design portfolio that could be expanded at this high visibility location. The District is happy to recommend several from which LaKritz might select.

B. If LaKritz does not become the front runner in this, the Banneker - Donatelli proposal is the second strongest. There is, however, a stronger preference for office uses instead of housing on these sites given the volume of housing that has been and is yet to be produced in this neighborhood. Their partnership with Donatelli builds some degree of confidence about their understanding of above Metro construction, but it was not fully elaborated upon to substantiate that the project manager-Banneker-does. This is not insurmountable, but it would have helped to under their knowledge level more. It does raise some concerns about potential public subsidies which may be requested to cover the layered costs of affordable housing, cultural uses, structured parking and local businesses above a metro tunnel. No request have, however, been made to date.

C. The Moddie Toray proposal, frankly, fails to inspire and lacks relevant information at the level of the above two. I recommend against this particular proposal for these sites.

If you have questions, please contact me for follow up. I am available

at 202.286.8814 for the remainder of the morning.

Derrick Lanardo Woody

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EMAIL: derrick.woody@dc.gov <mailto:derrick.woody@dc.gov>

More information: www.greatstreets.dc.gov

or www.dcbiz.dc.gov <http://www.dcbiz.dc.gov>

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CC: "Gardner, Geraldine (OP)" <geraldine.gardner@dc.gov>, "Bolden, Tarek (OP)" <Tarek.Bolden@dc.gov>

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

MEMORANDUM

TO: Rosalyn Doggett, Senior Development Specialist, WMATA

CC: Tarek Bolden, Ward 1 Planner, OP
Travis Parker, Development Review Specialist, OP

FROM: Geraldine Gardner, Associate Director, OP

DATE: November 15, 2007

SUBJECT: OP Comments on the Florida Ave. Parcel Proposals

The following are comments based upon the proposals sent to this office by WMATA for review. The comments are based on a preliminary analysis of the information provided by the development teams. Not all proposals provided sufficient information to evaluate them for zoning and planning consistency. We have pointed out where the proposals lack information or where clarification is needed. We hope this memo provides the evaluation team with an objective review of the information presented. Should you have any comments or questions, please contact me at (202)442-8970.

PROPOSAL #1: The Jazz at Florida Avenue
Submitted by: Banneker Ventures / Dontelli Development

OP Comments:
Note: This development team did not meet with OP staff regarding this proposal prior to its submission to WMATA.

Zoning & Plan Consistency

- This proposal appears to meet zoning requirements except asking for zoning relief for parking on parcel 3.
- Development type and density conforms to the DUKE and D.C. Comprehensive plans. OP is supportive of by right development at these sites.
- The proposal takes advantage of the bonus density allowed in ARTS overlay district and provides, in concept, appropriate types of arts uses (Jazz themed restaurant and Robeson Theatrical Museum). There were few details in the proposal regarding the anticipated owners or proprietors of these uses, which raises questions of feasibility.
- ~~The DUKE~~ plan envisions combining Parcel 3 with the CVS site, which is not anticipated in this proposal.
- The development timeline does not take into consideration the ~~Historic~~ Preservation Review Board or the BZA approval process (parking relief) that would be required.

Proposal Concept & Design

- OP has concerns regarding the feasibility of adding over 100 new units of rental housing to this market. The market analysis stated that the high number of condos in the area has left a void in the rental housing market in this area. Our office has recently seen a number of completed condominium projects being converted to "luxury rentals" due to the slowdown in the condo market. That trend plus the already projected pipeline of 1,687 Class A units of rental housing in

801 North Capitol Street, N.E., Suite 4000, Washington, D.C. 20002 202-442-7600, fax 202-442-7637 or 7638

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005173

the ward, may suggest the market is being saturated with rental housing.
  - What is the condominium vacancy rate in this area?
  - They listed 6 nearby rental projects for comparison, but only supplied occupancy rates for two of them. How many vacancies are there in the other rental buildings?
- We have concerns regarding the surface parking spaces off the alley entrance between 9th and 8th streets. The entrance to the alley surface parking fronts onto Florida Avenue and the increased traffic would hinder pedestrian flow along Florida Avenue.
- The District Department of Transportation (DDOT) may have concerns regarding the proximity of the garage entrance for parcel 2 to the intersection with Florida Avenue. It was not clear from the proposal if the development team discussed the project with DDOT prior to submission.
- **The concept designs provide a similar façade treatment for all three buildings. OP would like to see more differentiation in the design approach and reference to the historic character of the neighborhood.**

Community Support

- The development team includes letters of support from a civic association and an ANC commissioner from ANC1B, SMD, as well as a petition signed by community residents. We believe they have demonstrated broad community support in Ward 1.

Economic Benefit to the District

- The developer is a certified business enterprise in the District
- It appears from the proposal that no public subsidies are being requested at this time

PROPOSAL #2: Lakritz / Adler Proposal
Submitted by: Lakritz/Adler Development

Comments:

Zoning & Plan Consistency

- The Proposal appears to meet zoning requirements without asking for zoning relief except for parking on parcels 1 & 3.
- Development type and density conforms to DUKE and Comprehensive Plans. OP is supportive of by right development at these sites.
- This proposal takes advantage of bonus density allowed in the ARTS overlay district and the proposed uses are consistent with the use requirements (Warehouse Theater).
- The Lakritz/Adler proposal has a strong grasp of TDR requirements and discussion of TDR purchase
- The development timeline takes into consideration the Historic Preservation Review Board and BZA approval process.

Proposal Concept & Design

- The opportunity to combine the 1920 8th street site with Parcel 2 creates a significant development opportunity, which is both desired by the community and envisioned in the DUKE plan. The proposal also provides an alternate plan to combine Parcel 3 with CVS site as specifically called for in DUKE plan.
- This proposal would create more daytime pedestrian traffic for the area through the office use, which is consistent with the Office of Planning's goals for the Florida Ave/U Street corridor.
- The concept designs provide a similar façade treatment for all three buildings. OP would like to see more differentiation in the design approach and reference to the historic character of the neighborhood.
- **The proposal shows loading for Parcel 3 from Florida Avenue, this is not recommended due to pedestrian and vehicular traffic concerns.**

FOIA CONFIEDENTIAL TREATMENT REQUESTED

- As part of this proposal is the proposed re-location of the Warehouse Theater into Parcel 1. Will the office space parking be offered after-hours for the patrons of the theater? If not, there will be a concern about adequate off-street parking.
- Estimated time from Development Agreement approval to completion/Lease up is approx. 48 months. While this timeline is longer than the other two teams, this team did take into consideration the regulatory approvals that will be necessary.

Community Support

- The development team includes a summary of meetings with community leaders, but no direct letters of support. One of the ANC commissioners referenced in the meeting summaries wrote a letter of support for a competing proposal. The development team has a strong track record of community engagement and involvement in their predevelopment and development phase. It is unfortunate that they were unable to secure any letters of support from key leaders.

Economic Benefit to the District

- The developer is a certified business enterprise in the District
- It appears from the proposal that no public subsidies are being requested at this time
- This project is estimating one time fees of approx. $4,094,000, and annual tax revenue of $4,521,000.
- This proposal is estimating the creation of 237 local construction/development jobs and 293 permanent local jobs

PROPOSAL #3: Renaissance Row
Submitted by: Moddie Turay Co. / Clark Enterprises

Comments:

Zoning & Plan Consistency

- The Proposal did not provide a detailed zoning review, although it appears to meet zoning requirements without need for zoning relief. It was not clear from the proposal if they are meeting the parking requirement for the proposed uses.
- Development type and density conforms to DUKE and Comprehensive Plans. OP is supportive of by right development at these sites.
- The development team's proposal for providing arts use or purchasing TDRs to achieve the bonus density is unclear.
- The DUKE plan envisions combining Parcel 3 with CVS site, this is not anticipated in this proposal.
- We question the market analysis and demand to support an 130 additional residential units in this market area. Details on the housing tenure type and income mix of units were not included. Also it is unclear exactly how many units will be created through the development.
- The development timeline does not take into consideration the Historic Preservation Review Board or the BZA approval process (if applicable for parking relief) that would be required.

Proposal Concept & Design

- The proposal maximizes Florida Avenue frontage and activates it with ground floor retail, which is consistent with the goals of the DUKE plan.
- The proposal combines Parcel 1 & 2 with another parcel to the south. This design requires closure of the north/south alley in Square 393. This closure is not discussed in the proposal and has not been reviewed or approved by this office. Public alley closures also require Council approval, which does not appear to be factored into their development timeline.
- The District Department of Transportation (DDOT) may have concerns regarding the proximity of the garage entrance for parcel 2 to the intersection with Florida Avenue. It was not clear from the proposal if the development team discussed the project with DDOT prior to submission.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

- The concept design is very modern, but retails architectural details that reference the historic character of the area. The Historic Preservation Office will be keenly interested in ensuring that the design meets the spirit of the historic district.

Community Support

- The development team includes letters of support from an ANC 2C commissioner and the Shaw Main Streets organization.

Economic Benefit to the District

- The developer is a certified business enterprise in the District
- It appears from the proposal that no public subsidies are being requested at this time
- The estimated tax and one time fee revenue generated is not clear in the proposal
- This proposal is estimating the creation of approx. 250 new jobs.
- Estimated time from Development Agreement approval to completion/Lease up is approx. 36 months

From: "Woody, Derrick (EOM)" <derrick.woody@dc.gov>
To: "Rosalyn Doggett" <rdoggett@wmata.com>, "Gardner, Geraldine (OP)" <geraldine.gardner@dc.gov>
Date: 12/11/2007 4:54:09 PM
Subject: RE: FI Ave Interviews

One did express a desire for affordable housing dollars through HFA, but my point was that they all largely claimed limited or no reliance on public subsidies. They should be held to that. Careful breaking down and analysis of their proformas and sources and uses may reveal discrepancies or gaps that we have not agreed to fill.

Derrick Lanardo Woody
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<http://www.greatstreets.dc.gov/>

From: Rosalyn Doggett [mailto:rdoggett@wmata.com]
Sent: Tue 12/11/2007 4:47 PM
To: Woody, Derrick (EOM); Gardner, Geraldine (OP)
Cc: Joel R. Washington
Subject: RE: FI Ave Interviews

Derrick, I may be dense but what do you mean by saying that the viability depends heavily on public subsidies. You expect there to be subsidies? They have expressed that thought to you?

>>> "Woody, Derrick (EOM)" <derrick.woody@dc.gov> 12/11/2007 4:32 PM >>>
We've met with all of them and they should understand our thoughts on their proposals. Our comments were forward to you all earlier.

We were not privy to the Sources and Uses of funds for their development projects, but we certainly hope that the viability of their proposed projects depends heavily on public subsidies that are not yet committed to their projects. Ample due diligence should occur focused on this particular issue.

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<http://www.greatstreets.dc.gov/>

From: Rosalyn Doggett [mailto:rdoggett@wmata.com]
Sent: Tue 12/11/2007 3:55 PM

To: Woody, Derrick (EOM); Gardner, Geraldine (OP)
Cc: Joel R. Washington
Subject: FI Ave Interviews

We felt it useful to meet the proposal teams in person since we are not familiar with many of the principals and team members and there are items to clarify.

We have scheduled interviews on 1) technical and 2) economic proposals as follows:

Dec 17 10:30 a.m. Banneker Ventures
Dec 17 1 p.m. Moddie Turay
Dec 19 2 p.m Lakritz Adler

You are invited to attend the technical sessions if you wish to. I realize that OP by now has met with each team and may not wish to spend additional time. The meetings will be in upstairs rooms, and staff will need to escort you. So please let me know if you or a representative will attend so we can be on the lookout.

Finally, if there is someone in DDOT whom I should also invite, please let me know.

Thanks.

CC: "Joel R. Washington" <jrwashington@wmata.com>

From: "Woody, Derrick (EOM)" <derrick.woody@dc.gov>
To: "Rosalyn Doggett" <rdoggett@wmata.com>, "Gardner, Geraldine (OP)" <geraldine.gardner@dc.gov>
Date: 12/14/2007 4:50:07 PM
Subject: RE: FI Ave Interviews

Rosalyn:

I may be at these interviews as well. I am adding them to my schedule.

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More information: www.greatstreets.dc.gov
or www.dcbiz.dc.gov

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-----Original Message-----
From: Rosalyn Doggett [mailto:rdoggett@wmata.com]
Sent: Tuesday, December 11, 2007 3:55 PM
To: Woody, Derrick (EOM); Gardner, Geraldine (OP)
Cc: Joel R. Washington
Subject: FI Ave Interviews

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Dec 17	1 p.m.	Moddie Turay
Dec 19	2 p.m	Lakritz Adler

You are invited to attend the technical sessions if you wish to. I realize that OP by now has met with each team and may not wish to spend additional time. The meetings will be in upstairs rooms, and staff will need to escort you. So please let me know if you or a representative will attend so we can be on the lookout.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SOLICITATION
SUMMARY OF PROPOSALS

DEVELOPER	PROPOSED USES ALL PARCELS	PROPOSED USES PARCEL 1	PROPOSED USES PARCEL 2	PROPOSED USES PARCEL 3	BUSINESS RELATIONSHIP
Banneker Ventures, LLC District Development Group Donatelli Development, Inc. Contact: Omar A. Karim	104 du's 11,750 gsf retail/cultural 47 below-grade parking	45 du's 4,750 theater musem and retail 28 below-grade pkg.	combined with Parcel 1	59 du's 7,000 sf retail 19 below-grade pkg.	Lease or sale (sale price by future appraisal)
Lakritz\Adler Contact: Joshua Adler	75,483 gsf office 145-room hotel 26,124 gsf/nsf retail 78 below-grade parking	4,124 gsf free-standing theater/restaurant	75,483 gsf office 14,000 nsf retail and entertainment 44 below-grade pkg. needs assemblage with adjacent 11,320 sf parcel	145-room hotel 8,000 gsf retail 34 below-grade pkg.	Lease or sale
Moddie Turay Company Contact: Moddie Turay	104 -130 du's 26,282 nsf retail 62 below-grade parking	not broken out	not broken out needs assemblage with adjacent lots (1933-35 9th St.)	not broken out	Lease or sale

WMATA-INV 005180

Doggett, Rosalyn

From: Elisa L. Hill [ehill@wmata.com]
Sent: Thursday, May 31, 2007 4:25 PM
To: Hale, Douglas R.; Malasky, Gary; Ackerman, Heidi; Marshall, Malcolm; Meister, Mark K.; Doggett, Rosalyn; Bottigheimer, Nat
Subject: Solicitation for Shaw-Howard, Parcels 1, 2 and 3

We received 8 proposals. One was a resubmission of one of the unsolicited proposals that prompted the offering. The other 7 are new. This was indeed a great response.

Doggett, Rosalyn

From: <eric.smart@bolansmart.com> [eric.smart@bolansmart.com]
Sent: Tuesday, December 16, 2008 8:30 AM
To: Doggett, Rosalyn
Subject: Florida mods
Attachments: Jazz_-_Afford_Analysis_(12-15-08 mod).pdf

Roz

Attached is a summary illustrating selected mods to Omar's spreadsheets premised on solving for what his calcs generate if there were no affordables. These do not include a possible credit for writing down 20% of his land rent in conjunction with 20% affordables. His current background model already reflects this deduct and much more. With some ramifications could add a land rent adjustment as an additional layer, but for immediate purposes the attached depicts possible impacts from Omar revisiting the affordables assumptions and perhaps some consideration from DC. Note that in discounting for RE tax abatement we have used a simple model mod of assuming that upwards of a 100% tax abatement for xx years is the equivalent of an effective permanent 50% reduction in RE taxes. With some more time we can reformat Omar's model to capture a period of abatement, but direction of impact should be similar.

Eric

--
Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037 202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general) www.bolansmart.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005182

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Confidential - Budget and Proforma (The Jazz @ Florida Avenue)

Summary Data		
Site Area	SF	28,892
Total Possible Project GSF	4.50 FAR	135,414
Total Buildable Residential + Retail GSF		135,414
Retail GSF		14,000
Retail NSF	94% efficiency	13,160
Residential Gross SF	100%	121,414
Residential Net SF	83% efficiency	100,774
Residential Net SF - Market	80%	80,619
Residential Net SF - Affordable	20%	20,155
Total No. of Residential Units	950 SF avg	106
Market Rate Units	80%	85
Affordable Units	20%	21
Below Grade Parking (Resid Parking)	450.0 SF	45
Below Grade Parking (Dedicated Retail/Share Parking)		15
Total Parking Spaces		60

Program % Breakdown	
Residential	89.66%
Retail	10.34%

Lease Payments	
WMATA - Year 1 of Stabilization	$ 150,000

Project Vacancy	
Residential	5%
Retail	5%

% of Project Revenue	
Residential	93%
Retail	7%

Residential Per SF revenues	
Market	$ 2.90
Affordable Units (at 50% of AMI)	$ 1.10

WMATA Annual Lease Payment - Year 1	$ 150,000
Security Deposit	100,000
Pre-Lease Payment	100,000

Sources and Uses of Funds

Sources		Residential	Retail	Total
Debt	62% LTC	$ 23,661,000	$ -	$ 23,661,000
Equity - LIHTC		2,019,750	-	2,019,750
Equity - Sponsor/Institutional		8,889,406	3,800,145	12,689,551
Total Sources of Funds		**$ 34,570,156**	**$ 3,800,145**	**$ 38,370,300**

Uses	Residential	Retail	Total
Land	$ 268,984	$ 31,016	$ 300,000
Hard Costs	26,918,338	2,208,233	29,126,570
Transaction/Leasing Fees	297,676	34,324	332,000
Architectural/MEP, Structural Services	1,083,784	124,969	1,208,753
Marketing	430,374	49,626	480,000
General and Administrative	1,340,437	254,563	1,595,000
Financing Costs	2,116,086	35,470	2,151,556
Real Estate Taxes	331,747	38,253	370,000
Permit, Utility and Municipal Fees	516,684	59,578	576,262
Legal and Accounting	582,799	67,201	650,000
Retail	-	818,127	818,127
Insurance	20,071	2,314	22,385
Miscellaneous Expenses	663,177	76,470	739,647
Total Uses of Funds	**$ 34,570,156**	**$ 3,800,145**	**$ 38,370,300**

Summary of Stabilized Returns at Sale

2015	Residential	Retail	Total
Effective Gross Income	$ 3,422,435	$ 268,310	$ 3,690,745
Expenses	$ 856,073	$ 210,750	$ 1,066,823
Net Operating Income	**$ 2,566,362**	**$ 57,560**	**$ 2,623,922**
Less			
Reserves	$ 28,978	$ 32,782	$ 61,760
Debt Service	$ 1,967,975	$ -	$ 1,967,975
Stabilized Net Cash Flow 2015	$ 569,409	$ 24,778	$ 594,187

Avail Proceeds before WMATA & Returns		**6,986,155**
Avail pre WMATA share		6,986,155
WMATA Share of Avail Profit	0% avail profit	-
Net Proceeds after WMATA share paid		6,986,155
Equity Yield Target	17.00% IRR	18,068,615
Actual Equity Yield	**8.94% IRR**	

Potential proceeds avail after IRR met		
	0% affordable	-6,166,645
	20% affordable	-11,082,460
1)	90% affordable min size	-10,569,596
2)	5% affordable rent 60% AMI	-9,910,569
3)	0% subsidized retail sf	-8,615,353
4)	1-3 together	-6,991,081
5)	50% RE tax abatement all	-9,787,952
6)	50% RE tax abatement res	-8,497,716
7)	5-6 together	-7,203,208
8)	1+7 together	-6,179,632

WMATA-INV 005183

Doggett, Rosalyn

From: Montague, Joshua W.
Sent: Wednesday, December 03, 2008 11:23 AM
To: Doggett, Rosalyn
Subject: Florida Avenue - update

Hi Roz,

As you may have noticed, I did not include the clarification list with the drafts sent to Developer/DLA. I decided to just call Devorah Lewin at DLA and go over my concerns informally.

During the course of that conversation, she mentioned two things that you should be aware of:

1. Devorah said that Banneker "bought out" Metropolis. I told her that this might be an issue since WMATA approved the developer on the basis of all members of the team. She is going to check with Omar and let me know what the actual status is.

2. She said the Developer might be planning on developing a building which traverses our property and the adjacent property. I told her that this might be an issue since this was not the project that WMATA approved and may cause problems if we had to terminate the lease. She will check with Omar and let me know what the intention is.

I have been trying to catch you but you have been out of your office. I will try to pop up again later this afternoon to discuss.

Josh

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Bottigheimer, Nat
Sent: Tuesday, December 02, 2008 11:23 AM
To: Chisholm, Ann; Lawson, Arthuro V.; Washington, Joel R.; Moneme, Emeka; Doggett, Rosalyn
Cc: Wilson, Sara; Wallace, Maria A; Kline, Sarah A.; Ballard, Khalilah
Subject: Fwd: RE: **URGENT** Meeting with Deputy Mayor Neil Albert

ok with me....Emeka, is it ok with you?

>>> Ann Chisholm 12/2/2008 11:20 AM >>>
Ms. Warrick (Deputy Mayor's Office) suggested meeting with Mr. Albert after the Board meeting on Thursday, December 4th at about 1:30/2:00 p.m. Let me know if you are available. Nat can you host the meeting in your conference room? Thanks

Ann

Ann E. Chisholm
Assistant Government Relations Officer
Policy and Government Relations
Washington Metropolitan Area Transit Authority 600 Fifth Street, NW Washington, DC 20001
202-962-2877
202-329-2764 (cell)
achisholm@wmata.com

>>> "Warrick, Xzaquoinett (EOM)" <Xzaquoinett.Warrick@dc.gov> 11/25/2008
>>> 3:05:27 PM >>>

All -Tuesday will not work for DM Albert. I'll follow up with you all early part of next week to secure another date. Quoinett Warrick202-727-6851
Quoinett.Warrick@dc.govFrom: Ann Chisholm [mailto:achisholm@wmata.com]
Sent: Tuesday, November 25, 2008 1:46 PM
To: Warrick, Xzaquoinett (EOM)
Cc: Doggett, Rosalyn; Lawson, Arthuro V.; Wallace, Maria A; Washington,Joel R.
Subject: Fwd: **URGENT** Meeting with Deputy Mayor Neil Albert

Ms. Warrick,

Art is out of the office and asked me to see if we can reschedule the meeting for Tuesday, December 2nd at 1:30 p.m.

Thanks

Ann

Ann E. Chisholm
Assistant Government Relations Officer
Policy and Government Relations
Washington Metropolitan Area Transit Authority 600 Fifth Street, NW Washington, DC 20001
202-962-2877
202-329-2764 (cell)
achisholm@wmata.com

>>> Rosalyn Doggett 11/25/2008 1:36 PM >>>

>>> "Warrick, Xzaquoinett (EOM)" < Xzaquoinett.Warrick@dc.gov >
>>> 11/25/2008 12:15 PM >>>
Rosalyn/Art -
Just following up to see if you Monday, December 1st @ 130pm-2pm will work for Neil and Rosalyn to meet. I've not heard from either of you, and I'm still holding the time. Please let me know if I should release the time and search for a new date or continue to hold.

Any and all assistance would be greatly appreciated.

Thanks in advance,
Q

Quoinett Warrick
202-727-6851
Quoinett.Warrick@dc.gov

-----Original Message-----

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005185

From: Rosalyn Doggett [mailto:rdoggett@wmata.com]
Sent: Thursday, November 20, 2008 4:46 PM
To: Warrick, Xzaquoinett (EOM)
Subject: Re: Meeting with Deputy Mayor Neil Albert

Quoinett, please arrange this through Art Lawson, our Government Relations Officer, which is standard procedure for us. Art's e-mail is alawson@wmata.com . His phone number is 962 1050.

Thanks, Rosalyn

>>> "Warrick, Xzaquoinett (EOM)" < Xzaquoinett.Warrick@dc.gov >
>>> 11/20/2008
3:49 PM >>>
Rosslyn -

Per my voicemail, I'd like to check your availability for a meeting with DM Albert on Monday, Nov 24th @ 215pm-245pm to discuss the metro project on 8th and Florida w/Banneker Ventures.

Please advise:

- If this date and time works for you

- Names of those accompanying you to this meeting

- Cell # for the day of the meeting

Thanks in advance,

Quoinett

Xzaquoinett Y. Warrick

Executive Assistant/Scheduler

Office of Planning & Economic Development

1350 Pennsylvania Avenue, NW

Suite 317

Washington, DC 20004

202-727-6851

Quoinett.Warrick@dc.gov < mailto:Quoinett.Warrick@dc.gov >

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005186

Doggett, Rosalyn

From: Montague, Joshua W.
Sent: Monday, December 01, 2008 11:48 AM
To: Doggett, Rosalyn
Subject: Florida Avenue language

Hi Roz,

Following up on something we were discussing last week, I noticed that the "commercially reasonable best efforts" language proposed by Banneker is almost identical to the language used in the Greenbelt JD agreement.

Kermit is not here today, but I will try to follow up with him to see where he got this language from when he drafted the Greenbelt docs.

Thought you might find that interesting.

Josh

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Bottigheimer, Nat
Sent: Thursday, November 27, 2008 10:16 AM
To: arthemalaw@aol.com; Washington, Joel R.
Cc: Chisholm, Ann; Moneme, Emeka; Doggett, Rosalyn; alwason@wmata.com
Subject: Re: Fwd: RE: **URGENT** Meeting with Deputy Mayor Neil Albert

Regarding the Minnesota Ave letter, I had spoken with Shiva and Art and the suggested approach was for Art to forward to the Dep Mayor an email containing not a letter but the bullet points Marc Biondi included in the paragraph that starts with the GM say "I am concerned that...." That way, we're telling him we're preparing a letter response, and we tell him what the substance of the concerns are, but we're not putting a drafted letter in front of him.

I'm hoping Art and/or Ann can get this information to the Deputy Mayor as soon as possible, but by December 1st would be good.

Regarding the meeting with the Deputy Mayor on the 7th and Florida property, I'd like to recommend that if the Dep Mayor is part of it, then Emeka should be part of it, too (in addition to Roz). Roz and Joel, can you prepare materials for Emeka, please, that succinctly summarize the issue there (essentially, higher affordable housing requirements from Graham reduce land value to Metro to the point that we may need to get Board approval both on three possible items: 1) accepting lower value than approved; 2) rebidding the property; and 3) broader affordable housing policy from Board.).

Thanks very much, and Happy Thanksgiving Day to all,

Nat

>>> Joel R. Washington 11/25/08 4:04 PM >>>
I think there may be a timing issue with when a response is due from the GM. What are your thoughts on delaying the Minnesota Avenue response letter?

Joel

>>> Rosalyn Doggett 11/25/2008 3:08 PM >>>
Shall we hold the Minnesota Avenue letter until then?

>>> "Warrick, Xzaquoinett (EOM)" < Xzaquoinett.Warrick@dc.gov > 11/25/2008 3:05 PM >>>
All -

Tuesday will not work for DM Albert. Ill follow up with you all early part of next week to secure another date.

Quoinett Warrick

202-727-6851

Quoinett.Warrick@dc.gov

From: Ann Chisholm [mailto:achisholm@wmata.com]
Sent: Tuesday, November 25, 2008 1:46 PM
To: Warrick, Xzaquoinett (EOM)
Cc: Doggett, Rosalyn; Lawson, Arthuro V.; Wallace, Maria A; Washington,Joel R.
Subject: Fwd: **URGENT** Meeting with Deputy Mayor Neil Albert

Ms. Warrick,

Art is out of the office and asked me to see if we can reschedule the meeting for Tuesday, December 2nd at 1:30 p.m.

Thanks

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005188

Ann

Ann E. Chisholm
Assistant Government Relations Officer
Policy and Government Relations
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001
202-962-2877
202-329-2764 (cell)
achisholm@wmata.com

>>> Rosalyn Doggett 11/25/2008 1:36 PM >>>

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Any and all assistance would be greatly appreciated.

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Q

Quoinett Warrick
202-727-6851
Quoinett.Warrick@dc.gov

-----Original Message-----
From: Rosalyn Doggett [mailto:rdoggett@wmata.com]
Sent: Thursday, November 20, 2008 4:46 PM
To: Warrick, Xzaquoinett (EOM)
Subject: Re: Meeting with Deputy Mayor Neil Albert

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Please advise:

- If this date and time works for you

- Names of those accompanying you to this meeting

- Cell # for the day of the meeting

Thanks in advance,

Quoinett

Xzaquoinett Y. Warrick

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005189

Executive Assistant/Scheduler

Office of Planning & Economic Development

1350 Pennsylvania Avenue, NW

Suite 317

Washington, DC 20004

202-727-6851

Quoinett.Warrick@dc.gov < mailto:Quoinett.Warrick@dc.gov >

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005190

Doggett, Rosalyn

Subject:	Mtg w/ Neil Albert & Staff re 8th & Florida Avenue Project w/Banneker Ventures
Location:	Wilson Bldg
Start:	Mon 12/1/2008 1:30 PM
End:	Mon 12/1/2008 2:30 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Bottigheimer, Nat

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Johnston, Kasondra
Sent: Wednesday, July 25, 2007 3:27 PM
To: Doggett, Rosalyn
Subject: Re: FL Ave proposal thoughts

Very diplomatic of you, Roz. Some of the proposals may have been thrown assembled in less that 10 hours, while others may have been well considered. The holding back of information or call it built-in negotiating room makes any real analysis difficult. So as you say teasing or divining information is a challenge and better left to those with a fine toothed comb or divining rod.

>>> Rosalyn Doggett 7/25/2007 3:15 PM >>>
Thanks- I am now going to note what we do and do not have in terms of the entities' track record (as a firm or team, as opposed to the individuals who are firm or team members, AND indication of their ability to get financing. Yes, you are right, the information provided is sketchy. This was a Gary/Kathy RFEOI, and perhaps they would have been better equipped to tease something from it.

>>> Kasondra K. Johnston 07/25/07 3:04 PM >>>
Roz-

This is not intended as a comprehensive review of EOI responses for Florida Ave, however as you asked, I'm providing some quick thoughts. I reserve further judgement until we receive our consultants financial analysis. If this were my project I would want to have a better response from the developers prior to the 1st cut. Most respondents were vague in the extreme. Also our somewhat dated appraisal on Parcel 3 alone indicated that all the offers are low.

Banneker - question as to experience in the area of Construction Donatelli - proposal is sketchy (no art function) and limited. Also, assessed value or appraisal (exactly what are we looking at for the offer price?) Lakritz Adler - non-residential project (OK if that is appropriate) Metropolis - no art function retail and residenial Moddie Turay - requires land of others (no Art function) P N Hoffman - 2 stories (TOD ?), sale, Office & retail only SED Center - not acceptable to OP Symmetry - retail & residential housing Trammell Crow Co (Healthcare Div) - Medical bulding zoning is an issue and not typical TOD

-Kasondra

From: Rosalyn Doggett
To: Marc E. Biondi
Date: 10/11/2007 4:27:49 PM
Subject: Re: FL Ave Proposal - LaKritz / Adler

Thanks, Marc
I do have an original Lakritz LOC- now in our safe.
I also have a Lakritz disc (but no disc for the other proposals).
I have large site plans for each proposal.

This afternoon, I received the Fed Ex original of the LOC for Banneker et al. It must be drawn at BOA in Scranton. I am going to call and ask for a revised letter with a local address but will wait until you take a look to see if any other deficiencies.

>>> Marc E. Biondi 10/11/2007 4:21 PM >>>
Ros,

I have gone through the LaKritz / Adler proposal and I do not find any fatal omissions.

Technical Proposal:

The Proposal does not include a name for the entity the Developer proposes to use for the project.

I do not have in my copy, either the disk or full color (2' x 3') visual per section G. ... But I assume you do, and I do not need them, if you have them.

Economic Proposal:

NOTE: The proposal is incorrectly bound and reads back-to-front... thanks for the copy, though, that helps.

All submissions are made except, again, no disk accompanied my copy, which should include the complete financial models.

As we discussed the letter of credit appears to be a copy and the only requirement not yet met.

I have a 4:30 this afternoon and will address the other two submissions on Monday Morning.

Marc

Marc Biondi
Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Direct Dial: 202-962-1011
Fax: 202-962-2550
mebiondi@wmata.com

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INDIVIDUAL IMMEDIATELY, COLLECT IF NECESSARY.

CC: Joel R. Washington; Kasondra K. Johnston

~~Business~~ Integrity & Business Ethics
Joint Development ~~Social Responsibility~~

- Florida Ave. solicitation provided for termination of selected developer if found not to have satisfactory record of integrity and business ethics.
  - post-selection rather than qualification/responsibility criteria

- Federal statute requires that government contractors have a satisfactory record of integrity and business ethics as a matter of contractor responsibility.

- Federal Acquisition Regulation (FAR) requires a certificate from offerors and their principals that they (in summary):
  - are not ineligible for award of Federal contracts;
  - are not currently indicted for and have not within the past three years been convicted of or had a judgment entered regarding malfeasance in public contracting or certain dishonesty crimes (embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, tax evasion and other federal tax crimes, receiving stolen property); and
  - do not have an unsatisfied tax delinquency of greater than $3,000

- The contractor's certification responses are a matter of responsibility. Thus, an inability to certify as to no convictions, judgments or delinquencies does not necessarily preclude award. A failure to respond, on the other hand, bars award.
  - The contractor may be terminated for default if it knowingly provides an erroneous certification.

- In 2000, the agencies responsible for FAR revisions (FAR council) issued a final rule to further define what constitutes a "satisfactory record of integrity and business ethics" as persuasive evidence (such as adjudications) of noncompliance with labor, employment, environmental and consumer protection laws.
  - A broad coalition including the U.S. Chamber of Commerce, National Association of Manufacturers and the Association of General Contractors brought suit primarily alleging the rule lacked adequate justification or guidelines to prevent arbitrary and abusive implementation. Other industry associations and congressional representatives also sought suspension of the rule.
  - The FAR council responded by staying the rule.

- Issues using FAR approach in Joint Development:
  - Developers generally form unique entities thus "offeror and principals" will not capture all the needed history.
    Potential Solution: Require self-certification by the developer, its key personnel and members (including key personnel of any member that is an entity) and any other entities in which any of the foregoing have been members or principals during the previous three years.
  - FAR certificate does not cover social responsibility, yet FAR council experienced resistance to adding such requirement.
    Potential Solution: Use local procurement standards as model for evaluating social responsibility. Local standards, however, vary.
    - Arlington County: "the moral and business integrity and reliability which will assure good faith performance," Purch. Manual Sec. 1-201;
    - District of Columbia: "a satisfactory record of integrity and business ethics" & "compliance with the applicable District licensing and tax laws and regulations," 27 DCMR 2200.4
    - Fairfax County: "character, integrity, reputation, judgment, experience & efficiency" & "previous and existing compliance . . . with laws and ordinances relating to the contract or services" & "whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent," Purch. Res. Art. 2;
    - Montgomery County: "previous and existing compliance by the offeror with laws and ordinances relating to the contract and services" & may deny award "to any offeror who is in default of payment of any money due the County," Proc. Reg. Sec. 6.3;
    - Prince Georges' County: "integrity and reliability which will assure good-faith performance," Pub. L.L. Subtitle 10A-101.
  - Attached is a draft certificate for developer responsibility, including the criteria of integrity and business ethics. It synthesizes the majority approach in local standards to social responsibility even though a similar provision proved troublesome for the FAR council.

Draft Certification Regarding Responsibility Matters

The offeror hereby certifies to the best of its knowledge and belief that the offeror, any "principal" (as defined at 49 C.F.R. Part 29) of the offeror, any member of the offeror (including a principal of any member that is an entity) or any other entities in which the foregoing have been principals or members during the past three years:

1. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from award of contracts by any Federal agency or any agency of any political subdivision in WMATA's Transit Zone;

2. has not within the past three years been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a Federal, state or local contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal, state or local criminal tax laws, or receiving stolen property;

3. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in the previous paragraph;

4. is not in arrears or in default of payment of any money or obligation due the Federal government or any political subdivision in WMATA's Transit Zone; and

5. has no adjudicated violations and has not paid penalties relating to the housing, building and licensing laws, regulations, codes and ordinances of any political subdivision in WMATA's Transit Zone during the past three years .

An offeror that is unable to certify to the statements in this certification shall attach an explanation to this proposal. An offeror that fails to execute this certification or fails to provide adequate information for WMATA to evaluate its inability to certify to the statements in this certification may be ineligible for award.

This certification is a material representation of fact upon which reliance will be placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to WMATA, WMATA may terminate the contract resulting from this solicitation for default.

The offeror shall provide immediate written notice to WMATA if at any time it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Signature: _____

Title: _____

Date: _____

M E M O R A N D U M

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Sites- Tentative Developer Selection

DATE: February 26, 2008

FROM: Nat Bottigheimer

TO: John B. Catoe, Jr.

The Department of Planning and Joint Development (PLJD) recommends tentative selection of Banneker Ventures as developer of Metro's three Shaw-Howard/Florida Avenue parcels and preparation and negotiation of a term sheet with that team. If negotiations are unsuccessful, we recommend turning to the Moddie Turay Company for negotiation of a term sheet.

In early 2007, Metro issued Requests for Expressions of Interest for its Shaw-Howard/Florida Avenue joint development sites: Parcel 1, 3,800 sf on Florida Avenue at 9th St, NW; Parcel 2, 8,600 sf on Florida Avenue between 8th and 9th streets, NW, and Parcel 3, 16,500 sf on Florida Avenue between 7th and 8th streets.

After evaluation of responses, Metro requested six developers to submit more detailed proposals, and four did so with two combining as one team.

On October 5, 2007, Metro received three proposals from teams led by:

1. Banneker Ventures
2. Lakritz Adler
3. Moddie Turay Company

Washington Metropolitan Area Transit Authority

The recommendation to tentatively select Banneker Ventures is based on the Metro Evaluation Team's ranking of the proposals (memo attached) in accordance with the evaluation criteria in the Joint Development Solicitation and Source Selection Plan.

Metro team members comprising the Evaluation Team were from the Office of Station Area Planning and Asset Management (SAAM) and the Office of the General Counsel (COUN) with participation by the Office of Joint Development and Adjacent Construction (JDAC) since the sites are partly over Metrorail tunnels. In addition to Metro staff review and due diligence, outside real estate consultant Bolan Smart provided financial and market analysis, and representatives from the District of Columbia's Office of the Deputy Mayor for Economic Development and Office of Planning evaluated the proposals for conformance with city plans and policies.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

The Banneker and Moddie Turay proposals both encompass residential development over ground floor retail for all three sites and are not substantially different in concept.

In many other aspects, the teams match up evenly. A major difference was the financial offer from Banneker providing approximately $2.2 million more in net present value to Metro over the course of a 60-year lease. Further, the Banneker proposal has less complication than the Moddie Turay proposal, which envisions combining the smallest Metro site with an alley to be closed and adjacent historic district property to be acquired. The financial terms for this acquisition have not been agreed to, and the city staff has informed us that the prospects for closing an alley and removing two contributing historic structures are uncertain.

Staff is aware that a key potential benefit to the community of Metro's joint development program is the promotion of high-quality transit-oriented development. As a result, staff took pains to evaluate the degree to which proposals submitted by adjacent property owners could contribute to a higher-quality development project compared to a project developed independent of adjacent property owner projects.

Of particular interest were the buildings next to the Metro property fronting on 9th Street. To evaluate the potential benefits of combining Metro's property with adjacent property, staff visited these sites, consulted with District of Columbia planning and historic preservation staff, and reviewed each of the joint development proposals with attention to this important evaluation factor.

In staff's opinion, developing Metro's property independently of the development of the adjacent properties would not reduce the potential of adjacent properties to be redeveloped in accordance with historic district requirements.

Further, combining the adjacent properties with Metro's three parcels (1) would result in a significant potential for delaying the redevelopment of Metro's property because of the historic district and the alley closing issues mentioned above and (2) would not appear to offer substantial benefits in terms of transit oriented development quality.

cc. Jack Requa
Chuck Woodruff
Carol O'Keeffe
Shiva Pant

M E M O R A N D U M

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Sites - Tentative Developer Selection

DATE: January 29, 2008

FROM: Rosalyn Doggett

THRU: Joel R. Washington JRW

TO: Nat Bottigheimer

WMATA received 3 proposals for its Shaw-Howard/Florida Avenue joint development sites: Parcel 1, 3,800 sf on Florida Avenue at 9th St, NW; Parcel 2, 8,600 sf on Florida Avenue between 8th and 9th streets, NW, and Parcel 3, 16,500 sf on Florida Avenue between 7th and 8th streets. In accordance with the Source Selection Plan for the Shaw-Howard/Florida Avenue Joint Development Sites, an Evaluation Team composed of Rosalyn Doggett, Chair, John Magarelli and Marc Biondi met a number of times to rate proposals from each of three teams. Two meetings were held before interviews with the teams, and two were held after interviews and additional due diligence. The development teams are led by:

Banneker Ventures
Lakritz Adler
Moddie Turay Company

The Evaluation Team recommends tentative selection of Banneker Ventures and preparation and negotiation of a term sheet with that team. If negotiations are unsuccessful, the Evaluation Team recommends turning next to the Moddie Turay Company for negotiation of a term sheet.

The Lakritz Adler proposal does not meet the threshold test in the Source Selection Plan of providing WMATA with net present value of rent over a 60-year lease that meets WMATA's current fair market value appraisal for the site ($7.5 million as of August 2007). The failure to meet appraisal value, alone, eliminates the team from further consideration. Further, Lakritz Adler offers one-half or less of the present value offered by the other two teams so it is thought that the deficit cannot be made up through negotiation even if there were other reasons to select the team, which there do not appear to be.

Washington Metropolitan Area Transit Authority

FOIA CONFIEDENTIAL TREATMENT REQUESTED

The net present values of the offers over a sixty-year lease period are:

Banneker	$14 million
Moddie Turay	$11.8 million
Lakritz Adler	$ 6 million

Banneker Ventures has been recommended because it provides greater rental present value to WMATA, approximately $2.2 million more than its remaining competitor.

Both teams propose 4 to 5 story residential development over retail for all three parcels that comprise the joint development site, at a matter-of-right FAR of 4.5. Moddie Turay proposes combining Parcel 1 with two small adjacent parcels totaling 3,000 sf, which it controls, and utilizing the air rights over an alley proposed to be closed between Parcels 1 and 2; however its financial offer is not contingent on the two parcels being incorporated or the alley closing. Banneker proposes 103 dwelling units and 12,000 sf of retail whereas, utilizing the combined properties and alley closing, Moddie Turay proposes 130 dwelling units and 26,000 sf of retail. Otherwise, there is little difference in design concept between the two teams.

The Evaluation Team ranked the teams according to the evaluation criteria in the Source Selection Plan. These final rankings are shown in the accompanying table, which lists the evaluation criteria underlined below.

The Team found that both proposals reflect TOD principles since they are on a walkable street within blocks of two different Green Line Metro stations (Shaw-Howard and U Street-Cardozo-African American Civil War Memorial), maximize matter-of-right density and provide a mix of uses that will contribute to the ongoing revitalization of the area. The Banneker proposal includes a modest amount of affordable housing and represents that its building will be "green." Both proposals are equally viable in the market provided that the apartment market remains strong in the area. Each proposes some ground floor arts/retail uses that would be an asset to the community if realized. Their proposals conform to the District of Columbia's Duke Plan (except that the plan advocates even taller buildings if possible through a PUD; lack of space for underground parking may be a constraint, however). Also, the Office of Planning has since indicated that it will support by-right development. Both provide similar benefits to the local jurisdiction in terms of property and sales taxes.

The Moddie Turay proposal is slightly more creative in that it combines Parcel 1 with adjoining property, making a larger and more regular development parcel. However, it is not clear from talking to District planning and regulatory officials that the developer can accomplish either the alley closing

or the demolition of two structures which "contribute" to the historic district in which they are located. There may be issues with combining the adjoining fee property with leased WMATA property; also a sales price has not yet been agreed upon between Moddie Turay and the adjoining property owner. Price and historic preservation negotiations could delay project execution. Neither project will have an impact on WMATA facilities though construction over the Metro tunnel which runs partially beneath each parcel will need to be coordinated by JDAC. Once more detailed designs are prepared it is possible that the teams may need to seek a variance for required parking because of limitations in construction over the Metro tunnel.

There is little difference in experience. The Banneker team members (led by Omar Karim) include the District Development Group and, recently added, Metropolis Development, which has replaced Donatelli Development as a team member. Metropolis Development has extensive experience in developing new and adaptive residential buildings with ground floor retail in the Shaw neighborhood, including the Langston Lofts condominium project at 14th and V streets, a WMATA joint development site. The other teams members are less experienced but are obtaining approvals for a Silver Spring residential building at the present time. The Banneker Team architect, Torti Gallas, is experienced in residential and retail design on nearby U Street and over Metro tunnels. Moddie Turay and his company staff appear to have somewhat less experience but have an experienced local architect, Suman Sorg, and have teamed with Clark Enterprises represented by General Counsel Rebecca Owen who stated in interviews that Clark will deploy the necessary personnel to build the project for which the Moddie Turay Company will be project manager. Ms. Owen added that this could be either Clark Realty Capital, Clark's housing arm (which has participated in Fort Totten and Huntington but elected not to follow through on its contract for Western Bus Garage) or new personnel hired by Clark Enterprises, the parent company. Clark Enterprises clearly has construction expertise; however Banneker has stated that it intends to use Tompkins Builders, a local firm with Metro-related experience.

Financial benefit to WMATA was discussed earlier, and Banneker's offer is clearly superior in that regard. In terms of financial viablility, neither proposal has obvious flawed market or financial assumptions though Banneker depends on rent increases, which appear to be achievable, to subsidize affordable housing. Clark would more likely have access to financial sources. However, lender references for both teams indicated an interest in financing projects on these sites. Equity for Banneker would be provided by MacFarlane Partners, who are active team participants, and Clark will furnish its own equity, which it has the resources to do. Both teams provide modest enhancement to Metro Ridership.

It should be noted that WMATA requested both lease and sale proposals and received both. Net present value analysis showed that the lease proposals generate more revenue for WMATA over 60 years than the sale proposals. Since the Board's preference is to lease, the sale proposals were not considered further.

The accompanying table summarizes the land use and financial elements of the two finalist lease proposals. Both have financial elements that would likely need to be strengthened or provided in negotiations, for example, capital event participation for both teams; bonus density rent provisions and slightly higher base rent for Banneker; and annual base rent escalation for Moddie Turay. It is conceivable that negotiations could change the relative positions of the teams.

But for the present, it appears fair to start with the Banneker team since its financial offer is superior and its proposal does not have the potential complications of combining property with an adjacent owner. The Moddie Turay team, though close in ranking, has no clear superiority overall.

Rosalyn Doggett, Chair

John Magarelli

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FLORIDA AVENUE PROPOSALS EVALUATION 1-08				
	POSSIBLE POINTS	BANNEKER	LAKRITZ ADLER	MODDIE TURAY
TECHNICAL CRITERIA	50 Total	42	45	45
1 ReflectsTOD Principles	10	10	10	10
2 Market Viability	10	7	8	7
3 Prior Team Experience	10	7	8	9
4 Innovation/Creativity	5	3	4	4
5 Compatibility with Local Land Use Plan	5	5	5	5
6 Benefits to Local Jurisdiction	10	10	10	10
ECONOMIC CRITERIA	50 Total	35	20	30
1 Financial Benefits to WMATA	35	25	10	20
2 Financial Viability of Proposal	5	5	5	5
3 Enhanced Ridership	10	5	5	5
TOTAL POINTS	100	77	65	75

WMATA-INV 005203

FOIA CONFIDENTIAL TREATMENT REQUESTED

COMPARISON OF SHAW HOWARD/FLORIDA AVENUE LEASE PROPOSALS

Category	Banneker 60 year lease	Moddie Turay 60.year lease
Development Summary	104 du's, 11,750 sf retail, 47 below grade pkg. 127,692 gsf (excludes garage) 4.5 MOR FAR on site size of 28,892 sf Total Dev. Cost $35.6M	130 du's, 26,282 retail, 62 below grade pkg. (includes closed alley and 2 adj. lots) 4.5 MOR FAR on site size of 31,892 sf plus closed alley. Total Dev. Cost $43.6M
Non-Refundable Option Fee-amount, start, duration	$100,000 upon Selected Developer/Term Sheet approval 2/08	$100,000 upon Selected Developer/Term Sheet Approval
Land Value and derivation (Appraisal: $7.5M in 2007)	$8.2M, year 2010, based on residual land value 3 years back ÷ 1.03 = $7.5M (end 2007)	$8.8-9M, year 2011, based on $65/sf 2008 escalated 2%/year to 2011 (WMATA land only)
Pre-development Rent	$100,000/yr. from Agreement execution through construction thru yr. 2 of stabilization 6/08-11/10 (11/10 = outside rent start date) [Note: 11/10 = 50% stabilization on pro forma 3% escalation occurs 18 months later]	$120,000/year ($10,000/month) upon execution of agreement thru stabilization 12/11 willing to agree on mutually acceptable outside rent commencement date
Construction Period Rent $7.50/SF	see above ($100,000/yr.)	see above ($10,000/month)
Base rent: 7% (Appraisal: $525,000)	$500,000 in 12/10 (6% residual land value)	@ $700,822 (8% land value) in12/11
Escalation of base rent from 2008 to start of payment	None (base rent is the projected rent though it is below appraiser's current rent)	2%/yr. on 2008 $65 base land value
Escalation of base rent if delay from schedule	Increase pre-development rent 3% if projected closing (3/09) is delayed beyond a year	Increase pre-devel. rent to ½ stabilized rent if no full rent start by 12/11
Annual Base Rent escalation	3%	none
Periodic Rent revaluation	not addressed	adjust every 10 years- 3 appraiser method
Cash Flow Participation	share of gross income to be negotiated	not addressed
Capital event participation	share of net proceeds (after all project and sale-related expenses)	5% net proceeds (to be defined) but not construction loan takeout
Density increase payments	not addressed	based on increased FAR land value if PUD
NPV with residual appraisal = $7,500,000	$14 M with residual	$11.8 M with residual

WMATA-INV 005204

Routing Status

Status:	*This document is currently being routed for approval...*
Document:	MEAD(99972) Shaw-FL Av Developer Selection
Routing Initiated:	03/18/2008 12:46 pm by ROSALYN DOGGETT (rdoggett@wmata.com)

Routing Level	Name	Approver/ Reviewer	Notified by email	Action	Date of Action	Comments
1	GRISWOLD, RAYMOND	Approver	03/18/2008 12:46 pm	Approved	03/18/2008 03:02 pm	
	BOTTIGHEIMER, JOHN	Approver	03/18/2008 12:46 pm	Approved	03/19/2008 03:47 pm	
	WASHINGTON, JOEL	Approver	03/18/2008 12:46 pm	Reassigned	03/19/2008 11:21 am	[Reassigned to: MARK MEISTER, by:ROSALYN DOGGETT] reassigne
	MEISTER, MARK	Approver	03/19/2008 11:21 am	Approved	03/19/2008 11:50 am	
	BROWN, CARL	Reviewer	03/18/2008 12:46 pm		No action is necessary	
2	REQUA, JOHN	Approver	03/19/2008 03:47 pm	Approved	03/19/2008 04:24 pm	
	HARCUM, RICHARD	Reviewer	03/19/2008 03:47 pm		No action is necessary	
	LEW, HELEN	Reviewer	03/19/2008 03:47 pm		No action is necessary	
3	WOODRUFF, HARRY	Approver	03/19/2008 04:24 pm	Approved	03/19/2008 04:34 pm	
4	PENDING, COUNAPPROVAL	Approver	03/19/2008 04:34 pm	Reassigned	03/19/2008 05:50 pm	[Reassigned to: CAROL O'KEEFFE, by:COUNAPPROVAL PENDING] for sign off
	O'KEEFFE, CAROL	Approver	03/19/2008 05:50 pm	Approved	03/19/2008 05:52 pm	
5	FRANCIS, GERALD	Approver	03/19/2008 05:52 pm		*Awaiting approval...*	
	PANT, SHIVA	Approver				

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005205

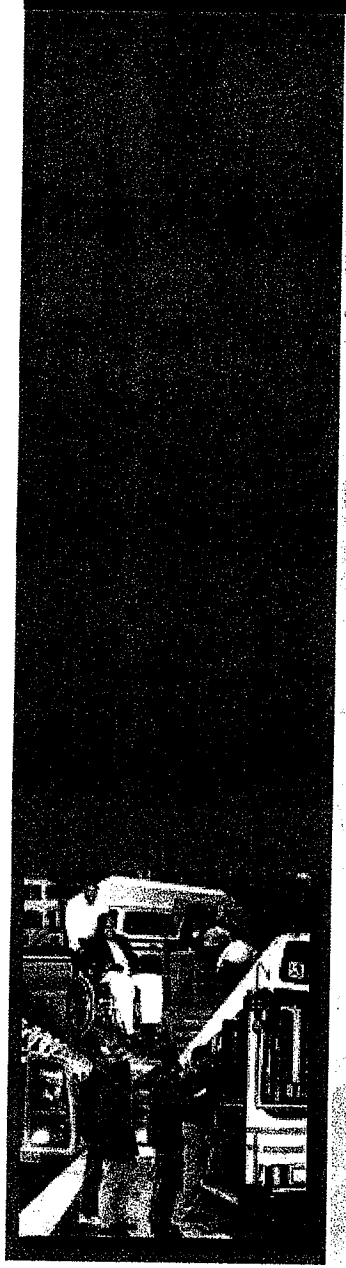
6	CHAMBLISS, HOPE-LEEN'DA	Approver				
7	CEO, GMGR	Approver				
8	WMATA, BOARD	Approver				
9						

Return to previous screen

CMIS

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED



Shaw-Howard U./Florida Avenue Joint Development Site

Developer Selection And Term Sheet Approval

Presented to the Board of Directors:

Planning, Development and Real Estate Committee

April 24, 2008

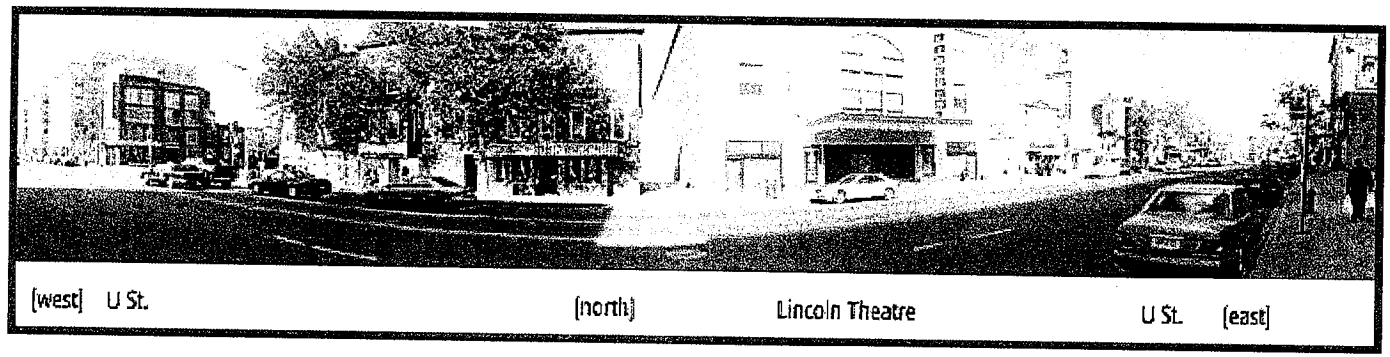
metro

WMATA-INV 005207

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Benefits/Costs

- **Benefits**
  - ✓ Extends U Street Florida Avenue Transit Oriented Development
  - ✓ Attracts new Metro riders
  - ✓ Increases Metro revenue
  - ✓ Increases tax base for District of Columbia
- **Costs**
  - ✓ Requires staff time to review development proposal
  - ✓ Requires staff time to monitor construction



WMATA-INV 005208

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Purpose

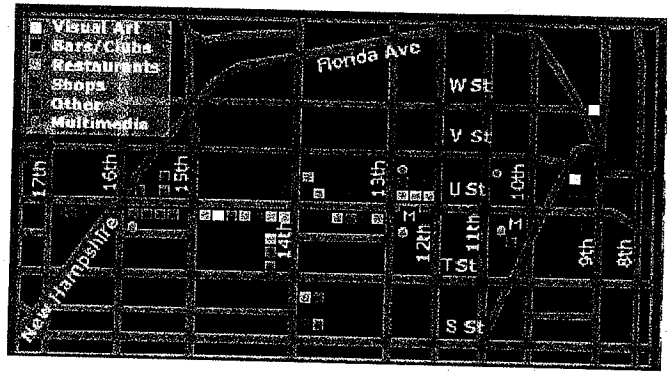
- **Approve Banneker Ventures team as developer of Shaw-Howard U./Florida Avenue joint development site**
- **Approve term sheet**
- **Authorize negotiation of development agreement**

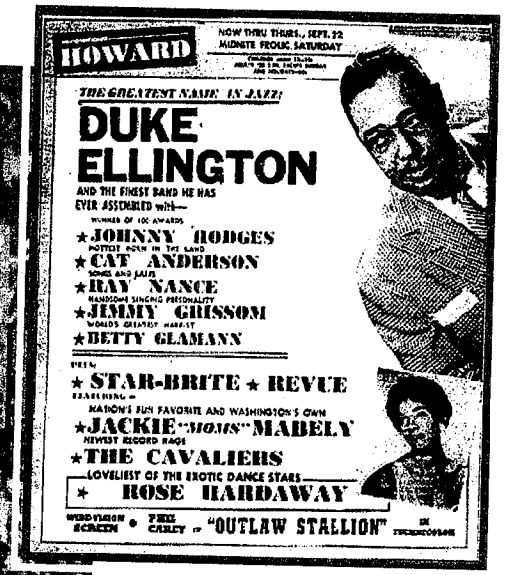
WMATA-INV 005209

FOIA CONFIDENTIAL TREATMENT REQUESTED

Site

- **WMATA has 3 parcels (comprising 28,892 sf) that were used to construct Green Line tunnel**
- **Washington, DC adopted "Duke" Plan for area in 2005**





WMATA-INV 005210

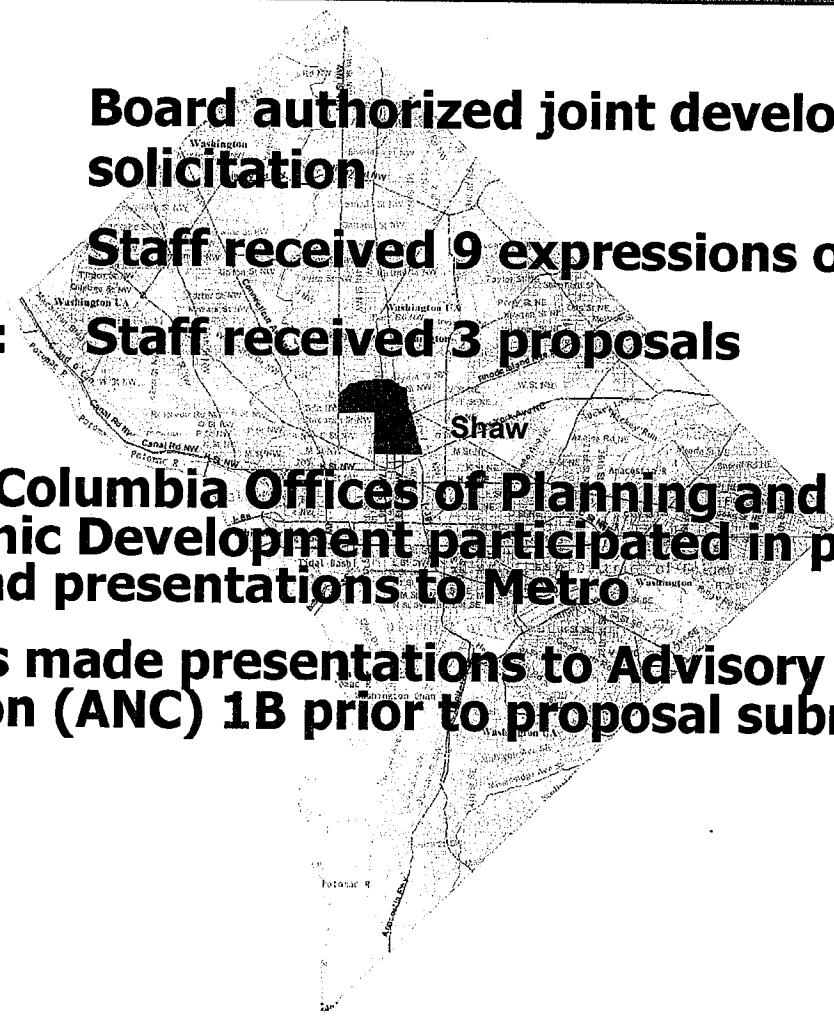
FOIA CONFIDENTIAL TREATMENT REQUESTED

Community Involvement

July 2006: Board authorized joint development solicitation

Spring 2007: Staff received 9 expressions of interest

October 2007: Staff received 3 proposals



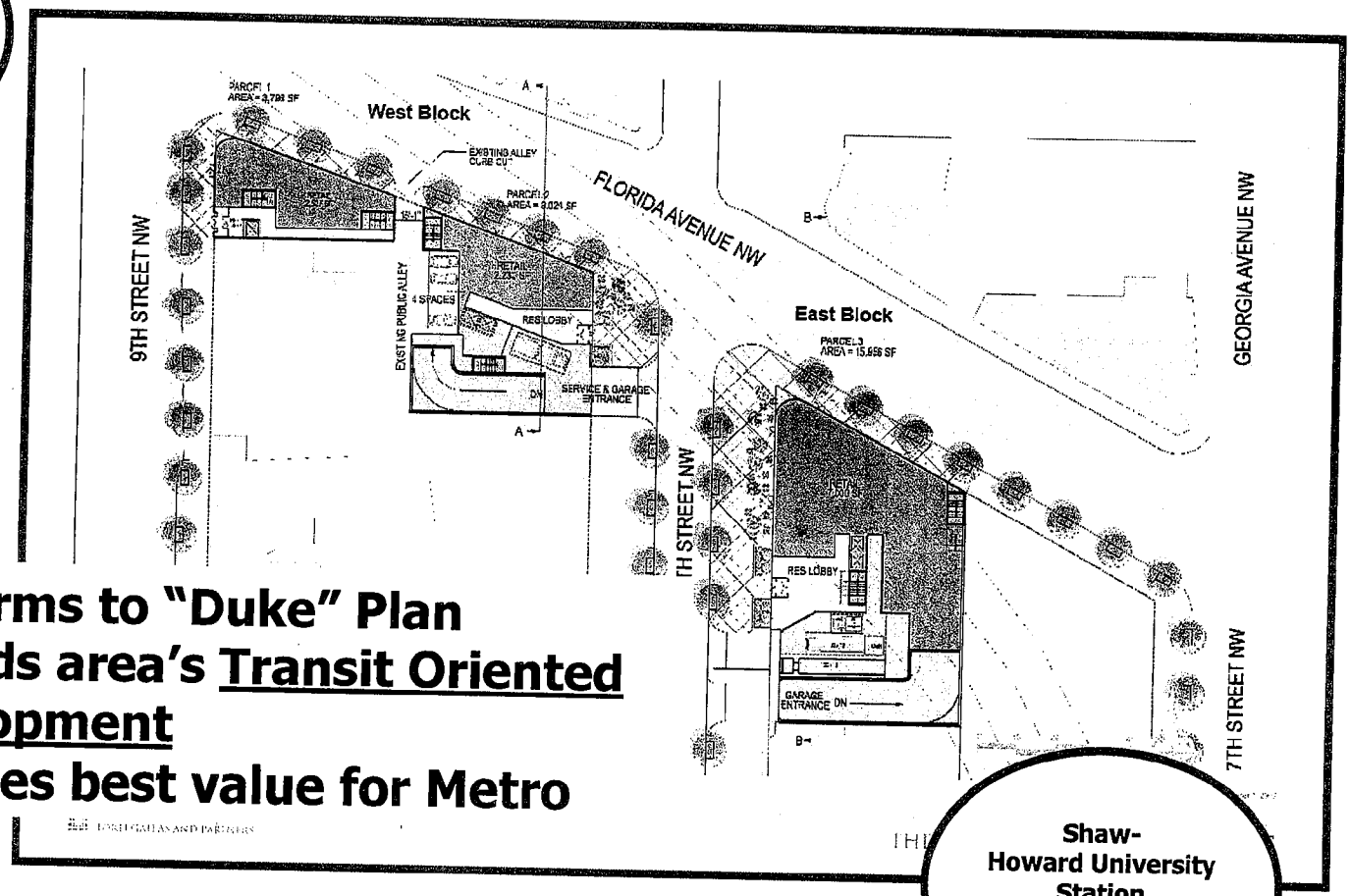
- District of Columbia Offices of Planning and Deputy Mayor for Economic Development participated in proposal reviews and presentations to Metro
- Developers made presentations to Advisory Neighborhood Commission (ANC) 1B prior to proposal submission

WMATA-INV 005211

FOIA CONFIDENTIAL TREATMENT REQUESTED

Site Plan

U Street/
African-American
Civil War
Memorial/Cardozo
Station
U & 10th



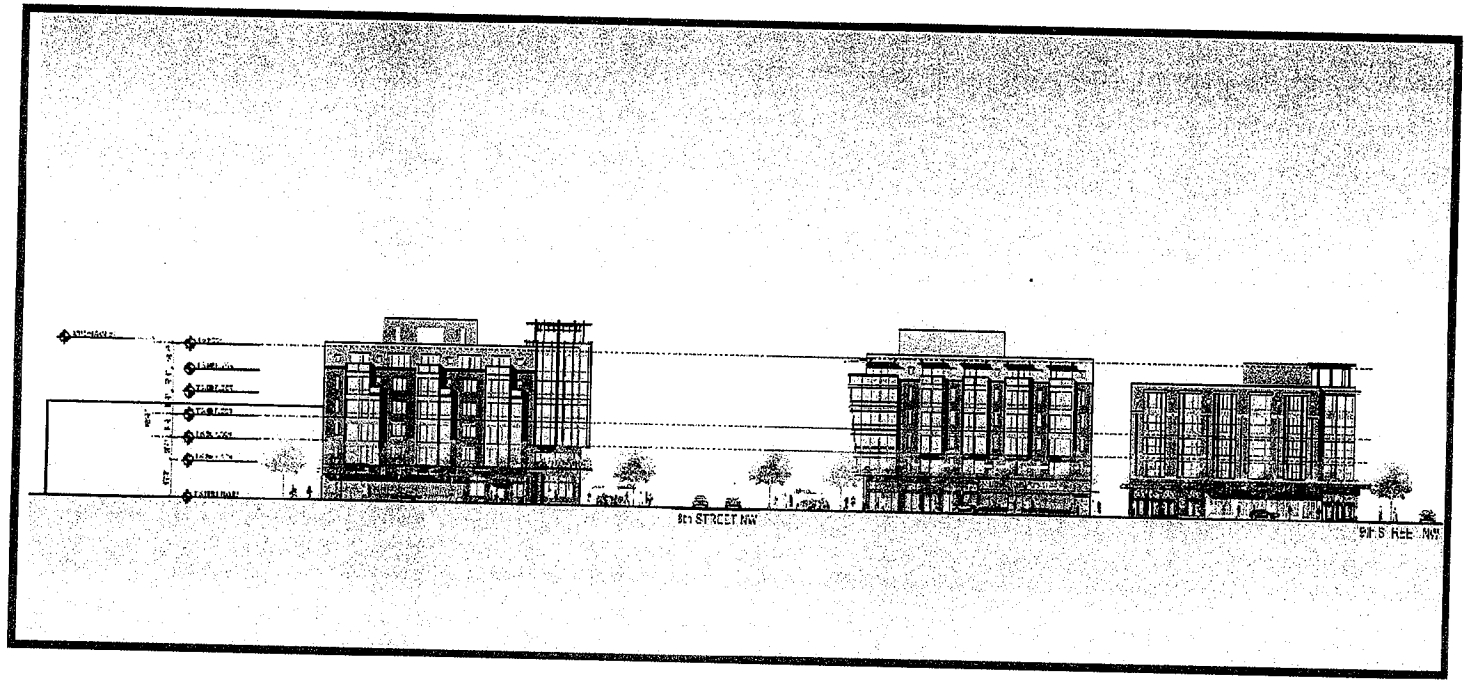
- **Conforms to "Duke" Plan**
- **Extends area's <u>Transit Oriented Development</u>**
- **Provides best value for Metro**

Shaw-
Howard University
Station
7th & S

WMATA-INV 005212

FOIA CONFIDENTIAL TREATMENT REQUESTED

Elevation



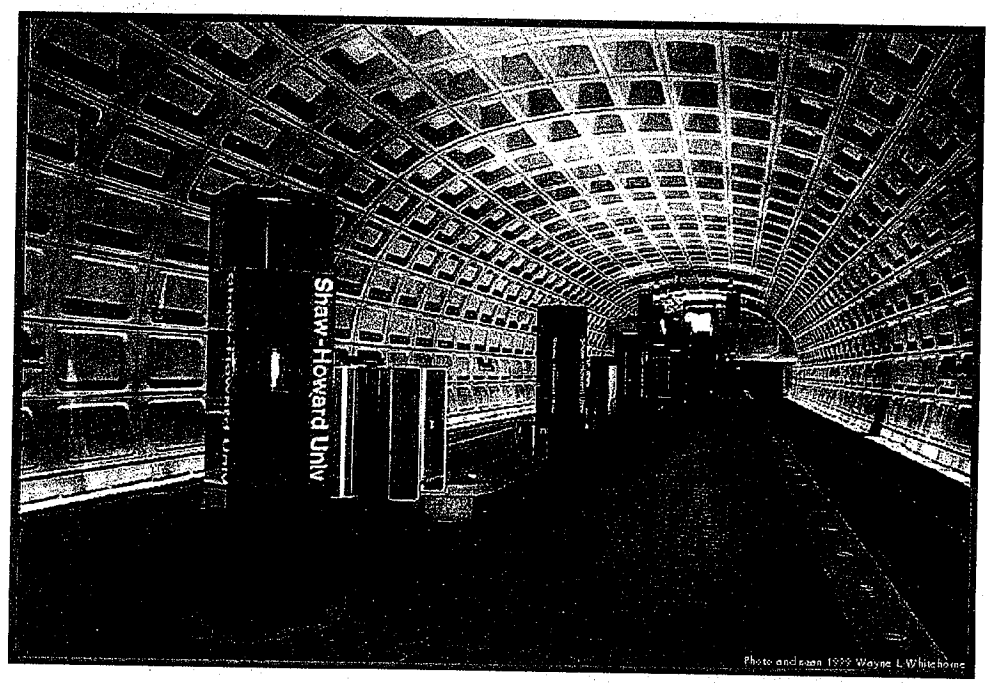
- **Provides 104 apartments**
- **Allocates 11,750 sf for retail/arts uses**

WMATA-INV 005213

FOIA CONFIDENTIAL TREATMENT REQUESTED

Recommendation

- **Approve Banneker Ventures team as developer of Shaw-Howard U./Florida Avenue joint development site**
- **Approve term sheet**
- **Authorize negotiation of development agreement**



WMATA-INV 005214

MEMORANDUM FOR: Chair and Members of the Board

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Record Review

A review of the Shaw-Howard/Florida Avenue Joint Development Developer selection process and record, as requested by Mr. Graham, is provided in this memorandum. The following supporting documents are attached:

- Expression of Interest Response evaluation sheet
- Letter to Banneker Ventures dated December 4, 2007
- Letter from Banneker Ventures dated December 14, 2007
- Letter from Metropolis Development Company dated January 28, 2008
- Memorandum from N. Bottigheimer to J. Catoe recommending Banneker Ventures, and attached thereto, a Memorandum from R. Doggett through J. Washington to N. Bottigheimer recommending Banneker Ventures. (Also includes Proposal evaluation score sheet.)
- Outline of Operating Agreement Between Banneker Ventures, LLC, District Development Group, Inc. and Metropolis Development Company, LLC, dated March 11, 2008

Background

In Spring 2007, Metro issued a Request for Expressions of Interest ("REI") for its Shaw-Howard/Florida Avenue joint development sites (hereinafter the "Property" or the "JD Site"). Staff review of the REI evaluated the proposals based on conformity with the Duke Plan; WMATA Return; Schedule (time to completion); Developer's Ability to Perform; and Developer's Track Record. Staff in WMATA's Office of Station Area Planning and Asset Management of the Department of Planning and Joint Development ("SAAM"), evaluated

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

and ranked these proposals and requested detailed proposals from those six developers who met the minimum requirements.

On October 5, 2007, in response to WMATA's request, detailed proposals were received from teams led by: Banneker Ventures; Lakritz Adler; and Moddie Turay Company. In each case the lead developer included other partners to strengthen their proposal and provide needed technical and financial support. Proposals were reviewed by Staff and Staff interviewed each team to discuss both the financial and technical aspects of the proposals. The evaluation criteria used by staff were those stated in the request for detailed proposals:

Technical Criteria

- Does the development reflect transit oriented development principles?
- Is the project viable/marketable?
- What is the Development Team's experience?
- Is the development innovative/creative?
- Is the development proposal compatible with the local land use plan?
- What benefits are provided to the local jurisdiction?

Economic Criteria

- What is the financial benefit to WMATA?
- What is the financial viability of the Proposal?
- Will the development enhance ridership?

Each development team was given the opportunity to 1) supplement their submissions where those submissions were found to be lacking; and 2) increase compensation to WMATA. The proposals received a numeric ranking on a scale of one to 100. Staff recommendation to management was the highest ranked developer, Banneker Ventures. Staff was aware, at the time of its recommendation, that Metropolis Development had replaced Donatelli Development as a partner on the Banneker team. Management agreed with Staff recommendation and made its recommendation to the General Manager on February 26, 2008.

Banneker Ventures Financial Submissions

Banneker Ventures made a timely submission in response to WMATA's request for a detailed proposal. As part of Staff's review, several

FOIA CONFIEDENTIAL TREATMENT REQUESTED

deficiencies were identified and Staff sent a letter to Banneker dated December 4, 2007 requesting, among other things:

- Evidence of the interest of MacFarlane Partners in providing equity for this project;
- Documentation of the creditworthiness of the entire team, and
- Balance sheets [of Banneker Ventures, LLC].

Banneker Ventures provided written responses, with supporting documentation on December 14, 2007. The response included financial documentation from MacFarlane Partners; letters of interest from three additional investment entities; and the Balance Sheet, Income Statement and Statement of Cash Flow from Banneker Ventures, LLC. As shown by the hand-written notes on the Letters of Interest, Staff communicated with the potential financial backers of the Banneker development and received positive feedback. Staff communication with these investment interests are not clearly dated, but appear to have occurred on or before January 8, 2008.

Substitution of Metropolis Development Company

By letter dated January 28, 2008, Metropolis Development Company ("Metropolis") joined Banneker Ventures and District Development Group as part of the Banneker Team. This partnership was later memorialized in that Outline of Operating Agreement Between Banneker Ventures, LLC., District Development Group, Inc. And Metropolis Development Company, LLC, dated March 11, 2008.

No additional documentation regarding this substitution is found in the file, however, as the January 28th letter indicates, Metropolis is a known entity having participated in the development of the Langston Lofts project with Metro at 14th and V Streets. It is my understanding that the substitution of Metropolis had no impact on the financial strength of the Banneker team. This is because of the high marketability of the proposed project at the JD Site and because of the strength of another equity partner of the team: MacFarlane Partners D.C. Rather, the impact of the removal of Donatelli Development was to call into question the team's ability to manage the construction of the project. The construction management experience, shown in the January 28, 2008 letter, allowed Staff to accept the change in membership and advance Banneker Ventures as the proposed developer.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005217

FOIA CONFIDENTIAL TREATMENT REQUESTED

CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2008	
CATEGORY	**Developer: An LLC to be formed by Banneker Ventures LLC, the District Development Group, LLC**
Site Description	The 28,892 sf site consists of three separate parcels on the south side of Florida Avenue, NW , between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by WMATA.
Developer's Proposal	104 apartments with 11,750 sf ground floor retail/arts uses (total 130,000 sf of development)
Proposed Contract	Lease - 60 years
Construction Schedule	Lease Closing: 20 months after development agreement execution Construction completion: 18 months after lease closing
Developer's Offer Performance Security	$250,000
Option Fee	$!00,000 upon Term Sheet approval
Pre-stabilization Rent	$100,000/year upon development agreement execution rising to $130,000
Additional Density	Prior to closing, $4.20/year/additional gross FAR sf. Thereafter by appraisal.
Base Rent	$597,000/year upon the earlier of stabilization or 45 months from development agreement date
Base Rent Escalation	For first 10 years base rent escalates at 1.5%/year, thereafter at 3%/year
Base Rent Revaluation	Every 10 years
Capital Event Participation	10% of net proceeds
Appraised Market Value $7,500,000 land value $525,000 rental value Appraisal by Integra Realty 8/07	NPV to WMATA over Term of Lease $14 million

WMATA-INV 005218

FOIA CONFIEDENTIAL TREATMENT REQUESTED

2007 SHAW HOWARD JOINT DEVELOPMENT SOLICITATION
SUMMARY OF PROPOSALS

5/07

SITE	DEVELOPER/EXPERIENCE	FINANCIAL	PROPOSAL
		Draft Appraisal:	
Parcels 1, 2, 3 proposal received 5/31 2:15 p.m.	**Banneker Ventures, LLC/District Development Group, LLC** Contact Omar A. Karim 700 12th St., NW Suite 700 Washington, DC 2005	**Financial Offer** Base Lease Payment: $500,000 with agreed-upon increases	**Uses** Residential units: 103 Retail: 11,757 sf **Business Relationship** Lease (total of 99 years, 1 lease with a 50 year term and 1 with a 49 year term ??)
Parcels 1, 2, 3 proposal received 5/31 9:30 a.m. Augments 12/5/2006 unsolicited offer which only addressed Parcel 3	**Donatelli Development/Donatelli & Klein, Inc.** Contact Larry W. Clark Christopher Donatelli Donatelli Development 7200 Wisconsin Avenue Suite 310 Bethesda, MD 20814	**Financial Offer** Purchase price or lease value based on latest assessment values provided by District of Columbia or a third party appraiser $100,000 earnest money deposit upon selection (12/5/2006 offer states upon execution of the Agreement)	**Uses** Retail on first floor, for-sale or rental residential units and underground parking ("can amend our original offer to include Parcels 1 and 2") "A portion of residential units affordable to persons with a household income of 80% - 120% of the Washington, D.C. metro-Area Median Income." **Business Relationship** Sale or Lease

WMATA-INV 005219

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Parcels 1, 2, 3 proposal received 5/31 2:30 p.m.	**Lakritz/Adler Real Estate Development** Contact Joshua Adler 4326 8th Street, NW Washington, DC 20011	**Financial Offer** Sale Parcel 1: $ 675,000 Parcel 2: $2,300,000 Parcel 3: $3,700,000 PUD Bonus Parcel 2: $50/sf above 4.5 FAR attributable to land area only with reductions Parcel 3: $52 sf above 4.5 FAR attributable to land area only with reductions Lease with Option to Purchase 29 years with seven 10 year renewal options plus additional renewals and right of first refusal Parcel 1: $ 32,400 annually Parcel 2: $110,400 annually Parcel 3: $140,600 annually PUD Bonus Parcel 2: $2.88/year/sf above 4.5 FAR attributable to land area only with reductions Parcel 3: $1.98/year/sf above 4.5 FAR attributable to land area only with reductions (43% of total if assemblage) Annual Rent increases by 20% at end of each ten year period	**Uses** Parcel 1: 4,124 sf free-standing retail/restaurant building with a performing arts center (The Warehouse Theater) Parcel 2 (assembled with abutting 11,327 sf parcel): 126,000 sf art-oriented commercial building including: 3,000 sf community theatre 8,600 sf restaurant and retail 30,000 sf charter school (The Academy for Learning Through the Arts) 84,000 sf office 44 underground parking spaces (PUD approval required) If no assemblage: 5-story (29,499 sf) retail and office building with: restaurant: 4,999 sf office: 24,498 sf 9 surface parking spaces Parcel 3: if PUD approval obtained, Marriott boutique hotel (SpringHill Suites) 6.0 FAR, 90 foot tall, 96,000 sf hotel with approx. 8,000 sf of ground floor restaurant and retail and 34 underground parking spaces If no PUD: 72,000 sf, 6 stories, 4.5 FAR and 65 foot height **Business Relationship** Sale or Lease

WMATA-INV 005220

FOIA CONFIEDENTIAL TREATMENT REQUESTED

2007 SHAW HOWARD JOINT DEVELOPMENT SOLICITATION
SUMMARY OF PROPOSALS

SITE	DEVELOPER/EXPERIENCE	FINANCIAL	PROPOSAL
		Draft Appraisal:	
West Block Parcels 1 & 2 East Block Parcel 3 proposal received 5/31 2:15 p.m.	Banneker Ventures Contact: Omar A. Karim 700 12th St., NW Suite 700 Washington, DC 2005	**Financial Offer** $400,000/year base rent plus $100,000 for right to negotiate devel. agreement after deduction of parking garage cost of $4,290,000 ($19,500/space) Total value based on $32,197/du	**Uses** 314 luxury rental apartments 3,300 s.f. of retail/commercial space 504 residential parking spaces in parking structure 16 retail surface spaces 220 VRE spaces in parking structure **Business Relationship** 60 year ground lease
East Block Parcel 3 proposal received 5/31	Donatelli Development Contacts: Larry W. Clark, Vice President, Christopher Donatelli, President Donatelli Development 7200 Wisconsin Avenue Suite 310 Bethesda, MD 20814	**Financial Offer** $65,800/year including pre-development period of 5 years 3%/year escalation after stabilization 60 year and 99 year lease	**Uses** 350 multi-family residential units with structured parking 220 VRE spaces in parking structure **Business Relationship** 99 year ground lease; or 60 year ground lease with 3 13-year options to renew for a total of 99 years.

T:\DOGGETT\SHAWHOWARD\2007 SHAW HOWARD CHART- SUMMARY OF PROPOSALS WITH FINANCIAL OFFERS.WPD

WMATA-INV 005221

FOIA CONFIDENTIAL TREATMENT REQUESTED

9:30 a.m.		options	
Parcels 1, 2, 3 proposal received 5/31 2:30 p.m.	Lakritz/Adler Real Estate Development Contact: Joshua Adler 4326 8th Street, NW Washington, DC 20011	**Financial Offer** $180,000 based on $10.04/ ground sf	**Uses** 180 condo units (4 stories above retail) 11,000 sf ground floor neighborhood retail On combined WMATA (17,798 sf) + adjacent Davey Street, LLC (40,000 sf) site **Business Relationship** Sale of .4 acre parcel on Southern Avenue at Davey St. (Only a portion of the site offered in the JDS)
Parcels 1,2,3 proposal received 5/31 1:45 p.m.	Metropolis Development Company Contact: Scott Pannick, President 1327 14th Street, NW Suite 200 Washington, DC 2005	**Financial Offer** $3,718,410 after deduction from $5,280,000 gross value for TDR's (25,373 sf- $177,590), chiller plant relocation ($1.5M) and option fee ($100,000)	**Uses** 176-key, 10 story Hampton Inn and Suites, 110' high 5,000 sf sit down restaurant ground floor– total 109,970 sf with TDR 50 below grade parking spaces Hotel built over and around existing chiller plant Cooling tower eventually relocated to roof of hotel **Business Relationship** Sale (but would contemplate lease)
Parcels 1, 2, 3	Moddie Turay Company Contact: Moddie Turay, President 2500 Q Street, NW Suite 338	**Financial Offer** $4.5 M net after deduction of $1M for chiller plant relocation	**Uses** 84 residential condos (7 floors over 1 floor retail, 90' high) 5,300 sf ground floor retail

WMATA-INV 005222

FOIA CONFIEDENTIAL TREATMENT REQUESTED

proposal received 5/31 2:45 p.m.	Washington, DC 20007		below grade parking 91,650 buildable sf Replacement chiller plant on roof **Business Relationship** Sale
original unsolicited proposal	P N Hoffman	**Financial Offer** $6.8M (based on $75/ FAR sf) less cost of chiller plant relocation estimated at $1M	**Uses** 103,500 sf condo building, 92 units M-O-R, 9 stories, 90' OR hotel OR 127,000 sf office building 10,000 sf ground floor retail **Business Relationship** condos = sale hotel or office building = lease
proposal received 5/31 3 p.m.	SED Center		
proposal received 5/31 3:20 p.m.	Symmetry		
proposal received 5/31 2:50 p.m.	Trammell Crow Company		

WMATA-INV 005223

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FLAVE PROPERTIES EVALUATION OF EOI RESPONSES.						
Team	Plan	WMATA Return	Schedule	Ability to Perform	Track Record	Total
Banneker						
Donatelli						
Lakritz Adler						
Metropolis						
Moddie Turay						
P N Hoffman						
SED Center						
Symmetry						
Trammell Crow Co.						

Rating system:

Plan	30 points
WMATA return	30 points
Schedule	10 points (Partly subsumed under WMATA return)
Ability to Perform	10 points
Track Record	20 points

Internal rating system:

Outstanding	total points
Good	2/3 points
Adequate	1/3 points
Inadequate	0 points

WMATA-INV 005224

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ERTIES EOI RESPONSES.

	Office sf	Retail sf	Arts &/or Education	Parking
		11,757 s	Below grade theater Parcel 1	43
		ground floor		"underground"
sf l d	24,500 5 story at 4.5 FAR 47,900 w. assembly & 4.5 FAR 96,000 w. assembly and PUD all Parcel 2	5,000 Parcel 2 11,600 Parcel 2 8,600 Parcel 2 4,400 Parcel 1 8,000 Parcel 3	Below ground Warehouse Theater Parcel 1 30,000 sf arts charter sch. Parcel 2 30,000 sf arts charter sch& 3,000 sf Community Theater Parcel 2	Parcel 1 - 0 Parcel 2 - 9 or 44 Parcel 3- 34
ı		12,000		underground Parcel 3
		24,930		not addressed
	18,000	14,000		27
			12,500 sf total ground floor art gallery educ. center & office above	not addressed
		20,769		not addressed
	148,000			not addressed

WMATA-INV 005225

Supplemental Information Florida Avenue EOI's 7/25/07

1 Banneker
-
2.Donatelli
-
3.Lakritz Adler
- lease payment would not start until 2011 per proposal (this is a correction to the table)
- development for Parcel 1 would be 4,400 sf, no theater beneath (theater is on Parcel 2)

4.Metropolis
-
5.Moddie Turay
- the $8,661,000 sf proposal is based on a successful PUD application
-states offer is $50/FAR sf

6.P N Hoffman
-
7.SED Center
-
8.Symmetry
- offering $15/sf for "yield" over 110,000 sf

9.Trammell Crow Company
- offer is 25% escalation after year 21 and CPI increase thereafter

Uptown Arts Overlay
Can get up to 4.5 (as opposed to 4.0 which can be achieved with residential and 50% ground floor retail/arts) with bonus for certain types of retail, a theater, or affordable housing (as defined in Inclusionary Zoning orders of May 18, 2006 and Feb 12, 2007 for Uptown Arts and which requires 8% set aside for C-2-B matter of right or 50% inclusionary zoning bonus density whichever is greater)

Howard Parcel = @ 20,000 sf

FL Ave EOI's Supplemental Information on
"The developer's background showing its ability to perform; and
the developer's prior experience"

1. Banneker: principals have shown "involvement" with numerous projects; howefer, actual track record for
   Banneker = 52 unit condo in Silver Spring, 64 unit condo in Memphis
   District Development Group (co-developer- 50%) = school renovations
   and small office and semi-industrial buildings

We did not ask for evidence of financial muscle and they have provided none; however they did subsequently send a letter of interest from a bank and have sent supplemental materials to Nat who has not opened them as they arrived after the deadling.

2. Donatelli
   Cited past residential projects, two of which have been with Metro. They are a known quantity.

3. Lakritz Adler

Has not done major projects. Currently developing in Shaw the new construction Moderno, 35 units, the 45,000 sf new construction Beauregard (11/V), Murano new constr 16-unit(10th/V) and recently completed the Visio , Veritas 2031 FL 12,500 sf historic retail with restaurant and office, Temperance Hall 6,000 sf neigh restaurant once block south of GA/Petworth station. Projects to date are smaller. This would be a step up for them.

No financial info given; none asked for.

4. Metropolis- known quantity in terms of track record and ability to complete a project of this size, e.g. Langston Lofts.

5. Moddie Turay- does not appear to have developed anything yet as its own company. Needs a partner. Provides a letter of interest from Clark Enterprises.

6. PN Hoffman. known quantity in terms of track record and ability to complete a project of this size.

7. SED- would rely on pro bono services of Ray Ritchey, an experienced and capable developer for a relatively small 4-story building. Pro forma shows a $2M construction hard cost. SED has net assets of $300,000 to $400,000. Ability to finance not shown.

8. Symmetry. Developer Nicole Totah completed a new construction office condo at 1430 K St. of under 200,000 sf. Developer's father and partner Sami Totah has built several million sf of commercial and residential. Type of development not specified. Financial wherewithal not supplied.

9. Trammell Crow Company. A known quantity with ability to perform.

VIA CERTIFIED MAIL, FASCIMILE AND E-MAIL

August 8, 2007

Mr. Moddie Turay, President
Moddie Turay Company, LLC
2500 Q Street, NW, Suite 338
Washington, DC 20007

RE: Proposal for Shaw-Howard WMATA Property

Dear Mr. Turay:

Thank you for your proposal tp develop Washington Metropolitan Area Transit Authority (WMATA) property on Florida Avenue near the Shaw-Howard University Metro station. WMATA is gratified to have received a number of proposals and has carefully reviewed them, together with representatives of the District of Columbia government. We have eliminated some proposals from further consideration.

We are now requesting a full proposal from your organization in accordance with WMATA's standard solicitation guidelines which are attached.

Note that the material supplied to WMATA to date is a not a substitute for that requested in this solicitation. In particular, ability to perform financially and the financial offer remain key considerations for WMATA.

WMATA is required by the Federal Transit Administration to sell or lease its property for the highest and best use which WMATA determines through an appraisal. The appraisal remains confidential. WMATA expects offers made at today's value to be escalated to the actual date of closing or first base rent payment and, in the case of a lease, escalated annually thereafter. WMATA is seeking firm commitments on payment dates and amounts. Your offer should include both.

WMATA's Board of Directors has expressed a preference for leasing rather than selling its property. To be competitive, a proposal for lease, as well as sale, should be submitted.

We look forward to receiving your full proposal. Please deliver it to WMATA headquarters at 600 Fifth Street, NW by 3 p.m. on Friday, September 28, 2007. If you have any questions, please call Rosalyn Doggett at 202 962 2208.

Sincerely,

Joel R. Washington
Acting Director
Office of Property Development and Management

Attachment

VIA CERTIFIED MAIL, FASCIMILE AND E-MAIL

August 9, 2007

Mr. Lamont Hoffman, CEO
P.N. Hoffman, Inc.
4725 Wisconsin Avenue, NW, Suite 200
Washington, DC 20016

RE: Unsolicited Proposal for Shaw-Howard WMATA Property

Dear Mr. Hoffman:

Thank you for your unsolicited proposal to develop Washington Metropolitan Area Transit Authority (WMATA) property on Florida Avenue near the Shaw-Howard University Metro station. As you may know, in accordance with our Policies and Guidelines, we advertised the sites for competitive offers and received a number of proposals. We have carefully reviewed the additional proposals, as well as yours, along with representatives of the District of Columbia government.

We have concluded that your proposed use does not meet City objectives for intensive development of the sites. Further, your financial offer was the lowest received and does not meet our expectations of value. Therefore, we will not be requesting a full proposal from your organization.

We thank you for your interest in the sites and regret that this opportunity did not work out. We hope that you will consider other WMATA requests for proposals in the future.

If you have any questions, please call Rosalyn Doggett at 202 962 2208.

Sincerely,

Joel R. Washington
Acting Director
Office of Property Development and Management

VIA CERTIFIED MAIL, FASCIMILE AND E-MAIL

August 9, 2007

Ms. Ana Marie Boitel
Chair, Board of Directors
Spanish Education Development Center
1840 Kalorama Road, NW
Washington, DC 20009

RE: Proposal for Shaw-Howard WMATA Property

Dear Ms. Boitel:

Thank you for your proposal to develop Washington Metropolitan Area Transit Authority (WMATA) property on Florida Avenue near the Shaw-Howard University Metro station. WMATA is gratified to have received a number of proposals and has carefully reviewed them, along with representatives of the District of Columbia government.

We have concluded that your proposed use does not meet City objectives for intensive development of the sites in conjunction with others nearby. We have, however, had discussions with City officials who have offered to assist you in finding an alternative location should you be interested.

We thank you for your consideration of our sites and appreciate the time and effort you put into preparing your proposal. We regret that this opportunity did not work out.

If you have any questions, please call Rosalyn Doggett at 202 962 2208.

Sincerely,

Joel R. Washington
Acting Director
Office of Property Development and Management

VIA CERTIFIED MAIL, FASCIMILE AND E-MAIL

August 9, 2007

Mr. Edward J. Morgan, Principal
Trammell Crow Company
1055 Thomas Jefferson Street, NW
Washington, DC 20007

RE: Proposal for Shaw-Howard WMATA Property

Dear Mr. Morgan:

Thank you for your proposal to develop Washington Metropolitan Area Transit Authority (WMATA) property on Florida Avenue near the Shaw-Howard University Metro station. WMATA is gratified to have received a number of proposals and has carefully reviewed them, together with representatives of the District of Columbia government.

We have concluded that your proposed use does not meet City objectives for development of the sites as set forth in the adopted plan for the area. Therefore, we will not be requesting a full proposal from your organization.

We thank you for your interest in our sites and appreciate the time and effort you put into preparing your proposal. We hope that you will consider other WMATA requests for proposals in the future.

If you have any questions, please call Rosalyn Doggett at 202 962 2208.

Sincerely,

Joel R. Washington
Acting Director
Office of Property Development and Management

VIA CERTIFIED MAIL, FASCIMILE AND E-MAIL

August 9, 2007

Mr. Moddie Turay, President
Moddie Turay Company, LLC
2500 Q Street, NW, Suite 338
Washington, DC 20007

RE: Proposal for Shaw-Howard WMATA Property

Dear Mr. Turay:

Thank you for your proposal tp develop Washington Metropolitan Area Transit Authority (WMATA) property on Florida Avenue near the Shaw-Howard University Metro station. WMATA is gratified to have received a number of proposals and has carefully reviewed them, together with representatives of the District of Columbia government. We have eliminated some proposals from further consideration.

We are now requesting a full proposal from your organization in accordance with WMATA's standard solicitation guidelines which are attached.

Note that the material supplied to WMATA to date is a not a substitute for that requested in this solicitation. In particular, ability to perform financially and the financial offer remain key considerations for WMATA.

WMATA is required by the Federal Transit Administration to sell or lease its property for the highest and best use which WMATA determines through an appraisal. The appraisal remains confidential. WMATA expects offers made at today's value to be escalated to the actual date of closing or first base rent payment and, in the case of a lease, escalated annually thereafter. WMATA is seeking firm commitments on payment dates and amounts. Your offer should include both.

WMATA's Board of Directors has expressed a preference for leasing rather than selling its property. To be competitive, a proposal for lease, as well as sale, should be submitted.

We look forward to receiving your full proposal. Please deliver it to WMATA headquarters at 600 Fifth Street, NW by 3 p.m. on Friday, September 28, 2007. If you have any questions, please call Rosalyn Doggett at 202 962 2208.

Sincerely,

Joel R. Washington
Acting Director
Office of Property Development and Management

Attachment

FOIA CONFIEDENTIAL TREATMENT REQUESTED

2007 SHAW HOWARD JOINT DEVELOPMENT SOLICITATION
SUMMARY OF PROPOSALS

SITE	DEVELOPER/EXPERIENCE	FINANCIAL	PROPOSAL
		Draft Appraisal:	
Parcels 1, 2, 3 proposal received 5/31 2:15 p.m.	**Banneker Ventures, LLC/District Development Group, LLC** Contact Omar A. Karim 700 12th St., NW Suite 700 Washington, DC 2005	**Financial Offer** Base Lease Payment: $500,000 with agreed-upon increases	**Uses** Residential units: 103 Retail: 11,757 sf **Business Relationship** Lease (total of 99 years, 1 lease with a 50 year term and 1 with a 49 year term ??)
Parcels 1, 2, 3 proposal received 5/31 9:30 a.m. Augments 12/5/2006 unsolicited offer which only addressed Parcel 3	**Donatelli Development/Donatelli & Klein, Inc.** Contact Larry W. Clark Christopher Donatelli Donatelli Development 7200 Wisconsin Avenue Suite 310 Bethesda, MD 20814	**Financial Offer** Purchase price or lease value based on latest assessment values provided by District of Columbia or a third party appraiser $100,000 earnest money deposit upon selection (12/5/2006 offer states upon execution of the Agreement)	**Uses** Retail on first floor, for-sale or rental residential units and underground parking ("can amend our original offer to include Parcels 1 and 2") "A portion of residential units affordable to persons with a household income of 80% - 120% of the Washington, D.C. metro-Area Median Income." **Business Relationship** Sale or Lease
Parcels 1, 2, 3	**Lakritz/Adler Real Estate Development**	**Financial Offer** Sale Parcel 1: $ 675,000	**Uses** Parcel 1: 4,124 sf free-standing retail/restaurant building with a

WMATA-INV 005236

FOIA CONFIEDENTIAL TREATMENT REQUESTED

proposal received 5/31 2:30 p.m.	Contact Joshua Adler 4326 8th Street, NW Washington, DC 20011	Parcel 2: $2,300,000 Parcel 3: $3,700,000 PUD Bonus Parcel 2: $50/sf above 4.5 FAR attributable to land area only with reductions Parcel 3: $52 sf above 4.5 FAR attributable to land area only with reductions Lease with Option to Purchase 29 years with seven 10 year renewal options plus additional renewals and right of first refusal Parcel 1: $ 32,400 annually Parcel 2: $110,400 annually Parcel 3: $140,600 annually PUD Bonus Parcel 2: $2.88/year/sf above 4.5 FAR attributable to land area only with reductions Parcel 3: $1.98/year/sf above 4.5 FAR attributable to land area only with reductions (43% of total if assemblage) Annual Rent increases by 20% at end of each ten year period	performing arts center (The Warehouse Theater) Parcel 2 (assembled with abutting 11,327 sf parcel): 126,000 sf art-oriented commercial building including: 3,000 sf community theatre 8,600 sf restaurant and retail 30,000 sf charter school (The Academy for Learning Through the Arts) 84,000 sf office 44 underground parking spaces (PUD approval required) If no assemblage: 5-story (29,499 sf) retail and office building with: restaurant: 4,999 sf office: 24,498 sf 9 surface parking spaces Parcel 3: if PUD approval obtained, Marriott boutique hotel (SpringHill Suites) 6.0 FAR, 90 foot tall, 96,000 sf hotel with approx. 8,000 sf of ground floor restaurant and retail and 34 underground parking spaces If no PUD: 72,000 sf, 6 stories, 4.5 FAR and 65 foot height **Business Relationship** Sale or Lease
Parcels 1, 2, 3 proposal received 5/31 1:45 p.m.	**Metropolis Development Company** Contact Scott Pannick 1327 14th Street, NW Suite 200	**Financial Offer** $100 per FAR Assume 4.5 FAR: $12,992,400	**Uses** (assume 4.5 FAR) Retail: 12,000 sf Condominiums: 117,924 gsf (luxury)

WMATA-INV 005237

FOIA CONFIDENTIAL TREATMENT REQUESTED

	Washington, DC 2005 202-588-1436 cell: 202-588-460-4150 fax: 202-588-1344		Underground parking **Business Relationship** Sale
Parcels 1, 2, 3 proposal received 5/31 2:45 p.m.	**Moddie Turay Company** Contact Moddie Turay 2500 Q Street, NW Suite 338 Washington, DC 20007	**Financial Offer** Sale $50 per FAR sf Based upon a 4.5 FAR and total sf of 28,872 for the parcels, purchase price of $6,496,200 If PUD selected, FAR would increase to 6.0, and pending site plan approval, etc. and construction of entire 6.0 FAR, total purchase price of $8,661,600 Lease $5,000 monthly commencing at closing and concluding at stabilization At stabilization:10% of pro-rata share of their Total Gross Revenue (based upon proportion of WMATA land square footage to total project square footage)	**Uses** Condominiums: 84 residential (7 floors over 1 floor retail, 90' high) Retail: 5,300 sf ground floor l Underground parking 91,650 buildable sf **Business Relationship** Sale or Lease
Parcels 1, 2, 3 original unsolicited proposal	**P N Hoffman, Inc.** Contact Lamont Hoffman P.N. Hoffman, Inc. 4725 Wisconsin Avenue, NW Suite 200 Washington, DC 20016 202-686-0010 fax: 202-686-0089	**Financial Offer** $700,000	**Uses** Two story buildings with ground level retail and office above Retail: 14,000 sf Office: 18,000 sf Parking (Parcel 1: to be sold to Central Safe and Locksmith Co. at below market rate)

WMATA-INV 005238

FOIA CONFIEDENTIAL TREATMENT REQUESTED

			Business Relationship Sale
Parcel 1 proposal received 5/31 3 p.m.	**SED Center** (Spanish Education Development Center) Contact Ana Maria Bataille, Chair, Board of Directors Spanish Education Development Center 1840 Kalorama Road, NW Washington, DC 20009 202-462-8848 fax: 202-462-6886 www.sedcenter.org	**Financial Offer** Lease with Option to Purchase Lease TBD based on FAR of the development times $65/FAR SF (Base Land Value) times 5% = Stabilized Ground Lease Rent 2% annual escalator based upon preceding year's rent Option to Purchase in the 10th, 20th, 30th and 40th lease anniversary dates for a value equal to the Base Land Value (as determined above) escalated by 2%	**Uses** Community-based, non-profit First floor: community-based art gallery Upper three floors: day care, classrooms and support offices Roof and side yards used for outdoor activities Total FAR: 12,500 sf approx. (3.3 FAR) **Business Relationship** Lease with option to purchase 50 year term with two 10 year renewals Right of First Refusal on any offer WMATA receives for the site
Parcels 1, 2, 3 proposal received 5/31 3:20 p.m.	**Symmetry** Contact Nicole Totah Symmetry 600 Jefferson Plaza, Suite 550 Rockville, MD 20852 301-294-4150 fax: 301-294-4151	**Financial Offer** Sale $75 per FAR sf of yield but not less than $7,500,000 plus $15 per FAR sf of yield above 110,000 sf for all parcels assembled (WMATA sites and adjoining sites) Lease $350,000 annually with 3% annual escalator	**Uses** Two options which include retail, residential (including affordable housing component) and office Option 2 includes assemblage with adjoining parcels and would allow underground parking **Business Relationship** Sale or Lease (99 years)
Parcels 1, 2, 3	**Trammell Crow Company and Michele Hagans**	**Financial Offer** Based upon Parcel 3 being rezoned to accommodate a	**Uses** 148,000 sf medical office building

WMATA-INV 005239

FOIA CONFIEDENTIAL TREATMENT REQUESTED

proposal received 5/31 2:50 p.m.	Contact Edward J. Morgan Trammel Crow Company 1055 Thomas Jefferson Street, NW Suite 600 Washington, DC 20007 (no phone number, etc. provided)	medical office building (4.0 FAR) Annual Lease Payment Parcel 1: $ 73,640 Parcel 2: $167,230 Parcel 3: $350,000 Total $590,870 25% escalation in year 21 and CPI increases annually thereafter	**Business Relationship** Lease (99 years) States that they may qualify to negotiate a JD agreement without competition based on Section 7.5 of *Joint Development Policies & Guidelines*

WMATA-INV 005240

FOIA CONFIEDENTIAL TREATMENT REQUESTED

SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SOLICITATION
SUMMARY OF PROPOSALS

DEVELOPER	PROPOSED USES ALL PARCELS	PROPOSED USES PARCEL 1	PROPOSED USES PARCEL 2	PROPOSED USES PARCEL 3	BUSINESS RELATIONSHIP
Banneker Ventures, LLC District Development Group Donatelli Development, Inc. Contact: Omar A. Karim	104 du's 11,750 gsf retail/cultural 47 below-grade parking	45 du's ater musem and retail 28 below-grade pkg.	combined with Parcel 1	59 du's 7,000 sf retail 19 below-grade pkg.	Lease or sale (sale price by future appraisal)
Lakritz\Adler Contact: Joshua Adler	75,483 gsf office 145-room hotel 26,124 gsf/nsf retail -grade parking	4,124 gsf free-standing theater/restaurant	75,483 gsf office 14,000 nsf retail and entertainment 44 below-grade pkg. needs assemblage with adjacent 11,320 sf parcel	145-room hotel 8,000 gsf retail 34 below-grade pkg.	Lease or sale
Moddie Turay Company Contact: Moddie Turay	104 -130 du's 26,282 nsf retail 62 below-grade parking	not broken out	not broken out needs assemblage with adjacent lots (1933-35 9th St.)	not broken out	Lease or sale

WMATA-INV 005241

Shaw-Howard/Florida Avenue Proposal Teams

Banneker Ventures, LLC- Omar A. Karim	developer/development manager
District Development Group- Phinis Jones Joshua Kern	co-developer/co-development manager
Donatelli Development, Inc.- Christopher J. Donatelli Larry Clark	co-developer/construction manager
Torti Gallas & Partners, Inc.-	architect
MacFarlane Partners-	equity partners
Tompkins Builders-	general contractor
Moddie Turay Company, LLC- Moddie Turay Adrian Donnelly Nia Francis	developer
Clark Enterprises, Inc.- Rebecca L. Owen Jessica Hubley King Davidson	co-developer and financial partner
Sorg & Associates- Suman Sorg	architect
Squire Sanders & Dempsey Michael S. Kosmas	attorney
LaKritz \ Adler Development Joshua A. Adler Robb LaKritz	lead developer
CORE Architects	lead architect
DANAC Corporation	co-developer (office)/equity partner
Milestone Capital Corporation Sander Mednick Michael L. Wachtell	co-developer (hotel)/equity partner
Warehouse Theater	venture partner/anchor tenant

Bank of America

BANK OF AMERICA - CONFIDENTIAL

DATE: OCTOBER 12, 2007

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 68021004

AMENDMENT NUMBER 1

ISSUING BANK
BANK OF AMERICA, N.A.
1 FLEET WAY
PA6-580-02-30
SCRANTON, PA 18507-1999

BENEFICIARY
WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
600 FIFTH STREET, NW
WASHINGTON, DC 20001

APPLICANT
DISTRICT DEVELOPMENT GROUP, LLC
3215 MARTIN L. KING, JR. AVENUE, SE
WASHINGTON, DC 20032

THIS AMENDMENT IS TO BE CONSIDERED AN INTEGRAL PART OF THE ABOVE CREDIT AND MUST BE ATTACHED THERETO.

THE ABOVE MENTIONED CREDIT IS AMENDED AS FOLLOWS:

"PAYMENT UNDER THIS LETTER OF CREDIT WILL BE EFFECTED UPON PRESENTATION OF YOUR DRAFT ACCOMPANIED BY THE REQUIRED DOCUMENT(S) (THE "DRAWING") TO BANK OF AMERICA N.A., ANACOSTA BRANCH, 2100 MARTIN LUTHER LING JR. SE, WASHINGTON, DC 20020-5732, ATTENTION: HUGH A. ANDERSON AND A COPY OF SUCH DRAWING SENT SIMULTANEOUSLY BY FACSIMILE TO BANK OF AMERICA, N.A. - SCRANTON FAX NUMBER (570) 330-4186/4187).

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS AMENDMENT, PLEASE CALL 800-370-7519 .

AUTHORIZED SIGNATURE

THIS DOCUMENT CONSISTS OF 1 PAGE(S).

ORIGINAL

05-17-1486B 7-2000

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FLORIDA AVENUE ANNUAL TAXES AND DAILY RIDERS 11-07

	Banneker	Lakritz	Moddie
Real Estate Taxes	$269,000	$1,718,000	
Sales Taxes	$304,000	$1,222,000	
Hotel Taxes (room+dining)		$1,553,000	
Parking Taxes			
		may include adj. parcel	not in Tech Volume 1

	Banneker	Lakrtiz	Moddie
Weekday residential metrorail trips (45% of all)	120		incoherent
Weekday retail metrorail trips (28 % of all)	336		

WMATA-INV 005244

FLORIDA AVENUE ANNUAL TAXES AND DAILY RIDERS 11-07

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005245

JOINT DEVELOPMENT SOLICITATION ISSUED AUGUST 24, 2007
PRESENTATION INSTRUCTIONS

These instructions are intended to provide guidance to Developers (and Development Teams) who have submitted Proposals to the Washington Metropolitan Area Transit Authority (WMATA) in response to the Joint Development Solicitation (JDS) issued on August 24, 2007, and have been invited to give a presentation to the WMATA Evaluation Team.

1. **Purpose**:
   The purpose of the oral presentations is to allow a Developer an opportunity to describe the key elements of its Proposal and to respond to questions from the WMATA Evaluation Team and jurisdictional representatives, approximately 8-12 attendees

2. **Organization of Presentations**:
   The presentation should be organized into two (2), 10-15-minute, segments. We have allotted an additional 15 minutes for questions after each presentation.

   Please note that the presentations and questions from those in attendance should be completed in approximately one (1) hour.

   The presentation should be structured in the following manner:

   a) Description of the Proposal highlighting relevant development experience of individual team development principals, Transit Oriented Development (TOD) principles, input received from both the local jurisdiction and community organizations, benefits to the local jurisdictions (taxes, jobs, etc.), anticipated schedule and timing of zoning requests, if appropriate. PLEASE DO NOT DISCLOSE ANY INFORMATION THAT YOU DO NOT WANT TO SHARE WITH THE APPLICABLE JURISDICTION. (Members of WMATA's Evaluation Team will be in attendance, and jurisdictional representatives are expected as well.)

   b) Proposed business relationship with WMATA, financial viability of the Proposal, and payments to WMATA. (Only members of WMATA's Evaluation Team will be in attendance.)

3. **Audio Visual Equipment, Handout Material and Other Aids**:
   Developers are encouraged to use maps, graphics and other visuals during their presentations. However, elaborate presentations are neither necessary nor encouraged.

   Equipment
   A slide projector, screen and/or easels will be available **upon request**. All other audio visual equipment must be provided by the Developer.

   Handouts
   Each Developer should ensure that ten (10) copies of any handout materials are available at the time of the presentation. **WMATA staff cannot be responsible for reproducing any handout materials**.

4. **Location**:
   All presentations will be held at the WMATA Headquarters Building, 600 Fifth Street, NW, Washington, DC. WMATA staff will escort you to the presentation room.

December 4, 2007

Joshua Adler, Principal
Lakritz Adler Development, Inc.
4326 8th Street, NE
Washington, DC 20011

Re: Shaw-Howard Florida Avenue Joint Development Site

Dear Mr. Adler:

Thank you for the submission of your proposal for the above-referenced 2007 Joint Development Solicitation (JDS) site.

The purpose of this letter is to bring to your attention missing or incomplete items or items that require further discussion and clarification. We would like to schedule an oral presentation by your team on December 12, 2007 at 11 a.m. at WMATA headquarters and have attached instructions for the presentation. We ask that you provide 10 copies of the supplementary information requested in this letter not later than the presentation and preferably before so that we may first review it.

The following items need clarification, correction or completion:

Technical Information
Within the schedule you presented, please indicate the outside, firm date by which a purchase or lease would occur.

What, if any, zoning approvals or variances will you be seeking for Parcels 1 or 3?

Do you expect that Parcel 3 loading from Florida Avenue will be acceptable to DDOT?

Though you have identified existing hotels in the competitive market, how would you assess the opportunity for the hotel type you are proposing if a competitive product were developed in Howard Town Center?

Please relate your experience with office condominiums.

Economic Information

Note that your valuation of the site is considerably below WMATA's appraisal and needs to be increased substantially or your offer cannot be considered. Likewise, the percentage of rent to value falls below WMATA appraisal thresholds and needs to be raised. These are FTA requirements.

WMATA expects escalation in the sale or rent amount from today's values if closing is delayed beyond a year. It further expects and receives option fees for each year that the property is held off the market, until closing. Please provide your proposal.

WMATA also expects and receives participations in capital events and in cash flow (or, alternatively to cash flow, revaluation of the project in which rent values do not fall below the previous year). Please provide your proposal.

It appears from your discussion that you are interested basically in a sale on Parcels 1 and 2 because of your financial arrangement with the Parcel 2 adjacent property owner and your interest in office condominiums. If you entertain a lease, explain how that can be accommodated given your option to purchase the adjoining property. Also, explain how you would combine the two properties in separate ownerships.

It appears that you are valuing the property adjacent to Parcel 2 at $94/FAR sf ($4.8M sales price divided by 11,330 sf x 4.5 FAR) whereas you value Parcel 2 at $42/FAR sf. ($4.9M divided by 26,100 sf x 4.5 FAR). Please explain the disparity and assure WMATA that it is not subsidizing the adjacent property deal.

Note that WMATA standard leases require annual minimum escalations of rent (as opposed to the once every 10 years that you have offered) and, also, that owing to past experience, WMATA has decided that it cannot grant a right of first refusal as you propose.

We look forward to your presentation and to further discussion on this project.

Sincerely,

Joel R. Washington, Director
Station Area Planning and Asset Management

Attachment

December 4, 2007

Omar A. Karim, Principal
Banneker Ventures, LLC.
700 12th Street, NW Suite 700
Washington, DC 20005

Re: Shaw-Howard Florida Avenue Joint Development Site

Dear Mr. Karim:

Thank you for the submission of your proposal for the above-referenced 2007 Joint Development Solicitation (JDS) site.

The purpose of this letter is to bring to your attention missing or incomplete items or items that require further discussion and clarification. We would like to schedule an oral presentation by your team on December 17, 2007 at 10:30 a.m. at WMATA headquarters and have attached instructions for the presentation. We ask that you provide 10 copies of the supplementary information requested in this letter not later than the presentation and preferably before so that we may first review it.

The following items need clarification, correction or completion:

Technical Information
Within the schedule you presented, please indicate the outside, firm date by which a lease would be executed.

What, if any, zoning approvals or variances will you be seeking for Parcels 1 or 3?

Please explain your schedule more fully. It appears to build in very long time periods for negotiating a WMATA agreement and not enough time for local historic preservation, zoning, and building permit approvals.

Also, please provide an outside date for stabilization.

Assess the market for rental apartments in the area now that conversions of condominium projects to rental product are occurring. Is the market becoming oversaturated with rentals and would you expect to experience difficulty in obtaining financing for your project.?

Do you have prospective tenants for the Robeson museum or themed restaurant?

Have you discussed with DDOT the proximity of the Parcel 2 garage entrance to Florida Avenue?

Economic Information

WMATA expects escalation in the sale or rent amount from today's values if closing is delayed beyond a year. Please indicate how you would satisfy this requirement.

The pro forma rents do not seem to square with the schedule. For example, stabilization seems to take 7 months in the schedule but the pro forma appears to show a longer time. Please reconcile.

WMATA also expects and receives participations in capital events and in cash flow (or, alternatively to cash flow, revaluation of the project in which rent values do not fall below the previous year). Please provide your proposal.

Provide evidence of the interest of MacFarlane Partners in providing equity for this project. Do you have alternative equity sources?

Document the creditworthiness of the entire team. Banking references are provided only for the Donatelli part of the partnership, which is 30% of the team.

Please submit the balance sheets that the proposal indicates will be provided under separate cover.

We look forward to your presentation and to further discussion on this project.

Sincerely,

Joel R. Washington, Director
Station Area Planning and Asset Management

Attachment

December 4, 2007

Moddie Turay, President
Moddie Turay Company, LLC
2500 Q Street., NW Suite 338
Washington, DC 20007

Re: Shaw-Howard Florida Avenue Joint Development Site

Dear Mr. Turay:

Thank you for the submission of your proposal for the above-referenced 2007 Joint Development Solicitation (JDS) site.

The purpose of this letter is to bring to your attention missing or incomplete items or items that require further discussion and clarification. We would like to schedule an oral presentation by your team on December 17, 2007 at 1 p.m. at WMATA headquarters and have attached instructions for the presentation. We ask that you provide 10 copies of the supplementary information requested in this letter not later than the presentation and preferably before so that we may first review it.

The following items need clarification, correction or completion:

Technical Information
What is the experience of the team in actually carrying out a residential development? This was not apparent from your proposal.

What is the contractual arrangement between Moddie Turay Company and Clark Enterpises? Has an agreement been worked out?

What, if any, zoning approvals or variances will you be seeking for Parcels 1 or 3?

Assess the market for rental apartments in the area now that conversions of condominium projects to rental product are occurring. Is the market becoming oversaturated with rentals and would you expect to experience difficulty in obtaining financing for your project.?

Do you have prospective tenants for the retail components of your project?

You appear to close the alley between 8th and 9th streets. Do you regard this as feasible? Can you obtain agreement from adjacent property owners?

Calculations of annual property, sales and any other taxes to the local jurisdiction are missing from your proposal. Please provide.

Economic Information

Note that your valuation of the site is considerably below WMATA's appraisal and needs to be increased substantially or your offer cannot be considered.

WMATA expects escalation in the sale or rent amount from today's values if closing is delayed beyond a year. Please indicate how you would satisfy this requirement.

Please be more precise about how you derived fair market value indicated as $6,496,200.

The pro forma rent, $279,000 annually does not seem to square with your statement that you will pay 8% of land value. Nor does escalation, stated as 2.5% annually , appear to take place in the pro forma.

Schedule: since rent does not start until stabilization, please indicate the outside date for stabilization.

WMATA also expects and receives participations in capital events and in cash flow (or, alternatively to cash flow, revaluation of the project in which rent values do not fall below the previous year). Please provide your proposal.

Is it expected that Clark Enterprises will provide the equity for this project? Do you have alternative equity sources?

Please submit the balance sheet that the proposal indicates will be provided under separate cover.

We look forward to your presentation and to further discussion on this project.

Sincerely,

Joel R. Washington, Director
Station Area Planning and Asset Management

Attachment

M E M O R A N D U M

SUBJECT: _____ DATE: _____

FROM: _____

THRU: _____

TO: _____

Comment [seg1]:

Washington
Metropolitan Area
Transit Authority

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FLORIDA AVENUE PROPOSALS EVALUATION 1-08				
	POSSIBLE POINTS	BANNEKER	LAKRITZ ADLER	MODDIE TURAY
TECHNICAL CRITERIA	50 Total	42	45	45
1 ReflectsTOD Principles	10	10	10	10
2 Market Viability	10	7	8	7
3 Prior Team Experience	10	7	8	9
4 Innovation/Creativity	5	3	4	4
5 Compatibility with Local Land Use Plan	5	5	5	5
6 Benefits to Local Jurisdiction	10	10	10	10
ECONOMIC CRITERIA	50 Total	35	20	30
1 Financial Benefits to WMATA	35	25	10	20
2 Financial Viability of Proposal	5	5	5	5
3 Enhanced Ridership	10	5	5	5
TOTAL POINTS	100	77	65	75

WMATA-INV 005254

FOIA CONFIEDENTIAL TREATMENT REQUESTED

COMPARISON OF SHAW HOWARD/FLORIDA AVENUE LEASE PROPOSALS

Category	Banneker 60 year lease	Moddie Turay 60.year lease
Development Summary	104 du's, 11,750 sf retail, 47 below grade pkg. 127,692 gsf (excludes garage) 4.5 MOR FAR on site size of 28,892 sf Total Dev. Cost $35.6M	130 du's, 26,282 retail, 62 below grade pkg. (includes closed alley and 2 adj. lots) 4.5 MOR FAR on site size of 31,892 sf plus closed alley. Total Dev. Cost $43.6M
Non-Refundable Option Fee- amount, start, duration	$100,000 upon Selected Developer/Term Sheet approval 2/08	$100,000 upon Selected Developer/Term Sheet Approval
Land Value and derivation (Appraisal: $7.5M in 2007)	$8.2M, year 2010, based on residual land value	$8.8-9M, year 2011, based on $65/sf 2008 escalated 2%/year to 2011 (WMATA land only)
Pre-development Rent	$100,000/yr. from Agreement execution through construction thru yr. 2 of stabilization 6/08-11/10 (11/10 = outside rent start date) [Note: 11/10 = 50% stabilization on pro forma 3% escalation occurs 18 months later]	$120,000/year ($10,000/month) upon execution of agreement thru stabilization 12/11 willing to agree on mutually acceptable outside rent commencement date
Construction Period Rent	see above ($100,000/yr.)	see above ($10,000/month)
Base rent: (Appraisal: $525,000)	$500,000 in 12/10 (6% residual land value)	@ $700,822 (8% land value) in12/11
Escalation of base rent from 2008 to start of payment	None (base rent is the projected rent though it is below appraiser's current rent)	2%/yr. on 2008 $65 base land value
Escalation of base rent if delay from schedule	Increase pre-development rent 3% if projected closing (3/09) is delayed beyond a year	Increase pre-devel. rent to ½ stabilized rent if no full rent start by 12/11
Annual Base Rent escalation	3%	none
Periodic Rent revaluation	not addressed	adjust every 10 years- 3 appraiser method
Cash Flow Participation	share of gross income to be negotiated	not addressed
Capital event participation	share of net proceeds (after all project and sale-related expenses)	5% net proceeds (to be defined) but not construction loan takeout
Density increase payments	not addressed	based on increased FAR land value if PUD
NPV with residual	$14 M with residual	$11.8 M with residual

WMATA-INV 005255

M E M O R A N D U M

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Sites - Tentative Developer Selection

DATE: January 29, 2008

FROM: Rosalyn Doggett

THRU: Joel R. Washington

TO: Nat Bottigheimer

WMATA received 3 proposals for its Shaw-Howard/Florida Avenue joint development sites: Parcel 1, 3,800 sf on Florida Avenue at 9th St. NW; Parcel 2, 8,600 sf on Florida Avenue between 8th and 9th streets, NW, and Parcel 3, 16,500 sf on Florida Avenue between 7th and 8th streets. In accordance with the Source Selection Plan for the Shaw-Howard/Florida Avenue Joint Development Sites, an Evaluation Team composed of Rosalyn Doggett, Chair, John Magarelli and Marc Biondi met a number of times to rate proposals from each of three teams. Two meetings were held before interviews with the teams, and two were held after interviews and additional due diligence. The development teams are led by:

Comment [seg1]:

Bannecker Ventures
Lakrity Adler
Moddie Turay Company

The Evaluation Team recommends tentative selection of Bannecker Ventures and preparation and negotiation of a term sheet with that team. If negotiations are unsuccessful, the Evaluation Team recommends turning next to the Moddie Turay Company for negotiation of a term sheet.

The Lakrity Adler proposal does not meet the threshold test in the Source Selection Plan of providing WMATA with net present value of rent over a 60-year lease that meets WMATA's current fair market value appraisal for the site ($7.5 million as of August 2007). The failure to meet appraisal value, alone, eliminates the team from further consideration. Further, Lakrity Adler offers one-half or less of the present value offered by the other two teams so it is thought that the deficit cannot be made up through negotiation even if there were other reasons to select the team, which there do not appear to be.

The net present values of the offers over a sixty-year lease period are:

Washington Metropolitan Area Transit Authority

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Bannecker $14 million
Moddie Turay $11.8 million
Lahrity Adler $ 6 million

Bannecker Ventures has been recommended because it provides greater rental present value to WMATA, approximately $2.2 million more than its remaining competitor.

Both teams propose 4 to 5 story residential development over retail for all three parcels that comprise the joint development site, at a matter-of-right FAR of 4.5. Moddie Turay proposes combining Parcel 1 with two small adjacent parcels totaling 3,000 sf. which it controls, and utilizing the air rights over an alley proposed to be closed between Parcels 1 and 2; however its financial offer is not contingent on the two parcels being incorporated or the alley closing. Bannecker proposes 103 dwelling units and 12,000 sf of retail whereas, utilizing the combined properties and alley closing, Moddie Turay proposes 130 dwelling units and 26,000 sf of retail. Otherwise, there is little difference in design concept between the two teams.

The Evaluation Team ranked the teams according to the evaluation criteria in the Source Selection Plan. These final rankings are shown in the accompanying table, which lists the evaluation criteria underlined below.

The Team found that both proposals reflect TOD principles since they are on a walkable street within blocks of two different Green Line Metro stations (Shaw-Howard and U Street-Cardozo-African American Civil War Memorial), maximize matter-of-right density and provide a mix of uses that will contribute to the ongoing revitalization of the area. The Bannecker proposal includes a modest amount of affordable housing and represents that its building will be "green." Both proposals are equally viable in the market provided that the apartment market remains strong in the area. Each proposes some ground floor arts/retail uses that would be an asset to the community if realized. Their proposals conform to the District of Columbia's Duke Plan (except that the plan advocates even taller buildings if possible through a PUD; lack of space for underground parking may be a constraint, however). Also, the Office of Planning has since indicated that it will support by-right development. Both provide similar benefits to the local jurisdiction in terms of property and sales taxes.

The Moddie Turay proposal is slightly more creative in that it combines Parcel 1 with adjoining property, making a larger and more regular development parcel. However, it is not clear from talking to District planning and regulatory officials that the developer can accomplish either the alley closing or the demolition of two structures which "contribute" to the historic district in which they are located. There may be issues with combining the adjoining fee property with leased WMATA property; also a sales price has not yet been agreed upon between Moddie Turay and the adjoining property owner. Price and historic preservation negotiations could delay project execution. Neither project will have an impact on WMATA facilities though construction over the Metro tunnel which runs partially beneath each parcel will need to be coordinated by JDAC. Once more detailed designs are prepared it is possible that the teams may need to seek a variance for required parking

FOIA CONFIEDENTIAL TREATMENT REQUESTED

because of limitations in construction over the Metro tunnel.

There is little difference in experience. The Bannecker team members (led by Omar Karim) include the District Development Group and, recently added, Metropolis Development, which has replaced Donatelli Development as a team member. Metropolis Development has extensive experience in developing new and adaptive residential buildings with ground floor retail in the Shaw neighborhood, including the Langston Lofts condominium project at 14th and V Streets, a WMATA joint development site. The other teams members are less experienced but are obtaining approvals for a Silver Spring residential building at the present time. The Bannecker Team architect, Torti Gallas, is experienced in residential and retail design on nearby U Street and over Metro tunnels. Moddie Turay and his company staff appear to have somewhat less experience but have an experienced local architect, Suman Sorg, and have teamed with Clark Enterprises represented by General Counsel Rebecca Owen who stated in interviews that Clark will deploy the necessary personnel to build the project for which the Moddie Turay Company will be project manager. Ms. Owen added that this could be either Clark Realty Capital, Clark's housing arm (which has participated in Fort Totten and Huntington but elected not to follow through on its contract for Western Bus Garage) or new personnel hired by Clark Enterprises, the parent company. Clark Enterprises clearly has construction expertise; however Bannecker has stated that it intends to use Tompkins Builders, a local firm with Metro-related experience.

Financial benefit to WMATA was discussed earlier, and Bannecker's offer is clearly superior in that regard. In terms of financial viability, neither proposal has obvious flawed market or financial assumptions though Bannecker depends on rent increases, which appear to be achievable, to subsidize affordable housing. Clark would more likely have access to financial sources. However, lender references for both teams indicated an interest in financing projects on these sites. Equity for Bannecker would be provided by MacFarlane Partners, who are active team participants, and Clark will furnish its own equity, which it has the resources to do. Both teams provide modest enhancement to Metro Ridership.

It should be noted that WMATA requested both lease and sale proposals and received both. Net present value analysis showed that the lease proposals generate more revenue for WMATA over 60 years than the sale proposals. Since the Board's preference is to lease, the sale proposals were not considered further.

The accompanying table summarizes the land use and financial elements of the two finalist lease proposals. Both have financial elements that would likely need to be strengthened or provided in negotiations, for example, capital event participation for both teams; bonus density rent provisions and slightly higher base rent for Bannecker; and annual base rent escalation for Moddie Turay. It is conceivable that negotiations could change the relative positions of the teams.

But for the present, it appears fair to start with the Bannecker team since its financial offer is superior and its proposal does not have the potential complications of combining property with an adjacent owner. The Moddie Turay team, though close in ranking, has no clear superiority overall.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Rosalyn Doggett, Chair

John Magarelli

HOWARD UNIVERSITY

Office of Real Estate Development
and Asset Management

February 15, 2008

Mr. Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW
Suite 700
Washington, DC 20005

Dear Mr. Karim:

Howard University has reviewed your plans for the proposed development of the WMATA-owned Shaw-Howard/ Florida Avenue site and the adjacent Howard University owned parcel situated along Georgia Avenue. We are interested in exploring the possibility of participating in this joint development, which will allow for mixed-use development adjacent to a major metro station. This Project allows for the maximization of the potential value of the area and fulfills the District's plan for more dense development along Georgia Avenue. Additionally, the development of a hotel at this location will support Howard's objectives to provide accommodations for visitors to the hospital complex as well as the University.

We understand that you will be partnering in this project with Metropolis Development Company and the MacFarlane Partners, and believe that they will bring significant experience and financial capability to the development team. Their past experience working with WMATA and the District should help to ensure the successful development of this Transit Oriented Development.

We will be pleased to partner with Banneker Ventures, LLC, Metropolis Development Company and MacFarlane Partners (the "Development Team") in the joint development of the Howard/WMATA sites as a mixed-use project. This will be conditioned upon the selection of the Development Team by WMATA and your refinement of the plans and the completion of the necessary due diligence to our satisfaction.

Sincerely,

Diane E. Branch
Associate Vice President

cc: Hassan Minor, Jr., Ph.D.

2225 Georgia Avenue, NW, Suite 510
Washington, DC 20059

Telephone 202 238 2381
Facsimile 202 986 2953
www.howard.edu

FOIA CONFIEDENTIAL TREATMENT REQUESTED

M E M O R A N D U M

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Sites- Tentative Developer Selection

DATE: February 26, 2008

FROM: Nat Bottigheimer

TO: John B. Catoe, Jr.

On October 5, 2007 WMATA received three proposals for its Shaw-Howard/Florida Avenue joint development sites: Parcel 1, 3,800 sf on Florida Avenue at 9th St. NW; Parcel 2, 8,600 sf on Florida Avenue between 8th and 9th streets, NW, and Parcel 3, 16,500 sf on Florida Avenue between 7th and 8th streets. Earlier in the year Requests for Expressions of Interest were advertised for those sites; after evaluation of responses, six developers were requested to submit more detailed proposals, and four did with two combining in one team.

Comment [seg1]: Start Memo text here

The three proposal teams are led by:

Bannecker Ventures
Lakrity Adler
Moddie Turay Company

PLJD recommends tentative selection of Bannecker Ventures as developer of the project and preparation and negotiation of a term sheet with that team. If negotiations are unsuccessful, we recommend turning to the Moddie Turay Company for negotiation of a term sheet.

The recommendation is based on the WMATA Evaluation Team's ranking of the proposals (memo attached) in accordance with the evaluation criteria in the Joint Development Solicitation and Source Selection Plan. WMATA team members comprising the Evaluation Team were from SAAM and COUR with participation by JDAC since the sites are partly over Metrorail tunnels. In addition to WMATA staff review and due diligence, outside real estate consultant Bolan Smart provided financial and market analysis, and representatives from the District of Columbia's Office of the Deputy Mayor for Economic Development and Office of Planning evaluated the proposals for conformance with city plans and policies.

The Bannecker and Moddie Turay proposals both encompass residential development over ground floor retail for all three sites and are not substantially different in concept. In many other aspects the teams match up evenly. A major difference was the financial offer from Bannecker providing approximately $2.2 million more in net present value to WMATA over the course of a 60-year lease. Further, the Bannecker proposal has less complication than the Moddie Turay proposal which

Washington Metropolitan Area Transit Authority

FOIA CONFIEDENTIAL TREATMENT REQUESTED

envisions combining the smallest WMATA site with an alley to be closed and adjacent historic district property to be acquired. The financial terms for the acquisition are not agreed to, and city staff inform us that the prospects for closing an alley and removing two contributing historic structures are uncertain.

Staff was asked by a key stakeholder in the Shaw area to take into account the benefits of combining the WMATA property with adjacent sites, in particular the buildings next to the WMATA property fronting on 9th Street. Staff visited the sites, consulted with District of Columbia planning and historic preservation staff, and reviewed the proposals. In our opinion, failure to combine those sites will not reduce their ability to be redeveloped in accordance with historic district requirements. However, combining the sites with WMATA property could result in delays in redeveloping the WMATA's property because of the historic district and alley closing issues mentioned previously.

cc. Jack Requa
Chuck Woodruff
Carol O'Keeffe
Shiva Pant

FOIA CONFIEDENTIAL TREATMENT REQUESTED

M E M O R A N D U M

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Sites - Tentative Developer Selection

DATE: January 29, 2008

FROM: Rosalyn Doggett

THRU: Joel R. Washington JRW

TO: Nat Bottigheimer

WMATA received 3 proposals for its Shaw-Howard/Florida Avenue joint development sites: Parcel 1, 3,800 sf on Florida Avenue at 9th St, NW; Parcel 2, 8,600 sf on Florida Avenue between 8th and 9th streets, NW, and Parcel 3, 16,500 sf on Florida Avenue between 7th and 8th streets. In accordance with the Source Selection Plan for the Shaw-Howard/Florida Avenue Joint Development Sites, an Evaluation Team composed of Rosalyn Doggett, Chair, John Magarelli and Marc Biondi met a number of times to rate proposals from each of three teams. Two meetings were held before interviews with the teams, and two were held after interviews and additional due diligence. The development teams are led by:

Banneker Ventures
Lakritz Adler
Moddie Turay Company

The Evaluation Team recommends tentative selection of Banneker Ventures and preparation and negotiation of a term sheet with that team. If negotiations are unsuccessful, the Evaluation Team recommends turning next to the Moddie Turay Company for negotiation of a term sheet.

The Lakritz Adler proposal does not meet the threshold test in the Source Selection Plan of providing WMATA with net present value of rent over a 60-year lease that meets WMATA's current fair market value appraisal for the site ($7.5 million as of August 2007). The failure to meet appraisal value, alone, eliminates the team from further consideration. Further, Lakritz Adler offers one-half or less of the present value offered by the other two teams so it is thought that the deficit cannot be made up through negotiation even if there were other reasons to select the team, which there do not appear to be.

Washington Metropolitan Area Transit Authority

FOIA CONFIEDENTIAL TREATMENT REQUESTED

The net present values of the offers over a sixty-year lease period are:

Banneker	$14 million
Moddie Turay	$11.8 million
Lakritz Adler	$ 6 million

Banneker Ventures has been recommended because it provides greater rental present value to WMATA, approximately $2.2 million more than its remaining competitor.

Both teams propose 4 to 5 story residential development over retail for all three parcels that comprise the joint development site, at a matter-of-right FAR of 4.5. Moddie Turay proposes combining Parcel 1with two small adjacent parcels totaling 3,000 sf, which it controls, and utilizing the air rights over an alley proposed to be closed between Parcels 1 and 2; however its financial offer is not contingent on the two parcels being incorporated or the alley closing. Banneker proposes 103 dwelling units and 12,000 sf of retail whereas, utilizing the combined properties and alley closing, Moddie Turay proposes 130 dwelling units and 26,000 sf of retail. Otherwise, there is little difference in design concept between the two teams.

The Evaluation Team ranked the teams according to the evaluation criteria in the Source Selection Plan. These final rankings are shown in the accompanying table, which lists the evaluation criteria underlined below.

The Team found that both proposals reflect TOD principles since they are on a walkable street within blocks of two different Green Line Metro stations (Shaw-Howard and U Street-Cardozo-African American Civil War Memorial), maximize matter-of-right density and provide a mix of uses that will contribute to the ongoing revitalization of the area. The Banneker proposal includes a modest amount of affordable housing and represents that its building will be "green." Both proposals are equally viable in the market provided that the apartment market remains strong in the area. Each proposes some ground floor arts/retail uses that would be an asset to the community if realized. Their proposals conform to the District of Columbia's Duke Plan (except that the plan advocates even taller buildings if possible through a PUD; lack of space for underground parking may be a constraint, however). Also, the Office of Planning has since indicated that it will support by-right development. Both provide similar benefits to the local jurisdiction in terms of property and sales taxes.

The Moddie Turay proposal is slightly more creative in that it combines Parcel 1 with adjoining property, making a larger and more regular development parcel. However, it is not clear from talking to District planning and regulatory officials that the developer can accomplish either the alley closing

or the demolition of two structures which "contribute" to the historic district in which they are located. There may be issues with combining the adjoining fee property with leased WMATA property; also a sales price has not yet been agreed upon between Moddie Turay and the adjoining property owner. Price and historic preservation negotiations could delay project execution. Neither project will have an impact on WMATA facilities though construction over the Metro tunnel which runs partially beneath each parcel will need to be coordinated by JDAC. Once more detailed designs are prepared it is possible that the teams may need to seek a variance for required parking because of limitations in construction over the Metro tunnel.

There is little difference in experience. The Banneker team members (led by Omar Karim) include the District Development Group and, recently added, Metropolis Development, which has replaced Donatelli Development as a team member. Metropolis Development has extensive experience in developing new and adaptive residential buildings with ground floor retail in the Shaw neighborhood, including the Langston Lofts condominium project at 14th and V streets, a WMATA joint development site. The other teams members are less experienced but are obtaining approvals for a Silver Spring residential building at the present time. The Banneker Team architect, Torti Gallas, is experienced in residential and retail design on nearby U Street and over Metro tunnels. Moddie Turay and his company staff appear to have somewhat less experience but have an experienced local architect, Suman Sorg, and have teamed with Clark Enterprises represented by General Counsel Rebecca Owen who stated in interviews that Clark will deploy the necessary personnel to build the project for which the Moddie Turay Company will be project manager. Ms. Owen added that this could be either Clark Realty Capital, Clark's housing arm (which has participated in Fort Totten and Huntington but elected not to follow through on its contract for Western Bus Garage) or new personnel hired by Clark Enterprises, the parent company. Clark Enterprises clearly has construction expertise; however Banneker has stated that it intends to use Tompkins Builders, a local firm with Metro-related experience.

Financial benefit to WMATA was discussed earlier, and Banneker's offer is clearly superior in that regard. In terms of financial viablility, neither proposal has obvious flawed market or financial assumptions though Banneker depends on rent increases, which appear to be achievable, to subsidize affordable housing. Clark would more likely have access to financial sources. However, lender references for both teams indicated an interest in financing projects on these sites. Equity for Banneker would be provided by MacFarlane Partners, who are active team participants, and Clark will furnish its own equity, which it has the resources to do. Both teams provide modest enhancement to Metro Ridership.

It should be noted that WMATA requested both lease and sale proposals and received both. Net present value analysis showed that the lease proposals generate more revenue for WMATA over 60 years than the sale proposals. Since the Board's preference is to lease, the sale proposals were not considered further.

The accompanying table summarizes the land use and financial elements of the two finalist lease proposals. Both have financial elements that would likely need to be strengthened or provided in negotiations, for example, capital event participation for both teams; bonus density rent provisions and slightly higher base rent for Banneker; and annual base rent escalation for Moddie Turay. It is conceivable that negotiations could change the relative positions of the teams.

But for the present, it appears fair to start with the Banneker team since its financial offer is superior and its proposal does not have the potential complications of combining property with an adjacent owner. The Moddie Turay team, though close in ranking, has no clear superiority overall.

Rosalyn Doggett, Chair

John Magarelli

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FLORIDA AVENUE PROPOSALS EVALUATION 1-08				
	POSSIBLE POINTS	BANNEKER	LAKRITZ ADLER	MODDIE TURAY
TECHNICAL CRITERIA	50 Total	42	45	45
1 ReflectsTOD Principles	10	10	10	10
2 Market Viability	10	7	8	7
3 Prior Team Experience	10	7	8	9
4 Innovation/Creativity	5	3	4	4
5 Compatibility with Local Land Use Plan	5	5	5	5
6 Benefits to Local Jurisdiction	10	10	10	10
ECONOMIC CRITERIA	50 Total	35	20	30
1 Financial Benefits to WMATA	35	25	10	20
2 Financial Viability of Proposal	5	5	5	5
3 Enhanced Ridership	10	5	5	5
TOTAL POINTS	100	77	65	75

WMATA-INV 005267

FOIA CONFIEDENTIAL TREATMENT REQUESTED

COMPARISON OF SHAW HOWARD/FLORIDA AVENUE LEASE PROPOSALS		
Category	Banneker 60 year lease	Moddie Turay 60.year lease
Development Summary	104 du's, 11,750 sf retail, 47 below grade pkg. 127,692 gsf (excludes garage) 4.5 MOR FAR on site size of 28,892 sf Total Dev. Cost $35.6M	130 du's, 26,282 retail, 62 below grade pkg. (includes closed alley and 2 adj. lots) 4.5 MOR FAR on site size of 31,892 sf plus closed alley. Total Dev. Cost $43.6M
Non-Refundable Option Fee-amount, start, duration	$100,000 upon Selected Developer/Term Sheet approval 2/08	$100,000 upon Selected Developer/Term Sheet Approval
Land Value and derivation (Appraisal: $7.5M in 2007)	$8.2M, year 2010, based on residual land value	$8.8-9M, year 2011, based on $65/sf 2008 escalated 2%/year to 2011 (WMATA land only)
Pre-development Rent	$100,000/yr. from Agreement execution through construction thru yr. 2 of stabilization 6/08-11/10 (11/10 = outside rent start date) [Note: 11/10 = 50% stabilization on pro forma 3% escalation occurs 18 months later]	$120,000/year ($10,000/month) upon execution of agreement thru stabilization 12/11 willing to agree on mutually acceptable outside rent commencement date
Construction Period Rent	see above ($100,000/yr.)	see above ($10,000/month)
Base rent: (Appraisal: $525,000)	$500,000 in 12/10 (6% residual land value)	@ $700,822 (8% land value) in12/11
Escalation of base rent from 2008 to start of payment	None (base rent is the projected rent though it is below appraiser's current rent)	2%/yr. on 2008 $65 base land value
Escalation of base rent if delay from schedule	Increase pre-development rent 3% if projected closing (3/09) is delayed beyond a year	Increase pre-devel. rent to ½ stabilized rent if no full rent start by 12/11
Annual Base Rent escalation	3%	none
Periodic Rent revaluation	not addressed	adjust every 10 years- 3 appraiser method
Cash Flow Participation	share of gross income to be negotiated	not addressed
Capital event participation	share of net proceeds (after all project and sale-related expenses)	5% net proceeds (to be defined) but not construction loan takeout
Density increase payments	not addressed	based on increased FAR land value if PUD
NPV with residual	$14 M with residual	$11.8 M with residual

WMATA-INV 005268

M E M O R A N D U M

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Sites- Tentative Developer Selection

DATE: February 26, 2008

FROM: Nat Bottigheimer

TO: John B. Catoe, Jr.

The Department of Planning and Joint Development (PLJD) recommends tentative selection of Banneker Ventures as developer of Metro's three Shaw-Howard/Florida Avenue parcels and preparation and negotiation of a term sheet with that team. If negotiations are unsuccessful, we recommend turning to the Moddie Turay Company for negotiation of a term sheet.

In early 2007, Metro issued Requests for Expressions of Interest for its Shaw-Howard/Florida Avenue joint development sites: Parcel 1, 3,800 sf on Florida Avenue at 9th St, NW; Parcel 2, 8,600 sf on Florida Avenue between 8th and 9th streets, NW, and Parcel 3, 16,500 sf on Florida Avenue between 7th and 8th streets.

After evaluation of responses, Metro requested six developers to submit more detailed proposals, and four did so with two combining as one team.

On October 5, 2007, Metro received three proposals from teams led by:

1. Banneker Ventures
2. Lakritz Adler
3. Moddie Turay Company

Washington Metropolitan Area Transit Authority

The recommendation to tentatively select Banneker Ventures is based on the Metro Evaluation Team's ranking of the proposals (memo attached) in accordance with the evaluation criteria in the Joint Development Solicitation and Source Selection Plan.

Metro team members comprising the Evaluation Team were from the Office of Station Area Planning and Asset Management (SAAM) and the Office of the General Counsel (COUN) with participation by the Office of Joint Development and Adjacent Construction (JDAC) since the sites are partly over Metrorail tunnels. In addition to Metro staff review and due diligence, outside real estate consultant Bolan Smart provided financial and market analysis, and representatives from the District of Columbia's Office of the Deputy Mayor for Economic Development and Office of Planning evaluated the proposals for conformance with city plans and policies.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

The Banneker and Moddie Turay proposals both encompass residential development over ground floor retail for all three sites and are not substantially different in concept.

In many other aspects, the teams match up evenly. A major difference was the financial offer from Banneker providing approximately $2.2 million more in net present value to Metro over the course of a 60-year lease. Further, the Banneker proposal has less complication than the Moddie Turay proposal, which envisions combining the smallest Metro site with an alley to be closed and adjacent historic district property to be acquired. The financial terms for this acquisition have not been agreed to, and the city staff has informed us that the prospects for closing an alley and removing two contributing historic structures are uncertain.

Staff is aware that a key potential benefit to the community of Metro's joint development program is the promotion of high-quality transit-oriented development. As a result, staff took pains to evaluate the degree to which proposals submitted by adjacent property owners could contribute to a higher-quality development project compared to a project developed independent of adjacent property owner projects.

Of particular interest were the buildings next to the Metro property fronting on 9th Street. To evaluate the potential benefits of combining Metro's property with adjacent property, staff visited these sites, consulted with District of Columbia planning and historic preservation staff, and reviewed each of the joint development proposals with attention to this important evaluation factor.

In staff's opinion, developing Metro's property independently of the development of the adjacent properties would not reduce the potential of adjacent properties to be redeveloped in accordance with historic district requirements.

Further, combining the adjacent properties with Metro's three parcels (1) would result in a significant potential for delaying the redevelopment of Metro's property because of the historic district and the alley closing issues mentioned above and (2) would not appear to offer substantial benefits in terms of transit oriented development quality.

cc. Jack Requa
Chuck Woodruff
Carol O'Keeffe
Shiva Pant

M E M O R A N D U M

SUBJECT: Shaw-Howard/Florida Avenue Joint Development Sites - Tentative Developer Selection

DATE: January 29, 2008

FROM: Rosalyn Doggett

THRU: Joel R. Washington JRW

TO: Nat Bottigheimer

WMATA received 3 proposals for its Shaw-Howard/Florida Avenue joint development sites: Parcel 1, 3,800 sf on Florida Avenue at 9th St, NW; Parcel 2, 8,600 sf on Florida Avenue between 8th and 9th streets, NW, and Parcel 3, 16,500 sf on Florida Avenue between 7th and 8th streets. In accordance with the Source Selection Plan for the Shaw-Howard/Florida Avenue Joint Development Sites, an Evaluation Team composed of Rosalyn Doggett, Chair, John Magarelli and Marc Biondi met a number of times to rate proposals from each of three teams. Two meetings were held before interviews with the teams, and two were held after interviews and additional due diligence. The development teams are led by:

Banneker Ventures
Lakritz Adler
Moddie Turay Company

The Evaluation Team recommends tentative selection of Banneker Ventures and preparation and negotiation of a term sheet with that team. If negotiations are unsuccessful, the Evaluation Team recommends turning next to the Moddie Turay Company for negotiation of a term sheet.

The Lakritz Adler proposal does not meet the threshold test in the Source Selection Plan of providing WMATA with net present value of rent over a 60-year lease that meets WMATA's current fair market value appraisal for the site ($7.5 million as of August 2007). The failure to meet appraisal value, alone, eliminates the team from further consideration. Further, Lakritz Adler offers one-half or less of the present value offered by the other two teams so it is thought that the deficit cannot be made up through negotiation even if there were other reasons to select the team, which there do not appear to be.

Washington Metropolitan Area Transit Authority

FOIA CONFIEDENTIAL TREATMENT REQUESTED

The net present values of the offers over a sixty-year lease period are:

Banneker	$14 million
Moddie Turay	$11.8 million
Lakritz Adler	$ 6 million

Banneker Ventures has been recommended because it provides greater rental present value to WMATA, approximately $2.2 million more than its remaining competitor.

Both teams propose 4 to 5 story residential development over retail for all three parcels that comprise the joint development site, at a matter-of-right FAR of 4.5. Moddie Turay proposes combining Parcel 1 with two small adjacent parcels totaling 3,000 sf, which it controls, and utilizing the air rights over an alley proposed to be closed between Parcels 1 and 2; however its financial offer is not contingent on the two parcels being incorporated or the alley closing. Banneker proposes 103 dwelling units and 12,000 sf of retail whereas, utilizing the combined properties and alley closing, Moddie Turay proposes 130 dwelling units and 26,000 sf of retail. Otherwise, there is little difference in design concept between the two teams.

The Evaluation Team ranked the teams according to the evaluation criteria in the Source Selection Plan. These final rankings are shown in the accompanying table, which lists the evaluation criteria underlined below.

The Team found that both proposals reflect TOD principles since they are on a walkable street within blocks of two different Green Line Metro stations (Shaw-Howard and U Street-Cardozo-African American Civil War Memorial), maximize matter-of-right density and provide a mix of uses that will contribute to the ongoing revitalization of the area. The Banneker proposal includes a modest amount of affordable housing and represents that its building will be "green." Both proposals are equally viable in the market provided that the apartment market remains strong in the area. Each proposes some ground floor arts/retail uses that would be an asset to the community if realized. Their proposals conform to the District of Columbia's Duke Plan (except that the plan advocates even taller buildings if possible through a PUD; lack of space for underground parking may be a constraint, however). Also, the Office of Planning has since indicated that it will support by-right development. Both provide similar benefits to the local jurisdiction in terms of property and sales taxes.

The Moddie Turay proposal is slightly more creative in that it combines Parcel 1 with adjoining property, making a larger and more regular development parcel. However, it is not clear from talking to District planning and regulatory officials that the developer can accomplish either the alley closing

or the demolition of two structures which "contribute" to the historic district in which they are located. There may be issues with combining the adjoining fee property with leased WMATA property; also a sales price has not yet been agreed upon between Moddie Turay and the adjoining property owner. Price and historic preservation negotiations could delay project execution. Neither project will have an impact on WMATA facilities though construction over the Metro tunnel which runs partially beneath each parcel will need to be coordinated by JDAC. Once more detailed designs are prepared it is possible that the teams may need to seek a variance for required parking because of limitations in construction over the Metro tunnel.

There is little difference in experience. The Banneker team members (led by Omar Karim) include the District Development Group and, recently added, Metropolis Development, which has replaced Donatelli Development as a team member. Metropolis Development has extensive experience in developing new and adaptive residential buildings with ground floor retail in the Shaw neighborhood, including the Langston Lofts condominium project at 14th and V streets, a WMATA joint development site. The other teams members are less experienced but are obtaining approvals for a Silver Spring residential building at the present time. The Banneker Team architect, Torti Gallas, is experienced in residential and retail design on nearby U Street and over Metro tunnels. Moddie Turay and his company staff appear to have somewhat less experience but have an experienced local architect, Suman Sorg, and have teamed with Clark Enterprises represented by General Counsel Rebecca Owen who stated in interviews that Clark will deploy the necessary personnel to build the project for which the Moddie Turay Company will be project manager. Ms. Owen added that this could be either Clark Realty Capital, Clark's housing arm (which has participated in Fort Totten and Huntington but elected not to follow through on its contract for Western Bus Garage) or new personnel hired by Clark Enterprises, the parent company. Clark Enterprises clearly has construction expertise; however Banneker has stated that it intends to use Tompkins Builders, a local firm with Metro-related experience.

Financial benefit to WMATA was discussed earlier, and Banneker's offer is clearly superior in that regard. In terms of financial viablility, neither proposal has obvious flawed market or financial assumptions though Banneker depends on rent increases, which appear to be achievable, to subsidize affordable housing. Clark would more likely have access to financial sources. However, lender references for both teams indicated an interest in financing projects on these sites. Equity for Banneker would be provided by MacFarlane Partners, who are active team participants, and Clark will furnish its own equity, which it has the resources to do. Both teams provide modest enhancement to Metro Ridership.

It should be noted that WMATA requested both lease and sale proposals and received both. Net present value analysis showed that the lease proposals generate more revenue for WMATA over 60 years than the sale proposals. Since the Board's preference is to lease, the sale proposals were not considered further.

The accompanying table summarizes the land use and financial elements of the two finalist lease proposals. Both have financial elements that would likely need to be strengthened or provided in negotiations, for example, capital event participation for both teams; bonus density rent provisions and slightly higher base rent for Banneker; and annual base rent escalation for Moddie Turay. It is conceivable that negotiations could change the relative positions of the teams.

But for the present, it appears fair to start with the Banneker team since its financial offer is superior and its proposal does not have the potential complications of combining property with an adjacent owner. The Moddie Turay team, though close in ranking, has no clear superiority overall.

Rosalyn Doggett, Chair

John Magarelli

FOIA CONFIDENTIAL TREATMENT REQUESTED

FLORIDA AVENUE PROPOSALS EVALUATION 1-08				
	POSSIBLE POINTS	BANNEKER	LAKRITZ ADLER	MODDIE TURAY
TECHNICAL CRITERIA	50 Total	42	45	45
1 ReflectsTOD Principles	10	10	10	10
2 Market Viability	10	7	8	7
3 Prior Team Experience	10	7	8	9
4 Innovation/Creativity	5	3	4	4
5 Compatibility with Local Land Use Plan	5	5	5	5
6 Benefits to Local Jurisdiction	10	10	10	10
ECONOMIC CRITERIA	50 Total	35	20	30
1 Financial Benefits to WMATA	35	25	10	20
2 Financial Viability of Proposal	5	5	5	5
3 Enhanced Ridership	10	5	5	5
TOTAL POINTS	100	77	65	75

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

COMPARISON OF SHAW HOWARD/FLORIDA AVENUE LEASE PROPOSALS		
Category	Banneker 60 year lease	Moddie Turay 60.year lease
Development Summary	104 du's, 11,750 sf retail, 47 below grade pkg. 127,692 gsf (excludes garage) 4.5 MOR FAR on site size of 28,892 sf Total Dev. Cost $35.6M	130 du's, 26,282 retail, 62 below grade pkg. (includes closed alley and 2 adj. lots) 4.5 MOR FAR on site size of 31,892 sf plus closed alley. Total Dev. Cost $43.6M
Non-Refundable Option Fee-amount, start, duration	$100,000 upon Selected Developer/Term Sheet approval 2/08	$100,000 upon Selected Developer/Term Sheet Approval
Land Value and derivation (Appraisal: $7.5M in 2007)	$8.2M, year 2010, based on residual land value	$8.8-9M, year 2011, based on $65/sf 2008 escalated 2%/year to 2011 (WMATA land only)
Pre-development Rent	$100,000/yr. from Agreement execution through construction thru yr. 2 of stabilization 6/08-11/10 (11/10 = outside rent start date) [Note: 11/10 = 50% stabilization on pro forma 3% escalation occurs 18 months later]	$120,000/year ($10,000/month) upon execution of agreement thru stabilization 12/11 willing to agree on mutually acceptable outside rent commencement date
Construction Period Rent	see above ($100,000/yr.)	see above ($10,000/month)
Base rent: (Appraisal: $525,000)	$500,000 in 12/10 (6% residual land value)	@ $700,822 (8% land value) in12/11
Escalation of base rent from 2008 to start of payment	None (base rent is the projected rent though it is below appraiser's current rent)	2%/yr. on 2008 $65 base land value
Escalation of base rent if delay from schedule	Increase pre-development rent 3% if projected closing (3/09) is delayed beyond a year	Increase pre-devel. rent to ½ stabilized rent if no full rent start by 12/11
Annual Base Rent escalation	3%	none
Periodic Rent revaluation	not addressed	adjust every 10 years- 3 appraiser method
Cash Flow Participation	share of gross income to be negotiated	not addressed
Capital event participation	share of net proceeds (after all project and sale-related expenses)	5% net proceeds (to be defined) but not construction loan takeout
Density increase payments	not addressed	based on increased FAR land value if PUD
NPV with residual	$14 M with residual	$11.8 M with residual

WMATA-INV 005276

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WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites
March 3, 2008

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, dated _____March , 2008, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

1. Parties

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC, together with District Development Group, LLC and Metropolis Development Company LLC, will form a limited liability corporation for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, the terms of which consent will be provided in the Definitive Agreement.

2. Definitive Agreement

The Definitive Agreement, to be presented to the Board for approval within five months' of Board Term Sheet approval, will be a Master Development Agreement ("MDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of fourteen months (14) months after the WMATA Board approves the Term Sheet or the issuance of the initial building permit to the DEVELOPER for the DEVELOPER Improvements.

3. Property to Be Leased by Developer

WMATA will lease to DEVELOPER approximately 28, 892 sf of land area outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31.

4. Project

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47

FOIA CONFIEDENTIAL TREATMENT REQUESTED

below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide representations customarily acceptable to WMATA, but will not warrant title to the Leased Premises, the environmental history or condition of the property, or the fitness of the Leased Premises for any use. Subject to the representations customarily acceptable to WMATA, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: No later than full execution of the Definitive Agreement, WMATA will grant DEVELOPER a Right-of-Entry Permit. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period").

6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) (the "Security Deposit") to secure DEVELOPER's performance. The Security Deposit will replace the $100,000 Proposal Security.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if the Definitive Agreement is not consummated for any reason other than WMATA's default, non-satisfaction of an express condition precedent to DEVELOPER's obligations, or DEVELOPER exercising its rights under the Study Period.

6.4 The Security Deposit may be applied by WMATA in whole or in part to cure or remedy any breach or default by DEVELOPER. No such application of the Security Deposit shall constitute a waiver of any breach or default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.5 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

7. Consideration

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005279

7.1 Option Fee: DEVELOPER will pay WMATA $100,000 (the"Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet . The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be non-refundable.

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement, or twenty-eight (28) months after WMATA Board approval of the Definitive Agreement (the "pre-stabilization Period"). Pre-stabilization Rent will be $100,000 per year payable in advance in quarterly instalments of $25,000.

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a penalty payment. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly. In no event shall the Initial Base Rent (for a full year) be less than Five Hundred and Eighty Thousand and No/100 Dollars ($580,000.00). After the Initial Base Rent payment, Base Rent will be due annually on the first day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent multiplied by 1.--* for that year (the "Initial Escalation Factor"). [*TBD—this is an escalator that would be less than 3% and would be designed to bring Base Rent to the pro forma amount ($500,000 escalated by 3% per year) through year10 of the lease]

7.3.2 For the second through tenth years of the Lease subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of the Lease and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005280

process that establishes unit values for each type of Project land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.4 Capital Event Participation: Whenever a capital event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital events include assignments of the Definitive Agreement or the Lease, sales or re-financings of DEVELOPER's Improvements, and other dispositions, transfers, and conversions ("Capital Event"). Any transaction, at any level of organization, that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER's Project lender. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease as a result of any Capital Event.

7.5 Periodic Rent Revaluation: Upon a Capital Event or every ten years, whichever is earlier, the Base Rent will be adjusted to 7 % of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease as a result of any Periodic Rent Revaluation.

7.6 WMATA Improvements: intentionally omitted

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement, WMATA will refund DEVELOPER's Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER.

7.8 WMATA Delays: The maximum length of 28 months for the Pre-stabilization Period will be extended, on a day-for-day basis, for delays caused by WMATA. In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, even though DEVELOPER's schedule may take longer than anticipated.

7.9 Additional Density:

7.9.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf of additional density and

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005281

multiplying the product derived (Project land value) by 7%.

7.9.2 During the term of the Lease, any densities or unit totals approved for DEVELOPER Improvements that are more than those originally shown in the Approved site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above.

8. Conditions to Definitive Agreement Consummation

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

9. Special Considerations

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement, DEVELOPER shall contact the appropriate community groups in the area, as specified by WMATA, to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005282

Project on the Leased Premises. DEVELOPER will use commercially reasonable best efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the District a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS— March 2006 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least thirty (30) calendar days prior to commencement of construction of the DEVELOPER Improvements.

9.7 Interim Improvements: intentionally omitted

9.8 Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005283

included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Circular 9300.1.A, Appendix B.

9.10 Transit Operations: Neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

12. Non-Binding Intent

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005284

This Term Sheet will have no binding effect on the parties. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet.

Agreed this _____ day of _____, 2008, by

Washington Metropolitan Area Transit Authority

By:
Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

Title:

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005285

Washington Metropolitan Area Transportation Authority
Board Action/Information Summary

☐ Action ☐ Information	MEAD Number: [redacted]	Resolution: ☐ Yes ☐ No

PURPOSE

Approve the selection of, and term sheet with, the Banneker Ventures LLC development team as Developer for the Shaw-Howard/Florida Avenue joint development parcels and authorize the negotiation of a Development Agreement to be presented to the Board.

DESCRIPTION

WMATA owns three parcels totaling 28,892 sf on Florida Avenue, NW between 7th and 9th streets. Originally purchased for construction of the Green Line tunnel, which runs partially beneath them, the parcels are now available for development. In accordance with a Joint Development Work Program, approved by the Board in July 2006, and after litigation affecting the parcels was resolved, WMATA issued a request for Expressions of Interest in the spring of 2007. It subsequently issued a Joint Development Solicitation for which three responses were received in October 2007.

Staff recommends selecting the Banneker Ventures LLC team as Developer of these sites. The team consists of Banneker Ventures LLC, District Development Group, LLC, and Metropolis Development Company LLC; they will form an LLC tentatively named The Jazz @ Florida Avenue. The team has the experience to complete the project; Metropolis recently developed the Langston Lofts joint development project at 14th and V streets. The Developer provided a better financial offer (see attached Confidential Statement) than its closest competitor and the same type of development: 4 to 5-story residential over ground floor retail and arts uses. This is the type of development recommended in the District of Columbia's adopted Duke Plan for the area. The third competitor did not meet appraisal benchmarks.

Under a 60-year ground lease, the Developer proposes to build a total of 104 apartments and 11,750 sf of ground floor retail and arts uses, consistent with the Uptown Arts Overlay District in which the three parcels are located. The sites are also in an historic district. Their development will help extend the successful

U Street/Florida Avenue Transit Oriented Development of the past few years from WMATA's redeveloped sites near the U Street/Cardozo/African-American Civil War Memorial Metro station (13th-14th and U streets) eastward to the Shaw-Howard University Metro station at 7th Street.

No WMATA facilities will be displaced. Work over and next to the Metro tunnel will need to be approved by the Authority's adjacent construction staff.

FUNDING IMPACT

Lease revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

RECOMMENDATION

That the Board of Directors approve the selection of, and term sheet with, the Banneker Ventures LLC development team as Developer for the Shaw-Howard/Florida Avenue joint development parcels and authorize the negotiation of a Development Agreement to be presented to the Board.

Washington Metropolitan Area Transportation Authority
Board Action/Information Summary

X Action	MEAD Number:	Resolution:
Information		Yes ☐ No ☐

PURPOSE

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Staff recommends selecting the Banneker Ventures, LLC team as developer of these sites. The team consists of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC; they will form an LLC tentatively named The Jazz @ Florida Avenue. The team has the experience to complete the project; Metropolis recently developed the Langston Lofts joint development project at 14th and V streets. The developer provided a better financial offer (see attached Confidential Statement) than its closest competitor and the same type of development: 4 to 5-stories of residential units over a ground floor devoted to retail and arts uses. This is the type of development recommended in the District of Columbia's adopted Duke Plan for the area. The third competitor did not meet appraisal benchmarks.

Under a 60-year ground lease, the developer proposes to build a minimum of 104 apartments and devote 11,750 sf of the ground floor to retail and arts uses, consistent with the Uptown Arts Overlay District in which the three parcels are

located. The sites are also in an historic district. Their development will help extend the successful U Street/Florida Avenue Transit Oriented Development of the past few years from WMATA's redeveloped sites near the U Street/African-American Civil War Memorial/Cardozo Metro station (13th-14th and U streets) eastward to the Shaw-Howard University Metro station at 7th Street.

No WMATA facilities will be displaced. Work over and next to the Metro tunnel and the 8th Street fan shaft/air vents will need to be approved by staff.

FUNDING IMPACT

Lease revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

RECOMMENDATION

That the Board of Directors approve the selection of, and term sheet with, the Banneker Ventures, LLC development team as developer for the Shaw-Howard University/Florida Avenue joint development parcels and authorize the negotiation of a development agreement that will be presented to the Board for approval.

Washington Metropolitan Area Transportation Authority
Board Action/Information Summary

☒ Action ☐ Information	MEAD Number:	Resolution: ☐ Yes ☒ No

PURPOSE

Approve the selection of, and term sheet with, the Banneker Ventures LLC development team as developer for the Shaw-Howard University/Florida Avenue joint development parcels and authorize the negotiation of a development agreement to be presented to the Board.

DESCRIPTION

WMATA owns three parcels totaling 28,892 sf on Florida Avenue, NW between 7th and 9th streets. Originally purchased for construction of the Green Line tunnel, which runs partially beneath them, the parcels are now available for development. In accordance with a joint development work program approved by the Board in July 2006, and after litigation affecting the parcels was resolved, Metro issued a request for Expressions of Interest in the spring of 2007. Metro subsequently issued a joint development solicitation for which three responses were received in October 2007.

Staff recommends selecting the Banneker Ventures, LLC team as developer of these sites. The team consists of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC; they will form an LLC tentatively named The Jazz @ Florida Avenue. The team has the experience to complete the project; Metropolis recently developed the Langston Lofts joint development project at 14th and V streets. The developer provided a better financial offer (see attached Confidential Statement) than its closest competitor and the same type of development: 4 to 5-stories of residential units over a ground floor devoted to retail and arts uses. This is the type of development recommended in the District of Columbia's adopted Duke Plan for the area. The third competitor did not meet appraisal benchmarks.

Under a 60-year ground lease, the developer proposes to build a minimum of 104 apartments and devote 11,750 sf of the ground floor to retail and arts uses, consistent with the Uptown Arts Overlay District in which the three parcels are

located. The sites are also in an historic district. Their development will help extend the successful U Street/Florida Avenue Transit Oriented Development of the past few years from WMATA's redeveloped sites near the U Street/African-American Civil War Memorial/Cardozo Metro station (13th-14th and U streets) eastward to the Shaw-Howard University Metro station at 7th Street.

No WMATA facilities will be displaced. Work over and next to the Metro tunnel and the 8th Street fan shaft/air vents will need to be approved by staff.

FUNDING IMPACT

Lease revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

RECOMMENDATION

That the Board of Directors approve the selection of, and term sheet with, the Banneker Ventures, LLC development team as developer for the Shaw-Howard University/Florida Avenue joint development parcels and authorize the negotiation of a development agreement that will be presented to the Board for approval.

Washington Metropolitan Area Transportation Authority
Board Action/Information Summary

Action / Information	MEAD Number: 99922	Resolution: Yes / No

PURPOSE

Approve the selection of, and term sheet with, the Banneker Ventures LLC development team as developer for the Shaw-Howard University/Florida Avenue joint development parcels and authorize the negotiation of a development agreement to be presented to the Board.

DESCRIPTION

Metro owns three parcels totaling 28,892 sf on Florida Avenue, NW between 7th and 9th streets. Originally purchased for construction of the Green Line tunnel, which runs partially beneath them, the parcels are now available for development. In accordance with a joint development work program approved by the Board in July 2006, and after litigation affecting the parcels was resolved, Metro issued a request for Expressions of Interest in the spring of 2007. Metro subsequently issued a joint development solicitation for which three responses were received in October 2007.

Staff recommends selecting the Banneker Ventures, LLC team as developer of the parcels. The team consists of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC; they will form an LLC tentatively named The Jazz @ Florida Avenue. The team has the experience to complete the project; Metropolis recently developed the Langston Lofts joint development project at 14th and V streets. The developer provided a better financial offer (see attached Confidential Statement) than its closest competitor and the same type of development: 4 to 5-stories of residential units over a ground floor devoted to retail and arts uses. This is the type of development recommended in the District of Columbia's adopted Duke Plan for the area. The third competitor did not meet appraisal benchmarks.

Under a 60-year ground lease, the developer proposes to build a minimum of 104 apartments and devote 11,750 sf of the ground floor to retail and arts uses, consistent with the Uptown Arts Overlay District in which the three parcels are

located. The parcels are also in an historic district. Their development will help extend the successful U Street/Florida Avenue Transit Oriented Development of the past few years from Metro's redeveloped sites near the U Street/African-American Civil War Memorial/Cardozo Metro station (13th-14th and U streets) eastward to the Shaw-Howard University Metro station at 7th Street.

No Metro facilities will be displaced. Work over and next to the Metro tunnel and the 8th Street fan shaft/air vents will need to be approved by staff.

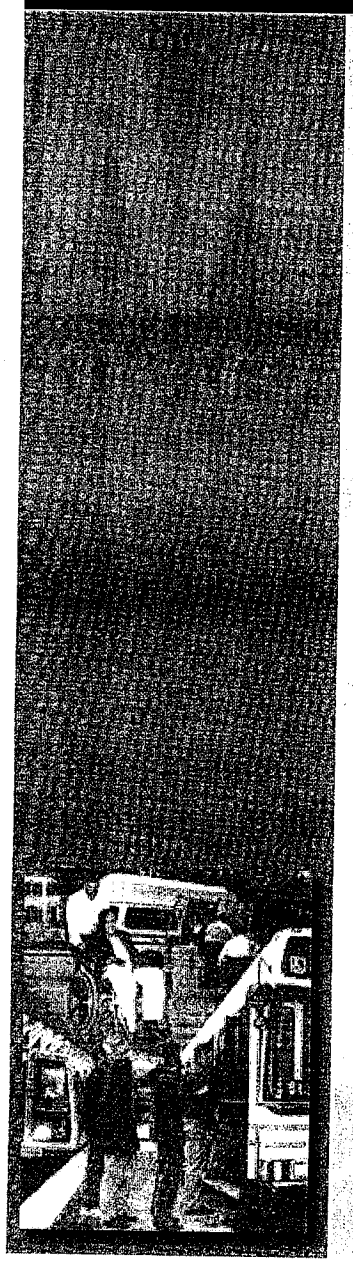
FUNDING IMPACT

Lease revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

RECOMMENDATION

That the Board of Directors approve the selection of, and term sheet with, the Banneker Ventures, LLC development team as developer for the Shaw-Howard University/Florida Avenue joint development parcels and authorize the negotiation of a development agreement that will be presented to the Board for approval.

FOIA CONFIDENTIAL TREATMENT REQUESTED



Shaw-Howard U./Florida Avenue Joint Development Site

Developer Selection And Term Sheet Approval

Presented to the Board of Directors:

Planning, Development and Real Estate Committee

April 24, 2008

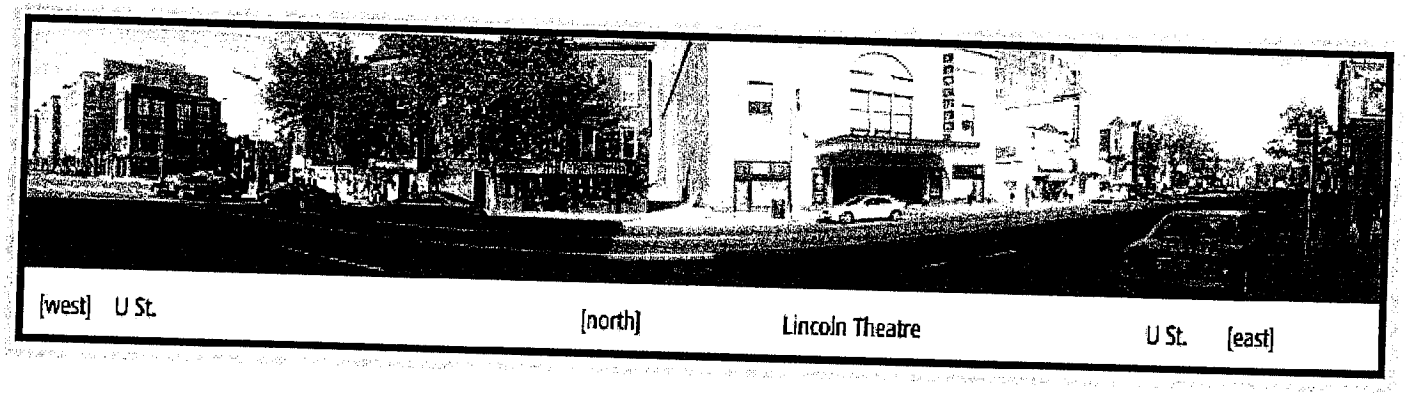
WMATA-INV 005294

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Benefits/Costs

- **Benefits**
  - ✓ Extends U Street Florida Avenue Transit Oriented Development
  - ✓ Attracts new Metro riders
  - ✓ Increases Metro revenue
  - ✓ Increases tax base for District of Columbia

- **Costs**
  - ✓ Requires staff time to review development proposal
  - ✓ Requires staff time to monitor construction

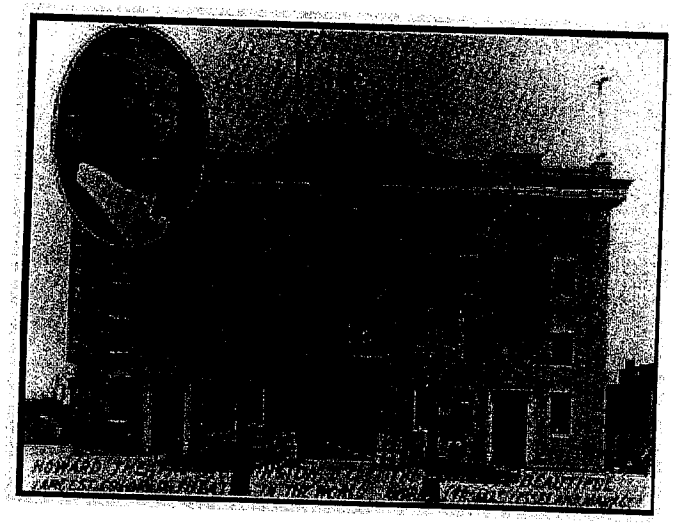


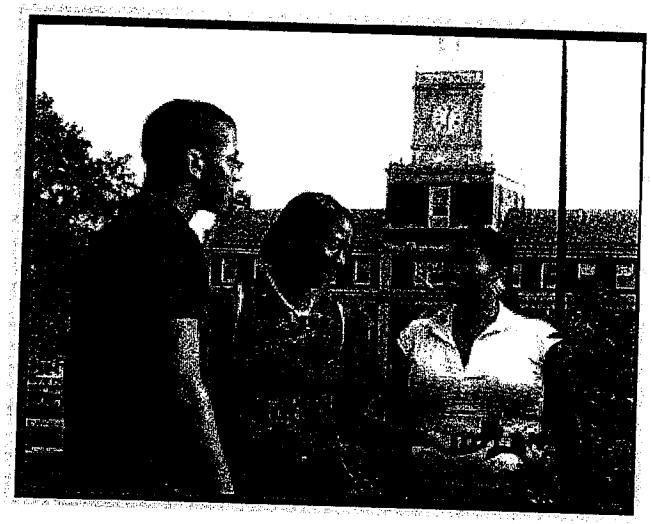
WMATA-INV 005295

FOIA CONFIDENTIAL TREATMENT REQUESTED

Purpose

- Approve Banneker Ventures team as developer of Shaw-Howard U./Florida Avenue joint development site
- Approve term sheet
- Authorize negotiation of development agreement



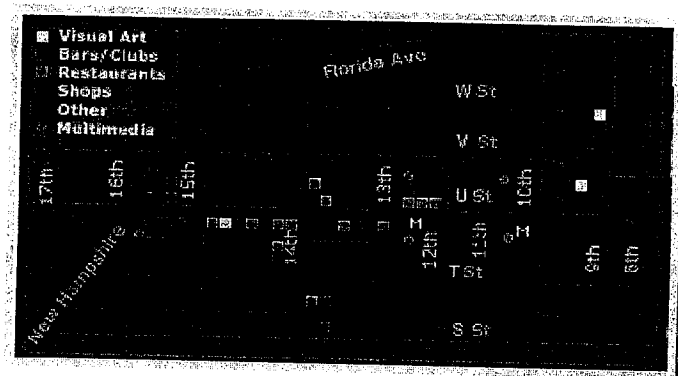


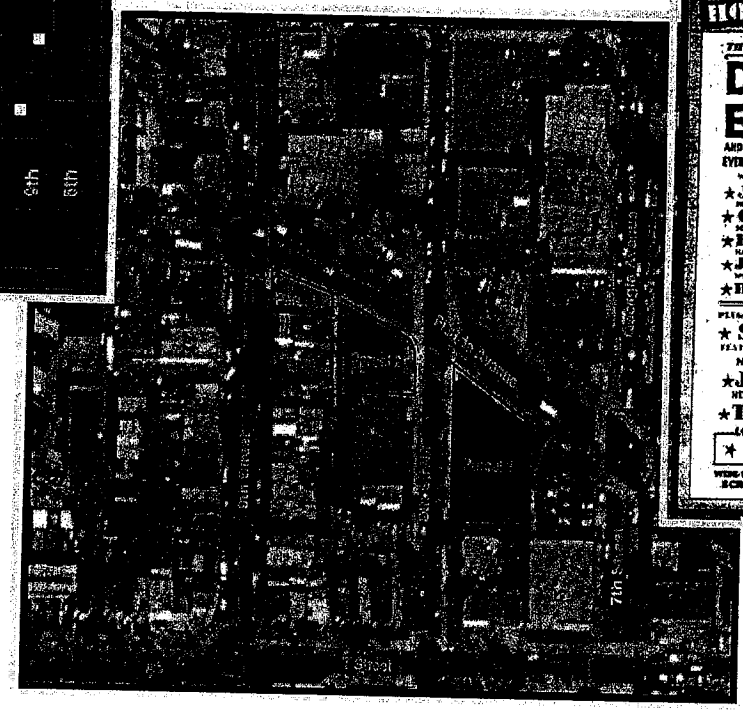
WMATA-INV 005296

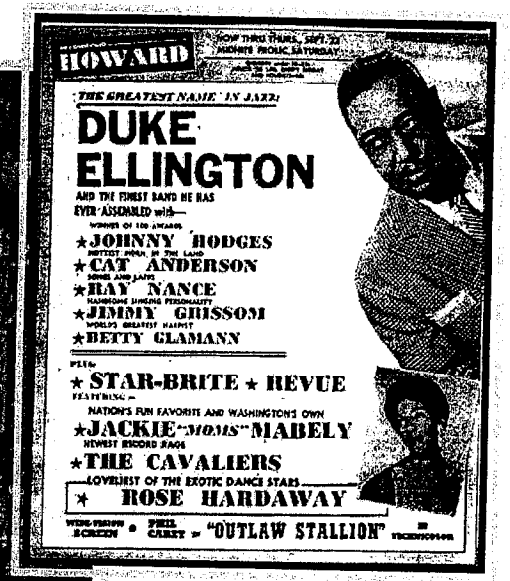
FOIA CONFIDENTIAL TREATMENT REQUESTED

Site

- **WMATA has 3 parcels (comprising 28,892 sf) that were used to construct Green Line tunnel**
- **Washington, DC adopted "Duke" Plan for area in 2005**







WMATA-INV 005297

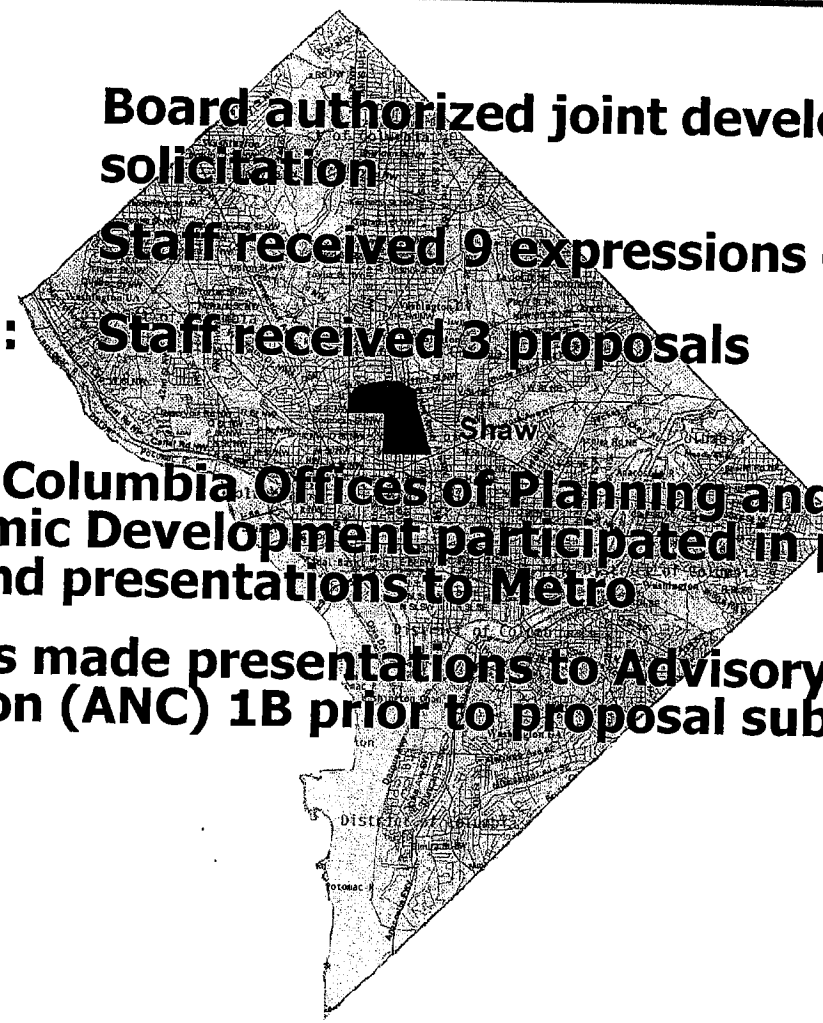
FOIA CONFIDENTIAL TREATMENT REQUESTED

Community Involvement

July 2006: Board authorized joint development solicitation

Spring 2007: Staff received 9 expressions of interest

October 2007: Staff received 3 proposals



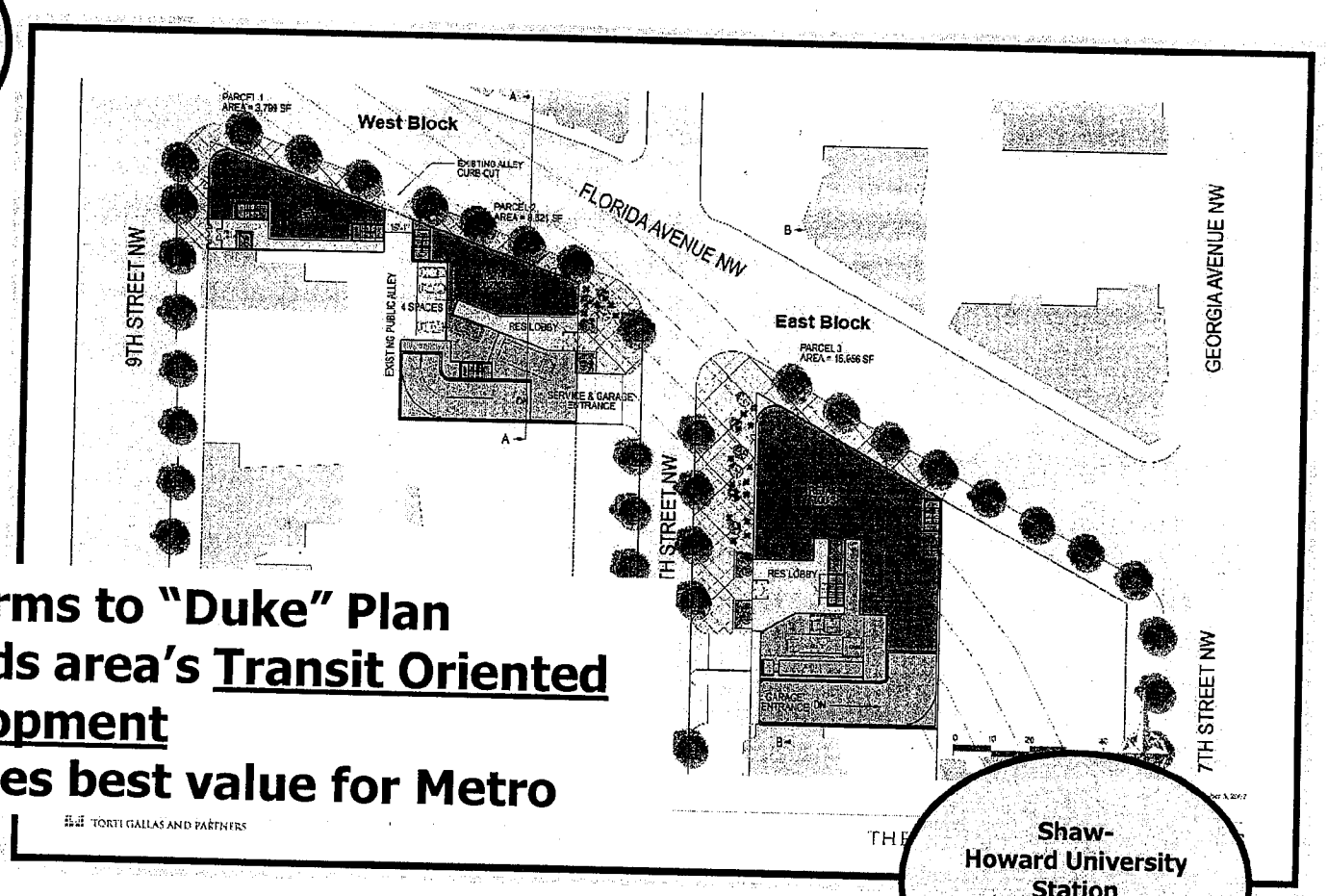
- District of Columbia Offices of Planning and Deputy Mayor for Economic Development participated in proposal reviews and presentations to Metro
- Developers made presentations to Advisory Neighborhood Commission (ANC) 1B prior to proposal submission

WMATA-INV 005298

FOIA CONFIDENTIAL TREATMENT REQUESTED

Site Plan

U Street/
African-American
Civil War
Memorial/Cardozo
Station
U & 10th



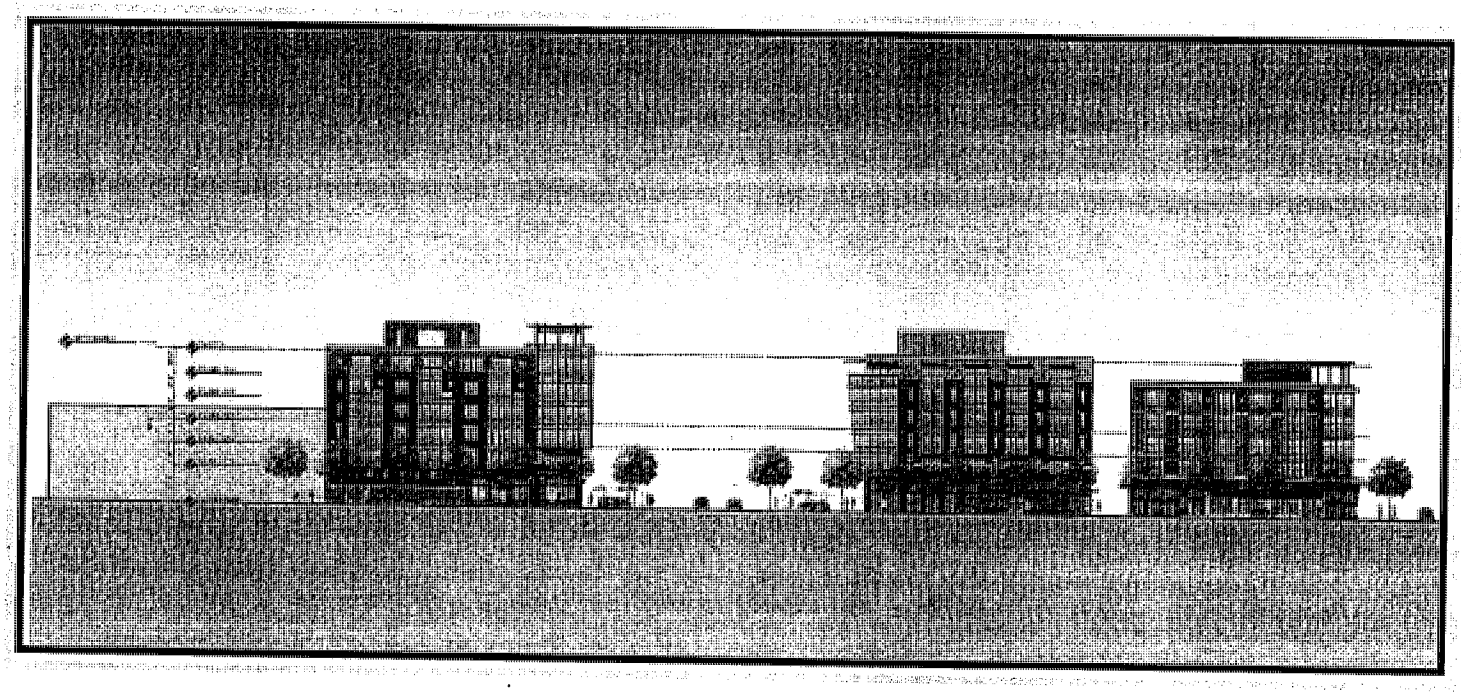
- **Conforms to "Duke" Plan**
- **Extends area's <u>Transit Oriented Development</u>**
- **Provides best value for Metro**

Shaw-
Howard University
Station
7th & S

WMATA-INV 005299

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Elevation



- **Provides 104 apartments**
- **Allocates 11,750 sf for retail/arts uses**

WMATA-INV 005300

FOIA CONFIDENTIAL TREATMENT REQUESTED

Recommendation

- Approve Banneker Ventures team as developer of Shaw-Howard U./Florida Avenue joint development site
- Approve term sheet
- Authorize negotiation of development agreement

WMATA-INV 005301

Washington Metropolitan Area Transportation Authority
Board Action/Information Summary

Action / Information	MEAD Number: 99972	Resolution: ☐ Yes ☒ No

PURPOSE

Approve the selection of, and term sheet with, the Banneker Ventures LLC development team as developer for the Shaw-Howard University/Florida Avenue joint development parcels and authorize the negotiation of a development agreement to be presented to the Board.

DESCRIPTION

Metro owns three parcels totaling 28,892 sf on Florida Avenue, NW between 7th and 9th Streets. Originally purchased for construction of the Green Line tunnel, which runs partially beneath them, the parcels are now available for development. In accordance with a joint development work program approved by the Board in July 2006, and after litigation affecting the parcels was resolved, Metro issued a request for Expressions of Interest in the spring of 2007. Metro subsequently issued a joint development solicitation for which three responses were received in October 2007.

Staff recommends selecting the Banneker Ventures, LLC team as developer of the parcels. The team consists of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC; they will form an LLC tentatively named The Jazz @ Florida Avenue. The team has the experience to complete the project; Metropolis recently developed the Langston Lofts joint development project at 14th and V Streets. The developer provided a better financial offer than its closest competitor and the same type of development: 4 to 5-stories of residential units over a ground floor devoted to retail and arts uses. This is the type of development recommended in the District of Columbia's adopted Duke Plan for the area. The third competitor did not meet appraisal benchmarks.

Under a 60-year ground lease, the developer proposes to build a minimum of 104 apartments and devote 11,750 sf of the ground floor to retail and arts uses, consistent with the Uptown Arts Overlay District in which the three parcels are

located. The parcels are also in an historic district. Their development will help extend the successful U Street/Florida Avenue Transit Oriented Development of the past few years from Metro's redeveloped sites near the U Street/African-American Civil War Memorial/Cardozo Metro station (13th-14th and U Streets) eastward to the Shaw-Howard University Metro station at 7th Street.

No Metro facilities will be displaced. Work over and next to the Metro tunnel and the 8th Street fan shaft/air vents will need to be approved by staff.

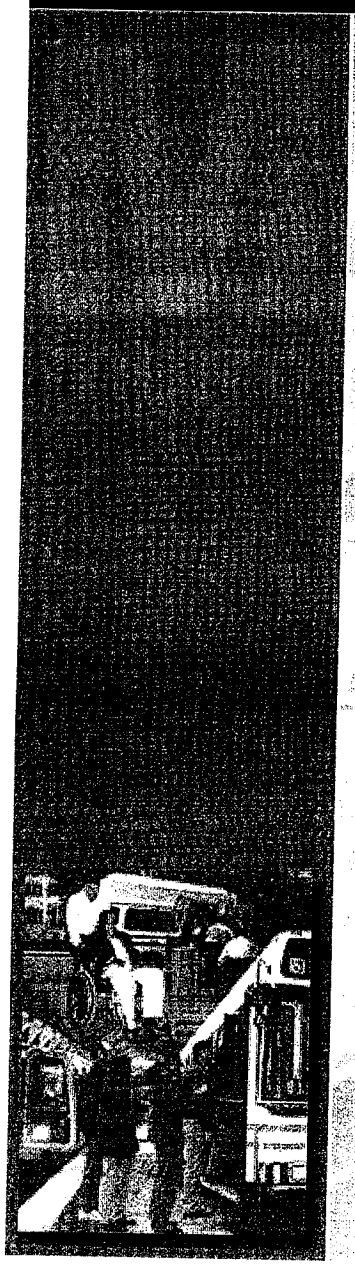
FUNDING IMPACT

Lease revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

RECOMMENDATION

That the Board of Directors approve the selection of, and term sheet with, the Banneker Ventures, LLC development team as developer for the Shaw-Howard University/Florida Avenue joint development parcels and authorize the negotiation of a development agreement that will be presented to the Board for approval.

FOIA CONFIEDENTIAL TREATMENT REQUESTED



Shaw-Howard U./Florida Avenue Joint Development Site

Developer Selection and Term Sheet Approval

Presented to the Board of Directors:

Planning, Development and Real Estate Committee

April 24, 2008

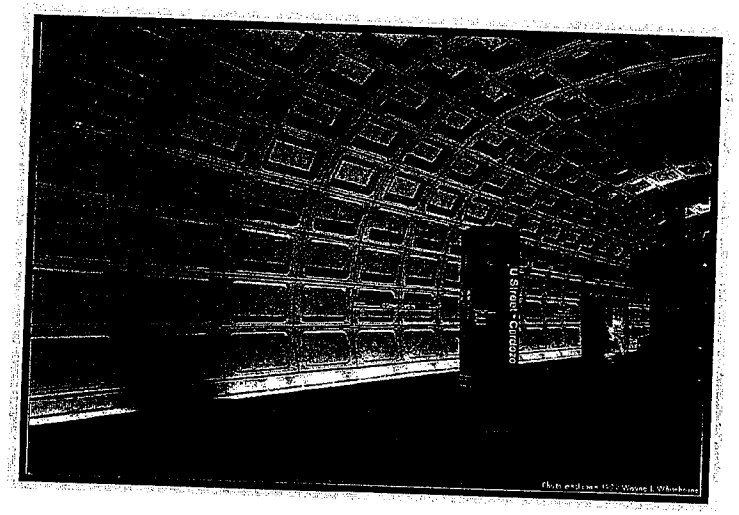
WMATA-INV 005304

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Benefits/Costs

- **Benefits**
  - ✓ Extends U Street Florida Avenue Transit Oriented Development
  - ✓ Attracts new Metro riders
  - ✓ Increases Metro revenue
  - ✓ Increases tax base for District of Columbia

- **Costs**
  - ✓ Requires staff time to review development proposal
  - ✓ Requires staff time to monitor construction

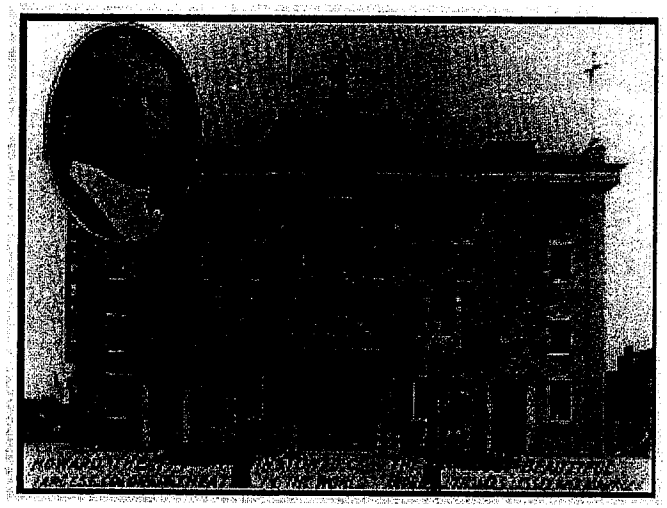


WMATA-INV 005305

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Purpose

- Approve Banneker Ventures team as developer of Shaw-Howard U./Florida Avenue joint development site
- Approve term sheet
- Authorize negotiation of development agreement

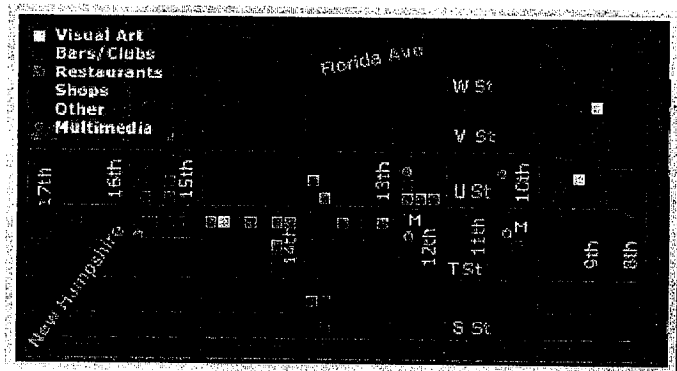


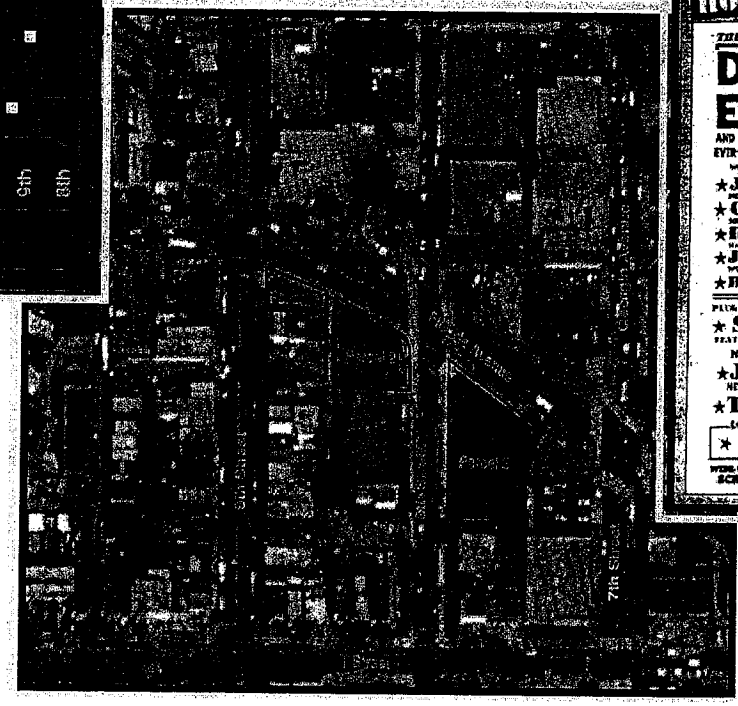
WMATA-INV 005306

FOIA CONFIDENTIAL TREATMENT REQUESTED

Site

- **WMATA has 3 parcels (comprising 28,892 sf) that were used to construct Green Line tunnel**
- **Washington, DC adopted "Duke" Plan for area in 2005**





WMATA-INV 005307

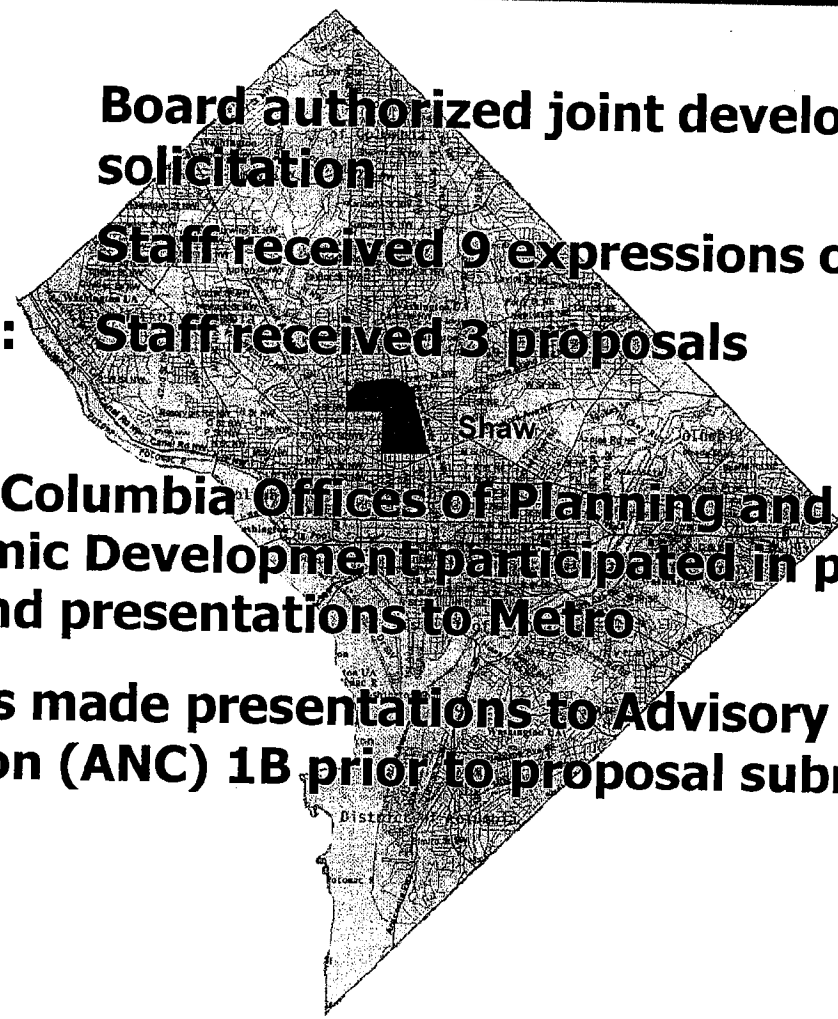
FOIA CONFIDENTIAL TREATMENT REQUESTED

Community Involvement

July 2006: Board authorized joint development solicitation

Spring 2007: Staff received 9 expressions of interest

October 2007: Staff received 3 proposals



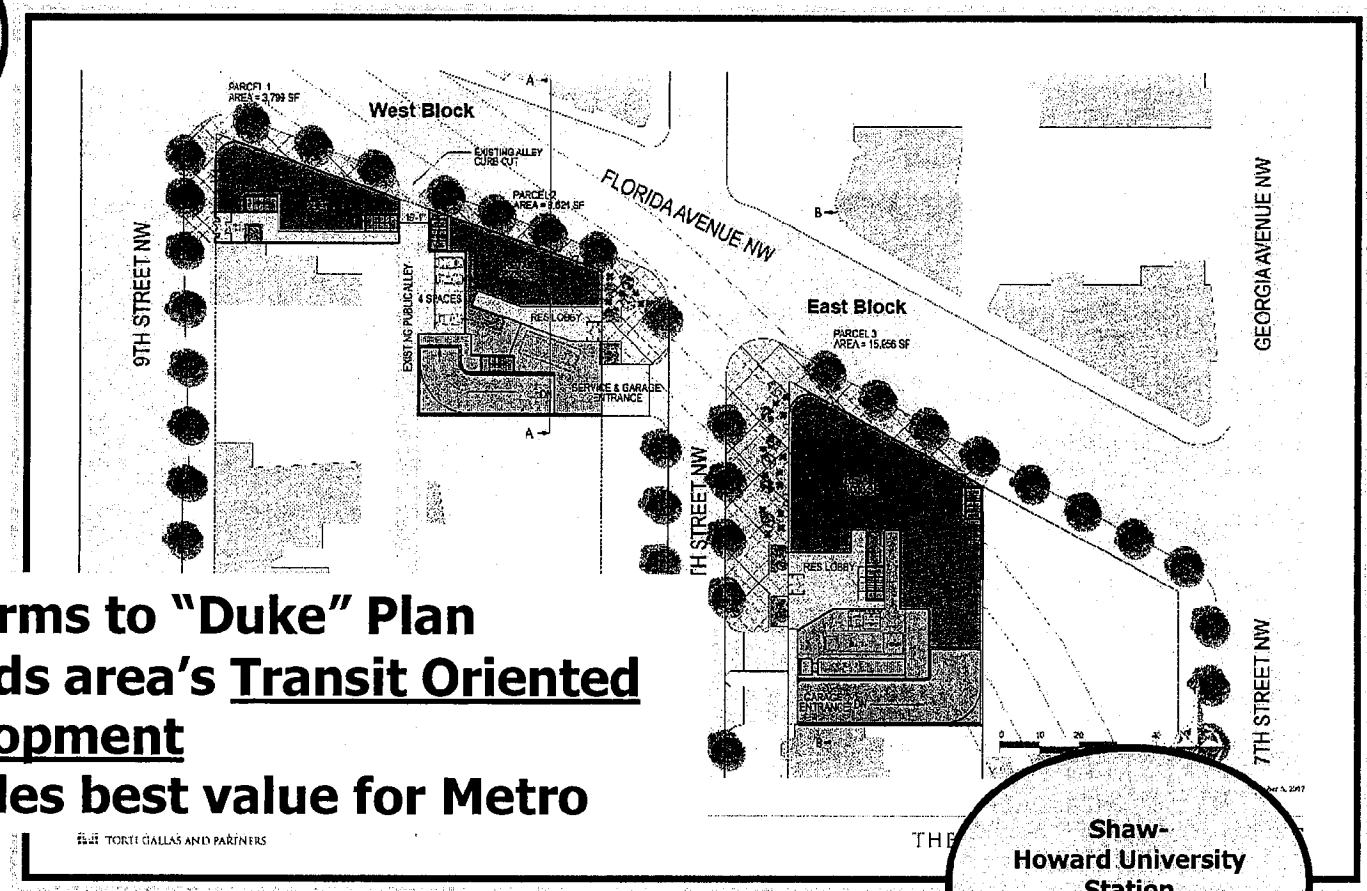
- District of Columbia Offices of Planning and Deputy Mayor for Economic Development participated in proposal reviews and presentations to Metro
- Developers made presentations to Advisory Neighborhood Commission (ANC) 1B prior to proposal submission

WMATA-INV 005308

FOIA CONFIDENTIAL TREATMENT REQUESTED

Site Plan

U Street/
African-American
Civil War
Memorial/Cardozo
Station
U & 10th



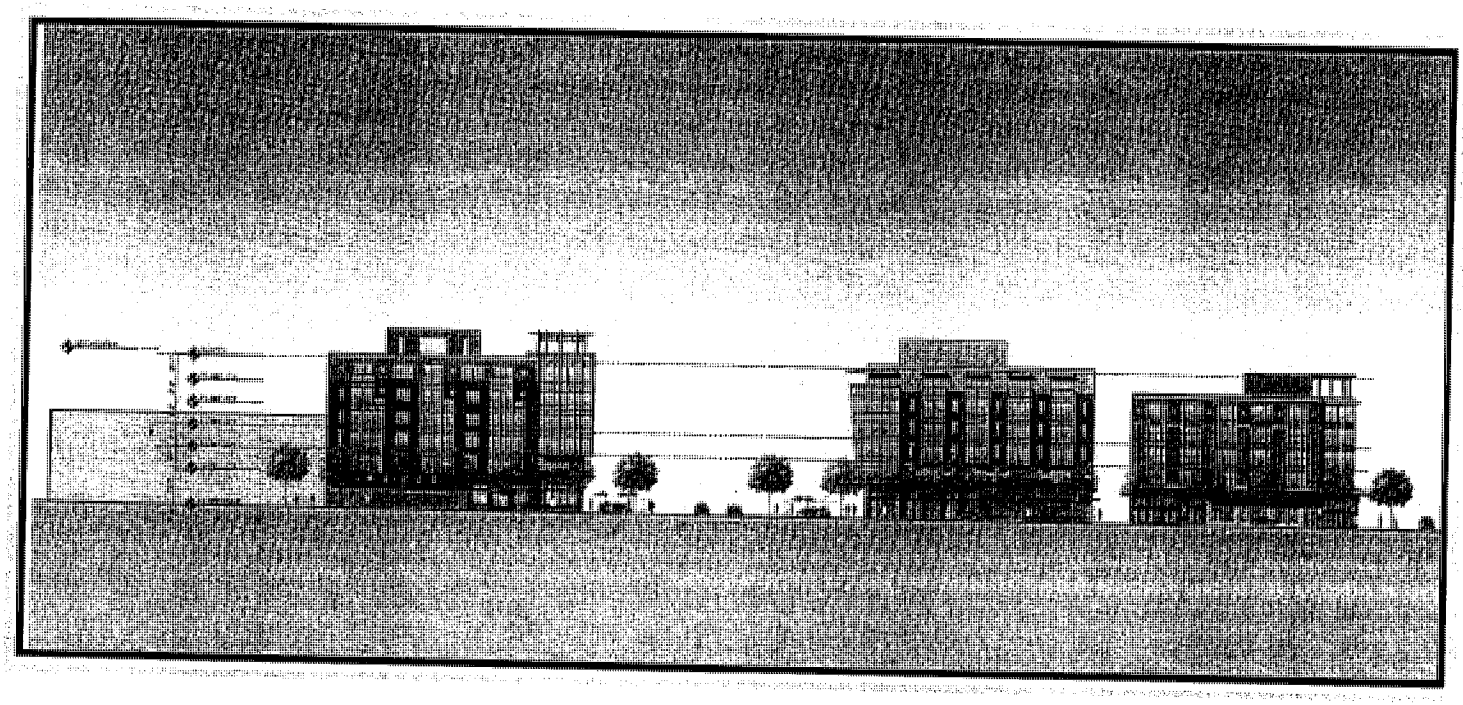
- **Conforms to "Duke" Plan**
- **Extends area's <u>Transit Oriented Development</u>**
- **Provides best value for Metro**

Shaw-
Howard University
Station
7th & S

WMATA-INV 005309

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Elevation



- **Provides 104 apartments**
- **Allocates 11,750 sf for retail/arts uses**

WMATA-INV 005310

FOIA CONFIDENTIAL TREATMENT REQUESTED

Recommendation

- **Approve Banneker Ventures team as developer of Shaw-Howard U./Florida Avenue joint development site**
- **Approve term sheet**
- **Authorize negotiation of development agreement**

WMATA-INV 005311

BANNEKER VENTURES, LLC

May 9, 2008

VIA EMAIL

Joel Washington
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

RE: Shaw-Howard/Florida Avenue Joint Development Site – Follow-up

Dear Mr. Washington:

We are writing to respond to certain questions concerning alleged obligations due to the District of Columbia (the "District") by Mr. Warren Williams, Jr., Principal of Banneker Ventures ("Banneker").

To our knowledge, Mr. Williams, in his personal capacity, does not have any outstanding financial obligations due to the District, except, for local taxes that may be owing but not overdue. Furthermore, Mr. Williams, in his capacity as a Principal of Banneker, does not have any outstanding financial obligations due to the District, except, for local taxes that may be owing but not overdue.

Prior to joining Banneker, Mr. Williams was a co-owner of Levelle, Inc., a company that operated The Coach & Four Restaurant (the "Restaurant") located in The Frank D. Reeves Municipal Center at 2000 14th Street, NW, Washington, DC 20009. It is our understanding that Levelle does not have any outstanding financial obligations due to the District nor has it ever been in arrears to the District under its lease during its more than 10 years of operation in this government facility. The only amount that Levelle has ever paid to the District aside from its normal lease payments and any license fees, local taxes or duties was a $100,000 payment made on January 6, 2005 as part of a settlement agreement and release of certain claims and cross-claims made between Levelle and the District. The settlement agreement resolved any disputes between Levelle and the District. At present, Mr. Williams no longer has any interest in Levelle and Levelle no longer operates the Restaurant. You may confirm that Levelle has satisfied its obligations related to the lease for the Restaurant and otherwise by contacting Bill Rice of the District of Columbia's Office of Property Management at (202) 724-4400.

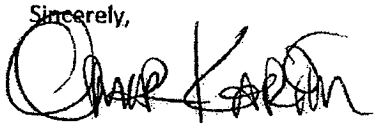
We hope that this clarifies any questions that WMATA may have regarding financial obligations due by Mr. Williams, Levelle or any company associated with Mr. Williams to the District.

700 12th Street, NW • Suite 700 • Washington, D.C. 20005 • (202) 667-4110
814 Thayer Avenue • Suite 300 • Silver Spring, Maryland 20910 • (301) 565-4980
www.bannekerventures.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Should you have any additional questions, please feel free to contact me at (202) 667-4110 (office) or (301) 523-1810 (cell).

Sincerely,



Omar A. Karim

Cc: Warren C. Williams, Jr.
Guy Flynn, DLA Piper US LLP

FOIA CONFIDENTIAL TREATMENT REQUESTED

CONFIDENTIAL STATEMENT - SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE 2008	
CATEGORY	**Developer: The Jazz @ Florida Avenue LLC to be formed by Banneker Ventures LLC, the District**
Site Description	The 28,892 sf site consists of three separate parcels on the south side of Florida Avenue, NW , between 7th and 9th streets, in the District of Columbia. The parcels were used for construction of the Green Line tunnel, which lies partially beneath each parcel, and are no longer needed by WMATA.
Developer's Proposal	104 apartments with 11,750 sf ground floor retail/arts uses (total 130,000 sf of development)
Proposed Contract	Lease - 60 years
Construction Schedule	Lease Closing: 20 months after development agreement execution Construction completion: 18 months after lease closing
<u>Developer's Offer</u> Performance Security	$250,000
Option Fee	$100,000 upon Term Sheet approval
Pre-stabilization Rent	$100,000/year upon development agreement execution rising to $130,000
Additional Density	If prior to closing, $4.20/year/additional gross FAR sf. (plus escalation)
Base Rent	$597,000/year upon the earlier of stabilization or 45 months from development agreement date
Base Rent Escalation	For first 10 years base rent escalates at 1.5%/year, thereafter at 3%/year
Base Rent Revaluation	Every 10 years
Capital Event Participation	10% of net proceeds
<u>Appraised Market Value</u> $7,500,000 land value $525,000 rental value Appraisal by Integra Realty 8/07	<u>NPV to WMATA over Term of Lease</u> $14 million

WMATA-INV 005314

Mr. Omar A. Karim

Dear Mr. Karim

I am pleased to inform you that on June 26, 2008 the Wash M A T Auth Board of Directors selected the Banneker Ventures team as developer of the Shaw-Howard/Florida Avenue joint development sites, approved the term sheet that we mutually agreed upon, and authorized my office to negotiate a joint development agreement (JDA) with you.

Congratulations!

I have enclosed a copy of the term sheet with two signature pages, which I have executed. Please return a copy of the term sheet executed by yourself along with a check for the $100,000 option fee before or at the JDA kickoff meeting which I understand is scheduled for the morning of Friday, July 25.

Sincerely,

JRW

2008

Execution Copy

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, and dated as of the date last executed below, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

1. **Parties**
   1.1 Washington Metropolitan Area Transit Authority ("WMATA").

   1.2 Banneker Ventures, LLC ("Banneker"), together with District Development Group, LLC ("DDG") and Metropolis Development Company LLC ("Metropolis"), will form a limited liability company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or another name as determined by Banneker, DDG and Metropolis (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, except for any equity partners that the DEVELOPER needs to provide financing for the Project, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, such consent not to be unreasonably withheld, with the terms of such consent to be provided in the Definitive Agreement.

2. **Definitive Agreement**
   The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within five months of Board Term Sheet approval, will be a Joint Development Agreement ("JDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement or the start of construction of the Project.

3. **Property to Be Leased by Developer**
   WMATA will lease to DEVELOPER approximately 28, 892 sf of land area outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31. The Leased Premises shall not include those property interests necessary for protection of WMATA's Transit Facilities.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

4. Project

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47 below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide knowledge-qualified representations customarily made by WMATA in transactions of this type, including with respect to title to the Leased Premises and the environmental history or condition of the property. Subject to the continued accuracy of such representations, and subject further to DEVELOPER'S Study Period rights as provided herein and satisfaction or waiver by DEVELOPER of all conditions precedent herein provided, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right-of-Entry Permit for entry into the Leased Premises, substantially in the form attached hereto as **Exhibit C**. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit or the Proposal Security (as defined below), as applicable, and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005317

6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00), (the "Security Deposit") to secure DEVELOPER's performance. The Security Deposit will replace the $100,000 Proposal Security.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if DEVELOPER shall be in default under the Definitive Agreement beyond applicable notice, cure and grace periods therein provided. In such event, the Security Deposit may be applied by WMATA in whole or in part to cure such default. No such application of the Security Deposit shall constitute a waiver of any such default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.4 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance (not to be unreasonably withheld, delayed or conditioned) by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

6.5 WMATA shall return the Security Deposit plus interest to DEVELOPER within twenty (20) business days of its receipt of a copy of the Certificate of Occupancy for the Project.

7. Consideration

7.1 Option Fee: DEVELOPER will pay WMATA $100,000 (the "Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet and written notification to the DEVELOPER by WMATA of such approval. The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be non-refundable.

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement or forty-five (45) months after WMATA Board approval and execution of the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005318

Definitive Agreement (the "Pre-stabilization Period"). Pre-stabilization Rent, for the first fifteen (15) months, will be $100,000 per year payable in advance in quarterly instalments of $25,000. Pre-stabilization Rent will increase to $115,000.00 per year for the next twelve (12) months. For the remaining Pre-stabilization Period, rent shall be $130,000.00 per year.

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a penalty payment, the amount of which to be determined in the Definitive Agreement. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly, payable in advance in quarterly instalments of one-quarter of the Initial Base Rent. In no event shall the Initial Base Rent (for a full year) be less than Five Hundred and Ninety-Seven Thousand and No/100 Dollars ($597,000.00). After the Initial Base Rent payment, Base Rent will be due annually, in quarterly instalments, beginning on the first business day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent multiplied by 1.5% for that year (the "Initial Escalation Factor").

7.3.2 For the second through tenth years of Base Rent payments, subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of Base Rent payments and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005319

land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.5 DEVELOPER shall lease the Leased Premises for a period of sixty (60) years (the "Lease Period"). The Definitive Agreement will provide a mechanism by which Developer may request an extension of the Lease Period, subject to completion of a written agreement between the parties and approval, if necessary, by WMATA's Board of Directors.

7.4 Capital Event Participation: Capital Events (defined hereinbelow) shall be permitted in accordance with this Section 7.4. Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital Event" include any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of DEVELOPER's Improvements, (iii) other dispositions, transfers, and conversions that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event. The Parties agree that Non-Capital Events, which will require WMATA approval, but not WMATA monetary participation, also exist and will be defined in the Definitive Agreement. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Capital Event.

7.5 Periodic Rent Revaluation: Upon a Capital Event or every ten years, whichever is earlier, the Base Rent will be adjusted to 7 % of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Periodic Rent Revaluation.

7.6 WMATA Improvements: intentionally omitted

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005320

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within five months following Board Term Sheet Approval (as provided in Section 2 above), WMATA will refund DEVELOPER's full Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER within twenty (20) business days.

7.8 WMATA Delays: The maximum length of 45months for the Pre-stabilization Period will be extended, on a day-for-day basis, for delays caused by WMATA actions or failure to act, including obtaining FTA Approval in accordance with Section 8.5 below and . In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, even though DEVELOPER's schedule may take longer than anticipated.

7.9 Force Majeure Delays: The maximum length of 45 months for the Pre-stabilization Period may be extended, subject to an increase in the rental payments due in order to maintain the net present value of the Definitive Agreement to WMATA, for any delays caused by acts of God, terrorism, casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement.

7.10 Changes to Project: Changes to Project, which increase Project density may be requested by the Developer, subject to the terms and conditions for such changes to the Project as may be required by WMATA in the Definitive Agreement. Such terms and conditions will require increases in rent or other compensation to WMATA.

7.11 Additional Density:

7.11.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf (subject to true-up of 3% per year from the execution of the Definitive Agreement) of additional density and multiplying the product derived (Project land value) by 7%.

7.11.2 During the term of the Lease, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those originally shown in the Approved Site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above, with such additional Base Rent including the incremental increase associated with any actually constructed DEVELOPER Improvements.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005321

8. Conditions to Definitive Agreement Consummation

If each of the following conditions is not satisfied within the timeframes provided below therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

8.6 Financing Contingency: Developer shall have received a commitment for construction financing from a bank or other lending institution in such amounts, and upon such terms and conditions, as shall be consistent with the approved development budget for the Project and as shall otherwise be reasonably satisfactory to Developer and WMATA.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

9. Special Considerations

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area as specified by WMATA,to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the applicable District agency or agencies a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005323

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS—2007 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten (10) calendar days prior to commencement of construction of the DEVELOPER Improvements.

9.7 Interim Improvements: intentionally omitted

9.8 Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin. The adequacy of security and need for this Guarantee to be further discussed in Definitive Agreement.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law, which can be found at 72 FR 5788.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005324

9.10 Transit Operations: Neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to WMATA Transit Facilities located under the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005325

12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

Agreed this 17th day of July, 2008, by

Washington Metropolitan Area Transit Authority

By: Joel R. Washington

Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By: _____

Title: Principal

FOIA CONFIEDENTIAL TREATMENT REQUESTED

This was printed from Washington Business Journal

Inner Loop

Jim Graham takes on Warren Williams

Premium content from Washington Business Journal

Date: Monday, July 14, 2008, 12:00am EDT - Last Modified: Friday, July 11, 2008, 8:34am EDT

Related:

Health Care, Commercial Real Estate, Economic Snapshot

Warren Williams Jr. is making headlines these days — too many, for some members of the D.C. Council.

In December, his Banneker Ventures LLC was part of a group tapped to redevelop the Sursum Corda housing project Northwest One, part of the city's New Communities program. Later, Banneker was the winning bidder — OK, the only bidder — to redevelop the Strand Theatre in Northeast. And just recently, Banneker was selected by the Metro board to develop an agency-owned lot on Florida Avenue NW.

But that's not why Williams has been in the papers so much lately. He and his wife, Alaka Williams, are the couple behind the company embroiled in controversy over the contract to run the D.C. Lottery, as The Washington Post reported. Mayor Adrian Fenty and Chief Financial Officer Natwar Gandhi favor a proposal from their company, W2I, over the existing operator, LTE. But the mayor, facing a skeptical council and accusations of cronyism, recently withdrew the proposal, meaning the council won't consider it until September at the earliest.

Some council members, including Jim Graham, D-Ward 1, are upset about Williams' past. He co-owned Club U — a hip-hop club in leased space inside D.C.'s Franklin D. Reeves Municipal Center at 14th and U streets NW — that closed in 2005 after a fatal stabbing on the premises.

Graham, a member of Metro's board, was so wary of Williams that he tried to derail efforts to award to him the Florida Avenue lot. While the original solicitation includes a provision allowing the board to fire Banneker if its integrity is questioned, the board went further, directing staff to develop

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005327

"business ethics" guidelines for selecting future development partners. He voted to approve Banneker.

Metro officials said they would specify what those guidelines are by September. No word from Williams about the whole brouhaha.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005328

Execution Copy

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, and dated as of the date last executed below, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

1. Parties

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC ("Banneker"), together with District Development Group, LLC ("DDG") and Metropolis Development Company LLC ("Metropolis"), will form a limited liability company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or another name as determined by Banneker, DDG and Metropolis (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, except for any equity partners that the DEVELOPER needs to provide financing for the Project, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, such consent not to be unreasonably withheld, with the terms of such consent to be provided in the Definitive Agreement.

2. Definitive Agreement

The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within five months of Board Term Sheet approval, will be a Joint Development Agreement ("JDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement or the start of construction of the Project.

3. Property to Be Leased by Developer

WMATA will lease to DEVELOPER approximately 28, 892 sf of land area outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31. The Leased Premises shall not include those property interests necessary for protection of WMATA's Transit Facilities.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

4. Project

DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47 below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. Due Diligence

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide knowledge-qualified representations customarily made by WMATA in transactions of this type, including with respect to title to the Leased Premises and the environmental history or condition of the property. Subject to the continued accuracy of such representations, and subject further to DEVELOPER'S Study Period rights as provided herein and satisfaction or waiver by DEVELOPER of all conditions precedent herein provided, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right-of-Entry Permit for entry into the Leased Premises, substantially in the form attached hereto as **Exhibit C**. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit or the Proposal Security (as defined below), as applicable, and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005330

6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00), (the "Security Deposit") to secure DEVELOPER's performance. The Security Deposit will replace the $100,000 Proposal Security.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if DEVELOPER shall be in default under the Definitive Agreement beyond applicable notice, cure and grace periods therein provided. In such event, the Security Deposit may be applied by WMATA in whole or in part to cure such default. No such application of the Security Deposit shall constitute a waiver of any such default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.4 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance (not to be unreasonably withheld, delayed or conditioned) by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

6.5 WMATA shall return the Security Deposit plus interest to DEVELOPER within twenty (20) business days of its receipt of a copy of the Certificate of Occupancy for the Project.

7. Consideration

7.1 Option Fee: DEVELOPER will pay WMATA $100,000 (the "Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet and written notification to the DEVELOPER by WMATA of such approval. The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be non-refundable.

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement or forty-five (45) months after WMATA Board approval and execution of the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005331

Definitive Agreement (the "Pre-stabilization Period"). Pre-stabilization Rent, for the first fifteen (15) months, will be $100,000 per year payable in advance in quarterly instalments of $25,000. Pre-stabilization Rent will increase to $115,000.00 per year for the next twelve (12) months. For the remaining Pre-stabilization Period, rent shall be $130,000.00 per year.

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a penalty payment, the amount of which to be determined in the Definitive Agreement. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly, payable in advance in quarterly instalments of one-quarter of the Initial Base Rent. In no event shall the Initial Base Rent (for a full year) be less than Five Hundred and Ninety-Seven Thousand and No/100 Dollars ($597,000.00). After the Initial Base Rent payment, Base Rent will be due annually, in quarterly instalments, beginning on the first business day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent multiplied by 1.5% for that year (the "Initial Escalation Factor").

7.3.2 For the second through tenth years of Base Rent payments, subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of Base Rent payments and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005332

land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.5 DEVELOPER shall lease the Leased Premises for a period of sixty (60) years (the "Lease Period"). The Definitive Agreement will provide a mechanism by which Developer may request an extension of the Lease Period, subject to completion of a written agreement between the parties and approval, if necessary, by WMATA's Board of Directors.

7.4 Capital Event Participation: Capital Events (defined hereinbelow) shall be permitted in accordance with this Section 7.4. Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital Event" include any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of DEVELOPER's Improvements, (iii) other dispositions, transfers, and conversions that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event. The Parties agree that Non-Capital Events, which will require WMATA approval, but not WMATA monetary participation, also exist and will be defined in the Definitive Agreement. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Capital Event.

7.5 Periodic Rent Revaluation: Upon a Capital Event or every ten years, whichever is earlier, the Base Rent will be adjusted to 7 % of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Periodic Rent Revaluation.

7.6 WMATA Improvements: intentionally omitted

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005333

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within five months following Board Term Sheet Approval (as provided in Section 2 above), WMATA will refund DEVELOPER's full Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER within twenty (20) business days.

7.8 WMATA Delays: The maximum length of 45months for the Pre-stabilization Period will be extended, on a day-for-day basis, for delays caused by WMATA actions or failure to act, including obtaining FTA Approval in accordance with Section 8.5 below and . In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, even though DEVELOPER's schedule may take longer than anticipated.

7.9 Force Majeure Delays: The maximum length of 45 months for the Pre-stabilization Period may be extended, subject to an increase in the rental payments due in order to maintain the net present value of the Definitive Agreement to WMATA, for any delays caused by acts of God, terrorism, casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement.

7.10 Changes to Project: Changes to Project, which increase Project density may be requested by the Developer, subject to the terms and conditions for such changes to the Project as may be required by WMATA in the Definitive Agreement. Such terms and conditions will require increases in rent or other compensation to WMATA.

7.11 Additional Density:

7.11.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf (subject to true-up of 3% per year from the execution of the Definitive Agreement) of additional density and multiplying the product derived (Project land value) by 7%.

7.11.2 During the term of the Lease, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those originally shown in the Approved Site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above, with such additional Base Rent including the incremental increase associated with any actually constructed DEVELOPER Improvements.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005334

8. Conditions to Definitive Agreement Consummation

If each of the following conditions is not satisfied within the timeframes provided below therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

8.6 Financing Contingency: Developer shall have received a commitment for construction financing from a bank or other lending institution in such amounts, and upon such terms and conditions, as shall be consistent with the approved development budget for the Project and as shall otherwise be reasonably satisfactory to Developer and WMATA.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

9. Special Considerations

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area as specified by WMATA,to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the applicable District agency or agencies a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005336

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS—2007 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten (10) calendar days prior to commencement of construction of the DEVELOPER Improvements.

9.7 Interim Improvements: intentionally omitted

9.8 Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin. The adequacy of security and need for this Guarantee to be further discussed in Definitive Agreement.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law, which can be found at 72 FR 5788.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005337

9.10 Transit Operations: Neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to WMATA Transit Facilities located under the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005338

12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

Agreed this 17th day of July, 2008, by

Washington Metropolitan Area Transit Authority

By: Joel R. Washington

Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

Title: Principal

FOIA CONFIEDENTIAL TREATMENT REQUESTED

rcd
9:30 am

DONATELLI
DEVELOPMENT

May 31, 2007

Mr. Gary Malasky
Contracting Officer
Office of Property Development & Management
600 Fifth Street, N.W.
Washington, DC 20001

RE: Shaw/U Street Development Opportunity

Dear Mr. Malasky:

To augment our December 6, 2006 unsolicited offer, this letter is in response to the WMATA advertisement requesting additional proposals to "*Compete Against An Unsolicited Proposal.*"

Donatelli Development ("Donatelli") confirms our original offer remains valid and the following is to comply with the advertised requirements. Donatelli wishes to establish a Development Agreement with the Washington Metropolitan Area Transit Authority ("WMATA") to develop the following property:

"Parcel 3" – Approximately 16,472 square feet of vacant property, bounded by Florida Avenue and 8th Street, N.W. in Square 416.

(We can amend our original offer to include Parcels 1 and 2)

Development Plan: Design and construction of a quality mixed use TOD project to include first floor retail and for-sale or rental residential units and underground parking to compliment the existing neighborhood and Metrorail Station.

With the current property zoning (C-2-B with an Arts Overlay), the development would be by right. Donatelli would consult the community and the Office of Planning with the design process. The project would conform to "DUKE Development Framework."

This proposal continues our track record and commitment to Transit Oriented Development in the District of Columbia.

Most uniquely, our development company worked with the WMATA Engineering Department to design and construct a building above WMATA tunnels (The Ellington at 13th & U Street). The exact condition is present at Parcel 3.

We would incorporate approved technical design elements from our Ellington development into the proposed buildings.

Most of the design requirements could be incorporated in our earliest design sets. This unique element to our proposal will save design and approval time, as well as, add to the comfort level of the WMATA Engineering Department when reviewing the proposals.

Donatelli has a proven track of working with public agencies and community residents to successfully develop over 800 units in public/private controlled scenarios in the District of Columbia.

Recent examples:

The Ellington is an elegant mixed-use building with street level community retail space and 190 rental apartments, at 13th and U Streets, NW.

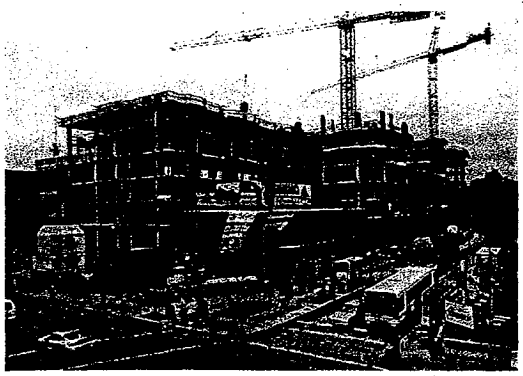
In 2000, Donatelli was selected by WMATA to develop a site on historic U Street. The Development Agreement with WMATA was executed expeditiously. The development received support and approvals from the Advisory Neighborhood Commission, Board of Zoning Appeals and the Historic Preservation Review Board.

The Ellington structural foundation and underground parking garage project sits above the underground tunnels of the Cardozo-Shaw / U Street Metro Station

Completed Project – Fall 2004

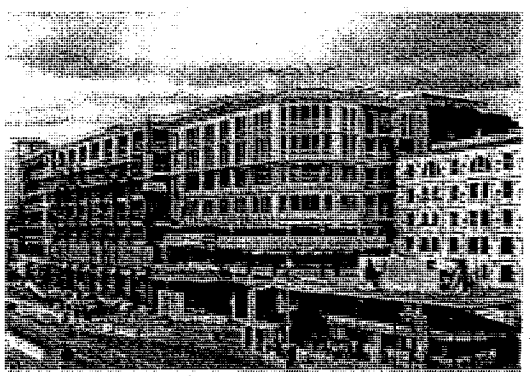
Original Project Rendering

Additionally, in April 2002 Donatelli was awarded parcels 15 and 26 by the NCRC. These two developments on the Green Line will add 400 residential units and 40,000 square feet of retail to the Columbia Heights neighborhood.



Highland Park – Construction

Completed Project Rendering

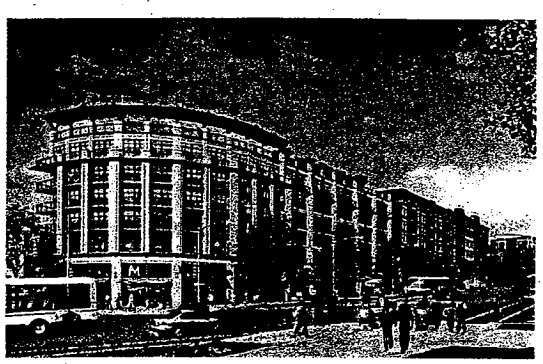


Kenyon Square – Construction

Completed Project Rendering

In addition to Columbia Heights, The Ellington, our development team was awarded the rights to develop a site at the Petworth Metro Station.

Park Place – Construction



Park Place – South View

The above developments are coming to fruition in the District of Columbia due to the involvement and cooperation of WMATA staff.

Consideration: A purchase price or lease value would be based on the latest assessment values provided by the District of Columbia or a third party appraiser.

Financing: The proposed development would be funded with conventional commercial bank financing and equity provided by the Developer. Cassidy & Pinkard will represent Donatelli with the financing. Donatelli will submit pro forma scenarios illustrating lease and sale options.

The financing structure for the development would utilize typical commercial debt and equity instruments. No public financial subsidies are relied upon.

Deposit: An earnest money deposit in the amount of $100,000 will be delivered to WMATA upon selection.

If selected as the developer, Donatelli Development agrees to the following requirements:

- A commitment to TOD and work in good faith with WMATA staff with the development.
- LSDBE partners in the ownership of the project.
- A portion of residential units affordable to persons with a household income of 80% - 120% of the Washington, D.C. metro-Area Median Income.

Sincerely,

Christopher J. Donatelli
President & CEO

DONATELLI
DEVELOPMENT

December 6, 2006

Mr. Gary Malasky
Contracting Officer
Office of Property Development & Management
600 Fifth Street, N.W.
Washington, DC 20001

RE: JDS 05-8 Shaw Howard University Metrorail Station

Dear Mr. Malasky:

Please consider this letter as an unsolicited offer from Donatelli Development/Donatelli & Klein.

Donatelli Development ("Donatelli") wishes to establish a Development Agreement with the Washington Metropolitan Area Transit Authority ("WMATA") to develop the following property:

"Parcel 3" – Approximately 16,472 square feet of vacant property, bounded by Florida Avenue and 8th Street, N.W. in Square 416.

The following are terms for consideration to include in the Development Agreement:

Developer: Donatelli Development/Donatelli & Klein, Inc.

Land Owner: Washington Metropolitan Area Transit Authority ("WMATA")

Development Plan: Design and construction of a quality mixed use TOD project to include first floor retail and for-sale or rental residential units and underground parking to compliment the existing neighborhood and Metrorail Station.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

With the current property zoning (C-2-B with an Arts Overlay), the development would be by-right. Donatelli would consult the community and the Office of Planning with the design process. The project would conform to DUKE Development Framework."

Consideration: A purchase price or lease value would be based on the latest assessment values provided by the District of Columbia or a third party appraiser.

We assume WMATA will order an appraisal of the property as justification of a negotiated consideration. We request that the final consideration be determined once D&K submits the final residential unit count.

Financing: The proposed development would be funded with conventional commercial bank financing and equity provided by the Developer. Cushman & Wakefield will represent Donatelli with the financing.

Deposit: An earnest money deposit in the amount of $100,000 will be delivered to WMATA upon execution of the Agreement.

Settlement: Settlement would occur at receipt of building permits from the DCRA.

Broker: Both parties recognize no brokers in this transaction.

Sincerely,

Christopher J. Donatelli
President & CEO

May 3, 2011

The Honorable Jim Graham
Councilmember, Ward One
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Suite 105
Washington, DC 20004

Dear Mr. Graham:

Please find attached a letter recently received by Keysia Thom, WMATA's Administrator for its Public Access to Records Policy. The letter asks for documents concerning the Board's decisions on the Florida Avenue Joint Development Project. Please review your records to see if you have any documents which would be responsive to the request. We have objected to Holland & Knight's participation in this matter because the firm is doing work for WMATA in another context. However, even if there is a change of the law firm, we still may be required to assemble the documents. As you may recall, we sent you a letter asking you to preserve any documents you may have in anticipation of potential litigation.

Sincerely,

Carol B. O'Keeffe
General Counsel

Attachment

Washington
etropolitan Area
Transit Authority

00 Fifth Street, NW
:hington, DC 20001
202/962-1234

ietroopensdoors.com

District of Columbia,
aryland and Virginia
Transit Partnership

Holland & Knight

2099 Pennsylvania Avenue, N.W., Suite 100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Kwamina Thomas Williford
(202) 828-1857
kwamina.williford@hklaw.com

April 25, 2011

Via First Class Mail and Email: kthom@wmata.com

Ms. Keysia A. Thom
PARP/Privay Policy Administrator
Washington Metropolitan Area Transit Authority
Office of General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW,
Washington, DC 20001

RE: Public Access to Records Policy Request – Shaw-Howard/Florida Avenue Joint Development Solicitation

Dear Ms. Thom:

Pursuant to the Washington Metropolitan Area Transit Authority Public Access to Records Policy ("Policy"), which is interpreted and applied consistently with the federal Freedom of Information Act, 5 U.S.C. Section 522, *et seq.*, and federal practice, I hereby request a copy of the following documents within the possession, custody or control of the Washington Metropolitan Area Transit Authority ("WMATA"):

1. Documents related to the selection of a developer for the Shaw-Howard/Florida Avenue Joint Development Solicitation issued by WMATA on August 24, 2007, including but not limited to correspondence of WMATA staff, WMATA Board of Directors and WMATA officers.

2. Documents discussing Banneker Ventures, LLC and/or Omar Karim, including but not limited to, correspondence among WMATA staff, WMATA Board members and officers, or third parties discussing any Term Sheets, commitment, agreement or directive.

3. Documents to, from or about LaKritz Adler and/or Robb LaKritz, including but not limited to, correspondence with or among WMATA staff, WMATA Board members, and officers discussing any Term Sheet, contract, agreement, arrangement or promise.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

4. Documents discussing any decision to postpone or discontinue negotiations with Banneker Ventures, LLC related to the Shaw-Howard/Florida Avenue Joint Development Site.

5. Disclosure form(s) submitted by then-Board Member Jim Graham, pursuant to Articles III(I) and IV of the Standards of Conduct for Members of the WMATA Board of Directors.

6. Documents to or from any WMATA Board member or WMATA staff from or to any appraiser hired to appraise the value of any portion of the Shaw-Howard Florida Avenue Joint Development Site.

For the purpose of this request, unless otherwise indicated, the time period of documents requested is from January 1, 2008 to December 31, 2010. The term "Shaw-Howard/Florida Avenue Joint Development Site" refers to the three (3) parcels of land (Parcel 1 – Lot 44, Square 393, 3,799 sq. ft.; Parcel 2 – Lot 45, Square 393, 8,621 sq. ft.; and Parcel 3 – Lot 31, Square 416, 15, 956 sq. ft.) located on the 700 and 900 blocks of Florida Avenue, NW, in the District of Columbia. The term "documents" means any tangible thing upon which information is or has been stored, recorded or communicated, including, but not limited to: records, letters, notes, correspondence, graphic or photographic matter, agreements, memoranda, diaries, calendars, telephone logs, messages, records, tapes, email and other electronically stored materials. Each draft and each non-identical copy shall be considered a separate document.

If for any reason a document arguably within the scope of this request is withheld as falling under an exemption covered by Section 6.0 of the Policy, please identify and describe the document being withheld, the basis for withholding it, and whether any exempt material can be deleted thereby allowing the document with deleted portions to be provided. We are aware of our rights to administrative appeal set forth in Section 9.1 of the Policy and are prepared to pursue them if necessary.

We are willing to pay all reasonable fees related to this request. Please contact me at (202) 828-1857 or kwamina.williford@hklaw.com if you have any questions concerning this Public Access to Records Policy request.

Sincerely yours,

HOLLAND & KNIGHT LLP

Kwamina T. Williford

Kwamina Thomas Williford

KTW:aem

cc: Carol O'Keefe, General Counsel, WMATA, via email [cokeefe@wmata.com]

#10292945_v2

O'Keeffe, Carol B.

From: Biondi, Marc E.
Sent: Tuesday, October 25, 2011 1:40 PM
To: O'Keeffe, Carol B.
Cc: Dickerson, Tracie S.
Subject: RE: Revised PARP Request No 11-0124

Carol,

The document requests that WMATA search emails (among other records) for the period March 2007 to present. Let's assume that 'present' is limited to a date-certain, say Sept. 30, 2011.

For the period **March 1, 2009 through Sept. 30, 2011**, yes, we could work with IT – MITS (V. Iwugo) to develop a database of emails that would be searchable. IT would need a list of relevant employees to do the data collection and could set up searches or enable the responsible attorney to run searches. IT can produce a CD of the documents to provide to the interested party. We may need to learn a little more about the Encase program in order to do an efficient and effective privilege review of the documents. (Thompson Coburn has been handling privilege review in AON)

For the period of the request **Jan. 2008 through February 28, 2009**, no, the email data available in-house does not include this time period. The back-up tapes for this time period are currently with an outside vendor for recovery, searching and production in the AON matter. That contract could be modified to include additional employees and new search terms assuming that 1) the technology issues raised in the email this morning are resolved; 2) the data is recovered; and 3) there is funding available in the existing contract or from another source.

For the period of the request **March 2007 through Dec. 2007**, the back-up tapes should be found in storage, but I would have to confirm this assumption with IT. Assuming again that EED can resolve their technology issues, the tapes could be sent to that vendor for recovery, searching and production. This would require either a modification/new task order for the existing contract or a new contract with EED and funding.

Please let me know if I can provide additional assistnace on this issue,

Marc

Marc Biondi
Associate General Counsel
Washington Metropolitan Area Transit Authority
202-962-1011

From: O'Keeffe, Carol B.
Sent: Tuesday, October 25, 2011 12:11 PM
To: Biondi, Marc E.
Subject: FW: Revised PARP Request No 11-0124

Marc, could you please look at the letter and see if the search tool that you used in AON would be an assist?

From: tori.gordon@hklaw.com [mailto:tori.gordon@hklaw.com]
Sent: Tuesday, October 25, 2011 10:01 AM

FOIA CONFIEDENTIAL TREATMENT REQUESTED

To: O'Keeffe, Carol B.
Cc: kwamina.williford@hklaw.com
Subject: FW: Revised PARP Request No 11-0124

Dear Ms. O'Keeffe:

The attached letter was sent to Ms. Tracie Dickerson yesterday.

Best,
Tori

Tori Gordon | Holland & Knight
Associate
2099 Pennsylvania Avenue, N.W., Suite 100 | Washington DC 20006
Phone 202.469.5110 | Fax 202.955.5564
tori.gordon@hklaw.com | www.hklaw.com

Add to address book | View professional biography

From: Gordon, Tori B (WAS - X75110)
Sent: Monday, October 24, 2011 5:25 PM
To: 'Dickerson, Tracie S.'
Cc: 'cokeefe@wmata.com'; Williford, Kwamina (WAS - X71857)
Subject: Revised PARP Request No 11-0124

Dear Ms. Dickerson:

Please find a letter regarding our revised PARP Request attached to this email. Please contact me with any questions or concerns.

Best,
Tori

Tori Gordon | Holland & Knight
Associate
2099 Pennsylvania Avenue, N.W., Suite 100 | Washington DC 20006
Phone 202.469.5110 | Fax 202.955.5564
tori.gordon@hklaw.com | www.hklaw.com

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****IRS CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE INFORM YOU THAT ANY TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN BY HOLLAND & KNIGHT LLP TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (I) AVOIDING TAX-RELATED PENALTIES UNDER THE INTERNAL REVENUE CODE, OR (II) PROMOTING, MARKETING, OR RECOMMENDING TO ANOTHER PARTY ANY TAX-RELATED MATTER HEREIN.****

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005350

Holland & Knight

2099 Pennsylvania Avenue, N.W., Suite 100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Kwamina Thomas Williford
(202) 828-1857
kwamina.williford@hklaw.com

October 24, 2011

Via First Class Mail and Email:TDickerson@wmata.com

Ms. Tracie Dickerson
Assistant General Counsel
Washington Metropolitan Area Transit Authority
Office of General Counsel
600 Fifth Street, NW,
Washington, DC 20001

RE: Revised PARP Request No. 11-0124

Dear Ms Dickerson

On October 19, 2011, you informed us that our April 2011 PARP Request # 11-0124 was too burdensome of a request, and unless we responded within five days to narrow this Request then it would be considered closed. We subsequently learned that the Request was deemed unduly burdensome because it required the searching of e-mail. This new delay tactic came after numerous follow-up communications from us regarding this Request and 27 working days after we submitted complete payment to process the Request. This tactic is consistent with your June 21, 2011 letter saying that we would need to pay $6,134 to process this Request or you would consider the matter closed, and with your September 2, 2011 letter quoting us $5,610 and saying that you are closing the matter without receiving full payment. All of these responses appear to be made in an effort to chill access to these records and deter us from getting this information.

For the purpose of getting some documents responsive to our April 2011 Request, and pursuant to the Washington Metropolitan Area Transit Authority Public Access to Records Policy ("Policy"), please see our narrowed request below seeking documents within the possession, custody or control of WMATA:

1. Documents related to the selection of a developer for the Shaw-Howard/Florida Avenue Joint Development Solicitation issued by WMATA on August 24, 2007, including but not limited to correspondence of WMATA staff, WMATA Board of Directors and WMATA officers.

2. Documents discussing Banneker Ventures, LLC and/or Omar Karim, including but not limited to, correspondence among WMATA staff, WMATA Board

FOIA CONFIEDENTIAL TREATMENT REQUESTED

members and officers, or third parties discussing any Term Sheets, commitment, agreement or directive.

3. Documents to, from or about LaKritz Adler and/or Robb LaKritz, including but not limited to, correspondence with or among WMATA staff, WMATA Board members, and officers discussing any Term Sheet, contract, agreement, arrangement or promise.

4. Documents discussing any decision to postpone or discontinue negotiations with Banneker Ventures, LLC related to the Shaw-Howard/Florida Avenue Joint Development Site.

5. Disclosure form(s) submitted by then-Board Member Jim Graham, pursuant to Articles III(I) and IV of the Standards of Conduct for Members of the WMATA Board of Directors.

6. Documents to or from any WMATA Board member or WMATA staff from or to any appraiser hired to appraise the value of any portion of the Shaw-Howard Florida Avenue Joint Development Site.

Please note that the term "documents" should be interpreted to mean any tangible thing upon which information is or has been stored, recorded or communicated. While is defies belief that the searching of e-mail could be deemed too burdensome, for the purpose of this Request, it is not necessary to search electronic mail databases related to document requests 1 through 4 above. However, if e-mail has been printed in hard copy form, and resides within a file, it should be covered under this Request. Please note that subsequent separate requests related to e-mail, which cannot be utilized to delay this Request any further, are forthcoming.

In addition, unless otherwise indicated, the time period of documents requested is from March 2007 to the present. The term "Shaw-Howard/Florida Avenue Joint Development Site" refers to the three (3) parcels of land (Parcel 1 – Lot 44, Square 393, 3,799 sq. ft.; Parcel 2 – Lot 45, Square 393, 8,621 sq. ft.; and Parcel 3 – Lot 31, Square 416, 15, 956 sq. ft.) located on the 700 and 900 blocks of Florida Avenue, NW, in the District of Columbia. If for any reason a document arguably within the scope of this request is withheld as falling under an exemption covered by Section 6.0 of the Policy, please identify and describe the document being withheld, the basis for withholding it, and whether any exempt material can be deleted thereby allowing the document with deleted portions to be provided.

We ask that the documents satisfying our narrowed request be produced to us on a rolling basis since we have already been greatly inconvenienced by numerous holdups in the processing of this Request. Also, because this Request no longer includes the searching of electronic mail databases for requests 1 through 4, I assume that a significant amount of the money paid so far will and should be refunded.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005352

Please contact me at (202) 828-1857 or kwamina.williford@hklaw.com if you have any questions concerning this narrowed Public Access to Records Policy request.

Sincerely yours,

HOLLAND & KNIGHT LLP

Kwamina Williford

Kwamina Thomas Williford

KTW:aem

cc: Carol O'Keefe, General Counsel, WMATA, via email [cokeefe@wmata.com]

#10699408_v3

NOTE: This e-mail is from a law firm, Holland & Knight LLP ("H&K"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you are not an existing client of H&K, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to H&K in reply that you expect it to hold in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of H&K, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

Holland & Knight

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Holland & Knight LLP | www.hklaw.com

Kwamina Thomas Williford
(202) 828-1857
kwamina.williford@hklaw.com

October 24, 2011

Via First Class Mail and Email:TDickerson@wmata.com

Ms. Tracie Dickerson
Assistant General Counsel
Washington Metropolitan Area Transit Authority
Office of General Counsel
600 Fifth Street, NW,
Washington, DC 20001

RE: Revised PARP Request No. 11-0124

Dear Ms Dickerson

On October 19, 2011, you informed us that our April 2011 PARP Request # 11-0124 was too burdensome of a request, and unless we responded within five days to narrow this Request then it would be considered closed. We subsequently learned that the Request was deemed unduly burdensome because it required the searching of e-mail. This new delay tactic came after numerous follow-up communications from us regarding this Request and 27 working days after we submitted complete payment to process the Request. This tactic is consistent with your June 21, 2011 letter saying that we would need to pay $6,134 to process this Request or you would consider the matter closed, and with your September 2, 2011 letter quoting us $5,610 and saying that you are closing the matter without receiving full payment. All of these responses appear to be made in an effort to chill access to these records and deter us from getting this information.

For the purpose of getting some documents responsive to our April 2011 Request, and pursuant to the Washington Metropolitan Area Transit Authority Public Access to Records Policy ("Policy"), please see our narrowed request below seeking documents within the possession, custody or control of WMATA:

1. Documents related to the selection of a developer for the Shaw-Howard/Florida Avenue Joint Development Solicitation issued by WMATA on August 24, 2007, including but not limited to correspondence of WMATA staff, WMATA Board of Directors and WMATA officers.

2. Documents discussing Banneker Ventures, LLC and/or Omar Karim, including but not limited to, correspondence among WMATA staff, WMATA Board

FOIA CONFIEDENTIAL TREATMENT REQUESTED

members and officers, or third parties discussing any Term Sheets, commitment, agreement or directive.

3. Documents to, from or about LaKritz Adler and/or Robb LaKritz, including but not limited to, correspondence with or among WMATA staff, WMATA Board members, and officers discussing any Term Sheet, contract, agreement, arrangement or promise.

4. Documents discussing any decision to postpone or discontinue negotiations with Banneker Ventures, LLC related to the Shaw-Howard/Florida Avenue Joint Development Site.

5. Disclosure form(s) submitted by then-Board Member Jim Graham, pursuant to Articles III(I) and IV of the Standards of Conduct for Members of the WMATA Board of Directors.

6. Documents to or from any WMATA Board member or WMATA staff from or to any appraiser hired to appraise the value of any portion of the Shaw-Howard Florida Avenue Joint Development Site.

Please note that the term "documents" should be interpreted to mean any tangible thing upon which information is or has been stored, recorded or communicated. While is defies belief that the searching of e-mail could be deemed too burdensome, for the purpose of this Request, it is not necessary to search electronic mail databases related to document requests 1 through 4 above. However, if e-mail has been printed in hard copy form, and resides within a file, it should be covered under this Request. Please note that subsequent separate requests related to e-mail, which cannot be utilized to delay this Request any further, are forthcoming.

In addition, unless otherwise indicated, the time period of documents requested is from March 2007 to the present. The term "Shaw-Howard/Florida Avenue Joint Development Site" refers to the three (3) parcels of land (Parcel 1 – Lot 44, Square 393, 3,799 sq. ft.; Parcel 2 – Lot 45, Square 393, 8,621 sq. ft.; and Parcel 3 – Lot 31, Square 416, 15, 956 sq. ft.) located on the 700 and 900 blocks of Florida Avenue, NW, in the District of Columbia. If for any reason a document arguably within the scope of this request is withheld as falling under an exemption covered by Section 6.0 of the Policy, please identify and describe the document being withheld, the basis for withholding it, and whether any exempt material can be deleted thereby allowing the document with deleted portions to be provided.

We ask that the documents satisfying our narrowed request be produced to us on a rolling basis since we have already been greatly inconvenienced by numerous holdups in the processing of this Request. Also, because this Request no longer includes the searching of electronic mail databases for requests 1 through 4, I assume that a significant amount of the money paid so far will and should be refunded.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005356

Please contact me at (202) 828-1857 or kwamina.williford@hklaw.com if you have any questions concerning this narrowed Public Access to Records Policy request.

Sincerely yours,

HOLLAND & KNIGHT LLP

Kwamina Thomas Williford

KTW:aem

cc: Carol O'Keefe, General Counsel, WMATA, via email [cokeefe@wmata.com]

#10699408_v3

Distribution List:

CHOS -
Shiva K. Pant

SAAM -
Nat Bottigheimer
Steven Goldin
Mark Meister
Rosalyn Doggett
Malcolm Marshall

TIES/ESVC -
Tom Robinson
Tariq Bushnaq

COUN -
Carol B. O'Keeffe
Josh Montague
Marc Biondi

John B. Catoe, Jr.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

M E M O R A N D U M

DATE: June 9, 2010

SUBJECT: Preservation of Evidence Regarding Shaw-Howard/Florida Avenue Joint Development Project

FROM: COUN - Bruce P. Heppen BPH

TO: Distribution List

Please be advised that Banneker Ventures is considering filing a claim against Metro and you have been identified as a person who may have knowledge of the facts or documents relating to this claim. This matter may be filed under the reference "SHAW-HOWARD JOINT DEVELOPMENT, "FLORIDA AVENUE LITIGATION" or "BANNEKER VENTURES LITIGATION" or similar in your files. You and Metro have a legal obligation to preserve all evidence relating in any way to the potential claim. In this case, the documents in question are those documents relating to: the solicitation and negotiation of the Shaw-Howard/Florida Avenue joint development project. The documents relevant to this claim are from the timeframe 8/1/2005 to present. **YOU MAY NOT DESTROY ALTER, DELETE OR MODIFY SUCH DOCUMENTS UNTIL FURTHER NOTICE.** The obligation to preserve documents is not limited as to time.

"Documents" as used herein includes paper and electronic originals and unique copies (i.e., copies with annotations or other markings not on the originals), such as requests, letters, memoranda, notes, email, instant messages, calendars, purchase orders, requisitions, correspondence or communications of any kind and applies even where retention would otherwise not be required by normal Metro retention policies and practices. Oral evidence should also be preserved, including tapes, recordings (or transcripts thereof) and voicemails.

Washington Metropolitan Area Transit Authority

You are also instructed to copy this memorandum, complete and sign page 3 and return the signed original not later than June 16, 2010, to the attention of Ms. Sherry Hamilton, Office of General Counsel, 2D.

Failure to comply with this instruction may result in disciplinary action leading up to, and including, termination of employment.

If you have any doubts about whether to preserve evidence, err on the side of preservation. Contact me at 202-962-2569 with any questions you may have.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

HOW TO PRESERVE DOCUMENTS

For all paper documents and files subject to this memorandum that Metro is currently maintaining in filing cabinets or the like, and that will continue to be used from time to time in the ordinary course of business, **please affix to the file cabinet or container the following label: "Contents Subject to Legal Counsel Preservation Memo. Make and Use Copies Only. Do Not Remove Originals Except to Copy and Return."**

For all other paper documents subject to this Memorandum that can feasibly be segregated from routinely used business files, **please segregate and store in separate boxes or files and affix a note with your name, and the date, and the same label: "Contents Subject to Legal Counsel Preservation Memo. Make and Use Copies Only. Do Not Remove Originals Except to Copy and Return."**

ELECTRONIC DOCUMENTS

Any electronic documents that may relate to this matter must be preserved. Such documents may be maintained on shared network files (such as local office file and print servers), computer hardware, DVD's, CDs, ROMs, floppy disks, laptop computers, handheld drive, and pocket PC's (e.g., Blackberrys, Palm Pilots and the like).

You are also instructed to insure that your email settings are changed to preserve all email at an interval no greater than 60 days. Instructions for changing your Outlook email settings are available from the Metro Help Desk at 202-962-1182. Please be informed that the Office of Information Technology has also been instructed to retain your email pursuant to this notification. Nonetheless, you should not delete any email.

ACTION TO TAKE

Please sign and print your name, employee number and date below to signify that you understand and will comply with the obligations explained in this memorandum. Failure to do so may lead to disciplinary action, including, but not limited to discharge. Please return it to Ms. Sherry Hamilton, Office of General Counsel, 2D, who can be reached at 202-962-2532.

I AGREE TO FOLLOW THE FOREGOING PROCEDURES REGARDING THE LITIGATION HOLD NOTICE DATED JUNE 9, 2010, IN THE MATTER OF BANNEKER VENTURES V. WMATA AND UNDERSTAND THAT FAILURE TO DO SO MAY LEAD TO DISCIPLINARY ACTION, INCLUDING TERMINATION.

_____
Signature

_____
Print Name

_____
Title

_____
Employee Number

_____
Date

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

Distribution List:

CHOS -
Shiva K. Pant

SAAM -
Nat Bottigheimer
Steven Goldin
Mark Meister
Rosalyn Doggett
Malcolm Marshall

TIES/ESVC -
Tom Robinson
Tariq Bushnaq

COUN -
Josh Montague
Marc Biondi

John B. Catoe, Jr.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

June 11, 2010

The Honorable Jim Graham
Council Member, Ward One
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Suite 105
Washington, DC 20004

Re: Preservation of Evidence Regarding Shaw-Howard/Florida Avenue Joint Development Project

Dear Mr. Graham:

I am writing to you in your capacity as a WMATA Board Member. As you may be aware, Banneker Ventures is considering filing a legal action against Metro and we have identified you as a person who may have knowledge of the facts or documents relating to this claim. This matter may be filed under the reference "SHAW-HOWARD JOINT DEVELOPMENT", "FLORIDA AVENUE LITIGATION" or "BANNEKER VENTURES LITIGATION" or similar in your files. You and Metro have a legal obligation to preserve all evidence relating in any way to the potential claim. In this case, the documents in questions are those documents relating to: the solicitation and negotiation of the Shaw-Howard/Florida Avenue joint development project. The documents relevant to this claim are from the timeframe 8/1/2005 to present. **YOU MAY NOT DESTROY ALTER, DELETE OR MODIFY SUCH DOCUMENTS UNTIL FURTHER NOTICE.** The obligation to preserve documents is not limited as to time.

"Documents" as used herein includes paper and electronic originals and unique copies (i.e., copies with annotations or other markings not on the originals), such as requests, letters, memoranda, notes, email, instant messages, calendars, purchase orders, requisitions, correspondence or communications of any kind and applies even where retention would otherwise not be required by normal Metro retention policies and practices. Oral evidence should also be preserved, including tapes, recordings (or transcripts thereof) and voicemails. Please note that in regard to emails, this

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Red, Green and
Yellow Lines
By Metrobus:
outes D1, D3, D6, P6,
70, 71, 80, X2

District of Columbia, Maryland and Virginia Transit Partnership

obligation extends to both official accounts created for your use as a public official and personal accounts, to the extent either contains information regarding this claim.

If you have any doubts about whether to preserve evidence, err on the side of preservation. Contact me at 202-962-2531 with any questions you may have.

Sincerely,

Carol B. O'Keeffe
General Counsel

June 11, 2010

Mr. Neil Albert
City Administrator
1350 Pennsylvania Avenue, NW
Suite 533
Washington, DC 20004

Re: Preservation of Evidence Regarding Shaw-Howard/Florida Avenue Joint Development Project

Dear Mr. Albert:

I am writing to you in your capacity as a WMATA Board Member. As you may be aware, Banneker Ventures is considering filing a legal claim against Metro and we have identified you as a person who may have knowledge of the facts or documents relating to this claim. This matter may be filed under the reference "SHAW-HOWARD JOINT DEVELOPMENT", "FLORIDA AVENUE LITIGATION" or "BANNEKER VENTURES LITIGATION" or similar in your files. You and Metro have a legal obligation to preserve all evidence relating in any way to the potential claim. In this case, the documents in questions are those documents relating to: the solicitation and negotiation of the Shaw-Howard/Florida Avenue joint development project. The documents relevant to this claim are from the timeframe 8/1/2005 to present. **YOU MAY NOT DESTROY ALTER, DELETE OR MODIFY SUCH DOCUMENTS UNTIL FURTHER NOTICE.** The obligation to preserve documents is not limited as to time.

"Documents" as used herein includes paper and electronic originals and unique copies (i.e., copies with annotations or other markings not on the originals), such as requests, letters, memoranda, notes, email, instant messages, calendars, purchase orders, requisitions, correspondence or communications of any kind and applies even where retention would otherwise not be required by normal Metro retention policies and practices. Oral evidence should also be preserved, including tapes, recordings (or transcripts thereof) and voicemails. Please note that in regard to emails, this obligation extends to both official accounts created for your use as a public

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70, 71, 80, X2

District of Columbia, Maryland and Virginia Transit Partnership

official and personal accounts, to the extent either contains information regarding this claim.

If you have any doubts about whether to preserve evidence, err on the side of preservation. Contact me at 202-962-2531 with any questions you may have.

Sincerely,

Carol B. O'Keeffe
General Counsel

June 11, 2010

The Honorable Michael Brown
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Suite 406
Washington, DC 20004

Re: Preservation of Evidence Regarding Shaw-Howard/Florida Avenue Joint Development Project

Dear Mr. Brown:

I am writing to you in your capacity as a WMATA Board Member. As you may be aware, Banneker Ventures is considering filing a legal action against Metro and we have identified you as a person who may have knowledge of the facts or documents relating to this claim. This matter may be filed under the reference "SHAW-HOWARD JOINT DEVELOPMENT", "FLORIDA AVENUE LITIGATION" or "BANNEKER VENTURES LITIGATION" or similar in your files. You and Metro have a legal obligation to preserve all evidence relating in any way to the potential claim. In this case, the documents in questions are those documents relating to: the solicitation and negotiation of the Shaw-Howard/Florida Avenue joint development project. The documents relevant to this claim are from the timeframe 8/1/2005 to present. **YOU MAY NOT DESTROY ALTER, DELETE OR MODIFY SUCH DOCUMENTS UNTIL FURTHER NOTICE.** The obligation to preserve documents is not limited as to time.

"Documents" as used herein includes paper and electronic originals and unique copies (i.e., copies with annotations or other markings not on the originals), such as requests, letters, memoranda, notes, email, instant messages, calendars, purchase orders, requisitions, correspondence or communications of any kind and applies even where retention would otherwise not be required by normal Metro retention policies and practices. Oral evidence should also be preserved, including tapes, recordings (or transcripts thereof) and voicemails. Please note that in regard to emails, this obligation extends to both official accounts created for your use as a public

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District of Columbia, Maryland and Virginia

official and personal accounts, to the extent either contains information regarding this claim.

If you have any doubts about whether to preserve evidence, err on the side of preservation. Contact me at 202-962-2531 with any questions you may have.

Sincerely,

Carol B. O'Keeffe
General Counsel

June 11, 2010

Mr. Tony Giancola
National Assoc. of County Engineers
25 Massachusetts Avenue, NW
Suite 580
Washington, DC 20001

Re: Preservation of Evidence Regarding Shaw-Howard/Florida Avenue Joint Development Project

Dear Mr. Giancola:

I am writing to you in your capacity as a WMATA Board Member. As you may be aware, Banneker Ventures is considering filing a legal action against Metro and we have identified you as a person who may have knowledge of the facts or documents relating to this claim. This matter may be filed under the reference "SHAW-HOWARD JOINT DEVELOPMENT", "FLORIDA AVENUE LITIGATION" or "BANNEKER VENTURES LITIGATION" or similar in your files. You and Metro have a legal obligation to preserve all evidence relating in any way to the potential claim. In this case, the documents in questions are those documents relating to: the solicitation and negotiation of the Shaw-Howard/Florida Avenue joint development project. The documents relevant to this claim are from the timeframe 8/1/2005 to present. **YOU MAY NOT DESTROY ALTER, DELETE OR MODIFY SUCH DOCUMENTS UNTIL FURTHER NOTICE.** The obligation to preserve documents is not limited as to time.

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official and personal accounts, to the extent either contains information regarding this claim.

If you have any doubts about whether to preserve evidence, err on the side of preservation. Contact me at 202-962-2531 with any questions you may have.

Sincerely,

Carol B. O'Keeffe
General Counsel

Remote User

Job 30277
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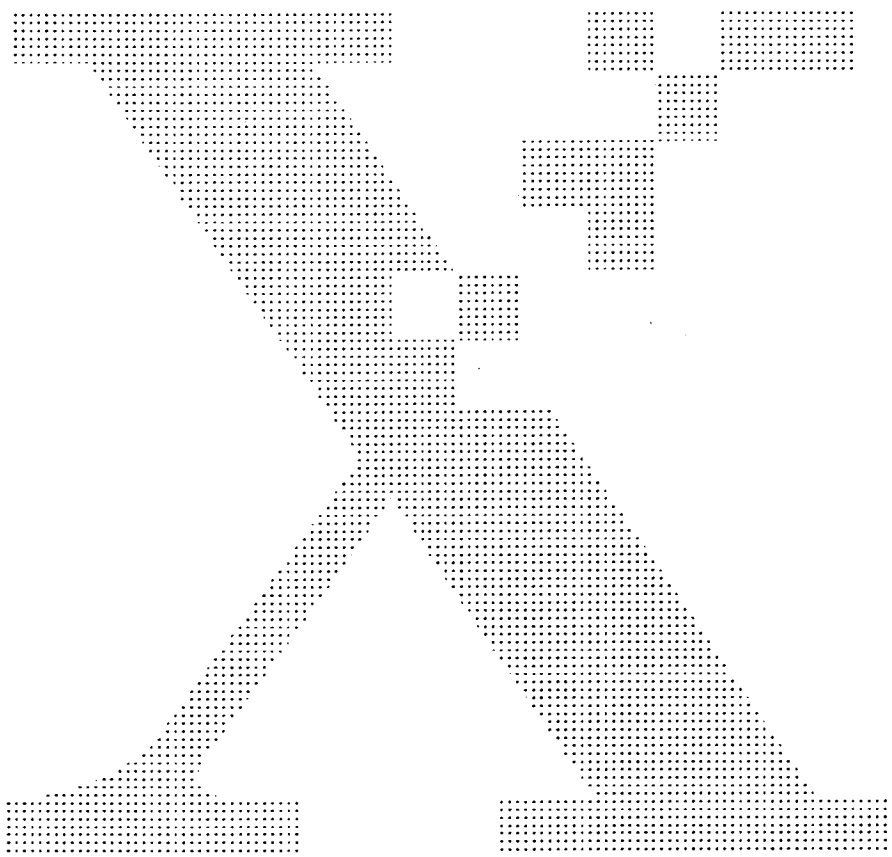

May 3, 2011

The Honorable Jim Graham
Councilmember, Ward One
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Suite 105
Washington, DC 20004

Dear Mr. Graham:

Please find attached a letter recently received by Keysia Thom, WMATA's Administrator for its Public Access to Records Policy. The letter asks for documents concerning the Board's decisions on the Florida Avenue Joint Development Project. Please review your records to see if you have any documents which would be responsive to the request. We have objected to Holland & Knight's participation in this matter because the firm is doing work for WMATA in another context. However, even if there is a change of the law firm, we still may be required to assemble the documents. As you may recall, we sent you a letter asking you to preserve any documents you may have in anticipation of potential litigation.

Sincerely,

Carol B. O'Keeffe
General Counsel

Attachment

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ington, DC 20001
202/962-1234

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ryland and Virginia
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Kwamina Thomas Williford
(202) 828-1857
kwamina.williford@hklaw.com

April 25, 2011

Via First Class Mail and Email: kthom@wmata.com

Ms. Keysia A. Thom
PARP/Privay Policy Administrator
Washington Metropolitan Area Transit Authority
Office of General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW,
Washington, DC 20001

RE: Public Access to Records Policy Request – Shaw-Howard/Florida Avenue Joint Development Solicitation

Dear Ms. Thom:

Pursuant to the Washington Metropolitan Area Transit Authority Public Access to Records Policy ("Policy"), which is interpreted and applied consistently with the federal Freedom of Information Act, 5 U.S.C. Section 522, *et seq.*, and federal practice, I hereby request a copy of the following documents within the possession, custody or control of the Washington Metropolitan Area Transit Authority ("WMATA"):

1. Documents related to the selection of a developer for the Shaw-Howard/Florida Avenue Joint Development Solicitation issued by WMATA on August 24, 2007, including but not limited to correspondence of WMATA staff, WMATA Board of Directors and WMATA officers.

2. Documents discussing Banneker Ventures, LLC and/or Omar Karim, including but not limited to, correspondence among WMATA staff, WMATA Board members and officers, or third parties discussing any Term Sheets, commitment, agreement or directive.

3. Documents to, from or about LaKritz Adler and/or Robb LaKritz, including but not limited to, correspondence with or among WMATA staff, WMATA Board members, and officers discussing any Term Sheet, contract, agreement, arrangement or promise.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

4. Documents discussing any decision to postpone or discontinue negotiations with Banneker Ventures, LLC related to the Shaw-Howard/Florida Avenue Joint Development Site.

5. Disclosure form(s) submitted by then-Board Member Jim Graham, pursuant to Articles III(I) and IV of the Standards of Conduct for Members of the WMATA Board of Directors.

6. Documents to or from any WMATA Board member or WMATA staff from or to any appraiser hired to appraise the value of any portion of the Shaw-Howard Florida Avenue Joint Development Site.

For the purpose of this request, unless otherwise indicated, the time period of documents requested is from January 1, 2008 to December 31, 2010. The term "Shaw-Howard/Florida Avenue Joint Development Site" refers to the three (3) parcels of land (Parcel 1 – Lot 44, Square 393, 3,799 sq. ft.; Parcel 2 – Lot 45, Square 393, 8,621 sq. ft.; and Parcel 3 – Lot 31, Square 416, 15, 956 sq. ft.) located on the 700 and 900 blocks of Florida Avenue, NW, in the District of Columbia. The term "documents" means any tangible thing upon which information is or has been stored, recorded or communicated, including, but not limited to: records, letters, notes, correspondence, graphic or photographic matter, agreements, memoranda, diaries, calendars, telephone logs, messages, records, tapes, email and other electronically stored materials. Each draft and each non-identical copy shall be considered a separate document.

If for any reason a document arguably within the scope of this request is withheld as falling under an exemption covered by Section 6.0 of the Policy, please identify and describe the document being withheld, the basis for withholding it, and whether any exempt material can be deleted thereby allowing the document with deleted portions to be provided. We are aware of our rights to administrative appeal set forth in Section 9.1 of the Policy and are prepared to pursue them if necessary.

We are willing to pay all reasonable fees related to this request. Please contact me at (202) 828-1857 or kwamina.williford@hklaw.com if you have any questions concerning this Public Access to Records Policy request.

Sincerely yours,

HOLLAND & KNIGHT LLP

Kwamina T. Williford

Kwamina Thomas Williford

KTW:aem

cc: Carol O'Keefe, General Counsel, WMATA, via email [cokeefe@wmata.com]

#10292945_v2

M E M O R A N D U M

DATE: June 9, 2010

SUBJECT: Preservation of Evidence Regarding Shaw-Howard/Florida Avenue Joint Development Project

FROM: COUN - Bruce P. Heppen BPH

TO: MITS – Victor Iwugo

Please be advised that COUN has issued the attached Litigation Hold Notice to the WMATA employees and former employees included on the Distribution List. We are communicating separately with Mr. Catoe; and we are assuming that his email records are still available to you. Please retain or recreate, as may be applicable, their email from 8/01/2005 to present.

As you are aware the Authority has a legal obligation to preserve all evidence relating in any way to the potential claim and your assistance in required to comply with this obligation. When you have implemented the email hold please sign this memorandum where indicated below and return the original to Ms. Sherry Hamilton, Office of General Counsel, 2D. Please provide additional information, including a proposed timetable, in the event that recreation of emails is required.

Thank you for your prompt attention to this matter.

If you have questions or concerns regarding this memorandum, please contact me on extension 2569.

Attachment

cc: COUN – Carol B. O'Keeffe
COUN – Josh Montague

I have completed the litigation hold requested in this memorandum.

_____ Date: _____

Victor Iwugo
Chief, Office of Metro IT Security

Washington Metropolitan Area Transit Authority

M E M O R A N D U M

DATE: June 9, 2010

SUBJECT: Preservation of Evidence Regarding Shaw-Howard/Florida Avenue Joint Development Project

FROM: COUN - Bruce P. Heppen BPH

TO: Distribution List

Please be advised that Banneker Ventures is considering filing a claim against Metro and you have been identified as a person who may have knowledge of the facts or documents relating to this claim. This matter may be filed under the reference "SHAW-HOWARD JOINT DEVELOPMENT, "FLORIDA AVENUE LITIGATION" or "BANNEKER VENTURES LITIGATION" or similar in your files. You and Metro have a legal obligation to preserve all evidence relating in any way to the potential claim. In this case, the documents in question are those documents relating to: the solicitation and negotiation of the Shaw-Howard/Florida Avenue joint development project. The documents relevant to this claim are from the timeframe 8/1/2005 to present. **YOU MAY NOT DESTROY ALTER, DELETE OR MODIFY SUCH DOCUMENTS UNTIL FURTHER NOTICE.** The obligation to preserve documents is not limited as to time.

"Documents" as used herein includes paper and electronic originals and unique copies (i.e., copies with annotations or other markings not on the originals), such as requests, letters, memoranda, notes, email, instant messages, calendars, purchase orders, requisitions, correspondence or communications of any kind and applies even where retention would otherwise not be required by normal Metro retention policies and practices. Oral evidence should also be preserved, including tapes, recordings (or transcripts thereof) and voicemails.

Washington Metropolitan Area Transit Authority

You are also instructed to copy this memorandum, complete and sign page 3 and return the signed original not later than June 16, 2010, to the attention of Ms. Sherry Hamilton, Office of General Counsel, 2D.

Failure to comply with this instruction may result in disciplinary action leading up to, and including, termination of employment.

If you have any doubts about whether to preserve evidence, err on the side of preservation. Contact me at 202-962-2569 with any questions you may have.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

HOW TO PRESERVE DOCUMENTS

For all paper documents and files subject to this memorandum that Metro is currently maintaining in filing cabinets or the like, and that will continue to be used from time to time in the ordinary course of business, **please affix to the file cabinet or container the following label: "Contents Subject to Legal Counsel Preservation Memo. Make and Use Copies Only. Do Not Remove Originals Except to Copy and Return."**

For all other paper documents subject to this Memorandum that can feasibly be segregated from routinely used business files, **please segregate and store in separate boxes or files and affix a note with your name, and the date, and the same label: "Contents Subject to Legal Counsel Preservation Memo. Make and Use Copies Only. Do Not Remove Originals Except to Copy and Return."**

ELECTRONIC DOCUMENTS

Any electronic documents that may relate to this matter must be preserved. Such documents may be maintained on shared network files (such as local office file and print servers), computer hardware, DVD's, CDs, ROMs, floppy disks, laptop computers, handheld drive, and pocket PC's (e.g., Blackberrys, Palm Pilots and the like).

You are also instructed to insure that your email settings are changed to preserve all email at an interval no greater than 60 days. Instructions for changing your Outlook email settings are available from the Metro Help Desk at 202-962-1182. Please be informed that the Office of Information Technology has also been instructed to retain your email pursuant to this notification. Nonetheless, you should not delete any email.

ACTION TO TAKE

Please sign and print your name, employee number and date below to signify that you understand and will comply with the obligations explained in this memorandum. Failure to do so may lead to disciplinary action, including, but not limited to discharge. Please return it to Ms. Sherry Hamilton, Office of General Counsel, 2D, who can be reached at 202-962-2532.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

I AGREE TO FOLLOW THE FOREGOING PROCEDURES REGARDING THE LITIGATION HOLD NOTICE DATED JUNE 9, 2010, IN THE MATTER OF BANNEKER VENTURES V. WMATA AND UNDERSTAND THAT FAILURE TO DO SO MAY LEAD TO DISCIPLINARY ACTION, INCLUDING TERMINATION.

_____
Signature

_____
Print Name

_____
Title

_____
Employee Number

_____
Date

Distribution List:

CHOS -
Shiva K. Pant

SAAM -
Nat Bottigheimer
Steven Goldin
Mark Meister
Rosalyn Doggett
Malcolm Marshall

TIES/ESVC -
Tom Robinson
Tariq Bushnaq

COUN -
Josh Montague
Marc Biondi

John B. Catoe, Jr.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

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Tom Robinson
Tariq Bushnaq

COUN -
Carol B. O'Keeffe
Josh Montague
Marc Biondi

John B. Catoe, Jr.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

O'Keeffe, Carol B.

From: O'Keeffe, Carol B.
Sent: Monday, June 07, 2010 11:47 AM
To: jim@grahamwone.com
Subject: please send me
Attachments: Letter from Banneker 04272010.pdf

Mr. Graham, per your request below, please find attached a copy (without attachments) of the April 27th Reed Smith document received in my office. I assume that was what the Office of the Secretary sent out, but I was not copied on the transmission and have never seen what was sent out to the Board.

Carol B. O'Keeffe
General Counsel
Washington Metropolitan Area
Transit Authority
600 5th Street, NW
Washington, DC 20001
P: 202-962-2531
F: 202-962-2550

THIS E-MAIL MESSAGE IS PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE RECIPIENT NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE NAMED RECIPIENT, OR THE AGENT RESPONSIBLE TO DELIVER IT TO THE NAMED RECIPIENT, YOU ARE NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING OR OTHER USE OF THIS INFORMATION/COMMUNICATION IS STRICTLY PROHIBITED AND NO PRIVILEGE IS WAIVED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY THE ABOVE-NAMED INDIVIDUAL IMMEDIATELY.

From: jim@grahamwone.com
Sent: Monday, June 07, 2010 7:44 AM
To: O'Keeffe, Carol B.
Subject: RE: please send me

Plea email directly just the letter from Bolden, not the attachments such as what was sent to the entire board.

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me. For most effective communication, please use my direct email address: jim@grahamwone.com

Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

Chairman, Committee on Public Works and Transportation (including alcohol regulation). Main Committee Number: 202-724-8195. 1350 Pa. Ave., NW, #116, Washington, DC 20004.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005381

Voting Member, Board of Directors, WMATA/Metro.

Website: **www.grahamwone.com**

From: O'Keeffe, Carol B. [mailto:cokeeffe@wmata.com]
Sent: Saturday, June 05, 2010 5:23 PM
To: Jim Graham
Subject: Re: please send me

Mr. Kass said that you still have the paper copy that. I couriered to you when the letter first came in April. Is that not correct?

Sent using BlackBerry

From: jim@grahamwone.com
To: O'Keeffe, Carol B.
Sent: Sat Jun 05 10:31:08 2010
Subject: RE: please send me
Courrier is good

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me. For most effective communication, please use my direct email address: jim@grahamwone.com

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Chairman, Committee on Public Works and Transportation (including alcohol regulation). Main Committee Number: 202-724-8195. 1350 Pa. Ave., NW, #116, Washington, DC 20004.

Voting Member, Board of Directors, WMATA/Metro.

Website: **www.grahamwone.com**

From: O'Keeffe, Carol B. [mailto:cokeeffe@wmata.com]
Sent: Thursday, June 03, 2010 1:38 PM
To: Jim Graham
Subject: RE: please send me

Mr. Graham: There are a number of attachments to the original incoming. I will have it couriered to you today. Do you want it delivered to you personally or is there anyone else in your office that can receive it if you are not available.

Carol B. O'Keeffe
General Counsel
Washington Metropolitan Area
Transit Authority
600 5th Street, NW

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005382

Washington, DC 20001
P: 202-962-2531
F: 202-962-2550

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From: jim@grahamwone.com
Sent: Thursday, June 03, 2010 12:43 PM
To: O'Keeffe, Carol B.
Subject: please send me

The original Banneker letter from Bolden

I typically answer emails before 9 AM on weekdays. If you email me after that, it is likely that you will hear from me the next weekday. If there is a need to communicate prior to that, you may wish to call me. For most effective communication, please use my direct email address: jim@grahamwone.com

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Voting Member, Board of Directors, WMATA/Metro.

Website: www.grahamwone.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005383

O'Keeffe, Carol B.

From: jim@grahamwone.com
Sent: Monday, June 07, 2010 7:44 AM
To: O'Keeffe, Carol B.
Subject: RE: please send me

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Chairman, Committee on Public Works and Transportation (including alcohol regulation). Main Committee Number: 202-724-8195. 1350 Pa. Ave., NW, #116, Washington, DC 20004.

Voting Member, Board of Directors, WMATA/Metro.

Website: www.grahamwone.com

From: O'Keeffe, Carol B. [mailto:cokeeffe@wmata.com]
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Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005384

Chairman, Committee on Public Works and Transportation (including alcohol regulation). Main Committee Number: 202-724-8195. 1350 Pa. Ave., NW, #116, Washington, DC 20004.

Voting Member, Board of Directors, WMATA/Metro.

Website: **www.grahamwone.com**

From: O'Keeffe, Carol B. [mailto:cokeeffe@wmata.com]
Sent: Thursday, June 03, 2010 1:38 PM
To: Jim Graham
Subject: RE: please send me

Mr. Graham: There are a number of attachments to the original incoming. I will have it couriered to you today. Do you want it delivered to you personally or is there anyone else in your office that can receive it if you are not available.

Carol B. O'Keeffe
General Counsel
Washington Metropolitan Area
Transit Authority
600 5th Street, NW
Washington, DC 20001
P: 202-962-2531
F: 202-962-2550

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Jim Graham, Councilmember, Ward One, 1350 Pa. Ave., NW, #105, Washington, DC 20004. 202-724-8181; 202-724-8109 (fax).

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005385

Chairman, Committee on Public Works and the Transportation (including alcohol regulation).
Main Committee Number: 202-724-8195. 1350 Pa. Ave., NW, #116, Washington, DC 20004.

Voting Member, Board of Directors, WMATA/Metro.

Website: www.grahamwone.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED

CONFIDENTIAL

Mr. Jim Graham
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Suite 105
Washington, DC 20004
202-724-8181

CONFIDENTIAL

ReedSmith

A. Scott Bolden
Direct Phone: +1 202 414 9266
Email: abolden@reedsmith.com

Reed Smith LLP
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005-3373
+1 202 414 9200
Fax +1 202 414 9299
reedsmith.com

May 19, 2010

CONFIDENTIAL

VIA OVERNIGHT MAIL

Keysia A. Thom
PARP/Privacy Policy Administrator
Office of General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

Re: Request for Records
WMATA Public Access to Records Policy

Dear Ms. Thom:

This request for records is made pursuant to the Washington Metropolitan Area Transit Authority ("WMATA") Public Access to Records Policy ("PARP") and the Freedom of Information Act ("FOIA"), codified at 5 U.S.C. § 552. It is the policy of WMATA to make official public records, including electronic records, available to the public for inspection and copying to the greatest extent possible unless such records are exempt from disclosure under a FOIA exemption. See WMATA, PARP, ¶ 1.0. In this regard, WMATA interprets and applies the PARP consistent with FOIA Id.; see also ERG Transit Systems, Inc. v. WMATA, 593 F. Supp. 2d. 249 (D.C. Cir. 2009) (court interpreted PARP in accordance with FOIA).

This PARP/FOIA request seeks the release of copies of "Documents" related to the WMATA Joint Development Program and Project identified below. For the purposes of this request, "Documents" means any and all documents including: the Joint Development Solicitation, all executed term sheets, contract or source selection documents, original and revised, and all WMATA staff, Board of Directors, Board of Directors' Committees' correspondence, meeting minutes, notes, memoranda, reports, audit reports, agendas, electronic mail communications and all other documents associated with, related to and/or resulting from the Joint Development Solicitation ("JDS") issued on August 24, 2007 for the joint development of real estate at the Shaw-Howard/Florida Avenue Joint Development Site. This request seeks the following Documents:

1) All responses/proposals submitted to WMATA by firms, vendors, and entities in response to the Joint Development Solicitation ("JDS") issued on August 24, 2007 for the joint

FOIA CONFIEDENTIAL TREATMENT REQUESTED

development of real estate at the Shaw-Howard/Florida Avenue Joint Development Site;

2) Copies of Documents regarding and related to WMATA's review, consideration, evaluation and source selection original and revised under the JDS;

3) Copies of Documents regarding and related to the best and final offers received by WMATA pursuant to the JDS;

4) Copies of Documents regarding and related to WMATA's developer selection process under the JDS;

5) Copies of Documents regarding and related to each of the term sheets received, reviewed and/or executed between Banneker Ventures, LLC and WMATA under the JDS;

6) Copies of Documents regarding and related to the official record or file, notes, correspondence, memoranda, electronic mail and meeting minutes in the possession of the WMATA Board of Directors (including any of its Committees) regarding the JDS;

7) Copies of Documents regarding and related to the official record or file, notes, correspondence, memoranda, electronic mail and meeting minutes in the possession of the WMATA Joint Development and Real Estate Committee regarding the JDS; and

8) Copies of Documents regarding and related to the official record or file, notes, correspondence, memoranda, electronic mail and meeting minutes in the possession of the WMATA staff regarding the JDS.

The WMATA PARP and FOIA, as amended, provide that, if any parts of a file or record are legally exempt from disclosure, "reasonably segregable" portions of such records must be released. Therefore, we request that, if you determine any portions of the requested "Documents" to be exempt from disclosure, that we be provided with a copy of all those "Documents" or portions thereof which are not so exempt and with a detailed list and description of all "Documents" or portions thereof for which an exemption is claimed and an explanation of why those "Documents" or portions of "Documents" fall within a PARP/FOIA exemption. See Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974); Mead Data Cent., Inc. v. Department of the Air Force, 566 F.2d 242, 251 (D.C. Cir. 1977):

> [W]hen an agency seeks to withhold information it must provide a relatively detailed justification, specifically identifying the reasons why a particular

ReedSmith

exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.

See, e.g., Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854 (D.C. Cir. 1980). Please note that WMATA has the burden of proving that the information it seeks to withhold falls within the PARP/FOIA exemption it claims. See Oglesby v. United States Dep't of the Army, 920 F.2d 57, 61-64, (D.C. Cir. 1990); Ethyl Corp. v. United States Envtl. Protection Agency, 25 F.3d 1241, 1245 (4th Cir. 1994). With regard to the deliberative-process exemption, an agency must be able to demonstrate that information withheld would actually inhibit candor in the decision-making process. See Army Times Publ'g Co. v. Department of the Air Force, 998 F.2d 1067, 1070 (D.C. Cir. 1993). In addition, the deliberative process exception under FOIA Exemption 5 only applies to internal advisory options regarding future agency action. See Hennessey v. U.S. Agency for International Development, 12 F.3d 698 (4th Cir. 1997). Accordingly, FOIA exemptions are to be narrowly construed, consistent with the Freedom of Information Act's goal of broad disclosure. See Department of the Interior and Bureau of Indian Affairs v. Klamath Water Users Protective Assoc., 121 S. Ct. 1060, 1065 (2001); Maricopa Audubon Soc'y v. United States Forest Serv., 108 F.3d 1082, 1085 (9th Cir. 1997).

Your prompt attention to this request will be most appreciated. As you know, PARP and FOIA require that WMATA determine within 20 business days after receipt of this request whether it will comply and immediately notify the undersigned of WMATA's determination, the reasons therefore, and appeal rights in the event of an adverse determination.

We are, of course, prepared to pay the fees that may lawfully be required for compliance with this PARP/FOIA request, including the cost of overnight delivery. Should the cost of complying with this PARP/FOIA request be estimated to exceed $500.00, please contact us at 202.414.9266, for prior approval. Additionally, as soon as any portion of this request becomes available, I would appreciate it if you could forward that information to my attention at the address above as soon as possible. It is not necessary to send the entire request together; in fact, it is preferable to receive items as soon as possible. Please contact me before sending any materials in order to discuss an expedited method for us to receive such materials.

If you have any questions please feel free to contact me. Thank you for your cooperation in processing this request.

Sincerely, I am

A. Scott Bolden

A. Scott Bolden

O'Keeffe, Carol B.

From: O'Keeffe, Carol B.
Sent: Wednesday, June 02, 2010 2:57 PM
To: Montague, Joshua W.; Heppen, Bruce P.; Goldin, Steven
Cc: Bottigheimer, Nat
Subject: Banneker /Florida Ave

All, this is a reminder that the incoming letter from Banneker dated April 27 is confidential and should not be released to anyone. Cok

Carol B. O'Keeffe
General Counsel
Washington Metropolitan Area
Transit Authority
600 5th Street, NW
Washington, DC 20001
P: 202-962-2531
F: 202-962-2550

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005391

O'Keeffe, Carol B.

From: O'Keeffe, Carol B.
Sent: Wednesday, June 02, 2010 1:57 PM
To: 'abolden@reedsmith.com'
Cc: Sarles, Richard
Subject: your letter dated April 27th

Mr. Bolden:

Your letter dated April 27th and addressed to Mr. Benjamin and Mr. Sarles was mailed to the WMATA Board of Directors , *via* email, in error . The WMATA Board members are aware that certain allegations of your letter are highly confidential and will treat them as such and I request that you continue to do so, as well.

Thank you for your consideration in these regards,

Carol B. O'Keeffe
General Counsel
Washington Metropolitan Area
Transit Authority
600 5th Street, NW
Washington, DC 20001
P: 202-962-2531
F: 202-962-2550

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

ReedSmith

A. Scott Bolden
Direct Phone: +1 202 414 9266
Email: abolden@reedsmith.com

Reed Smith LLP
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005-3373
+1 202 414 9200
Fax +1 202 414 9299
reedsmith.com

April 27, 2010

CONFIDENTIAL

VIA OVERNIGHT MAIL AND E-MAIL

Richard Sarles
Interim General Manager
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

-and-

Peter Benjamin
Chair, Board of Directors
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

Re: Status of Banneker Ventures Term Sheet and Award of Jazz at Florida Avenue Project

Dear Messrs. Sarles and Benjamin:

We represent Banneker Ventures, LLC ("Banneker") and write to address the status of the Washington Metropolitan Area Transit Authority ("WMATA") Board of Directors ("Board") approval of the Banneker Term Sheet for the joint development project known as the "Jazz at Florida Avenue Project" (the "Project"). We received a letter today from Steven Goldin, Director Office of Station Area Planning & Asset Management, WMATA confirming that the WMATA Joint Development and Real Estate Committee had moved to extend Banneker's exclusive negotiation period to July 30, 2010, but noting that The WMATA Board had voted unanimously, without explanation or rationale, "to table" *indefinitely* any further consideration of Banneker's timely-submitted, amended Term Sheet. WMATA's attempt to provide itself an opportunity to begin negotiations with other developers, besides Banneker, during the exclusive negotiation period, without the Board ever considering or rejecting the amended Term Sheet as required by the Joint Development Solicitation, is outrageous and unlawful.

Below, we provide: (I) a background summary of the Project; (II) Banneker's responses to alleged WMATA Board concerns; (III) Banneker's allegations of inappropriate conduct by WMATA Board Member, Joint Development & Real Estate Committee ("Committee") Chair Jim Graham; and (IV) Banneker's request for immediate WMATA Board approval and award of the Project.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ReedSmith

I. BACKGROUND

On May 31, 2007, Banneker submitted its Response to the Opportunity to Compete Against an Unsolicited Proposal for the redevelopment of WMATA-owned parcels located at Shaw-Howard/Florida Avenue to Gary Malasky, Contracting Officer, Office of Property Development and Management, WMATA. In preparing the proposal, Banneker assembled a team, which included Torti Gallas & Partners, Inc., an architectural company with previous experience working on WMATA joint development projects, and District Development Group, LLC, who would serve as co-developer for the Project.

On August 24, 2007, WMATA issued a Joint Development Solicitation ("JDS") for the joint development of real estate at the Shaw-Howard/Florida Avenue Joint Development Site (the "Site"). See Attachment 1, Joint Development Solicitation, Shaw-Howard/Florida Avenue Joint Development Site: Proposal Submission Requirements, August 24, 2007. According to the JDS, proposals were due on October 5, 2007.

On September 18, 2007, Myla Moss, Advisory Neighborhood Commission ("ANC") Commissioner, ANC 1B01, held a Town Hall meeting to allow the WMATA short-listed development teams to present their vision for redeveloping the Shaw-Howard/Florida Avenue site. According to Ms. Moss' letter to Nat Bottigheimer, Contracting Officer, Office of Property Development and Management, WMATA dated October 4, 2007, only the Banneker proposal responded to all the express needs and desires of the community. See Attachment 2, Letter from Myla Moss, Commissioner, ANC 1B01 to Nat Bottigheimer, WMATA, dated October 4, 2007. Accordingly, Ms. Moss' letter supported Banneker to receive the WMATA contract to perform the Project.

On October 5, 2007, Banneker responded to the JDS and submitted a proposal to WMATA after assembling a team of development and investment partners, which included: (1) Banneker (Developer); (2) District Development Group, LLC (Co-Developer); (3) Donatelli Development Inc. (Co-Developer); (4) Torti Gallas & Partners, Inc. (Project Architect); (5) MacFarlane Partners (Equity Partner); and (6) Tompkins Builders (General Contractor).

On December 17, 2007, Banneker presented the Project to WMATA to demonstrate their capability and commitment to developing the WMATA-owned parcels at the Shaw-Howard/Florida Avenue site. See Attachment 3, Banneker Presentation to WMATA, The Jazz at Florida Avenue, December 17, 2007.

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More specifically, Ms. Doggett suggested that Banneker's written submission state that Mr. Williams would not participate in the WMATA deal, if Banneker's selection was approved by the WMATA Board. By letter dated April 23, 2008, Banneker wrote WMATA to address the concerns raised by Mr. Graham. See Attachment 4, Letter from Omar Karim, Banneker to Rosalyn Doggett, WMATA dated April 23, 2008.

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local real estate firm, to its development team for the Project or purchase their interest in an adjacent property that LaKritz Adler was controlling at the time. LaKritz Adler and its principals contributed significantly to Mr. Graham's District of Columbia Council re-election campaign. Ultimately, Banneker chose not to add LaKritz Adler to its development team.

On or about July 25, 2008, WMATA and Banneker participated in the Project kick-off meeting. At this meeting, Banneker provided WMATA with an executed copy of the Term Sheet and paid the $100,000 Option Fee as required by the JDS.

From July 2008 through March 2009, the parties engaged in continuous negotiations to enter into a finalized JDA.

In January 2009, Mr. Graham became Chairman of the WMATA Board. During his entire tenure as a WMATA Board Member and Chairman, Mr. Graham has injected himself into the day-to-day management of WMATA operations and has exceeded the scope of his duties as a WMATA Board Member. For example, in July 2009, Mr. Graham took it upon himself to contact the independent appraiser, who had been hired by WMATA staff to appraise the value of the Site, before the appraiser had submitted its appraisal report.

On March 6, 2009, Banneker provided WMATA with a letter from Banc of America Community Development Corporation ("Banc of America"). See Attachment 8, E-mail correspondence from Omar Karim, Banneker to Emeka Moneme, WMATA sent on March 6, 2009 at 3:00PM. Banc of America agreed to become a Co-Developer of and provide direct equity investment into the Project.

On April 23, 2009, WMATA's Board approved a one hundred twenty (120) day extension of the negotiation period between WMATA and Banneker regarding the Project. See Attachment 9, Letter from Emeka Moneme, WMATA to Leila Edwards, District of Columbia Department of Housing and Community Development, dated June 1, 2009.

By e-mail sent on May 29, 2009, WMATA informed Banneker that a possible JDA was imminent. However, WMATA indicated that it could not finalize the JDA until an outside appraisal of the deal was conducted by an independent contractor. See Attachment 10, E-mail correspondence from Rosalyn Doggett, WMATA to Omar Karim, Banneker sent on May 29, 2009 at 4:53PM.

From August 2009 through October 2009, WMATA proposed to change the Project from a lease agreement to a purchase agreement, whereby Banneker would own the property.

On or about September 10, 2009, WMATA staff requested another extension of the negotiation period with Banneker and the WMATA Board approved the extension.

On October 22, 2009, Mr. Graham met with Mr. Karim and Banneker's Chief Financial Officer ("CFO") to discuss the Project. Mr. Graham told both Mr. Karim and Banneker's CFO that the "firm should not have bid on the WMATA project" and that he "won't allow the sale of the WMATA-owned parcels located at Shaw-Howard/Florida Avenue." Mr. Karim told Mr. Graham that Banc of America

preferred a sale, and had spent the past few months underwriting the Project as a sale. Mr. Graham told Mr. Karim that Banneker could get a new joint venture partner to facilitate the lease of the WMATA-owned parcels.

Moreover, Mr. Graham also told Mr. Karim that he would ensure that the Project would not get delayed if Mr. Karim agreed to change the Project from a sale of property to a lease. Mr. Karim agreed with Mr. Graham's request to change the Project back to a lease agreement. Later that day, Mr. Karim had several telephone conversations with John Catoe, Jr., the then-WMATA General Manager and Mr. Graham to discuss the terms of the lease.

By e-mail correspondence sent on October 22, 2009 from Steven Goldin, WMATA's Director of Station Area Planning & Asset Management, WMATA informed Banneker that "per direction from our Board, we are proceeding with preparing a Term Sheet for the lease of our property. The matter is to be taken up by the full Board in a special meeting in two weeks." See Attachment 11, E-mail correspondence from Steven Goldin, WMATA to Omar Karim, Banneker sent on October 22, 2009 at 3:08PM.

On or about November 16, 2009, WMATA staff submitted the parties' revised Term Sheet to the WMATA Board for approval. See Attachment 12, E-mail correspondence from Rosalyn Doggett, WMATA to Omar Karim, Banneker sent on November 16, 2009 at 8:54AM.

By e-mail correspondence sent on November 19, 2009, WMATA informed Banneker that the WMATA Board discussed the Term Sheet, but the WMATA Board took no action. See Attachment 13, E-mail correspondence from Steven Goldin, WMATA to Omar Karim, Banneker sent on November 19, 2009 at 5:22PM. This correspondence further advised Banneker that the WMATA Board directed WMATA staff to address specific issues raised by the Board regarding the initial capitalized lease payment and the lack of a payment "reset" for the first 60 years under the lease.

Following the November 19, 2009 meeting of the WMATA Board, Banneker was able to convince its equity partner to reduce its return on their investment and therefore increase the capitalized lease that the Banneker team could pay WMATA. WMATA and Banneker negotiated a revised Term Sheet which WMATA's staff then recommended to the WMATA Board for approval.

On January 14, 2010, although the WMATA staff recommended the Committee approve the revised Term Sheet, the Committee informed WMATA staff that it wanted Banneker to pay additional funds to perform at the Site. In this regard, the Committee moved to approve a time extension to allow WMATA staff and Banneker to negotiate an amended Term Sheet for the Site, which was to be brought to the WMATA Board by March 31, 2010. See Attachment 14, WMATA, Committee, Minutes of Planning, Development and Real Estate Committee, January 14, 2010.

Following the January 14, 2010 meeting of the WMATA Board, Mr. Graham becomes Chair of the Committee.

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From January 14, 2010 through March 25, 2010, WMATA and Banneker engaged in negotiations to reach final agreement with regard to the amended Term Sheet for the Project. Prior to March 25, 2010, the parties reached final agreement on the amended Term Sheet and submitted it to the WMATA Board for approval. The revised Term Sheet significantly increases the capitalized lease payment that Banneker would pay WMATA from the amount submitted to the WMATA Board at the January 14, 2010 meeting.

On March 25, 2010, the WMATA Board discussed the executed amended Term Sheet in Executive Session, but, at the behest of Jim Graham, the Board removed from their agenda consideration of the amended Term Sheet and the WMATA Board did not take any action to approve it.

Since the March 25, 2010 WMATA Board Executive Session meeting and subsequent tabling of the approval of the executed amended Term Sheet at the public WMATA Board meeting, WMATA has not taken any action with regard to its further consideration and approval of the executed amended Term Sheet. Moreover, the Committee is not scheduled to meet to discuss the Banneker Project in the month of April.

On April 26, Steven Goldin, Director Office of Station Area Planning & Asset Management, WMATA sent a letter to Banneker confirming that the WMATA Joint Development and Real Estate Committee had moved to extend Banneker's exclusive negotiation period to July 30, 2010. Mr. Goldin's letter noted that The WMATA Board had voted unanimously, without explanation or rationale, "to table" indefinitely any further consideration of Banneker's timely-submitted, amended Term Sheet without the Board ever considering or rejecting the amended Term Sheet as required by the Joint Development Solicitation.

II. BANNEKER'S RESPONSES TO ALLEGED WMATA BOARD CONCERNS

During the course of the negotiations between WMATA and Banneker, mentioned above, WMATA raised concerns regarding Banneker's ability to: (a) perform the Project; (b) have a joint venture partner to work with Banneker on the Project; and (c) maintain financing to perform the Project. Each of these concerns is addressed below.

A. Banneker Has the Experience to Perform the Project

Banneker is a full service real estate firm that specializes in providing construction, construction management, real estate development and real estate advisory services to the public and private sectors. The firm focuses its resources and experience on transforming neighborhoods throughout the Mid-Atlantic region of the United States. The Banneker management team has more than 40 years of construction, construction management, development and finance experience in the public and private real estate sectors. In this regard, Banneker is known for its ability to work on and complete complex construction projects on time and within budget.

As part of its proposal, Banneker provided WMATA with three (3) examples of prior construction and land development projects for which Banneker played a significant lead role.

Moreover, Banneker currently plays a significant role as the lead or co-lead on the following projects: (1) Walker Jones Education Campus; (2) Deanwood Community Center; and (3) Joiner Shop Lofts. All of these projects are comparable to the WMATA Project.

(1) Walker Jones Education Campus

Banneker provided project management and construction management services toward the design and construction of the Walker Jones Education Campus in the District of Columbia. This $50 million project involved the design and construction of a: (i) 100,000 square foot public school; (ii) 20,000 square foot recreation center; and (iii) 5,000 square foot library. Construction of this project was completed on time and within budget in December 2009. This project was the fastest public school ever built in the District of Columbia.

(2) Deanwood Community Center

Banneker is providing project management and construction management services toward completion of the Deanwood Community Center project in the District of Columbia. This project is a 63,000 square foot community center and library facility with a project budget of $32 million. The facility includes an indoor swimming pool, locker rooms, gymnasium, game room, library, childcare facilities, senior services area, kitchen, and multi-purpose facilities. The facility is 85% complete and is expected to reach Final Completion in August 2010. Upon completion, the Deanwood Community Center will be the largest public recreation center ever built in the District of Columbia.

(3) Joiner Shop Lofts

Banneker is providing development management services toward completion of the $60 million Joiner Shop Lofts project. The Joiner Shop Lofts is an adaptive-use, residential and retail development that includes the conversion of a 157,000 square foot warehouse into a 170-unit apartment and retail project. This project is the first residential building that will be completed at The Yards, a large-scale, mixed-use redevelopment of a 42-acre former annex to the Washington Navy Yard.

The above successful projects evidence Banneker's unquestionable ability to serve as project and construction manager on major projects such as the "Jazz at Florida Avenue Project". The services provided by Banneker on the above projects are similar in size and scope to those necessary to perform the WMATA Project. Accordingly, Banneker certainly has the experience to successfully perform the Project.

B. Banneker Has Development Partners to Perform the Project

Jim Graham has been reported as claiming that Banneker does not have a development partner(s) to perform the Project. This simply is not true. Banneker has development partners to perform the Project.

As stated above, Banc of America was very interested and preferred the WMATA deal when the Project involved the sale of the WMATA-owned parcels. However, due to Mr. Graham's requests, the structure of the WMATA deal was changed to a lease. Given these facts, Jim Graham advised Banneker that it could select another development partner to replace Banc of America, if necessary. Accordingly, the executed amended Term Sheet contains language that allows Banneker to replace Banc of America with a development partner with similar experience as that of Banc of America, if necessary.

In addition, Banneker has assembled a team of other development partners, which includes: Torti Gallas & Partners, Inc. (Project Architect); Clark Builders Group (General Contractor); Love Funding Corporation (Project Financing); and Holland & Knight LLP (Land Use Counsel). During negotiations, Banneker provided WMATA with information from each of the above and can provide that information again upon request.

Accordingly, there is no question that Banneker has capable and competent development partners to perform the WMATA Project.

C. Banneker Has Financing to Perform the Project

The WMATA Board, particularly Jim Graham, has raised concerns as to whether Banneker has financing to perform the Project. In fact, Banneker has financing to perform the WMATA Project. Love Funding Corporation ("Love Funding"), a national full-service, commercial mortgage-banking firm that serves as a direct lender and financial intermediary to offer loan placement services for borrowers, as well as origination, consulting and servicing of loans for investors nationwide, has agreed to provide the majority of the financing needed for the Project. In addition, Banneker has received a commitment from the District of Columbia to provide grant funding. Finally, Banneker and its equity partner will provide any remaining financing needed for the Project. Indeed, there is no question that Banneker has financing to perform the WMATA Project.

III. BANNEKER'S ALLEGATIONS OF INAPPROPRIATE CONDUCT BY WMATA BOARD MEMBER JIM GRAHAM

As you are aware, Jim Graham serves on the WMATA Board and is currently the Chair of the Committee. The duties of the WMATA Board members are prescribed in the "Procedures for WMATA Board of Directors – 2010" ("WMATA Board Rules"), which were presented and approved on January 28, 2010. See Attachment 15, Procedures for WMATA Board of Directors – 2010, January 28, 2010. The Standards of Conduct for Members of the WMATA Board of Directors ("Standards of Conduct") are included as Attachment 2 to the WMATA Board Rules.

Banneker believes that Mr. Graham likely has engaged in inappropriate conduct and has violated WMATA's Standards of Conduct as prescribed in the WMATA Board Rules. Specifically, Mr. Graham, in violation of WMATA Board rules, has: (a) in July of 2008, misused his official position as a member of the WMATA Board and his position as a District of Columbia Councilmember to improperly influence WMATA's selection of Banneker by offering to support a separate piece of legislation pending before the District of Columbia Council that would benefit a former Banneker principal, in

exchange for Banneker resigning as the Selected Developer for the WMATA Project; (b) on July 2, 2008, Mr. Graham inappropriately offered Banneker a quid pro quo for his support of Banneker for the Project on the condition that Banneker agree to use a specific developer identified by Mr. Graham; and (c) Mr. Graham has not acted impartially and has instead repeatedly demonstrated bias against Banneker.

If necessary, Banneker and others will provide evidence of Mr. Graham's unethical conduct. At a minimum, Mr. Graham should be investigated by the WMATA Office of the Inspector General and/or not be allowed any further involvement in approval or oversight of the WMATA Project. According to the WMATA Board Rules, any Board member who willfully violates the WMATA Board Rules shall forfeit the Board member's position with WMATA. See id., Article VI.

IV. BANNEKER'S REQUEST FOR IMMEDIATE WMATA BOARD APPROVAL AND AWARD OF THE PROJECT

Banneker requests an opportunity to meet with the WMATA officials and/or Board to provide information or make a presentation to address any concerns the Board may have in order to facilitate the immediate approval of the executed amended Term Sheet. Toward that end, Banneker seeks immediate WMATA Board approval of the executed amended Term Sheet followed by an expedited negotiation in order to reach agreement and WMATA Board approval of the JDA and resulting lease agreement. As stated above, the negotiations for the Project have been ongoing for over two (2) years. Banneker has paid both the requisite Proposal Security ($100,000) and the Option Fee ($100,000).

In addition, Banneker has incurred significant additional costs as a result of the protracted WMATA contract negotiations. As a small business, Banneker should not be forced to continue to incur these costs absent a commitment from WMATA that a final deal to perform the Project is forthcoming.

The WMATA Board should act immediately to approve the Project and avoid further delays. The Project is being delayed as a result of the WMATA Board's failure to approve the executed amended Term Sheet.

V. CONCLUSION

WMATA and Banneker have been engaged in good faith negotiations regarding the award of the Project to Banneker since March 2008. Throughout these negotiations, Banneker has remained available to perform the Project and is ready, willing and able to provide information, if necessary, to address any WMATA concerns in an effort to eliminate further delay of the contract award decision-making process. WMATA's announcement today that it plans to indefinitely "table" consideration of the amended Term Sheet WMATA Staff has executed with Banneker, without the Board ever meeting in public session to review and approve or reject it, itself demonstrates bad faith. Moreover, such action (or in this case inaction) cannot be in the best interests of WMATA.

ReedSmith

Banneker requests a meeting as soon as possible with the appropriate WMATA officials, including members from the WMATA Joint Development & Real Estate Committee, in order to expedite WMATA's action on the Project and formal consideration of Banneker's amended Term Sheet.

If the parties are unable to successfully move forward with action on Banneker's amended Term Sheet, given the foregoing, Banneker is prepared to seek any and all available remedies at law or in equity to address Banneker's damages and concerns regarding the selection process in this instance.

Sincerely, I am

A. Scott Bolden

A. Scott Bolden

Attachments

cc: Carol O'Keeffe, General Counsel, WMATA
Steven Goldin, Director, Office of Station Area Planning & Asset Management, WMATA
(w/o attachments)

April 30, 2010

Via Courier

The Honorable Jim Graham
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Suite 105
Washington, DC 20004

Dear Mr. Graham:

This is to follow up my conversation with you earlier today. I apologize for not having written separately to you, instead of copying you on the letter addressed to Mr. Benjamin, as a separate letter might have made clear that the General Counsel and her staff will work closely with you in addressing your concerns raised by the letter from A. Scott Bolden. As I stated during our telephone call, WMATA staff in the General Counsel's Office and the real estate office will draft a response to Mr. Bolden's letter and we will work closely with you and your staff in fashioning a response. I can assure you that your interests and the interests of the Authority will be addressed in the response.

Sincerely,

Bruce P Heppen

Bruce P. Heppen
Deputy General Counsel

cc: Mr. Peter Benjamin, Chairman

Washington Metropolitan Area Transit Authority

500 Fifth Street, NW
shington, DC 20001
202/962-1234

By Metrorail:
iciary Square—Red Line
lery Place-Chinatown—
Red, Green and
Yellow Lines
By Metrobus:
Routes D1, D3, D6, P6,
70, 71, 80, X2

l District of Columbia, Maryland and Virginia Transit Partnership

April 30, 2010

Via Courier

Mr. Peter Benjamin, Chairman
10705 Shelley Court
P.O. Box 486
Garrett Park, MD 20896-0486

Dear Mr. Benjamin:

This is to follow up my conversation with you last night and my e-mail to you and Mr. Graham. I am attaching a copy of a letter which I received from A. Scott Bolden, the attorney for Banneker Ventures. The copy addressed to you, with its attachments, is being held by the Board Secretary, Loyda Sequeira.

As we discussed, in Section III of the letter (at pp. 8-9) Mr. Bolden alleges inappropriate conduct by WMATA Board Member Jim Graham in violation of the Standards of Conduct for Members of the WMATA Board of Directors. Mr. Bolden requests an investigation by the Inspector General. Last night I spoke with Ellen Bass, Assistant Inspector General for Investigations and Counsel to the Inspector General, who confirmed that the Inspector General has been directed by a prior Board Chair to refer allegations lodged against members of the Board to the Board Chair. As you are also aware, the Board Standards of Conduct explicitly provide that the Board "may seek guidance from the General Counsel, but where there are specific allegations of misconduct, it shall, if necessary, employ appropriate outside legal counsel for assistance." Article VIII.

If you need further assistance, please do not hesitate to call me or in my absence from the office today and next week, Bruce P. Heppen, who is acting for me.

Sincerely,

Bruce P Heppen for
Carol B. O'Keeffe
General Counsel

Enclosure

cc: The Honorable Jim Graham, Council Member, District of Columbia

Washington Metropolitan Area Transit Authority

00 Fifth Street, NW
:hington, DC 20001
202/962-1234

By Metrorail:
:iary Square—Red Line
ery Place-Chinatown—
Red, Green and
Yellow Lines
By Metrobus:
outes D1, D3, D6, P6,
70, 71, 80, X2

District of Columbia, Maryland and Virginia Transit Partnership

ReedSmith

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Direct Phone: +1 202 414 9266
Email: abolden@reedsmith.com

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reedsmith.com

April 27, 2010

CONFIDENTIAL

VIA OVERNIGHT MAIL AND E-MAIL

Richard Sarles
Interim General Manager
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

-and-

Peter Benjamin
Chair, Board of Directors
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

Re: Status of Banneker Ventures Term Sheet and Award of Jazz at Florida Avenue Project

Dear Messrs. Sarles and Benjamin:

We represent Banneker Ventures, LLC ("Banneker") and write to address the status of the Washington Metropolitan Area Transit Authority ("WMATA") Board of Directors ("Board") approval of the Banneker Term Sheet for the joint development project known as the "Jazz at Florida Avenue Project" (the "Project"). We received a letter today from Steven Goldin, Director Office of Station Area Planning & Asset Management, WMATA confirming that the WMATA Joint Development and Real Estate Committee had moved to extend Banneker's exclusive negotiation period to July 30, 2010, but noting that The WMATA Board had voted unanimously, without explanation or rationale, "to table" *indefinitely* any further consideration of Banneker's timely-submitted, amended Term Sheet. WMATA's attempt to provide itself an opportunity to begin negotiations with other developers, besides Banneker, during the exclusive negotiation period, without the Board ever considering or rejecting the amended Term Sheet as required by the Joint Development Solicitation, is outrageous and unlawful.

Below, we provide: (I) a background summary of the Project; (II) Banneker's responses to alleged WMATA Board concerns; (III) Banneker's allegations of inappropriate conduct by WMATA Board Member, Joint Development & Real Estate Committee ("Committee") Chair Jim Graham; and (IV) Banneker's request for immediate WMATA Board approval and award of the Project.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ReedSmith

I. BACKGROUND

On May 31, 2007, Banneker submitted its Response to the Opportunity to Compete Against an Unsolicited Proposal for the redevelopment of WMATA-owned parcels located at Shaw-Howard/Florida Avenue to Gary Malasky, Contracting Officer, Office of Property Development and Management, WMATA. In preparing the proposal, Banneker assembled a team, which included Torti Gallas & Partners, Inc., an architectural company with previous experience working on WMATA joint development projects, and District Development Group, LLC, who would serve as co-developer for the Project.

On August 24, 2007, WMATA issued a Joint Development Solicitation ("JDS") for the joint development of real estate at the Shaw-Howard/Florida Avenue Joint Development Site (the "Site"). See Attachment 1, Joint Development Solicitation, Shaw-Howard/Florida Avenue Joint Development Site: Proposal Submission Requirements, August 24, 2007. According to the JDS, proposals were due on October 5, 2007.

On September 18, 2007, Myla Moss, Advisory Neighborhood Commission ("ANC") Commissioner, ANC 1B01, held a Town Hall meeting to allow the WMATA short-listed development teams to present their vision for redeveloping the Shaw-Howard/Florida Avenue site. According to Ms. Moss' letter to Nat Bottigheimer, Contracting Officer, Office of Property Development and Management, WMATA dated October 4, 2007, only the Banneker proposal responded to all the express needs and desires of the community. See Attachment 2, Letter from Myla Moss, Commissioner, ANC 1B01 to Nat Bottigheimer, WMATA, dated October 4, 2007. Accordingly, Ms. Moss' letter supported Banneker to receive the WMATA contract to perform the Project.

On October 5, 2007, Banneker responded to the JDS and submitted a proposal to WMATA after assembling a team of development and investment partners, which included: (1) Banneker (Developer); (2) District Development Group, LLC (Co-Developer); (3) Donatelli Development Inc. (Co-Developer); (4) Torti Gallas & Partners, Inc. (Project Architect); (5) MacFarlane Partners (Equity Partner); and (6) Tompkins Builders (General Contractor).

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More specifically, Ms. Doggett suggested that Banneker's written submission state that Mr. Williams would not participate in the WMATA deal, if Banneker's selection was approved by the WMATA Board. By letter dated April 23, 2008, Banneker wrote WMATA to address the concerns raised by Mr. Graham. See Attachment 4, Letter from Omar Karim, Banneker to Rosalyn Doggett, WMATA dated April 23, 2008.

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On or about July 25, 2008, WMATA and Banneker participated in the Project kick-off meeting. At this meeting, Banneker provided WMATA with an executed copy of the Term Sheet and paid the $100,000 Option Fee as required by the JDS.

From July 2008 through March 2009, the parties engaged in continuous negotiations to enter into a finalized JDA.

In January 2009, Mr. Graham became Chairman of the WMATA Board. During his entire tenure as a WMATA Board Member and Chairman, Mr. Graham has injected himself into the day-to-day management of WMATA operations and has exceeded the scope of his duties as a WMATA Board Member. For example, in July 2009, Mr. Graham took it upon himself to contact the independent appraiser, who had been hired by WMATA staff to appraise the value of the Site, before the appraiser had submitted its appraisal report.

On March 6, 2009, Banneker provided WMATA with a letter from Banc of America Community Development Corporation ("Banc of America"). See Attachment 8, E-mail correspondence from Omar Karim, Banneker to Emeka Moneme, WMATA sent on March 6, 2009 at 3:00PM. Banc of America agreed to become a Co-Developer of and provide direct equity investment into the Project.

On April 23, 2009, WMATA's Board approved a one hundred twenty (120) day extension of the negotiation period between WMATA and Banneker regarding the Project. See Attachment 9, Letter from Emeka Moneme, WMATA to Leila Edwards, District of Columbia Department of Housing and Community Development, dated June 1, 2009.

By e-mail sent on May 29, 2009, WMATA informed Banneker that a possible JDA was imminent. However, WMATA indicated that it could not finalize the JDA until an outside appraisal of the deal was conducted by an independent contractor. See Attachment 10, E-mail correspondence from Rosalyn Doggett, WMATA to Omar Karim, Banneker sent on May 29, 2009 at 4:53PM.

From August 2009 through October 2009, WMATA proposed to change the Project from a lease agreement to a purchase agreement, whereby Banneker would own the property.

On or about September 10, 2009, WMATA staff requested another extension of the negotiation period with Banneker and the WMATA Board approved the extension.

On October 22, 2009, Mr. Graham met with Mr. Karim and Banneker's Chief Financial Officer ("CFO") to discuss the Project. Mr. Graham told both Mr. Karim and Banneker's CFO that the "firm should not have bid on the WMATA project" and that he "won't allow the sale of the WMATA-owned parcels located at Shaw-Howard/Florida Avenue." Mr. Karim told Mr. Graham that Banc of America

preferred a sale, and had spent the past few months underwriting the Project as a sale. Mr. Graham told Mr. Karim that Banneker could get a new joint venture partner to facilitate the lease of the WMATA-owned parcels.

Moreover, Mr. Graham also told Mr. Karim that he would ensure that the Project would not get delayed if Mr. Karim agreed to change the Project from a sale of property to a lease. Mr. Karim agreed with Mr. Graham's request to change the Project back to a lease agreement. Later that day, Mr. Karim had several telephone conversations with John Catoe, Jr., the then-WMATA General Manager and Mr. Graham to discuss the terms of the lease.

By e-mail correspondence sent on October 22, 2009 from Steven Goldin, WMATA's Director of Station Area Planning & Asset Management, WMATA informed Banneker that "per direction from our Board, we are proceeding with preparing a Term Sheet for the lease of our property. The matter is to be taken up by the full Board in a special meeting in two weeks." See Attachment 11, E-mail correspondence from Steven Goldin, WMATA to Omar Karim, Banneker sent on October 22, 2009 at 3:08PM.

On or about November 16, 2009, WMATA staff submitted the parties' revised Term Sheet to the WMATA Board for approval. See Attachment 12, E-mail correspondence from Rosalyn Doggett, WMATA to Omar Karim, Banneker sent on November 16, 2009 at 8:54AM.

By e-mail correspondence sent on November 19, 2009, WMATA informed Banneker that the WMATA Board discussed the Term Sheet, but the WMATA Board took no action. See Attachment 13, E-mail correspondence from Steven Goldin, WMATA to Omar Karim, Banneker sent on November 19, 2009 at 5:22PM. This correspondence further advised Banneker that the WMATA Board directed WMATA staff to address specific issues raised by the Board regarding the initial capitalized lease payment and the lack of a payment "reset" for the first 60 years under the lease.

Following the November 19, 2009 meeting of the WMATA Board, Banneker was able to convince its equity partner to reduce its return on their investment and therefore increase the capitalized lease that the Banneker team could pay WMATA. WMATA and Banneker negotiated a revised Term Sheet which WMATA's staff then recommended to the WMATA Board for approval.

On January 14, 2010, although the WMATA staff recommended the Committee approve the revised Term Sheet, the Committee informed WMATA staff that it wanted Banneker to pay additional funds to perform at the Site. In this regard, the Committee moved to approve a time extension to allow WMATA staff and Banneker to negotiate an amended Term Sheet for the Site, which was to be brought to the WMATA Board by March 31, 2010. See Attachment 14, WMATA, Committee, Minutes of Planning, Development and Real Estate Committee, January 14, 2010.

Following the January 14, 2010 meeting of the WMATA Board, Mr. Graham becomes Chair of the Committee.

ReedSmith

From January 14, 2010 through March 25, 2010, WMATA and Banneker engaged in negotiations to reach final agreement with regard to the amended Term Sheet for the Project. Prior to March 25, 2010, the parties reached final agreement on the amended Term Sheet and submitted it to the WMATA Board for approval. The revised Term Sheet significantly increases the capitalized lease payment that Banneker would pay WMATA from the amount submitted to the WMATA Board at the January 14, 2010 meeting.

On March 25, 2010, the WMATA Board discussed the executed amended Term Sheet in Executive Session, but, at the behest of Jim Graham, the Board removed from their agenda consideration of the amended Term Sheet and the WMATA Board did not take any action to approve it.

Since the March 25, 2010 WMATA Board Executive Session meeting and subsequent tabling of the approval of the executed amended Term Sheet at the public WMATA Board meeting, WMATA has not taken any action with regard to its further consideration and approval of the executed amended Term Sheet. Moreover, the Committee is not scheduled to meet to discuss the Banneker Project in the month of April.

On April 26, Steven Goldin, Director Office of Station Area Planning & Asset Management, WMATA sent a letter to Banneker confirming that the WMATA Joint Development and Real Estate Committee had moved to extend Banneker's exclusive negotiation period to July 30, 2010. Mr. Goldin's letter noted that The WMATA Board had voted unanimously, without explanation or rationale, "to table" indefinitely any further consideration of Banneker's timely-submitted, amended Term Sheet without the Board ever considering or rejecting the amended Term Sheet as required by the Joint Development Solicitation.

II. BANNEKER'S RESPONSES TO ALLEGED WMATA BOARD CONCERNS

During the course of the negotiations between WMATA and Banneker, mentioned above, WMATA raised concerns regarding Banneker's ability to: (a) perform the Project; (b) have a joint venture partner to work with Banneker on the Project; and (c) maintain financing to perform the Project. Each of these concerns is addressed below.

A. Banneker Has the Experience to Perform the Project

Banneker is a full service real estate firm that specializes in providing construction, construction management, real estate development and real estate advisory services to the public and private sectors. The firm focuses its resources and experience on transforming neighborhoods throughout the Mid-Atlantic region of the United States. The Banneker management team has more than 40 years of construction, construction management, development and finance experience in the public and private real estate sectors. In this regard, Banneker is known for its ability to work on and complete complex construction projects on time and within budget.

As part of its proposal, Banneker provided WMATA with three (3) examples of prior construction and land development projects for which Banneker played a significant lead role.

ReedSmith

Moreover, Banneker currently plays a significant role as the lead or co-lead on the following projects: (1) Walker Jones Education Campus; (2) Deanwood Community Center; and (3) Joiner Shop Lofts. All of these projects are comparable to the WMATA Project.

(1) Walker Jones Education Campus

Banneker provided project management and construction management services toward the design and construction of the Walker Jones Education Campus in the District of Columbia. This $50 million project involved the design and construction of a: (i) 100,000 square foot public school; (ii) 20,000 square foot recreation center; and (iii) 5,000 square foot library. Construction of this project was completed on time and within budget in December 2009. This project was the fastest public school ever built in the District of Columbia.

(2) Deanwood Community Center

Banneker is providing project management and construction management services toward completion of the Deanwood Community Center project in the District of Columbia. This project is a 63,000 square foot community center and library facility with a project budget of $32 million. The facility includes an indoor swimming pool, locker rooms, gymnasium, game room, library, childcare facilities, senior services area, kitchen, and multi-purpose facilities. The facility is 85% complete and is expected to reach Final Completion in August 2010. Upon completion, the Deanwood Community Center will be the largest public recreation center ever built in the District of Columbia.

(3) Joiner Shop Lofts

Banneker is providing development management services toward completion of the $60 million Joiner Shop Lofts project. The Joiner Shop Lofts is an adaptive-use, residential and retail development that includes the conversion of a 157,000 square foot warehouse into a 170-unit apartment and retail project. This project is the first residential building that will be completed at The Yards, a large-scale, mixed-use redevelopment of a 42-acre former annex to the Washington Navy Yard.

The above successful projects evidence Banneker's unquestionable ability to serve as project and construction manager on major projects such as the "Jazz at Florida Avenue Project". The services provided by Banneker on the above projects are similar in size and scope to those necessary to perform the WMATA Project. Accordingly, Banneker certainly has the experience to successfully perform the Project.

B. Banneker Has Development Partners to Perform the Project

Jim Graham has been reported as claiming that Banneker does not have a development partner(s) to perform the Project. This simply is not true. Banneker has development partners to perform the Project.

As stated above, Banc of America was very interested and preferred the WMATA deal when the Project involved the sale of the WMATA-owned parcels. However, due to Mr. Graham's requests, the structure of the WMATA deal was changed to a lease. Given these facts, Jim Graham advised Banneker that it could select another development partner to replace Banc of America, if necessary. Accordingly, the executed amended Term Sheet contains language that allows Banneker to replace Banc of America with a development partner with similar experience as that of Banc of America, if necessary.

In addition, Banneker has assembled a team of other development partners, which includes: Torti Gallas & Partners, Inc. (Project Architect); Clark Builders Group (General Contractor); Love Funding Corporation (Project Financing); and Holland & Knight LLP (Land Use Counsel). During negotiations, Banneker provided WMATA with information from each of the above and can provide that information again upon request.

Accordingly, there is no question that Banneker has capable and competent development partners to perform the WMATA Project.

C. Banneker Has Financing to Perform the Project

The WMATA Board, particularly Jim Graham, has raised concerns as to whether Banneker has financing to perform the Project. In fact, Banneker has financing to perform the WMATA Project. Love Funding Corporation ("Love Funding"), a national full-service, commercial mortgage-banking firm that serves as a direct lender and financial intermediary to offer loan placement services for borrowers, as well as origination, consulting and servicing of loans for investors nationwide, has agreed to provide the majority of the financing needed for the Project. In addition, Banneker has received a commitment from the District of Columbia to provide grant funding. Finally, Banneker and its equity partner will provide any remaining financing needed for the Project. Indeed, there is no question that Banneker has financing to perform the WMATA Project.

III. BANNEKER'S ALLEGATIONS OF INAPPROPRIATE CONDUCT BY WMATA BOARD MEMBER JIM GRAHAM

As you are aware, Jim Graham serves on the WMATA Board and is currently the Chair of the Committee. The duties of the WMATA Board members are prescribed in the "Procedures for WMATA Board of Directors – 2010" ("WMATA Board Rules"), which were presented and approved on January 28, 2010. See Attachment 15, Procedures for WMATA Board of Directors – 2010, January 28, 2010. The Standards of Conduct for Members of the WMATA Board of Directors ("Standards of Conduct") are included as Attachment 2 to the WMATA Board Rules.

Banneker believes that Mr. Graham likely has engaged in inappropriate conduct and has violated WMATA's Standards of Conduct as prescribed in the WMATA Board Rules. Specifically, Mr. Graham, in violation of WMATA Board rules, has: (a) in July of 2008, misused his official position as a member of the WMATA Board and his position as a District of Columbia Councilmember to improperly influence WMATA's selection of Banneker by offering to support a separate piece of legislation pending before the District of Columbia Council that would benefit a former Banneker principal, in

exchange for Banneker resigning as the Selected Developer for the WMATA Project; (b) on July 2, 2008, Mr. Graham inappropriately offered Banneker a quid pro quo for his support of Banneker for the Project on the condition that Banneker agree to use a specific developer identified by Mr. Graham; and (c) Mr. Graham has not acted impartially and has instead repeatedly demonstrated bias against Banneker.

If necessary, Banneker and others will provide evidence of Mr. Graham's unethical conduct. At a minimum, Mr. Graham should be investigated by the WMATA Office of the Inspector General and/or not be allowed any further involvement in approval or oversight of the WMATA Project. According to the WMATA Board Rules, any Board member who willfully violates the WMATA Board Rules shall forfeit the Board member's position with WMATA. See id., Article VI.

IV. BANNEKER'S REQUEST FOR IMMEDIATE WMATA BOARD APPROVAL AND AWARD OF THE PROJECT

Banneker requests an opportunity to meet with the WMATA officials and/or Board to provide information or make a presentation to address any concerns the Board may have in order to facilitate the immediate approval of the executed amended Term Sheet. Toward that end, Banneker seeks immediate WMATA Board approval of the executed amended Term Sheet followed by an expedited negotiation in order to reach agreement and WMATA Board approval of the JDA and resulting lease agreement. As stated above, the negotiations for the Project have been ongoing for over two (2) years. Banneker has paid both the requisite Proposal Security ($100,000) and the Option Fee ($100,000).

In addition, Banneker has incurred significant additional costs as a result of the protracted WMATA contract negotiations. As a small business, Banneker should not be forced to continue to incur these costs absent a commitment from WMATA that a final deal to perform the Project is forthcoming.

The WMATA Board should act immediately to approve the Project and avoid further delays. The Project is being delayed as a result of the WMATA Board's failure to approve the executed amended Term Sheet.

V. CONCLUSION

WMATA and Banneker have been engaged in good faith negotiations regarding the award of the Project to Banneker since March 2008. Throughout these negotiations, Banneker has remained available to perform the Project and is ready, willing and able to provide information, if necessary, to address any WMATA concerns in an effort to eliminate further delay of the contract award decision-making process. WMATA's announcement today that it plans to indefinitely "table" consideration of the amended Term Sheet WMATA Staff has executed with Banneker, without the Board ever meeting in public session to review and approve or reject it, itself demonstrates bad faith. Moreover, such action (or in this case inaction) cannot be in the best interests of WMATA.

ReedSmith

Banneker requests a meeting as soon as possible with the appropriate WMATA officials, including members from the WMATA Joint Development & Real Estate Committee, in order to expedite WMATA's action on the Project and formal consideration of Banneker's amended Term Sheet.

If the parties are unable to successfully move forward with action on Banneker's amended Term Sheet, given the foregoing, Banneker is prepared to seek any and all available remedies at law or in equity to address Banneker's damages and concerns regarding the selection process in this instance.

Sincerely, I am

A. Scott Bolden

A. Scott Bolden

Attachments

cc: Carol O'Keeffe, General Counsel, WMATA
Steven Goldin, Director, Office of Station Area Planning & Asset Management, WMATA
(w/o attachments)

May 28, 2010

A. Scott Bolden, Esquire
Reed Smith LLP
1301 K Street, N.W.
Suite 1100 – East Tower
Washington, DC 20005-3373

Re: Status of Banneker Ventures Term Sheet and Award of Jazz at Florida Avenue Project

Dear Mr. Bolden:

Your letter dated April 27, 2010 to Mr. Sarles and Mr. Benjamin has been referred to me for response. The procedural posture of the Jazz at Florida Avenue Project is as follows: The Board of Directors ("Board") of the Washington Metropolitan Area Transit Authority ("WMATA") unanimously voted, on March 25, 2010, to table any action on the proposed amendment of the term sheet ("Term Sheet", attached hereto as Attachment A) executed by WMATA and Banneker Ventures, LLC ("Banneker") following Board member Graham's motion to extend the time within which to finalize a joint development agreement. The Board follows Robert's Rules of Order. Accordingly, the matter can now be taken from the table only by majority vote of the Board in accordance with the voting provisions of the WMATA Compact (Section 8). Pursuant to the terms of the Term Sheet, the exclusive negotiation period between WMATA and Banneker expired on March 31, 2010.

You have presented a number of points in your letter; although I will not respond point by point, the following discussion is intended to meet the substantive issues of concern. Let me begin by saying that WMATA staff worked diligently with Banneker representatives in attempting to achieve agreement on the revised business terms proposed by your client, which differed significantly from those originally proposed. We recognized that those revisions were driven by the changed economic circumstances. Nevertheless, the changes occurred in the context of a public solicitation for proposals for the Florida Avenue site and the differing terms presented

Washington Metropolitan Area Transit Authority

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202/962-1234

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Transit Partnership

challenges that simply could not be overcome, despite our best efforts and the efforts of your client. We appreciate your client's interest in the site and regret that the faltering real estate market made it difficult for your client to adhere to the original terms which prompted the Board's initial selection of Banneker as the developer for the site. Having said that, it is important for you to understand that the Board has plenary authority to approve the terms of a joint development agreement and that approval simply was not achieved. I know of no plans to remove the matter from the table.

By submitting a proposal in response to the Florida Avenue Joint Development Solicitation ("JDS" or "Solicitation", attached hereto as Attachment B), Banneker agreed to and accepted all of the terms of the JDS (*see* JDS, § 1.5). Thus, Banneker agreed that the Term Sheet was not a binding agreement between WMATA and Banneker, but only established a fixed period of time in which Banneker had the exclusive right to negotiate a binding development agreement (*see* JDS §§ 1.6 and 1.7; and Term Sheet § 12). Banneker also agreed that the Term Sheet would terminate upon the expiration of such exclusive negotiation period (*see* JDS § 3.3(C)). It has so terminated. The Board has the sole authority to approve extensions of the Term Sheet and/or the terms of the binding development agreement (*see* JDS § 3.3(D), Term Sheet § 2, and WMATA's Joint Development Policies and Guidelines § 5.1).

Pursuant to the Term Sheet, Banneker and WMATA established an exclusive negotiation period of five months. The Term Sheet was initially executed by Banneker in July 2008, which meant that the parties had until December 2008 to submit a development agreement to the Board for approval. Almost immediately after being granted its exclusive negotiation period, Banneker significantly reduced its offer to WMATA. For example, Banneker's winning proposal offered an annual ground lease rent payment of $597,000 per year; soon after being selected, Banneker lowered its offer to less than $200,000 per year. The Board extended the negotiation period several times to provide the parties additional time to improve the business terms. In January 2010, the Board voted to extend the exclusive negotiation period through March 31, 2010. When the Board did not approve the extension of the exclusive negotiation period on March 25, 2010, the Term Sheet expired.

In Section IV of your letter, you state that Banneker has incurred significant additional costs as a result of the protracted contract negotiations. Please note that Banneker agreed at the onset that any costs incurred by Banneker

during this exclusive negotiation period are the sole liability of Banneker (*see* JDS § 1.9 and Term Sheet § 12).

Your letter overlooks critical details surrounding WMATA's dealings with Banneker. First, your letter provides a detailed description of WMATA's inquiry into the role of Warren Williams, Jr. and implies that the inquiry was, in some fashion, wrong. As Banneker acknowledged in its letter dated April 23, 2008, WMATA reserved the sole right to disqualify a selected developer if any member of the development team were found to have an unsatisfactory record of integrity and business ethics (*see* JDS § 5.2(F)). WMATA's inquiries were consistent with this right. As a publicly funded entity, WMATA has a duty to avoid entering into business relationships with persons that do not share WMATA's commitment to integrity. It is unquestioned that WMATA acted properly when it requested further information on certain members of Banneker's development team.

Your letter addresses affordable housing issues on this project, but fails to acknowledge all of the relevant facts. The JDS required proposals to be consistent with local land use policies (*see* JDS § 2.1). At the time of the Solicitation, WMATA's Florida Avenue property was subject to the "small area plan" adopted by the District of Columbia Council in June 2005, known as the "Duke Plan." As Banneker acknowledged in several meetings with WMATA, the Duke Plan, in conjunction with the positions of local community groups and the District of Columbia zoning and permitting offices, effectively required a 20% to 30% affordable housing set aside for any residential project on WMATA's Florida Avenue property. Banneker's acknowledgement of this fact is further evidenced by Banneker's original proposals, which included an affordable housing component (*see* the letter from District of Columbia Housing Finance Agency to Banneker, attached hereto as Attachment C). The Duke Plan's affordable housing policy was extant long before any purported meeting between Mr. Karim and Mr. Graham on July 2, 2008.

When reviewing all of the proposals that responded to the JDS, WMATA placed a high priority on development experience. Development experience is a priority for all WMATA joint development sites, and this project required the sophisticated expertise to be able to build a structure directly over WMATA's train tunnel. Such attention to development experience is evidenced in the JDS, which provided: (i) that the designation of a selected developer was in the nature of a personal services contract because of the importance of skills, experience, knowledge, and financing on this project;

and (ii) a change in the composition of the selected developer's development team required WMATA's written approval (*see* JDS § 5.1).

Throughout the duration of negotiations, WMATA had concerns about the stability of Banneker's development team. Because WMATA felt that Banneker was relatively inexperienced with this type of project, it decided that Banneker needed a strong development partner. It was the presence of Banneker's much more experienced partners, first Donatelli Development and then Metropolis Development Company, which satisfied WMATA when it initially approved Banneker's proposal. But, Banneker's development team experienced constant instability. Development partners Donatelli Development, District Development Group, Metropolis Development Company, and Banc of America Community Development Corporation all dropped out of the project without warning or explanation. Consequently, WMATA understandably expressed concern with Banneker's development team.

Your letter states that, "[f]rom August 2009 through October 2009, WMATA proposed to change the Project from a lease agreement to a purchase agreement." This statement ignores crucial facts surrounding this event. WMATA made it clear from the very beginning that WMATA preferred a lease transaction over a sale (*see* JDS § 1.1). Banneker's winning proposal was for a lease transaction. But, three months after WMATA and Banneker executed the Term Sheet, Banneker significantly changed its proposal. Banneker informed WMATA that it intended to purchase parcels adjacent to WMATA's property in order to construct a larger single building traversing both WMATA's property and the adjacent property. WMATA immediately informed Banneker that WMATA did not want to be the ground lease landlord of half of a building. Banneker assured WMATA that it would find a way to make this situation work for both parties. Over the next 10 months, WMATA repeatedly asked Banneker to resolve this problem and voiced its skepticism about this concept. Banneker never offered any solutions, but still insisted on combining WMATA's property with the adjacent property. Finally, in August 2009, Banneker proposed a co-tenancy agreement, which would govern the ownership of the building on the combined properties in the event that Banneker defaulted on its lease with WMATA. WMATA informed Banneker that the co-tenancy agreement was an untenable arrangement for WMATA. Seeing no other solution to Banneker's insistence on adding the adjacent parcels, in late August 2009, WMATA began to explore the option of selling its land to Banneker and to evaluate whether the co-tenancy arrangement could be appropriately modified. But, in October 2009, WMATA

decided to remove the sale option because of: (i) WMATA's long standing institutional preference for a lease; and (ii) concerns that the switch from lease to sale, after awarding the project would expose WMATA to bid protests. Your assertion that Mr. Graham advocated for the Florida Avenue project to be a lease transaction is consistent with the long standing policy of the Board to enter into leases rather than sales.

The incorporation of adjacent property into the project was required to be disclosed at the time of bidding under the JDS (*see* JDS §3.2(X)). By waiting until after it was designated as the selected developer to reveal its intention to assemble WMATA's property with adjacent parcels, Banneker caused significant problems for the negotiation.

Your letter also states that the Board removed consideration of the amended Term Sheet at the behest of Board member Jim Graham. It should be noted here that Mr. Graham, as chairman of WMATA's Planning, Development and Real Estate committee, actually recommended that the Board grant an extension of the Term Sheet. Board member Neil Albert then stepped in and moved to table the issue. The Board then voted unanimously to approve the motion to table.

In Section III, you have attempted to create the impression that improprieties occurred during your conversations with a WMATA Board member. Board members frequently discuss the progress of joint development negotiations with the parties involved. The nature of these discussions is dynamic and may include ways to strengthen the development team, but these discussions do not bind the WMATA Board of Directors. The allegations in your letter, standing alone, do not appear to constitute a violation of the Board's Standards of Conduct. However, if further consideration is deemed appropriate, it will be handled in accordance with the Board's Procedures. As you are aware, Mr. Graham has referred your letter to the Attorney General for the District of Columbia, regarding the claims you have made concerning District of Columbia matters.

At all times, WMATA staff and the Board have acted in accordance with the JDS and the Term Sheet. Neither the Term Sheet nor any other document grants Banneker an entitlement to any interest in WMATA's Florida Avenue property. By entering into the Term Sheet, the parties agreed to a schedule for negotiating a binding development agreement, but there was never a guarantee that these negotiations would produce an agreement that would gain Board approval. That schedule was enlarged by a series of extensions,

from December 2008 to March 2010. The Board took firm action on March 25, 2010. The Board is not required, under the JDS, Term Sheet, or WMATA's internal procedures, to provide Banneker with further explanation or rationale for its action, but I believe this letter clearly outlines the problems that are inherent in Banneker's revised business proposal. I trust that this is responsive to your concerns.

Sincerely,

Carol B. O'Keeffe
General Counsel

Attachments

cc: Chairman and Members of the Board, WMATA
Richard Sarles, General Manager

SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE: PROPOSAL SUBMISSION REQUIREMENTS

SECTION 1: ADMINISTRATIVE AND CONTRACTUAL INFORMATION

1.1. Issuing Information

This Joint Development Solicitation (JDS) is issued in accordance with WMATA's Joint Development Policies and Guidelines, Revised July 21, 2005, as may be amended, included as Attachment D to this JDS. The three parcels that comprise the Joint Development Site in this solicitation are available primarily under a long-term lease, as WMATA's preference is to lease, rather than sell, its property. If a sale is proposed, the Proposal must clearly demonstrate that a sale is more advantageous to WMATA than a long-term lease. WMATA reserves the right to select different Developers for individual parcels.

1.2. Purpose and Scope

This JDS is intended to provide interested Developers with sufficient summary information about WMATA's requirements to facilitate Proposal preparation. It contains instructions on Proposal content and format, but does not attempt to define all of WMATA's Joint Development contract requirements in detail. Certain contract requirements are non-negotiable.

1.3. Amendments and Supplements to JDS

WMATA reserves the right to issue Amendments and/or Supplements to this JDS. Developers will be required to acknowledge in writing the receipt of an Amendment and/or Supplement.

1.4. Acceptance/Rejection of Proposals

This JDS does not commit WMATA to designate a Selected Developer or to enter into a Development Agreement. WMATA reserves the right to accept or reject any or all Proposals.

1.5. Acceptance of Terms and Conditions

By submitting a Proposal, a Developer is deemed to have agreed to and accepted all terms and conditions set forth in this JDS. Notwithstanding the foregoing, WMATA reserves the right to amend or modify any of the terms and conditions.

1.6. Selected Developer Status

A designation as Selected Developer for a Joint Development Site does not mean WMATA accepts the Proposal without further negotiation. Rather, the Developer's Proposal is the foundation for further negotiation and WMATA reserves the right to negotiate a Development Agreement with a Selected Developer containing benefits to WMATA that exceed those set forth in the Proposal.

1.7. Binding Agreement

An executed Development Agreement, approved by the WMATA Board of Directors, is the only binding commitment of and by WMATA with respect to a Joint Development Site. Designation of a Selected Developer, WMATA's agreement to a Term Sheet or any conduct or oral representations by WMATA shall not in any way constitute a binding obligation or commitment by WMATA. In submitting a Proposal, the Developer acknowledges it will have no legal or equitable right to, or interest in, any Joint Development Site except as set forth in an executed Development Agreement.

1.8. Schedule of Activities

Item	Date
Request for Proposals	AUG 24, 2007
Proposals Due	OCT 5, 2007
Meetings with Developers (if required)	NOV/DEC 2007
Final Proposals Due (if required)	DEC 2007/ JAN 2008

1.9. Costs

WMATA shall not be liable for any costs incurred by a Developer and/or Development Team responding to this JDS or any costs incurred with respect to the negotiation of the Development Agreement and related final documentation.

1.10. Approvals

The designation of a Selected Developer and the terms of a Development Agreement negotiated pursuant to this JDS are subject to the approval of the WMATA Board of Directors and the Federal Transit Administration of the U.S. Department of Transportation (FTA).

FOIA CONFIEDENTIAL TREATMENT REQUESTED

1.11. Pre-Proposal Conference
Intentionally omitted

1.12. Inspections
Intentionally omitted

1.13. Inquiries
Inquiries concerning this JDS are to be submitted in writing to:

Mr. Nat Bottigheimer
Contracting Officer
Office of Property Development
and Management
Washington Metropolitan Area
Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Any written response made by WMATA's Contracting Officer will be disseminated to all Developers from whom a Proposal was requested. Oral responses are not binding.

1.14. Closing Date for Proposal Submission
One original and 10 copies of the Proposal must be received in a sealed package not later than 3 p.m. on Friday, **October 5, 2007** (Closing Date) addressed as provided in Section 2.7.

1.15. Late Proposals
Any Proposal received by WMATA after the Closing Date shall be considered a Late Proposal. A Late Proposal may be accepted and evaluated by WMATA at the sole discretion of WMATA's Contracting Officer.

1.16. Jurisdictional and Community Participation Requirements
Prior to submitting a Proposal, Developers are required to meet with jurisdictional representatives from the Office of Planning and interested community organizations, including the Advisory Neighborhood Commission, to share information about a pending Proposal submission to WMATA and to seek their views. Failure to comply with this requirement may result in a Proposal's being rejected. WMATA will provide a contact list to each Developer from whom a Proposal is being requested.

1.17. WMATA Facilities
WMATA Facilities are critical to the efficient operation of the transit system and must be accommodated in the site plan. Information on the WMATA facilities beneath the Joint Development Site was provided with the advertisement requiring a May 31, 2007 proposal.

SECTION 2: PROPOSAL PREPARATION/ FORMAT/CONTENT/SUBMISSION

2.1. General
To be considered, a Developer must submit a complete response to this JDS. WMATA encourages creative and innovative Proposals which promote Transit-Oriented Development consistent with local land use policies. Failure to respond with the requisite information may result in a Developer's being eliminated from consideration.

2.2. Proposal Submission Structure
Proposals must be submitted in **two separate**, 8.5 x 11 inch bound volumes with Volume 1 containing Technical Information and Volume 2 containing Economic Information.

The contents of each volume must comply with Section 2.3 and Section 2.4 of this JDS. Proposals should include the identical titles and numbering for each subsection as set forth in this JDS. NOTE: No financial information is to be included or referenced in Volume 1.

2.3. Proposal Contents: Volume 1–Technical Information

A. Transmittal Letter -- a letter signed by an officer authorized to make a binding commitment for the Developer which states that the Proposal is valid for a minimum of 180 days from the date of submission and that if selected, the Developer will negotiate in good faith with WMATA.

B. Completed Proposal Form (3 pages) -- See ATTACHMENT A.

C. Table of Contents.

D. Executive Summary excluding all financial information (5 pages maximum).

E. Development Team Information

FOIA CONFIEDENTIAL TREATMENT REQUESTED

1. A description of the Developer and the proposed Development Team and the role of each principal member.

2. A statement that the Developer has the power and authority to enter into a Development Agreement and all final documentation as required by WMATA without the consent or joinder of any other party or authority.

F. Development Entity

1. A description of the Developer's business entity and, if a different entity will be formed, details of the structure of this other entity.

2. A detailed description of how the Project's ownership and management will be structured.

G. A proposed site plan and a description of land uses, including an explanation of how the Project complies with Transit-Oriented Development principles. The site plans must show building elevations and heights with number of stories.

Additionally, one jpeg on a disk and one full color visual of the site plan at least 2' by 3' in size must accompany the Proposal. The visual may be rolled up or mounted on posterboard.

H. An explanation of the anticipated impact that the Project will have, if any, on WMATA Facilities beneath the sites. Information on the WMATA facilities was provided with the advertisement for which proposals were requested by May 31, 2007.

I. The proposed Project schedule, starting in January 2008, in Microsoft Project or similar format, which at a minimum includes the following tasks and milestones, if applicable:

1. Term Sheet negotiations (assume 120 calendar days from the Proposal submission);

2. Approval of Selected Developer and Term Sheet by WMATA's Board of Directors (assume 30 calendar days from conclusion of Term Sheet negotiations);

3. Development Agreement and final documentation negotiations and execution (assume 120 calendar days from Selected Developer and Term Sheet approval);

4. Approval of Development Agreement and final documentation by WMATA's Board of Directors (assume 30 calendar days from conclusion of Development Agreement negotiations);

5. Agreement(s) for the acquisition of parcels to be assembled with the Joint Development Site, if applicable;

6. Concept plan preparation and approval;

7. Intentionally omitted.

8. Development plan preparation and approval, including interim WMATA Replacement Facilities plan (allow 30 calendar days for WMATA approval);

9. Local and other governmental approvals and actions (zoning, site plan, alley closings, grants, etc., as applicable);

10. Project financing approval;

11. Schematic design and construction document preparation and approval (allow 25 business days for WMATA approval of 35% construction documents, 20 business days for WMATA approval of 65% construction documents, and 15 business days for WMATA approval of 100% construction documents);

NOTE: if documents are not approved, WMATA comments must be addressed and resubmitted for approval.

12. Local permitting process;

13. Intentionally omitted.

14. Project construction period (per phase, if applicable);

15. Initial occupancy; and

16. Stabilization period.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

J. Zoning

1. The existing zoning classification and, if a change will be sought, the proposed zoning category.

2. The permitted FAR (floor area ratio) or other density measure, and the proposed FAR or other density measure, as applicable.

K. The proposed business relationship with WMATA and the proposed terms (lease, sale, etc.) including, but not limited to, the following:

Lease (WMATA preference is 60 years).

1. Identification of the portion of the Joint Development Site to be leased by location and approximate land area. (NOTE: The leased premises will exclude all WMATA Reserved Areas and Interests.)

Sale

1. Identification of the portion of the Joint Development Site proposed to be purchased in fee simple by location and approximate land area. (NOTE: The sale will exclude all WMATA Reserved Areas and Interests.)

2. An explanation of why the Project should not be developed under a lease and why a sale is more advantageous to WMATA than a long-term lease.

L. A market analysis and marketing strategy for the proposed uses of the WMATA joint development site.

M. A summary (specific financial analysis required in Economic Section) of the Project's impact on the tax base of the local jurisdiction as follows:

1. Identification of the property taxes, sales taxes, amount of fees and contributions and other local public income.

N. A statement identifying each of the community organizations that the Developer has met with and the meeting dates; the specific information that the Developer shared; the reaction of each community organization to the proposed development concept; the issues raised by each community organization; and how the Proposal addresses these issues. See Section 1.16.

O. A statement describing the Developer's contact with local jurisdiction staff, (representatives' names and meeting dates) and the views and expectations of the local jurisdiction regarding the Project, including any existing or anticipated jurisdictional issues or concerns. See Section 1.16.

P. A statement on whether the Project's feasibility is contingent on any local, state or federal government action or financial support (including a change in regulations; street or alley closing; funding, including guarantees and issuance of tax-exempt bonds; financing and credit enhancements; leasing of space; granting of access to the Joint Development Site; and the justification and process for obtaining government support).

Q. Statements that:

1. The Project is compatible with local land use requirements.

2. The Project will conform to all applicable federal, state and local laws, regulations and ordinances including all federal and relevant local environmental regulations.

R. A quantitative analysis of the Project's beneficial effect on WMATA's total daily transit ridership will be performed by WMATA and will be part of the evaluation of Proposals.

S. A statement identifying the past, current or anticipated contractual or financial relationship of any member of the Development Team (including but not limited to, the Developer, partners or co-venturers) with WMATA or any of its staff or Board Members. The Development Team must also disclose any contractual or financial relationship which may give the appearance of a conflict of interest.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

T. The following information about Developer's previous projects:

1. Illustrative materials on three recent successful projects of similar or comparable scope for which substantial financing was obtained.

2. The sources and amounts of debt and equity capital that were raised in previous projects.

U. A list of any projects on which the Developer, its parent company, or any member of the Development Team has defaulted or declared bankruptcy and an explanation of each default or bankruptcy.

V. Detailed information regarding any criminal indictments and felony or fraud convictions of the Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team.

W. A statement indicating whether the Developer is willing to include Disadvantaged Business Enterprises ("DBEs"), as defined in Section 6, in its Project. WMATA encourages Developers to include DBEs and will assist Developers in identifying such firms.

X. If the proposed Project consists of an assemblage of the WMATA Joint Development Site with adjacent property, a statement identifying the adjacent property ownership, and if the property owner and the Developer are not the same, an executed agreement between the property owner and the Developer defining the property owner's participation, if any, in the Project.

Y. Any other information to assist WMATA in its evaluation of the Proposal, including a statement of why WMATA should select the Developer and its Development Team.

2.4. Proposal Contents: Volume 2 – Economic Information

A. Table of Contents.

B. Executive Summary of economic information only.

C. The Developer's estimated fair market value of WMATA's land or interest, how the value was derived and the assumptions underlying the value.

D. If the proposed business relationship with WMATA is a Lease (the term must be specified and preferably will be 60 years):

1. A statement that the Developer will pay WMATA a non-refundable option fee of $100,000 for the right to negotiate a Development Agreement upon designation as Selected Developer and approval of the Term Sheet. This fee is separate and distinct from the other payments, deposits and fees which WMATA requires.

2. The amount and timing of pre-development rent to be paid to WMATA during the interval period after the Development Agreement is executed but before the Project produces income (include the estimated length of this period).

3. The guaranteed base rent to be paid to WMATA throughout the term of the lease, including escalations. The description of escalations must include the method used to calculate escalations, their timing, and the projected amount of each escalation.

4. The method of adjusting the base rent if it does not commence by the date projected and/or the final approved density is greater than that proposed.

WMATA expects that the present value of its financial return will not be diminished by delays in the development process.

5. How any environmental remediation costs will be handled.

6. WMATA's participating share of gross income from the Project.

7. WMATA's share of proceeds from a capital event such as an assignment of the leasehold interest, transfer of interest

FOIA CONFIEDENTIAL TREATMENT REQUESTED

in the Developer's business entity, refinancing or sale of the Project, or any other capital event after construction.

8. Identification of any additional payments to WMATA based upon factors chosen by the Developer.

9. Intentionally omitted

E. If the proposed business relationship with WMATA is a Sale:

1. A statement that the Developer will pay WMATA a non-refundable option fee of $100,000 for the right to negotiate a Development Agreement upon designation as Selected Developer and approval of the Term Sheet. This fee is separate and distinct from the purchase price and the other payments, deposits and fees WMATA requires.

2. The amount and timing of pre-development fees to be paid to WMATA during the interval period after the Development Agreement is executed but before WMATA realizes income from the sale (include the estimated length of this period).

3. The proposed purchase price for each portion of the Joint Development Site including:

a. The schedule of purchase price escalations if the sale is not completed by the date projected.

WMATA expects that the present value of its financial return will not be diminished by delays in the development process.

b. The method of adjusting the purchase price if the final approved density is greater than that proposed.

4. How any environmental remediation costs will be handled.

5. Proposed business arrangement under which WMATA will retain an interest in any development rights in excess of those used by the development constructed pursuant to the Proposal. Under such an arrangement, WMATA will receive payments over and above the purchase price if, upon subsequent redevelopment of the Joint Development Site within 25 years of closing, the redeveloped density is greater than the original density.

6. Identification of any additional payments to WMATA based upon factors chosen by the Developer.

F. A summary table of the sources (including debt, equity and other financing) and uses of funds to design and construct the Project.

G. A 15-year pre-development, construction and operating period cash flow statement which starts in October 2007. It should include each separate phase of development and land use type by phase and contain at a minimum:

1. The following assumptions:

Financing
Construction loan rate, term and amount
Permanent loan rate, term and amount
Loan-to-value ratio
Equity as a percentage of total construction costs
Revenues
Office rent ($/GSF and #GSF)
Retail rent ($/GSF and #GSF)
Residential ($/DU and #DU)
Parking
Other revenues
Construction Costs
Total hard costs
Total soft costs (also as a percentage of total hard costs)
Cost of improvements on a unit basis ($/FAR SF for office and retail, $/DU)
Cost per structured parking space
Cost per surface parking space
Land value per FAR SF
Ground rent to WMATA
Operating Costs
Operating Expenses (in $, $/GSF and as a percentage of revenues)

2. The following line items presented

FOIA CONFIEDENTIAL TREATMENT REQUESTED

as a pro forma on an annual basis:

Sources
Equity
Construction Financing
Permanent Financing
Other Financing
Total Financing
Revenues
Office
Residential
Retail
Parking
Other Revenues
Total Gross Revenues
Total Net Revenues (less vacancy)
Uses
WMATA Rent or Sales Price (as applicable)
Construction Costs
Soft - by line item
Hard - by line item
Total
Operating Expenses (all non-debt Operating Costs, e.g.: direct costs, G&A, taxes, legal, marketing, commissions, etc.)
Net Operating Income
Debt Service (including any fees or expenses associated with loans)
Net Cash Flow (defined as revenue less operating expenses, debt service and ground rent to WMATA if applicable)
Percentage Rent to WMATA
Distributions to Investors
Free Cash Flow
Returns
Developer's Internal Rate of Return
Return on Investment
Return on Equity

NOTE: The pro forma (and any budgets in other parts of the Proposal) should clearly show all of the fees and income that the Developer, its partners, and affiliates receive from the Project. Those line items should be taken from the pro forma and shown together on the spreadsheet as individual line items in a separate report. Annual replacement reserves (total, $/GSF and $/DU) should also be broken out and shown).

3. The analysis must be presented in current dollars with an annual escalation rate of 3%.

4. All financial models must be submitted to WMATA on disk as well as hard copy. All financial information must be linked in a single spreadsheet, and all files must be in Microsoft Excel and retain all cell relationships.

H. A detailed financial analysis, with assumptions given, of the Project's impact on the tax base of the local jurisdiction as follows:

1. Identification of the property taxes, sales taxes, amount of fees and contributions and other local public income.

I. Copies of Developer's balance sheets, income statements and sources and uses of funds statements for the past three fiscal years.

J. Statements regarding the Developer's financial creditworthiness and past development experience which can be verified, including the following:

The names and addresses of at least three commercial or institutional credit references and a letter authorizing each credit reference to respond to inquiries from WMATA. At least two of the references should be lending institutions.

2.5. Proposal Security

Each Proposal must be accompanied by Proposal Security in the amount of One Hundred Thousand Dollars ($100,000). (Alternative Proposals for the same Joint Development Site require only one Proposal Security.) Acceptable forms of Proposal Security include a proposal bond in the form set forth in ATTACHMENT B, a bank letter of credit in the form set forth in ATTACHMENT C, a cashier's check, certified check or money order. All Proposal Security must be drawn on a U.S. based national bank and contain the following:

At top of Proposal Security document, insert the name of the Joint Development Site _____.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005427

WMATA will hold all funds that can be deposited into a financial institution in an interest-bearing account, and interest will be paid on such funds. No later than 15 business days after the WMATA Board of Directors identifies and approves the Selected Developer for a specific Joint Development Site, the Proposal Security will be returned to all Developers other than the designated Selected Developer. WMATA shall retain the designated Selected Developer's Proposal Security until a Development Agreement is executed and provisions are made with respect to the disposition of the Proposal Security in the Development Agreement.

2.6. Alternative Proposals
A Developer may submit alternative Development Proposals for the Joint Development Site and its individual parcels.

2.7. Submission of Proposal
A complete Proposal shall include the items set forth in Section 2.3. and Section 2.4. and the requisite Proposal Security. On or before the Closing Date, one original and 15 copies of the Proposal (marked Proposal for Shaw Howard/Florida Avenue JDS) must be submitted in a sealed package, addressed and mailed or delivered in person to:

Mr.Nat Bottigheimer
Contracting Officer
Office of Property Development
and Management
Washington Metropolitan Area
Transit Authority
600 Fifth Street, NW
Washington, DC 20001

SECTION 3. PROPOSAL REVIEW, EVALUATION, DEVELOPER SELECTION AND POST DEVELOPER SELECTION PROCESS

3.1. Proposal Review Process
WMATA will review and evaluate Proposals as follows:

A. The Contracting Officer receives and processes all Proposals. Proposals that in WMATA's sole and non-reviewable discretion are deemed non-responsive or not reasonably susceptible of being selected for award will be rejected and returned to the Developer with a written explanation. Please note that any Proposal that does not satisfy the requirements for jurisdictional officials and community organization participation may be rejected as technically unacceptable and returned to the Developer. WMATA reserves the right to accept or reject any Proposal without negotiation or discussion.

B. The Contracting Officer designates an Evaluation Team composed of WMATA's Joint Development staff assisted by other WMATA staff, jurisdictional representative(s) and consultants, as appropriate. An analysis and evaluation of each Proposal deemed to be reasonably susceptible of being selected for award is conducted.

C. The Evaluation Team may meet with all or select Developers for both an oral presentation and specific discussions about a Proposal. If such meetings are held, details on the oral presentation will be provided as part of the scheduling process. Such discussions will include identifying areas of the Proposal that: require clarification or improvement including architectural and engineering designs and drawings, or do not comply with the JDS.

D. If requested by WMATA, Developers shall submit Final Proposals. The Final Proposal may be significantly changed from the Initial Proposal submitted. WMATA reserves the right to waive the Final Proposal submission requirement, to request further clarification of a Final Proposal, or to request a Revised Final Proposal.

E. The Evaluation Team will, in coordination with the Contracting Officer, rate each responsive Proposal, and rank it based upon the Proposal Evaluation Factors in Section 3.2. The Evaluation Team will then forward its ranking to the Contracting Officer, who will decide to tentatively designate a Selected Developer. The Joint Development project manager will commence negotiation of a Term Sheet. If negotiations are unsuccessful, the Joint Development staff, in coordination with the Contracting Officer, may terminate negotiations and commence negotiations with the second ranked Developer and

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those ranked thereafter, in order of ranking. Alternatively, the Joint Development staff may, in coordination with the Contracting Officer, decide upon competitive negotiations with two or more ranked Developers.

F. As soon as the principal business terms for the tentatively Selected Developer's Project have been reduced to a Term Sheet, the Contracting Officer submits a recommendation regarding the designation of a Selected Developer and approval of the Term Sheet to WMATA's Real Estate Committee and to the WMATA Board of Directors.

G. Designation of a Selected Developer must be approved by the WMATA Board of Directors.

3.2. Proposal Evaluation Factors

Each Proposal will be evaluated using FTA's requirements for "Highest and Best Use" or "Highest and Best Transit Use" (see www.fta.dot.gov/library/policy/9300.1A/appenB.htm) and the following criteria:

A. Technical Criteria

1. Degree to which the Project reflects Transit-Oriented Development principles;

2. The market viability of the Project;

3. The experience and prior performance of the Development Team;

4. The innovation and creativity of the Project;

5. The compatibility of the Project with local Transit-Oriented Development plans and land use policies; and

6. Benefits accruing to the local jurisdiction.

B. Economic Criteria

1. Financial benefits accruing to WMATA;

2. Financial viability of the Project; and

3. Enhanced ridership.

3.3. Post Developer Selection Process

A. A Developer designated by the WMATA Board of Directors as a Selected Developer will be required to send a letter to each of the community organizations with which its representatives met to inform them as to how the Proposal presented to WMATA addresses their issues or concerns. A copy of this letter must also be submitted to WMATA.

B. A Developer designated by the WMATA Board of Directors as a Selected Developer will be required to pay WMATA, in immediately available funds, a non-refundable option fee for WMATA's granting to the Selected Developer the exclusive right to negotiate a Development Agreement. The amount and timing of the non-refundable option fee shall be as set forth in the Proposal (or Final Proposal, as the case may be), in accordance with Section 2.4.

C. After WMATA's Board of Directors has designated a Selected Developer and approved the Term Sheet, WMATA staff, in coordination with the Contracting Officer, will negotiate with the Selected Developer a Development Agreement (and other necessary final documentation) that incorporates the provisions of the Term Sheet. Such Development Agreement shall be completed within 150 days following the WMATA Board's designation of the Selected Developer and approval of the Term Sheet.

In the event that this schedule is not met, the Selected Developer designation expires, the Proposal is no longer viable, and WMATA may retain the Proposal Security (in addition to the non-refundable option fee) in accordance with Section 5.2. WMATA may choose to reestablish the Selected Developer designation and provide a specific time frame to the Selected Developer for the completion of negotiations or to re-advertise the Joint Development Site.

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D. As soon as the Development Agreement (and related final documentation) is completed and executed by the Developer, the Contracting Officer submits a recommendation and summary of the final Development Agreement to WMATA's Real Estate Committee and to the WMATA Board of Directors for approval. There is no binding agreement between the Selected Developer and WMATA until such time as the WMATA Board of Directors has approved the final Development Agreement and the Development Agreement has been executed by the parties

3.4. Disclosure and Use of Data

WMATA is required to brief its Board of Directors on all aspects of a Proposal. The proposed business terms of a Proposal will be held in confidence only until the Development Agreement and all final documentation have been approved and executed. WMATA reserves the right to review the zoning and land use aspects of any Proposal with local zoning, land use planning, transportation and environmental officials (and in the State of Maryland, with state officials). Additionally, at the sole discretion of the WMATA Board of Directors, such review may include conducting public hearings, town meetings and similar public forums.

NOTE: WMATA's "Public Access to Records Policy" is available at MetroOpensDoors.com (click"About Metro," then click "Public access to records.")

SECTION 4. WMATA'S NONNEGOTIABLE REQUIREMENTS AND CONDITIONS

The following requirements and conditions are nonnegotiable and the concepts will be included in the Development Agreement and final documentation executed by the Selected Developer and WMATA. By submitting a Proposal in response to this JDS, a Developer is agreeing to accept and comply with these nonnegotiable requirements and conditions.

4.1. WMATA's Reserved Areas and Interests

The location of WMATA's Reserved Areas and Interests shall be determined by WMATA in its sole and absolute discretion. Additionally, the conveyance or lease of any WMATA property shall be subject to a reservation by WMATA of a permanent, exclusive and irrevocable easement for vertical and horizontal support and as otherwise necessary for the operation and maintenance of present and future WMATA Facilities, WMATA Improvements and WMATA Reserved Areas and Interests.

4.2. WMATA's Approval Rights and Adjacent Construction Requirements

The following rights and requirements apply to all Projects:

A. Approval Rights

WMATA shall have the right to approve in its sole and absolute discretion:

1. Matters that affect the integrity, functionality, efficiency, safety, operation, maintenance, legal compliance, cost or profitability of WMATA's business, customers, operations or activities;

2. Matters that affect WMATA Facilities, WMATA Replacement Facilities, WMATA Reserved Areas and Interests, ingress/egress to WMATA Facilities, etc.;

3. Matters that affect any of WMATA's adjacent property;

4. The design and construction of interim and permanent WMATA Replacement Facilities; and

5. Matters that affect the Selected Developer's obligations as they relate to timing (changes in Project schedule) and performance (changes in what will be constructed, i.e., the product mix).

B. WMATA's Comment Rights

WMATA shall have the right to comment on the development plan/site plan and on other matters concerning the Project which do not affect the integrity, functionality, efficiency, safety, operation or maintenance of WMATA Facilities, WMATA Improvements, or WMATA Reserved Areas and Interests. The Selected Developer shall be obligated to consider WMATA's comments and to respond reasonably.

C. WMATA's Construction Requirements

In order to avoid adverse impact on WMATA Facilities, Projects must be built in compliance with WMATA's adjacent construction criteria as

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005430

contained in WMATA's Adjacent Construction Design Manual, Revision I and as further revised, and WMATA's Manual of Design Criteria (Release 8), which are available by e-mailing tbushnaq@wmata.com. Additionally, Developers must comply with WMATA's requirements for the relocation and maintenance of operations during construction which include the uninterrupted and unimpeded operation of WMATA Facilities. WMATA will review and approve Developer plans in accordance with established WMATA procedures.

4.3. Relocation or Replacement of WMATA Facilities

Intentionally omitted.

4.4. Selected Developer's Funding of WMATA Compact Public Hearing

Intentionally omitted.

4.5. No Subordination of WMATA's Fee Interest

WMATA will not subordinate its fee interest in its property. In a lease situation, WMATA will permit lenders to have a leasehold security interest in the Project, which security interest would be subordinate to WMATA's right to terminate the lease upon a default by the Selected Developer (subject to the lender's right to cure).

4.6. Federal Transit Administration (FTA) Requirements

WMATA is subject to the requirements of the FTA. The terms of the Development Agreement negotiated with the Selected Developer, as it pertains to WMATA property, are subject to FTA approval. While FTA may impose additional requirements which cannot be known until FTA reviews a specific Project, FTA requires that the Selected Developer comply with certain laws and regulations barring discrimination on the basis of race, color, national origin or disabilities; and further requires compliance with FTA requirements regarding conflicts of interest and debarment.

FTA also requires, as a covenant running with the land, that the entire Joint Development Project constitute a Transit-Oriented Development as defined in the latest applicable FTA Regulations. See FTA Circular 9300.1A, Appendix B, The Relationship Between Joint Development and Livable Communities on the FTA web site at: www.fta.dot.gov/library/policy/IFT/iftb.html.

4.7. Americans With Disabilities Act (ADA)

All Projects shall be constructed in compliance with Titles II and III of the Americans with Disabilities Act, 42 USCA Section 12101, et seq., as amended, and any regulations promulgated thereunder. Proposals must include a plan indicating how access from the Project to the Metro station will be provided for persons with disabilities. Additionally, if a Project or any subsequent addition, modification or alteration triggers ADA-related improvements to the Metro station, the Selected Developer shall be responsible for the costs of such improvements. The only exceptions are when the ADA-related improvements predate the date of completion of the Project and are required to be made regardless of the Project, or constitute ADA-related improvements that WMATA is implementing at Metro stations in general as part of its system-wide improvements or alterations.

4.8. Direct Connections

Intentionally omitted

4.9. Davis-Bacon Act/Fair Labor Standards Act

The construction of any WMATA Replacement Facility or WMATA Improvement must be built in compliance with the Davis-Bacon Act, 40 USC Section 276a, et seq., and overtime compensation must be paid in compliance with Section 64 of the WMATA Compact, and the Fair Labor Standards Act, 29 USCA Section 201, et seq. (1978), as amended.

4.10. Other Laws, Regulations and Requirements

Developers are responsible for being fully informed of and complying with the requirements of applicable federal, State of Maryland, District of Columbia, Commonwealth of Virginia, and local jurisdictional laws and regulations. Additionally, the Selected Developer shall be responsible for obtaining, at its own cost and expense, all requisite approvals, licenses and permits.

4.11. WMATA's Indemnification Policy

The terms of any Development Agreement and final documentation will require that the Selected Developer and its contractors and subcontractors (and subtenants, where applicable) indemnify WMATA against all claims, liabilities and costs of whatsoever kind and nature including environmental claims which may be imposed upon, or incurred by, or

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asserted against WMATA in connection with the Selected Developer's performance under the Development Agreement or related agreements.

WMATA will accept responsibility for environmental claims of third parties if such claims arise from WMATA's actions prior to the transfer of the site to the Selected Developer.

4.12. WMATA's Insurance Requirements
The terms of any Development Agreement and final documentation will require that the Selected Developer, its contractors and subcontractors procure and maintain insurance coverage in amounts determined by WMATA, which may include, but is not limited to: General Liability, All Risk Property, Builder's Risk, Worker's Compensation, Automobile Liability, Contractors' Pollution Legal Liability, Railroad Protective Liability, Rental Value Insurance, Professional Errors and Omissions Liability and Boiler and Machinery (during operations only).

4.13. Payment, Performance and Completion Bonds
WMATA requires that the Selected Developer secure and file with WMATA a payment bond equal to 100% of the value of each phase of the Project from a federally approved surety company, with sufficient assets. The payment bond must name WMATA for the benefit of laborers, subcontractors, material suppliers and others that have or may have claims or liens against the Project or the realty.

WMATA also requires the Selected Developer to secure and file with WMATA a performance bond equal to 100% of the value of each construction phase of the Project from a federally approved surety company, with sufficient assets and which bond names WMATA for the completion of the planned construction in that phase.

Additionally, if there are WMATA Replacement Facilities being constructed, WMATA requires the Selected Developer to secure and file with WMATA a completion bond equal to 100% of the value of the WMATA Replacement Facilities from a federally approved surety company, with sufficient assets, and which bond names WMATA as the sole obligee for the completion of the Replacement Facilities.

All bonds must be in a form acceptable to WMATA and countersigned by a Commonwealth of Virginia, State of Maryland or District of Columbia resident agent of the surety, with a copy of the agent's license, as issued by the appropriate Insurance Commissioner.

4.14. WMATA's Disclaimer of Liability
WMATA disclaims all responsibility and liability for the completeness or accuracy of any information that it provides.

4.15. Inspection of Accounting Records
The Selected Developer will be required to permit WMATA, or any of its duly authorized representatives, at reasonable times and places, access to any books, documents, papers and records, including certified financial statements, which are directly pertinent to the Development Agreement. WMATA shall be permitted to audit, inspect, examine, copy and transcribe such books, documents, papers and records. The Selected Developer shall retain all records for three years after submission of any statement required for determining any variable payment obligations under the Development Agreement or related agreements.

4.16. WMATA's Tax Exempt Status
WMATA is tax exempt pursuant to the WMATA Compact. Any taxes, assessments or impositions on the Project or the real estate shall be assumed by the Selected Developer. In no event shall the Selected Developer assert or attempt to assert for its own benefit, an exemption or immunity available to WMATA under the WMATA Compact.

4.17. Financing Requirement
The Selected Developer shall be obligated to obtain the requisite financing to consummate the lease/sale of the WMATA Joint Development Site, and the development, construction and final completion of the Project by a reasonable date certain, or WMATA may terminate the Development Agreement.

SECTION 5. ADDITIONAL JOINT DEVELOPMENT REQUIREMENTS AND PROCEDURES

5.1. Assignment of Proposal, Change in Developer or Withdrawal of Developer
WMATA considers the designation of Selected Developer to be in the nature of a personal services contract. The Selected Developer will be designated because of its skills, experience, knowledge and financial standing.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

A Developer who submits a Proposal in response to this JDS may withdraw, assign its Proposal or change the composition of its Development Team only as follows:

A. Withdrawal of Proposal

At any time prior to designation of the Selected Developer, a Developer may elect to withdraw its Proposal. Under such circumstances, WMATA shall return the Proposal Security without interest.

B. Assignment of Proposal

At any time prior to designation of the Selected Developer, a Developer may request WMATA's approval to assign its Proposal to another development entity. No purported assignment is valid unless WMATA has given its prior written approval. The Developer and its proposed assignee shall submit all documents required by WMATA before the request will be considered. WMATA is under no obligation to approve the request. If WMATA refuses to grant approval, and the Developer does not want to proceed in accordance with its Proposal, WMATA will return the Proposal Security without interest. An assignment may be subject to the requirement of a Guaranty pursuant to Section 5.7.

C. Change in Composition of Developer or Development Team

1. Prior to designation of the Selected Developer, a Developer may change its composition or the composition of its Development Team only with WMATA's prior written approval. If WMATA does not approve the change, and the Developer does not want to proceed in accordance with its Proposal, WMATA will return the Proposal Security without interest.

2. After designation as the Selected Developer, the Selected Developer must request WMATA's written approval to change its composition or the composition of its Development Team. If WMATA does not approve the change, and the Selected Developer does not want to proceed in accordance with its Proposal, WMATA may terminate the Selected Developer designation and retain the Proposal Security.

D. Other Situations

An assignment or change in the composition of the Development Team which is not addressed above is at the sole discretion of WMATA's Contracting Officer. For any such assignment or change to be valid, WMATA's prior written approval is required. Any purported assignment occurring without WMATA's prior written approval shall be void.

5.2. Termination of Selected Developer Designation

WMATA may terminate the Selected Developer designation for any of the following reasons and retain the Proposal Security and any other deposit held by WMATA (except as stated otherwise in subsections I and J):

A. The Selected Developer fails to negotiate and execute the Development Agreement within 150 days following the designation of the Selected Developer and approval of the Term Sheet by the WMATA Board of Directors..

In the event that the foregoing schedule is not met, WMATA may terminate the designation of the Selected Developer and retain the Proposal Security without any liability or further obligation to the Selected Developer. The foregoing deadlines can only be extended by action of the WMATA Board of Directors in its sole and non-reviewable discretion.

B. The Selected Developer or any individual or entity holding ownership in or comprising the Development Team declares bankruptcy.

C. The ownership structure of the Selected Developer changes without WMATA's prior written approval. Structural changes include changes in percentages of ownership interests or changes in ownership of any entity holding an ownership interest in the Selected Developer.

D. The Selected Developer assigns its designation or transfers its rights in a WMATA Joint Development Site without WMATA's prior written approval.

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E. The Selected Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team is indicted for, or convicted of, a fraud or a felony.

F. The Selected Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team is found not to have a satisfactory record of integrity and business ethics, in WMATA's sole and non-reviewable discretion.

G. The Selected Developer provided materially incorrect or incomplete information in any of its submissions to WMATA, as determined in WMATA's sole and non-reviewable discretion.

H. The Selected Developer does not comply with this JDS, its Proposal or the terms of the Development Agreement as negotiated by the parties.

I. In accordance with Section 5.5, the Selected Developer conducts environmental due diligence and consequently modifies its Proposal in a manner which is unacceptable to WMATA. Under such circumstances, WMATA shall return the Proposal Security with any interest that may have accrued, less site restoration costs actually incurred by WMATA.

J. WMATA determines (in its sole and non-reviewable discretion) that termination is in its best interest. Under such circumstances, WMATA shall return the Proposal Security with any interest that may have accrued.

5.3. Metro Station Access Roads and Interior Maintenance Roads

Intentionally omitted.

5.4. Developer's Research Obligations

A Developer is expected to know all information reasonably ascertainable concerning the site size, and character, quality, and quantity of surface and subsurface materials or obstacles on the Joint Development Site as well as the existing utilities on the Joint Development Site. Some of this information is available from a visual inspection of the Joint Development Site and may be available from technical drawings and specifications (as built drawings) which WMATA will make available upon request, utility companies serving the area and local land records. WMATA disclaims all responsibility and liability for the completeness or accuracy of any information it provides. All Joint Development Sites are subject to existing physical and legal conditions, whether of record or not.

Additionally, a Developer is expected to know the conditions affecting construction on the Joint Development Site, which include but are not restricted to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, the topography and conditions of the ground, and the character of equipment and facilities needed before and during prosecution of the work.

5.5. Environmental Matters

WMATA has undertaken no comprehensive environmental investigations of the presence or absence of contaminated material or other environmental conditions that may affect development except as specifically identified. Interested Developers may request permission to perform a due diligence environmental site assessment prior to Proposal submission, after Proposal submission or after designation as the Selected Developer. Such due diligence site assessment and all associated costs shall be the sole responsibility of the Developer. Permission will be granted by WMATA subject to the execution of a Right of Entry Agreement with standard insurance and indemnity provisions. A sample Right of Entry Agreement is available from rdoggett@wmata.com.

WMATA shall be provided, in a timely manner, a copy of each test result and report addressing the environmental site investigation. If environmental contamination is found that requires a clean-up or remediation of the Joint Development Site under a governmental regulatory agency's review, the Developer may withdraw its Proposal (including its Final Proposal) but is responsible for site restoration costs. In the event that the due diligence environmental site assessment is performed after the designation of the Selected Developer, but prior to the execution of the Development Agreement, the Selected Developer and WMATA may negotiate the transaction based

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upon the levels of contaminated materials or other environmental conditions encountered which would substantially delay development or substantially increase the costs of excavation, removal or disposal of soil/materials, or the treatment of groundwater. If the parties cannot agree upon the resolution of these issues the Selected Developer may withdraw its Proposal but the Developer is responsible for site restoration costs, and WMATA has the corresponding right to terminate the Selected Developer designation in accordance with Section 5.2.I.

5.6. Protest Policy
The policy and procedure for the administrative resolution of protests involving the designation of a Selected Developer arising pursuant to this JDS are as follows:

A. Only an Interested Party may submit a protest. An Interested Party is defined as a Developer who submitted a Proposal pursuant to this JDS.

B. Protests must be submitted no later than 30 calendar days after WMATA's designation of the Selected Developer. Any protest submitted subsequent to this time may be deemed by WMATA's Contracting Officer to be untimely and denied on that basis unless the Contracting Officer concludes that the issue(s) raised by the protest involves fraud, gross abuse of the selection process, or otherwise indicates substantial prejudice to the integrity of the selection process.

C. The Interested Party wishing to file a protest shall submit a written document to WMATA's Contracting Officer which contains the following:

1. The name and address of the Interested Party;

2. Description of the nature of the protest;

3 Identification of the provision(s) of this JDS, applicable Joint Development Policies and Guidelines or laws upon which the protest is based;

4. A statement of the specific relief requested; and

5. Any documents relevant to the protest.

D. WMATA's Contracting Officer shall carefully review the protest in consultation with WMATA staff. At the discretion of the Contracting Officer, a conference may be held with the Interested Party. The Contracting Officer shall have 30 calendar days to render a written decision on the merits of the protest. A determination by the Contracting Officer that a protest is meritorious may result in a change in the terms, conditions or format of this JDS in the form of an Amendment; the rejection of a Proposal; the cancellation of this JDS; or the termination of the designated Selected Developer.

E. This Protest Policy is not applicable to actions taken by WMATA in response to legal proceedings filed in the courts, or actions taken by WMATA in its sole and non-reviewable discretion.

5.7 Guaranty
WMATA may require a third party to guarantee some or all of the obligations of the Selected Developer, including but not limited to construction obligations.

SECTION 6: DEFINITIONS

Contracting Officer
WMATA's Assistant General Manager for Planning and Joint Development, or, if such position is vacant at the time in question, the person designated to act in such capacity at such time.

Developer(s)
The entity submitting or contemplating the submission of a Proposal in response to this Joint Development Solicitation (JDS). The Developer may be any qualified individual or entity with real estate development-related experience and access to financing sufficient to undertake the proposed Project, including real estate brokers, non-profit organizations, public agencies, etc. Real estate brokers are invited to participate as the Developer or as a member of the Development Team as opposed to participating in a purely marketing role. WMATA will not pay any broker's commissions.

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Development Agreement
The legal document (lease, sales contract, combination lease/sale, master development agreement or other agreement) that constitutes the contract between WMATA and the Selected Developer.

Development Team
The Developer and the principal persons and/or entities (including officers, directors, partners, members, managers or the equivalent of such persons and/or entities) identified by the Developer as the participants in the Project.

Disadvantaged Business Enterprise (DBE)
For the purpose of Joint Development Projects, a DBE is a for-profit, small business concern that is owned and controlled (at least 51%) by one or more socially and economically disadvantaged persons. Socially and economically disadvantaged persons are persons who are citizens of the United States (or lawfully admitted permanent residents), and who are either:

A. Black Americans (meaning persons having origin in any of the Black racial groups of Africa);

B. Hispanic Americans (meaning persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portugese culture or origin, regardless of race);

C. Native Americans (meaning persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians);

D. Asian-Pacific Americans (meaning persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong);

E. Subcontinent Asian American (meaning persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldive Islands, Nepal or Sri Lanka); or

F. Women.

Evaluation Team
WMATA staff assigned by the Contracting Officer to analyze the Proposals and make recommendations.

Federal Transit Administration (FTA)
The federal agency within the U.S. Department of Transportation which administers the federal rules and regulations governing joint development programs and oversees other aspects of real property purchased with federal funds for transit purposes.

Final Proposal
If requested by WMATA, the final document or compilation of documents submitted by the Developer for analysis before the Evaluation Team makes its recommendation. See definition of Proposal.

Initial Proposal
The initial document or compilation of documents submitted by the Developer in response to this JDS. See definition of Proposal.

Joint Development
A creative program through which property interests owned and/or controlled by WMATA are marketed to office, retail/commercial, recreational/entertainment and residential developers with the objective of developing Transit-Oriented Development projects. See definition of Transit-Oriented Development.

Joint Development Policies and Guidelines
The procedures approved by the WMATA Board of Directors which govern the Joint Development Program and are included as Attachment D to this JDS.

Joint Development Project
The development ideas, concepts and plans that a Developer presents in its Proposal. Also refers to the development plans of the Selected Developer.

Joint Development Site(s)
The property areas and interests identified in this JDS.

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Joint Development Work Program
A document prepared annually of Joint Development opportunities associated with WMATA-owned properties. The Joint Development Work Program is drafted in coordination with the local jurisdictions and approved by the WMATA Board of Directors.

Project
The joint development ideas, concepts and plans that a Developer presents in its Proposal. Also refers to the development plans of the Selected Developer. Project is synonymous with Joint Development Project.

Proposal(s)
The development-related documents submitted in response to this Joint Development Solicitation (JDS). The term Proposal can include both the Initial Proposal and, if requested by WMATA, the Final Proposal.

Selected Developer
The Developer with the exclusive right to negotiate a Development Agreement with WMATA. WMATA's designation of the Selected Developer shall not become final and binding until a Development Agreement has been negotiated and executed by the parties.

Term Sheet
The nonbinding document which summarizes the development concept, financial structure and other major business terms of the Project.

Transit-Oriented Development
Those projects that integrate WMATA's transit facilities, reduce automobile dependency, increase pedestrian/bicycle originated transit trips, foster safe station areas, enhance surrounding area connections to transit stations, provide mixed use including housing and the opportunity to obtain goods and services near transit stations, offer active public spaces and promote and enhance ridership and sound growth in the communities which WMATA serves. See also FTA's definition at www.fta.dot.gov/library/policy/IFT/iftb.html.

WMATA Compact
Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as may be amended.

WMATA Facility
Any improvements, structures, infrastructure components, tangible property and/or areas required, in the judgment of WMATA, for the use, operation, access, maintenance, repair, servicing, replacement or removal of structures and supports, any and all access, parking, operation and service facilities and areas relating to WMATA's operations or activities, including without limitation, the Metro station, tunnels, rails, tracks, bus stations, bus transfer areas, supervision kiosks, employee bathrooms, electric substations, conduits and lines, communications equipment and structures, pedestrian ways, waiting and shelter areas, facilities serving persons with disabilities, cooling towers, chiller plants, vent and fan shafts, bicycle rack and locker areas, storm water management facilities, landscaping, lighting and all other associated facilities.

WMATA Improvement(s)
Those improvements, whether an interim replacement facility or a new facility, which will be designed and/or constructed by the Selected Developer for WMATA in a configuration acceptable to WMATA. Upon final acceptance by WMATA, a WMATA Improvement will become a WMATA Facility.

WMATA Replacement Facility
A WMATA Improvement designed and/or constructed by the Selected Developer for WMATA in a configuration acceptable to WMATA that replaces any displaced or disrupted WMATA Facility which will be turned over to WMATA.

WMATA Reserved Areas and Interests
Includes (a) all areas of, within or adjacent to the Joint Development Site containing any WMATA Facility; (b) all areas of, within or adjacent to the Joint Development Site relating to the use, operation, access, maintenance, repair, servicing, replacement or removal of any WMATA Facility; and (c) any and all easements and other reserved rights required by WMATA in connection with its use, operation, access, maintenance, repair, servicing, replacement or removal of any WMATA Facility or WMATA operations and business generally, whether expressly provided for or reasonably contemplated. Such easements and other reserved rights shall include, without limitation, easements and reserved rights (whether at, above or

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below ground level) for (i) the construction, operation, maintenance, repair, replacement, removal or relocation of any and all existing tunnels and related facilities, (ii) all WMATA Facilities (including, without limitation, any replacement facilities) which have piling or other structural support within or adjacent to the Joint Development Site, (iii) any and all service facilities serving such tunnels or any WMATA Facility, (iv) all underground power lines and other utilities, (v) horizontal and vertical support for all WMATA Facilities in, on and about the WMATA Joint Development Site, including without limitation, structures, equipment or installations such as foundations, beams, columns, bracing and similar structural features which maintain vertical and horizontal support and are necessary for the maintenance, operation and protection of any WMATA Facility and (vi) protections and approval rights satisfactory to WMATA in its sole and unreviewable discretion with respect to limits on loads and pressures which may affect any WMATA Facility, whether vertical or lateral.

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Execution Copy

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, and dated as of the date last executed below, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

1. Parties

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC ("Banneker"), together with District Development Group, LLC ("DDG") and Metropolis Development Company LLC ("Metropolis"), will form a limited liability company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or another name as determined by Banneker, DDG and Metropolis (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, except for any equity partners that the DEVELOPER needs to provide financing for the Project, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, such consent not to be unreasonably withheld, with the terms of such consent to be provided in the Definitive Agreement.

2. Definitive Agreement

The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within five months of Board Term Sheet approval, will be a Joint Development Agreement ("JDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement or the start of construction of the Project.

3. Property to Be Leased by Developer

WMATA will lease to DEVELOPER approximately 28, 892 sf of land area outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31. The Leased Premises shall not include those property interests necessary for protection of WMATA's Transit Facilities.

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4. **Project**
DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47 below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. **Due Diligence**
5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide knowledge-qualified representations customarily made by WMATA in transactions of this type, including with respect to title to the Leased Premises and the environmental history or condition of the property. Subject to the continued accuracy of such representations, and subject further to DEVELOPER'S Study Period rights as provided herein and satisfaction or waiver by DEVELOPER of all conditions precedent herein provided, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right-of-Entry Permit for entry into the Leased Premises, substantially in the form attached hereto as **Exhibit C**. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit or the Proposal Security (as defined below), as applicable, and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

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6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00), (the "Security Deposit") to secure DEVELOPER's performance. The Security Deposit will replace the $100,000 Proposal Security.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if DEVELOPER shall be in default under the Definitive Agreement beyond applicable notice, cure and grace periods therein provided. In such event, the Security Deposit may be applied by WMATA in whole or in part to cure such default. No such application of the Security Deposit shall constitute a waiver of any such default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.4 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance (not to be unreasonably withheld, delayed or conditioned) by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

6.5 WMATA shall return the Security Deposit plus interest to DEVELOPER within twenty (20) business days of its receipt of a copy of the Certificate of Occupancy for the Project.

7. Consideration

7.1 Option Fee: DEVELOPER will pay WMATA $100,000 (the "Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet and written notification to the DEVELOPER by WMATA of such approval. The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be non-refundable.

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement or forty-five (45) months after WMATA Board approval and execution of the

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Definitive Agreement (the "Pre-stabilization Period"). Pre-stabilization Rent, for the first fifteen (15) months, will be $100,000 per year payable in advance in quarterly instalments of $25,000. Pre-stabilization Rent will increase to $115,000.00 per year for the next twelve (12) months. For the remaining Pre-stabilization Period, rent shall be $130,000.00 per year.

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a penalty payment, the amount of which to be determined in the Definitive Agreement. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly, payable in advance in quarterly instalments of one-quarter of the Initial Base Rent. In no event shall the Initial Base Rent (for a full year) be less than Five Hundred and Ninety-Seven Thousand and No/100 Dollars ($597,000.00). After the Initial Base Rent payment, Base Rent will be due annually, in quarterly instalments, beginning on the first business day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent multiplied by 1.5% for that year (the "Initial Escalation Factor").

7.3.2 For the second through tenth years of Base Rent payments, subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of Base Rent payments and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project

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land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.5 DEVELOPER shall lease the Leased Premises for a period of sixty (60) years (the "Lease Period"). The Definitive Agreement will provide a mechanism by which Developer may request an extension of the Lease Period, subject to completion of a written agreement between the parties and approval, if necessary, by WMATA's Board of Directors.

7.4 Capital Event Participation: Capital Events (defined hereinbelow) shall be permitted in accordance with this Section 7.4. Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital Event" include any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of DEVELOPER's Improvements, (iii) other dispositions, transfers, and conversions that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event. The Parties agree that Non-Capital Events, which will require WMATA approval, but not WMATA monetary participation, also exist and will be defined in the Definitive Agreement. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Capital Event.

7.5 Periodic Rent Revaluation: Upon a Capital Event or every ten years, whichever is earlier, the Base Rent will be adjusted to 7 % of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Periodic Rent Revaluation.

7.6 WMATA Improvements: intentionally omitted

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7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within five months following Board Term Sheet Approval (as provided in Section 2 above), WMATA will refund DEVELOPER's full Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER within twenty (20) business days.

7.8 WMATA Delays: The maximum length of 45months for the Pre-stabilization Period will be extended, on a day-for-day basis, for delays caused by WMATA actions or failure to act, including obtaining FTA Approval in accordance with Section 8.5 below and . In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, even though DEVELOPER's schedule may take longer than anticipated.

7.9 Force Majeure Delays: The maximum length of 45 months for the Pre-stabilization Period may be extended, subject to an increase in the rental payments due in order to maintain the net present value of the Definitive Agreement to WMATA, for any delays caused by acts of God, terrorism, casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement.

7.10 Changes to Project: Changes to Project, which increase Project density may be requested by the Developer, subject to the terms and conditions for such changes to the Project as may be required by WMATA in the Definitive Agreement. Such terms and conditions will require increases in rent or other compensation to WMATA.

7.11 Additional Density:

7.11.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf (subject to true-up of 3% per year from the execution of the Definitive Agreement) of additional density and multiplying the product derived (Project land value) by 7%.

7.11.2 During the term of the Lease, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those originally shown in the Approved Site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above, with such additional Base Rent including the incremental increase associated with any actually constructed DEVELOPER Improvements.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005444

8. Conditions to Definitive Agreement Consummation

If each of the following conditions is not satisfied within the timeframes provided below therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

8.6 Financing Contingency: Developer shall have received a commitment for construction financing from a bank or other lending institution in such amounts, and upon such terms and conditions, as shall be consistent with the approved development budget for the Project and as shall otherwise be reasonably satisfactory to Developer and WMATA.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

9. Special Considerations

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area as specified by WMATA,to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the applicable District agency or agencies a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

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9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS—2007 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten (10) calendar days prior to commencement of construction of the DEVELOPER Improvements.

9.7 Interim Improvements: intentionally omitted

9.8 Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin. The adequacy of security and need for this Guarantee to be further discussed in Definitive Agreement.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law, which can be found at 72 FR 5788.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005447

9.10 Transit Operations: Neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to WMATA Transit Facilities located under the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005448

12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

Agreed this 17th day of July, 2008, by

Washington Metropolitan Area Transit Authority

By: Joel R. Washington

Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

Title: Principal

FOIA CONFIEDENTIAL TREATMENT REQUESTED

District of Columbia Housing Finance Agency
815 Florida Avenue, NW Washington, DC 20001-3017

December 13, 2007

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005

Re: Letter of Interest as part of WMATA Joint Development Solicitation
Development of three parcels on Florida Avenue, NW
Tax Exempt Bond and Low Income Housing Tax Credit Financing

Dear Mr. Karim:

The District of Columbia Housing Finance Agency ("DCHFA" or the "Agency") has reviewed your response to the Washington Metropolitan Transit Authority Joint Development Solicitation (the "Proposal Response") to redevelop the above referenced parcels (the "Project") in the Shaw neighborhood of Washington, DC (the "District").

The Agency has a strong interest in participating in the financing of the redevelopment of over 18,000 square feet of currently vacant parcels. Your proposal to develop the site into a quality mixed-use residential and retail development (aptly called The Jazz @ Florida Avenue) is consistent with the Agency's strategic objective of encouraging the development of affordable housing in vibrant mixed income and mixed-use developments. Moreover, with the proximity of the Project located directly across the street from the Agency, we are enthusiastic to partner with you to develop this site.

According to the Proposal Response, which appears to be consistent with the requirements of your Joint Development Solicitation, your proposal is as follows:

- Redevelop the site, in a mixed-use platform, into 103 high quality units of mixed-income rental housing which will be built over 11,700 square feet of ground floor retail space.
- Make 20% of the units affordable to individuals or families who earn up to 50% of the area median income (AMI).
- Partner with District Development Group and Donatelli Development, both respected developers in the redevelopment of the site.
- Include neighborhood serving retail uses including cultural and arts space.

Phone: 202-777-1600 Fax: 202-986-6705 www.dchfa.org

- Finance the $36 million development with an allocation of tax exempt bonds, equity from the sale of 4% low income housing tax credits (LIHTCs), institutional equity and possibly secondary permanent financing from the District of Columbia Department of Housing and Community Development (DHCD).

Although this letter does not represent a financing commitment from DCHFA, it does represent the Agency's strong interest in financing the subject project. Based on our current and projected bond volume cap for multifamily housing, DCHFA will be able to allocate tax exempt and/or taxable bonds and 4% LIHTCs to the Project. The final allocation of bond volume cap and low income housing tax credits will depend on the final build out, tenant mix and the resultant eligible basis of the Project.

We eagerly await your submission of a formal application for financing and are looking forward to working with you to bring this much needed and exciting project to fruition.

Sincerely,

Anthony L. Waddell
Director, Public Finance

cc: Mr. Harry D. Sewell
Mr. Cedric M. Brown
General Counsel's Office
LOI File

JIM GRAHAM
COUNCILMEMBER, WARD ONE
COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

WASHINGTON DC
THE AMERICAN EXPERIENCE

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Chairperson
Committee on
Public Works and Transportation

Member
Board of Directors, Washington
Metropolitan Area Transit Authority

May 10, 2010

A. Scott Bolden, Attorney
Reed Smith LLP
1301 K Street, NW
Suite 1100 – East Tower
Washington, DC 20005

CONFIDENTIAL

Dear Mr. Bolden:

I reject as wholly groundless the accusations made in your letter, on behalf of Banneker Ventures, LLC, dated April 27, 2010. I am now asking the DC Attorney General for his review and action on this matter.

Sincerely,

CC: Peter Nickles
Peter Benjamin
Carol O'Keeffe
Richard Sarles

Attachments to Mr. Nickles only

JG/ml

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ReedSmith

A. Scott Bolden
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reedsmith.com

April 27, 2010

CONFIDENTIAL

VIA OVERNIGHT MAIL AND E-MAIL

Richard Sarles
Interim General Manager
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

-and-

Peter Benjamin
Chair, Board of Directors
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

Re: Status of Banneker Ventures Term Sheet and Award of Jazz at Florida Avenue Project

Dear Messrs. Sarles and Benjamin:

We represent Banneker Ventures, LLC ("Banneker") and write to address the status of the Washington Metropolitan Area Transit Authority ("WMATA") Board of Directors ("Board") approval of the Banneker Term Sheet for the joint development project known as the "Jazz at Florida Avenue Project" (the "Project"). We received a letter today from Steven Goldin, Director Office of Station Area Planning & Asset Management, WMATA confirming that the WMATA Joint Development and Real Estate Committee had moved to extend Banneker's exclusive negotiation period to July 30, 2010, but noting that The WMATA Board had voted unanimously, without explanation or rationale, "to table" *indefinitely* any further consideration of Banneker's timely-submitted, amended Term Sheet. WMATA's attempt to provide itself an opportunity to begin negotiations with other developers, besides Banneker, during the exclusive negotiation period, without the Board ever considering or rejecting the amended Term Sheet as required by the Joint Development Solicitation, is outrageous and unlawful.

Below, we provide: (I) a background summary of the Project; (II) Banneker's responses to alleged WMATA Board concerns; (III) Banneker's allegations of inappropriate conduct by WMATA Board Member, Joint Development & Real Estate Committee ("Committee") Chair Jim Graham; and (IV) Banneker's request for immediate WMATA Board approval and award of the Project.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ReedSmith

I. BACKGROUND

On May 31, 2007, Banneker submitted its Response to the Opportunity to Compete Against an Unsolicited Proposal for the redevelopment of WMATA-owned parcels located at Shaw-Howard/Florida Avenue to Gary Malasky, Contracting Officer, Office of Property Development and Management, WMATA. In preparing the proposal, Banneker assembled a team, which included Torti Gallas & Partners, Inc., an architectural company with previous experience working on WMATA joint development projects, and District Development Group, LLC, who would serve as co-developer for the Project.

On August 24, 2007, WMATA issued a Joint Development Solicitation ("JDS") for the joint development of real estate at the Shaw-Howard/Florida Avenue Joint Development Site (the "Site"). See Attachment 1, Joint Development Solicitation, Shaw-Howard/Florida Avenue Joint Development Site: Proposal Submission Requirements, August 24, 2007. According to the JDS, proposals were due on October 5, 2007.

On September 18, 2007, Myla Moss, Advisory Neighborhood Commission ("ANC") Commissioner, ANC 1B01, held a Town Hall meeting to allow the WMATA short-listed development teams to present their vision for redeveloping the Shaw-Howard/Florida Avenue site. According to Ms. Moss' letter to Nat Bottigheimer, Contracting Officer, Office of Property Development and Management, WMATA dated October 4, 2007, only the Banneker proposal responded to all the express needs and desires of the community. See Attachment 2, Letter from Myla Moss, Commissioner, ANC 1B01 to Nat Bottigheimer, WMATA, dated October 4, 2007. Accordingly, Ms. Moss' letter supported Banneker to receive the WMATA contract to perform the Project.

On October 5, 2007, Banneker responded to the JDS and submitted a proposal to WMATA after assembling a team of development and investment partners, which included: (1) Banneker (Developer); (2) District Development Group, LLC (Co-Developer); (3) Donatelli Development Inc. (Co-Developer); (4) Torti Gallas & Partners, Inc. (Project Architect); (5) MacFarlane Partners (Equity Partner); and (6) Tompkins Builders (General Contractor).

On December 17, 2007, Banneker presented the Project to WMATA to demonstrate their capability and commitment to developing the WMATA-owned parcels at the Shaw-Howard/Florida Avenue site. See Attachment 3, Banneker Presentation to WMATA, The Jazz at Florida Avenue, December 17, 2007.

On February 29, 2008, Rosalyn Doggett called Omar Karim and informed him that WMATA had designated Banneker as the Selected Developer of the Site. Over the next several weeks, WMATA and the Banneker-led team negotiated a Term Sheet resulting in a final version of the Term Sheet on March 18, 2008. During these negotiations, Ms. Doggett informed Mr. Karim that WMATA's Board should approve the Joint Development Agreement ("JDA") and resulting lease agreement with the Banneker-led team by October 2008.

In early April 2008, WMATA staff requested that the WMATA Board approve the Term Sheet previously agreed to by the parties and the selection of Banneker to perform the Project. Later that month, on April 17, 2008, Rosalyn Doggett contacted Omar Karim to inform him that WMATA Board Member Jim Graham raised issues regarding the participation of then Banneker principal Warren Williams, Jr. in the Project. Ms. Doggett recommended that Banneker respond to the issues raised by Jim Graham in a written submission to WMATA.

More specifically, Ms. Doggett suggested that Banneker's written submission state that Mr. Williams would not participate in the WMATA deal, if Banneker's selection was approved by the WMATA Board. By letter dated April 23, 2008, Banneker wrote WMATA to address the concerns raised by Mr. Graham. See Attachment 4, Letter from Omar Karim, Banneker to Rosalyn Doggett, WMATA dated April 23, 2008.

On April 24, 2008, during the monthly meeting conducted by the Committee, Mr. Graham requested that Banneker's designation as the Selected Developer of the Site be discussed in Executive Session of the Committee. Following the closed door meeting, the Committee reconvened in public and Mr. Graham moved to defer the WMATA Board approval of Banneker to serve as the Florida Avenue Developer and approval of the Term Sheet for a period of not less than 60 days. See Attachment 5, WMATA, Minutes of Planning, Development and Real Estate Committee, April 24, 2008.

By letter dated May 9, 2008, Banneker wrote WMATA to respond to further questions raised by Jim Graham regarding alleged obligations due the District of Columbia by Mr. Williams. See Attachment 6, Letter from Omar Karim, Banneker to Joel Washington, WMATA dated May 9, 2008. The letter clarified that Mr. Williams did not have any outstanding financial obligations due to the District in either his personal or corporate capacities.

In June 2008, WMATA staff again requested that the WMATA Board approve the Term Sheet previously agreed to by the parties and the selection of Banneker to perform the Project. On June 26, 2008, during a meeting of the Committee, Mr. Graham once again requested that the Committee discuss approval of Banneker's selection in Executive Session. See Attachment 7, WMATA, Board Agenda Review as of June 3, 2008. Following the Executive Session, the matter was eventually brought before the Committee in a public meeting during which the Committee approved both Banneker's selection as the Selected Developer and the Term Sheet over Mr. Graham's objections.

Following the June 26, 2008 Committee meeting, the WMATA Board reconvened later that day to review and vote on matters that had been approved by the various Board committees. During the full meeting of the Board, Mr. Graham approached and met briefly with Mr. Karim while he was in the audience. Mr. Graham informed Mr. Karim that he would vote for Banneker's selection to perform the Project, but that Mr. Karim needed to meet with him to discuss the Project.

On or about July 2, 2008, Mr. Graham and Mr. Karim met at Mr. Graham's Council of the District of Columbia office and then again at a restaurant to discuss the Project. During these meetings, Mr. Graham informed Mr. Karim that he wanted the Project to set aside 20% of its residential units as affordable housing. Mr. Graham also strongly suggested that Banneker add LaKritz Adler, a small,

local real estate firm, to its development team for the Project or purchase their interest in an adjacent property that LaKritz Adler was controlling at the time. LaKritz Adler and its principals contributed significantly to Mr. Graham's District of Columbia Council re-election campaign. Ultimately, Banneker chose not to add LaKritz Adler to its development team.

On or about July 25, 2008, WMATA and Banneker participated in the Project kick-off meeting. At this meeting, Banneker provided WMATA with an executed copy of the Term Sheet and paid the $100,000 Option Fee as required by the JDS.

From July 2008 through March 2009, the parties engaged in continuous negotiations to enter into a finalized JDA.

In January 2009, Mr. Graham became Chairman of the WMATA Board. During his entire tenure as a WMATA Board Member and Chairman, Mr. Graham has injected himself into the day-to-day management of WMATA operations and has exceeded the scope of his duties as a WMATA Board Member. For example, in July 2009, Mr. Graham took it upon himself to contact the independent appraiser, who had been hired by WMATA staff to appraise the value of the Site, before the appraiser had submitted its appraisal report.

On March 6, 2009, Banneker provided WMATA with a letter from Banc of America Community Development Corporation ("Banc of America"). See Attachment 8, E-mail correspondence from Omar Karim, Banneker to Emeka Moneme, WMATA sent on March 6, 2009 at 3:00PM. Banc of America agreed to become a Co-Developer of and provide direct equity investment into the Project.

On April 23, 2009, WMATA's Board approved a one hundred twenty (120) day extension of the negotiation period between WMATA and Banneker regarding the Project. See Attachment 9, Letter from Emeka Moneme, WMATA to Leila Edwards, District of Columbia Department of Housing and Community Development, dated June 1, 2009.

By e-mail sent on May 29, 2009, WMATA informed Banneker that a possible JDA was imminent. However, WMATA indicated that it could not finalize the JDA until an outside appraisal of the deal was conducted by an independent contractor. See Attachment 10, E-mail correspondence from Rosalyn Doggett, WMATA to Omar Karim, Banneker sent on May 29, 2009 at 4:53PM.

From August 2009 through October 2009, WMATA proposed to change the Project from a lease agreement to a purchase agreement, whereby Banneker would own the property.

On or about September 10, 2009, WMATA staff requested another extension of the negotiation period with Banneker and the WMATA Board approved the extension.

On October 22, 2009, Mr. Graham met with Mr. Karim and Banneker's Chief Financial Officer ("CFO") to discuss the Project. Mr. Graham told both Mr. Karim and Banneker's CFO that the "firm should not have bid on the WMATA project" and that he "won't allow the sale of the WMATA-owned parcels located at Shaw-Howard/Florida Avenue." Mr. Karim told Mr. Graham that Banc of America

preferred a sale, and had spent the past few months underwriting the Project as a sale. Mr. Graham told Mr. Karim that Banneker could get a new joint venture partner to facilitate the lease of the WMATA-owned parcels.

Moreover, Mr. Graham also told Mr. Karim that he would ensure that the Project would not get delayed if Mr. Karim agreed to change the Project from a sale of property to a lease. Mr. Karim agreed with Mr. Graham's request to change the Project back to a lease agreement. Later that day, Mr. Karim had several telephone conversations with John Catoe, Jr., the then-WMATA General Manager and Mr. Graham to discuss the terms of the lease.

By e-mail correspondence sent on October 22, 2009 from Steven Goldin, WMATA's Director of Station Area Planning & Asset Management, WMATA informed Banneker that "per direction from our Board, we are proceeding with preparing a Term Sheet for the lease of our property. The matter is to be taken up by the full Board in a special meeting in two weeks." See Attachment 11, E-mail correspondence from Steven Goldin, WMATA to Omar Karim, Banneker sent on October 22, 2009 at 3:08PM.

On or about November 16, 2009, WMATA staff submitted the parties' revised Term Sheet to the WMATA Board for approval. See Attachment 12, E-mail correspondence from Rosalyn Doggett, WMATA to Omar Karim, Banneker sent on November 16, 2009 at 8:54AM.

By e-mail correspondence sent on November 19, 2009, WMATA informed Banneker that the WMATA Board discussed the Term Sheet, but the WMATA Board took no action. See Attachment 13, E-mail correspondence from Steven Goldin, WMATA to Omar Karim, Banneker sent on November 19, 2009 at 5:22PM. This correspondence further advised Banneker that the WMATA Board directed WMATA staff to address specific issues raised by the Board regarding the initial capitalized lease payment and the lack of a payment "reset" for the first 60 years under the lease.

Following the November 19, 2009 meeting of the WMATA Board, Banneker was able to convince its equity partner to reduce its return on their investment and therefore increase the capitalized lease that the Banneker team could pay WMATA. WMATA and Banneker negotiated a revised Term Sheet which WMATA's staff then recommended to the WMATA Board for approval.

On January 14, 2010, although the WMATA staff recommended the Committee approve the revised Term Sheet, the Committee informed WMATA staff that it wanted Banneker to pay additional funds to perform at the Site. In this regard, the Committee moved to approve a time extension to allow WMATA staff and Banneker to negotiate an amended Term Sheet for the Site, which was to be brought to the WMATA Board by March 31, 2010. See Attachment 14, WMATA, Committee, Minutes of Planning, Development and Real Estate Committee, January 14, 2010.

Following the January 14, 2010 meeting of the WMATA Board, Mr. Graham becomes Chair of the Committee.

From January 14, 2010 through March 25, 2010, WMATA and Banneker engaged in negotiations to reach final agreement with regard to the amended Term Sheet for the Project. Prior to March 25, 2010, the parties reached final agreement on the amended Term Sheet and submitted it to the WMATA Board for approval. The revised Term Sheet significantly increases the capitalized lease payment that Banneker would pay WMATA from the amount submitted to the WMATA Board at the January 14, 2010 meeting.

On March 25, 2010, the WMATA Board discussed the executed amended Term Sheet in Executive Session, but, at the behest of Jim Graham, the Board removed from their agenda consideration of the amended Term Sheet and the WMATA Board did not take any action to approve it.

Since the March 25, 2010 WMATA Board Executive Session meeting and subsequent tabling of the approval of the executed amended Term Sheet at the public WMATA Board meeting, WMATA has not taken any action with regard to its further consideration and approval of the executed amended Term Sheet. Moreover, the Committee is not scheduled to meet to discuss the Banneker Project in the month of April.

On April 26, Steven Goldin, Director Office of Station Area Planning & Asset Management, WMATA sent a letter to Banneker confirming that the WMATA Joint Development and Real Estate Committee had moved to extend Banneker's exclusive negotiation period to July 30, 2010. Mr. Goldin's letter noted that The WMATA Board had voted unanimously, without explanation or rationale, "to table" indefinitely any further consideration of Banneker's timely-submitted, amended Term Sheet without the Board ever considering or rejecting the amended Term Sheet as required by the Joint Development Solicitation.

II. BANNEKER'S RESPONSES TO ALLEGED WMATA BOARD CONCERNS

During the course of the negotiations between WMATA and Banneker, mentioned above, WMATA raised concerns regarding Banneker's ability to: (a) perform the Project; (b) have a joint venture partner to work with Banneker on the Project; and (c) maintain financing to perform the Project. Each of these concerns is addressed below.

A. Banneker Has the Experience to Perform the Project

Banneker is a full service real estate firm that specializes in providing construction, construction management, real estate development and real estate advisory services to the public and private sectors. The firm focuses its resources and experience on transforming neighborhoods throughout the Mid-Atlantic region of the United States. The Banneker management team has more than 40 years of construction, construction management, development and finance experience in the public and private real estate sectors. In this regard, Banneker is known for its ability to work on and complete complex construction projects on time and within budget.

As part of its proposal, Banneker provided WMATA with three (3) examples of prior construction and land development projects for which Banneker played a significant lead role.

Moreover, Banneker currently plays a significant role as the lead or co-lead on the following projects: (1) Walker Jones Education Campus; (2) Deanwood Community Center; and (3) Joiner Shop Lofts. All of these projects are comparable to the WMATA Project.

(1) Walker Jones Education Campus

Banneker provided project management and construction management services toward the design and construction of the Walker Jones Education Campus in the District of Columbia. This $50 million project involved the design and construction of a: (i) 100,000 square foot public school; (ii) 20,000 square foot recreation center; and (iii) 5,000 square foot library. Construction of this project was completed on time and within budget in December 2009. This project was the fastest public school ever built in the District of Columbia.

(2) Deanwood Community Center

Banneker is providing project management and construction management services toward completion of the Deanwood Community Center project in the District of Columbia. This project is a 63,000 square foot community center and library facility with a project budget of $32 million. The facility includes an indoor swimming pool, locker rooms, gymnasium, game room, library, childcare facilities, senior services area, kitchen, and multi-purpose facilities. The facility is 85% complete and is expected to reach Final Completion in August 2010. Upon completion, the Deanwood Community Center will be the largest public recreation center ever built in the District of Columbia.

(3) Joiner Shop Lofts

Banneker is providing development management services toward completion of the $60 million Joiner Shop Lofts project. The Joiner Shop Lofts is an adaptive-use, residential and retail development that includes the conversion of a 157,000 square foot warehouse into a 170-unit apartment and retail project. This project is the first residential building that will be completed at The Yards, a large-scale, mixed-use redevelopment of a 42-acre former annex to the Washington Navy Yard.

The above successful projects evidence Banneker's unquestionable ability to serve as project and construction manager on major projects such as the "Jazz at Florida Avenue Project". The services provided by Banneker on the above projects are similar in size and scope to those necessary to perform the WMATA Project. Accordingly, Banneker certainly has the experience to successfully perform the Project.

B. Banneker Has Development Partners to Perform the Project

Jim Graham has been reported as claiming that Banneker does not have a development partner(s) to perform the Project. This simply is not true. Banneker has development partners to perform the Project.

As stated above, Banc of America was very interested and preferred the WMATA deal when the Project involved the sale of the WMATA-owned parcels. However, due to Mr. Graham's requests, the structure of the WMATA deal was changed to a lease. Given these facts, Jim Graham advised Banneker that it could select another development partner to replace Banc of America, if necessary. Accordingly, the executed amended Term Sheet contains language that allows Banneker to replace Banc of America with a development partner with similar experience as that of Banc of America, if necessary.

In addition, Banneker has assembled a team of other development partners, which includes: Torti Gallas & Partners, Inc. (Project Architect); Clark Builders Group (General Contractor); Love Funding Corporation (Project Financing); and Holland & Knight LLP (Land Use Counsel). During negotiations, Banneker provided WMATA with information from each of the above and can provide that information again upon request.

Accordingly, there is no question that Banneker has capable and competent development partners to perform the WMATA Project.

C. Banneker Has Financing to Perform the Project

The WMATA Board, particularly Jim Graham, has raised concerns as to whether Banneker has financing to perform the Project. In fact, Banneker has financing to perform the WMATA Project. Love Funding Corporation ("Love Funding"), a national full-service, commercial mortgage-banking firm that serves as a direct lender and financial intermediary to offer loan placement services for borrowers, as well as origination, consulting and servicing of loans for investors nationwide, has agreed to provide the majority of the financing needed for the Project. In addition, Banneker has received a commitment from the District of Columbia to provide grant funding. Finally, Banneker and its equity partner will provide any remaining financing needed for the Project. Indeed, there is no question that Banneker has financing to perform the WMATA Project.

III. BANNEKER'S ALLEGATIONS OF INAPPROPRIATE CONDUCT BY WMATA BOARD MEMBER JIM GRAHAM

As you are aware, Jim Graham serves on the WMATA Board and is currently the Chair of the Committee. The duties of the WMATA Board members are prescribed in the "Procedures for WMATA Board of Directors – 2010" ("WMATA Board Rules"), which were presented and approved on January 28, 2010. See Attachment 15, Procedures for WMATA Board of Directors – 2010, January 28, 2010. The Standards of Conduct for Members of the WMATA Board of Directors ("Standards of Conduct") are included as Attachment 2 to the WMATA Board Rules.

Banneker believes that Mr. Graham likely has engaged in inappropriate conduct and has violated WMATA's Standards of Conduct as prescribed in the WMATA Board Rules. Specifically, Mr. Graham, in violation of WMATA Board rules, has: (a) in July of 2008, misused his official position as a member of the WMATA Board and his position as a District of Columbia Councilmember to improperly influence WMATA's selection of Banneker by offering to support a separate piece of legislation pending before the District of Columbia Council that would benefit a former Banneker principal, in

exchange for Banneker resigning as the Selected Developer for the WMATA Project; (b) on July 2, 2008, Mr. Graham inappropriately offered Banneker a quid pro quo for his support of Banneker for the Project on the condition that Banneker agree to use a specific developer identified by Mr. Graham; and (c) Mr. Graham has not acted impartially and has instead repeatedly demonstrated bias against Banneker.

If necessary, Banneker and others will provide evidence of Mr. Graham's unethical conduct. At a minimum, Mr. Graham should be investigated by the WMATA Office of the Inspector General and/or not be allowed any further involvement in approval or oversight of the WMATA Project. According to the WMATA Board Rules, any Board member who willfully violates the WMATA Board Rules shall forfeit the Board member's position with WMATA. See id., Article VI.

IV. BANNEKER'S REQUEST FOR IMMEDIATE WMATA BOARD APPROVAL AND AWARD OF THE PROJECT

Banneker requests an opportunity to meet with the WMATA officials and/or Board to provide information or make a presentation to address any concerns the Board may have in order to facilitate the immediate approval of the executed amended Term Sheet. Toward that end, Banneker seeks immediate WMATA Board approval of the executed amended Term Sheet followed by an expedited negotiation in order to reach agreement and WMATA Board approval of the JDA and resulting lease agreement. As stated above, the negotiations for the Project have been ongoing for over two (2) years. Banneker has paid both the requisite Proposal Security ($100,000) and the Option Fee ($100,000).

In addition, Banneker has incurred significant additional costs as a result of the protracted WMATA contract negotiations. As a small business, Banneker should not be forced to continue to incur these costs absent a commitment from WMATA that a final deal to perform the Project is forthcoming.

The WMATA Board should act immediately to approve the Project and avoid further delays. The Project is being delayed as a result of the WMATA Board's failure to approve the executed amended Term Sheet.

V. CONCLUSION

WMATA and Banneker have been engaged in good faith negotiations regarding the award of the Project to Banneker since March 2008. Throughout these negotiations, Banneker has remained available to perform the Project and is ready, willing and able to provide information, if necessary, to address any WMATA concerns in an effort to eliminate further delay of the contract award decision-making process. WMATA's announcement today that it plans to indefinitely "table" consideration of the amended Term Sheet WMATA Staff has executed with Banneker, without the Board ever meeting in public session to review and approve or reject it, itself demonstrates bad faith. Moreover, such action (or in this case inaction) cannot be in the best interests of WMATA.

ReedSmith

Banneker requests a meeting as soon as possible with the appropriate WMATA officials, including members from the WMATA Joint Development & Real Estate Committee, in order to expedite WMATA's action on the Project and formal consideration of Banneker's amended Term Sheet.

If the parties are unable to successfully move forward with action on Banneker's amended Term Sheet, given the foregoing, Banneker is prepared to seek any and all available remedies at law or in equity to address Banneker's damages and concerns regarding the selection process in this instance.

Sincerely, I am

A. Scott Bolden

A. Scott Bolden

Attachments

cc: Carol O'Keeffe, General Counsel, WMATA
Steven Goldin, Director, Office of Station Area Planning & Asset Management, WMATA
(w/o attachments)

ATTACHMENT 1

SHAW-HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITE: PROPOSAL SUBMISSION REQUIREMENTS

SECTION 1: ADMINISTRATIVE AND CONTRACTUAL INFORMATION

1.1. Issuing Information
This Joint Development Solicitation (JDS) is issued in accordance with WMATA's Joint Development Policies and Guidelines, Revised July 21, 2005, as may be amended, included as Attachment D to this JDS. The three parcels that comprise the Joint Development Site in this solicitation are available primarily under a long-term lease, as WMATA's preference is to lease, rather than sell, its property. If a sale is proposed, the Proposal must clearly demonstrate that a sale is more advantageous to WMATA than a long-term lease. WMATA reserves the right to select different Developers for individual parcels.

1.2. Purpose and Scope
This JDS is intended to provide interested Developers with sufficient summary information about WMATA's requirements to facilitate Proposal preparation. It contains instructions on Proposal content and format, but does not attempt to define all of WMATA's Joint Development contract requirements in detail. Certain contract requirements are non-negotiable.

1.3. Amendments and Supplements to JDS
WMATA reserves the right to issue Amendments and/or Supplements to this JDS. Developers will be required to acknowledge in writing the receipt of an Amendment and/or Supplement.

1.4. Acceptance/Rejection of Proposals
This JDS does not commit WMATA to designate a Selected Developer or to enter into a Development Agreement. WMATA reserves the right to accept or reject any or all Proposals.

1.5. Acceptance of Terms and Conditions
By submitting a Proposal, a Developer is deemed to have agreed to and accepted all terms and conditions set forth in this JDS. Notwithstanding the foregoing, WMATA reserves the right to amend or modify any of the terms and conditions.

1.6. Selected Developer Status
A designation as Selected Developer for a Joint Development Site does not mean WMATA accepts the Proposal without further negotiation. Rather, the Developer's Proposal is the foundation for further negotiation and WMATA reserves the right to negotiate a Development Agreement with a Selected Developer containing benefits to WMATA that exceed those set forth in the Proposal.

1.7. Binding Agreement
An executed Development Agreement, approved by the WMATA Board of Directors, is the only binding commitment of and by WMATA with respect to a Joint Development Site. Designation of a Selected Developer, WMATA's agreement to a Term Sheet or any conduct or oral representations by WMATA shall not in any way constitute a binding obligation or commitment by WMATA. In submitting a Proposal, the Developer acknowledges it will have no legal or equitable right to, or interest in, any Joint Development Site except as set forth in an executed Development Agreement.

1.8. Schedule of Activities

Item	Date
Request for Proposals	AUG 24, 2007
Proposals Due	OCT 5, 2007
Meetings with Developers (if required)	NOV/DEC 2007
Final Proposals Due (if required)	DEC 2007/ JAN 2008

1.9. Costs
WMATA shall not be liable for any costs incurred by a Developer and/or Development Team responding to this JDS or any costs incurred with respect to the negotiation of the Development Agreement and related final documentation.

1.10. Approvals
The designation of a Selected Developer and the terms of a Development Agreement negotiated pursuant to this JDS are subject to the approval of the WMATA Board of Directors and the Federal Transit Administration of the U.S. Department of Transportation (FTA).

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005465

1.11. Pre-Proposal Conference
Intentionally omitted

1.12. Inspections
Intentionally omitted

1.13. Inquiries
Inquiries concerning this JDS are to be submitted in writing to:

Mr. Nat Bottigheimer
Contracting Officer
Office of Property Development
and Management
Washington Metropolitan Area
Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Any written response made by WMATA's Contracting Officer will be disseminated to all Developers from whom a Proposal was requested. Oral responses are not binding.

1.14. Closing Date for Proposal Submission
One original and 10 copies of the Proposal must be received in a sealed package not later than 3 p.m. on Friday, **October 5, 2007** (Closing Date) addressed as provided in Section 2.7.

1.15. Late Proposals
Any Proposal received by WMATA after the Closing Date shall be considered a Late Proposal. A Late Proposal may be accepted and evaluated by WMATA at the sole discretion of WMATA's Contracting Officer.

1.16. Jurisdictional and Community Participation Requirements
Prior to submitting a Proposal, Developers are required to meet with jurisdictional representatives from the Office of Planning and interested community organizations, including the Advisory Neighborhood Commission, to share information about a pending Proposal submission to WMATA and to seek their views. Failure to comply with this requirement may result in a Proposal's being rejected. WMATA will provide a contact list to each Developer from whom a Proposal is being requested.

1.17. WMATA Facilities
WMATA Facilities are critical to the efficient operation of the transit system and must be accommodated in the site plan. Information on the WMATA facilities beneath the Joint Development Site was provided with the advertisement requiring a May 31, 2007 proposal.

SECTION 2: PROPOSAL PREPARATION/ FORMAT/CONTENT/SUBMISSION

2.1. General
To be considered, a Developer must submit a complete response to this JDS. WMATA encourages creative and innovative Proposals which promote Transit-Oriented Development consistent with local land use policies. Failure to respond with the requisite information may result in a Developer's being eliminated from consideration.

2.2. Proposal Submission Structure
Proposals must be submitted in **two separate**, 8.5 x 11 inch bound volumes with Volume 1 containing Technical Information and Volume 2 containing Economic Information.

The contents of each volume must comply with Section 2.3 and Section 2.4 of this JDS. Proposals should include the identical titles and numbering for each subsection as set forth in this JDS. NOTE: No financial information is to be included or referenced in Volume 1.

2.3. Proposal Contents: Volume 1–Technical Information

A. Transmittal Letter – a letter signed by an officer authorized to make a binding commitment for the Developer which states that the Proposal is valid for a minimum of 180 days from the date of submission and that if selected, the Developer will negotiate in good faith with WMATA.

B. Completed Proposal Form (3 pages) – See ATTACHMENT A.

C. Table of Contents.

D. Executive Summary excluding all financial information (5 pages maximum).

E. Development Team Information

FOIA CONFIEDENTIAL TREATMENT REQUESTED

1. A description of the Developer and the proposed Development Team and the role of each principal member.

2. A statement that the Developer has the power and authority to enter into a Development Agreement and all final documentation as required by WMATA, without the consent or joinder of any other party or authority.

F. Development Entity

1. A description of the Developer's business entity and, if a different entity will be formed, details of the structure of this other entity.

2. A detailed description of how the Project's ownership and management will be structured.

G. A proposed site plan and a description of land uses, including an explanation of how the Project complies with Transit-Oriented Development principles. The site plans must show building elevations and heights with number of stories.

Additionally, one jpeg on a disk and one full color visual of the site plan at least 2' by 3' in size must accompany the Proposal. The visual may be rolled up or mounted on posterboard.

H. An explanation of the anticipated impact that the Project will have, if any, on WMATA Facilities beneath the sites. Information on the WMATA facilities was provided with the advertisement for which proposals were requested by May 31, 2007.

I. The proposed Project schedule, starting in January 2008, in Microsoft Project or similar format, which at a minimum includes the following tasks and milestones, if applicable:

1. Term Sheet negotiations (assume 120 calendar days from the Proposal submission);

2. Approval of Selected Developer and Term Sheet by WMATA's Board of Directors (assume 30 calendar days from conclusion of Term Sheet negotiations);

3. Development Agreement and final documentation negotiations and execution (assume 120 calendar days from Selected Developer and Term Sheet approval);

4. Approval of Development Agreement and final documentation by WMATA's Board of Directors (assume 30 calendar days from conclusion of Development Agreement negotiations);

5. Agreement(s) for the acquisition of parcels to be assembled with the Joint Development Site, if applicable;

6. Concept plan preparation and approval;

7. Intentionally omitted.

8. Development plan preparation and approval, including interim WMATA Replacement Facilities plan (allow 30 calendar days for WMATA approval);

9. Local and other governmental approvals and actions (zoning, site plan, alley closings, grants, etc., as applicable);

10. Project financing approval;

11. Schematic design and construction document preparation and approval (allow 25 business days for WMATA approval of 35% construction documents, 20 business days for WMATA approval of 65% construction documents, and 15 business days for WMATA approval of 100% construction documents);

NOTE: if documents are not approved, WMATA comments must be addressed and resubmitted for approval.

12. Local permitting process;

13. Intentionally omitted.

14. Project construction period (per phase, if applicable);

15. Initial occupancy; and

16. Stabilization period.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

J. Zoning

1. The existing zoning classification and, if a change will be sought, the proposed zoning category.

2. The permitted FAR (floor area ratio) or other density measure, and the proposed FAR or other density measure, as applicable.

K. The proposed business relationship with WMATA and the proposed terms (lease, ~~sale, etc.)~~ ~~including, but not limited to,~~ the following:

Lease (~~WMATA preference is 60 years~~).

1. Identification of the portion of the Joint Development Site to be leased by location and approximate land area. (NOTE: The leased premises will exclude all WMATA Reserved Areas and Interests.)

Sale

1. Identification of the portion of the Joint Development Site proposed to be purchased in fee simple by location and approximate land area. (NOTE: The sale will exclude all WMATA Reserved Areas and Interests.)

2. An explanation of why the Project should not be developed under a lease and why a sale is more advantageous to WMATA than a long-term lease.

L. A market analysis and marketing strategy for the proposed uses of the WMATA joint development site.

M. A summary (specific financial analysis required in Economic Section) of the Project's impact on the tax base of the local jurisdiction as follows:

1. Identification of the property taxes, sales taxes, amount of fees and contributions and other local public income.

N. A statement identifying each of the community organizations that the Developer has met with and the meeting dates; the specific information that the Developer shared; the reaction of each community organization to the proposed development concept; the issues raised by each community organization; and how the Proposal addresses these issues. See Section 1.16.

O. A statement describing the Developer's contact with local jurisdiction staff, (representatives' names and meeting dates) and the views and expectations of the local jurisdiction regarding the Project, including any existing or anticipated jurisdictional issues or concerns. See Section 1.16.

P. A statement on whether the Project's feasibility is contingent on any local, state or federal government action or financial support (including a change in regulations; street or alley closing; funding, including guarantees and issuance of tax-exempt bonds; financing and credit enhancements; leasing of space; granting of access to the Joint Development Site; and the justification and process for obtaining government support).

Q. Statements that:

1. The Project is compatible with local land use requirements.

2. The Project will conform to all applicable federal, state and local laws, regulations and ordinances including all federal and relevant local environmental regulations.

R. ~~A quantitative analysis of the Project's~~ beneficial effect on WMATA's total daily transit ridership will be performed by WMATA and will be part of the evaluation of Proposals.

S. A statement identifying the past, current or anticipated contractual or financial relationship of any member of the Development Team (including but not limited to, the Developer, partners or co-venturers) with WMATA or any of its staff or Board Members. The Development Team must also disclose any contractual or financial relationship which may give the appearance of a conflict of interest.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

T. The following information about Developer's previous projects:

1. Illustrative materials on three recent successful projects of similar or comparable scope for which substantial financing was obtained.

2. The sources and amounts of debt and equity capital that were raised in previous projects.

U. A list of any projects on which the Developer, its parent company, or any member of the Development Team has defaulted or declared bankruptcy and an explanation of each default or bankruptcy.

V. Detailed information regarding any criminal indictments and felony or fraud convictions of the Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team.

W. A statement indicating whether the Developer is willing to include Disadvantaged Business Enterprises ("DBEs"), as defined in Section 6, in its Project. WMATA encourages Developers to include DBEs and will assist Developers in identifying such firms.

X. If the proposed Project consists of an assemblage of the WMATA Joint Development Site with adjacent property, a statement identifying the adjacent property ownership, and if the property owner and the Developer are not the same, an executed agreement between the property owner and the Developer defining the property owner's participation, if any, in the Project.

Y. Any other information to assist WMATA in its evaluation of the Proposal, including a statement of why WMATA should select the Developer and its Development Team.

2.4. Proposal Contents: Volume 2 – Economic Information

A. Table of Contents.

B. Executive Summary of economic information only.

C. The Developer's estimated fair market value of WMATA's land or interest, how the value was derived and the assumptions underlying the value.

D. If the proposed business relationship with WMATA is a Lease (the term must be specified and preferably will be 60 years):

1. A statement that the Developer will pay WMATA a non-refundable option fee of $100,000 for the right to negotiate a Development Agreement upon designation as Selected Developer and approval of the Term Sheet. This fee is separate and distinct from the other payments, deposits and fees which WMATA requires.

2. The amount and timing of pre-development rent to be paid to WMATA during the interval period after the Development Agreement is executed but before the Project produces income (include the estimated length of this period).

3. The guaranteed base rent to be paid to WMATA throughout the term of the lease, including escalations. The description of escalations must include the method used to calculate escalations, their timing, and the projected amount of each escalation.

4. The method of adjusting the base rent if it does not commence by the date projected and/or the final approved density is greater than that proposed.

WMATA expects that the present value of its financial return will not be diminished by delays in the development process.

5. How any environmental remediation costs will be handled.

6. WMATA's participating share of gross income from the Project.

7. WMATA's share of proceeds from a capital event such as an assignment of the leasehold interest, transfer of interest

FOIA CONFIEDENTIAL TREATMENT REQUESTED

in the Developer's business entity, refinancing or sale of the Project, or any other capital event after construction.

8. Identification of any additional payments to WMATA based upon factors chosen by the Developer.

9. Intentionally omitted

E. If the proposed business relationship with WMATA is a Sale:

1. A statement that the Developer will pay WMATA a non-refundable option fee of $100,000 for the right to negotiate a Development Agreement upon designation as Selected Developer and approval of the Term Sheet. This fee is separate and distinct from the purchase price and the other payments, deposits and fees WMATA requires.

2. The amount and timing of pre-development fees to be paid to WMATA during the interval period after the Development Agreement is executed but before WMATA realizes income from the sale (include the estimated length of this period).

3. The proposed purchase price for each portion of the Joint Development Site including:

a. The schedule of purchase price escalations if the sale is not completed by the date projected.

WMATA expects that the present value of its financial return will not be diminished by delays in the development process.

b. The method of adjusting the purchase price if the final approved density is greater than that proposed.

4. How any environmental remediation costs will be handled.

5. Proposed business arrangement under which WMATA will retain an interest in any development rights in excess of those used by the development constructed pursuant to the Proposal. Under such an arrangement, WMATA will receive payments over and above the purchase price if, upon subsequent redevelopment of the Joint Development Site within 25 years of closing, the redeveloped density is greater than the original density.

6. Identification of any additional payments to WMATA based upon factors chosen by the Developer.

F. A summary table of the sources (including debt, equity and other financing) and uses of funds to design and construct the Project.

G. A 15-year pre-development, construction and operating period cash flow statement which starts in October 2007. It should include each separate phase of development and land use type by phase and contain at a minimum:

1. The following assumptions:

Financing
Construction loan rate, term and amount
Permanent loan rate, term and amount
Loan-to-value ratio
Equity as a percentage of total construction costs
Revenues
Office rent ($/GSF and #GSF)
Retail rent ($/GSF and #GSF)
Residential ($/DU and #DU)
Parking
Other revenues
Construction Costs
Total hard costs
Total soft costs (also as a percentage of total hard costs)
Cost of improvements on a unit basis ($/FAR SF for office and retail, $/DU)
Cost per structured parking space
Cost per surface parking space
Land value per FAR SF
Ground rent to WMATA
Operating Costs
Operating Expenses (in $, $/GSF and as a percentage of revenues)

2. The following line items presented

FOIA CONFIEDENTIAL TREATMENT REQUESTED

as a pro forma on an annual basis:

Sources
Equity
Construction Financing
Permanent Financing
Other Financing
Total Financing
Revenues
Office
Residential
Retail
Parking
Other Revenues
Total Gross Revenues
Total Net Revenues (less vacancy)
Uses
WMATA Rent or Sales Price (as applicable)
Construction Costs
Soft - by line item
Hard - by line item
Total
Operating Expenses (all non-debt Operating Costs, e.g.: direct costs, G&A, taxes, legal, marketing, commissions, etc.)
Net Operating Income
Debt Service (including any fees or expenses associated with loans)
Net Cash Flow (defined as revenue less operating expenses, debt service and ground rent to WMATA if applicable)
Percentage Rent to WMATA
Distributions to Investors
Free Cash Flow
Returns
Developer's Internal Rate of Return
Return on Investment
Return on Equity

NOTE: The pro forma (and any budgets in other parts of the Proposal) should clearly show all of the fees and income that the Developer, its partners, and affiliates receive from the Project. Those line items should be taken from the pro forma and shown together on the spreadsheet as individual line items in a separate report. Annual replacement reserves (total, $/GSF and $/DU) should also be broken out and shown).

3. The analysis must be presented in current dollars with an annual escalation rate of 3%.

4. All financial models must be submitted to WMATA on disk as well as hard copy. All financial information must be linked in a single spreadsheet, and all files must be in Microsoft Excel and retain all cell relationships.

H. A detailed financial analysis, with assumptions given, of the Project's impact on the tax base of the local jurisdiction as follows:

1. Identification of the property taxes, sales taxes, amount of fees and contributions and other local public income.

I. Copies of Developer's balance sheets, income statements and sources and uses of funds statements for the past three fiscal years.

J. Statements regarding the Developer's financial creditworthiness and past development experience which can be verified, including the following:

The names and addresses of at least three commercial or institutional credit references and a letter authorizing each credit reference to respond to inquiries from WMATA. At least two of the references should be lending institutions.

2.5. Proposal Security

Each Proposal must be accompanied by Proposal Security in the amount of One Hundred Thousand Dollars ($100,000). (Alternative Proposals for the same Joint Development Site require only one Proposal Security.) Acceptable forms of Proposal Security include a proposal bond in the form set forth in ATTACHMENT B, a bank letter of credit in the form set forth in ATTACHMENT C, a cashier's check, certified check or money order. All Proposal Security must be drawn on a U.S. based national bank and contain the following:

At top of Proposal Security document, insert the name of the Joint Development Site _____.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA will hold all funds that can be deposited into a financial institution in an interest-bearing account, and interest will be paid on such funds. No later than 15 business days after the WMATA Board of Directors identifies and approves the Selected Developer for a specific Joint Development Site, the Proposal Security will be returned to all Developers other than the designated Selected Developer. WMATA shall retain the designated Selected Developer's Proposal Security until a Development Agreement is executed and provisions are made with respect to the disposition of the Proposal Security in the Development Agreement.

2.6. Alternative Proposals
A Developer may submit alternative Development Proposals for the Joint Development Site and its individual parcels.

2.7. Submission of Proposal
A complete Proposal shall include the items set forth in Section 2.3. and Section 2.4. and the requisite Proposal Security. On or before the Closing Date, one original and 15 copies of the Proposal (marked Proposal for Shaw Howard/Florida Avenue JDS) must be submitted in a sealed package, addressed and mailed or delivered in person to:

Mr.Nat Bottigheimer
Contracting Officer
Office of Property Development
and Management
Washington Metropolitan Area
Transit Authority
600 Fifth Street, NW
Washington, DC 20001

SECTION 3. PROPOSAL REVIEW, EVALUATION, DEVELOPER SELECTION AND POST DEVELOPER SELECTION PROCESS

3.1. Proposal Review Process
WMATA will review and evaluate Proposals as follows:

A. The Contracting Officer receives and processes all Proposals. Proposals that in WMATA's sole and non-reviewable discretion are deemed non-responsive or not reasonably susceptible of being selected for award will be rejected and returned to the Developer with a written explanation. Please note that any Proposal that does not satisfy the requirements for jurisdictional officials and community organization participation may be rejected as technically unacceptable and returned to the Developer. WMATA reserves the right to accept or reject any Proposal without negotiation or discussion.

B. The Contracting Officer designates an Evaluation Team composed of WMATA's Joint Development staff assisted by other WMATA staff, jurisdictional representative(s) and consultants, as appropriate. An analysis and evaluation of each Proposal deemed to be reasonably susceptible of being selected for award is conducted.

C. The Evaluation Team may meet with all or select Developers for both an oral presentation and specific discussions about a Proposal. If such meetings are held, details on the oral presentation will be provided as part of the scheduling process. Such discussions will include identifying areas of the Proposal that: require clarification or improvement including architectural and engineering designs and drawings, or do not comply with the JDS.

D. If requested by WMATA, Developers shall submit Final Proposals. The Final Proposal may be significantly changed from the Initial Proposal submitted. WMATA reserves the right to waive the Final Proposal submission requirement, to request further clarification of a Final Proposal, or to request a Revised Final Proposal.

E. The Evaluation Team will, in coordination with the Contracting Officer, rate each responsive Proposal, and rank it based upon the Proposal Evaluation Factors in Section 3.2. The Evaluation Team will then forward its ranking to the Contracting Officer, who will decide to tentatively designate a Selected Developer. The Joint Development project manager will commence negotiation of a Term Sheet. If negotiations are unsuccessful, the Joint Development staff, in coordination with the Contracting Officer, may terminate negotiations and commence negotiations with the second ranked Developer and

FOIA CONFIEDENTIAL TREATMENT REQUESTED

those ranked thereafter, in order of ranking. Alternatively, the Joint Development staff may, in coordination with the Contracting Officer, decide upon competitive negotiations with two or more ranked Developers.

F. As soon as the principal business terms for the tentatively Selected Developer's Project have been reduced to a Term Sheet, the Contracting Officer submits a recommendation regarding the designation of a Selected Developer and approval of the Term Sheet to WMATA's Real Estate Committee and to the WMATA Board of Directors.

G. Designation of a Selected Developer must be approved by the WMATA Board of Directors.

3.2. Proposal Evaluation Factors

Each Proposal will be evaluated using FTA's requirements for "Highest and Best Use" or "Highest and Best Transit Use" (see www.fta.dot.gov/library/policy/9300.1A/appenB.htm) and the following criteria:

A. Technical Criteria

1. Degree to which the Project reflects Transit-Oriented Development principles;

2. The market viability of the Project;

3. The experience and prior performance of the Development Team;

4. The innovation and creativity of the Project;

5. The compatibility of the Project with local Transit-Oriented Development plans and land use policies; and

6. Benefits accruing to the local jurisdiction.

B. Economic Criteria

1. Financial benefits accruing to WMATA;

2. Financial viability of the Project; and

3. Enhanced ridership.

3.3. Post Developer Selection Process

A. A Developer designated by the WMATA Board of Directors as a Selected Developer will be required to send a letter to each of the community organizations with which its representatives met to inform them as to how the Proposal presented to WMATA addresses their issues or concerns. A copy of this letter must also be submitted to WMATA.

B. A Developer designated by the WMATA Board of Directors as a Selected Developer will be required to pay WMATA, in immediately available funds, a non-refundable option fee for WMATA's granting to the Selected Developer the exclusive right to negotiate a Development Agreement. The amount and timing of the non-refundable option fee shall be as set forth in the Proposal (or Final Proposal, as the case may be), in accordance with Section 2.4.

C. After WMATA's Board of Directors has designated a Selected Developer and approved the Term Sheet, WMATA staff, in coordination with the Contracting Officer, will negotiate with the Selected Developer a Development Agreement (and other necessary final documentation) that incorporates the provisions of the Term Sheet. Such Development Agreement shall be completed within 150 days following the WMATA Board's designation of the Selected Developer and approval of the Term Sheet.

In the event that this schedule is not met, the Selected Developer designation expires, the Proposal is no longer viable, and WMATA may retain the Proposal Security (in addition to the non-refundable option fee) in accordance with Section 5.2. WMATA may choose to reestablish the Selected Developer designation and provide a specific time frame to the Selected Developer for the completion of negotiations or to re-advertise the Joint Development Site.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

D. As soon as the Development Agreement (and related final documentation) is completed and executed by the Developer, the Contracting Officer submits a recommendation and summary of the final Development Agreement to WMATA's Real Estate Committee and to the WMATA Board of Directors for approval. There is no binding agreement between the Selected Developer and WMATA until such time as the WMATA Board of Directors has approved the final Development Agreement and the Development Agreement has been executed by the parties.

3.4. Disclosure and Use of Data

WMATA is required to brief its Board of Directors on all aspects of a Proposal. The proposed business terms of a Proposal will be held in confidence only until the Development Agreement and all final documentation have been approved and executed. WMATA reserves the right to review the zoning and land use aspects of any Proposal with local zoning, land use planning, transportation and environmental officials (and in the State of Maryland, with state officials). Additionally, at the sole discretion of the WMATA Board of Directors, such review may include conducting public hearings, town meetings and similar public forums.

NOTE: WMATA's "Public Access to Records Policy" is available at MetroOpensDoors.com (click "About Metro," then click "Public access to records.")

SECTION 4. WMATA'S NONNEGOTIABLE REQUIREMENTS AND CONDITIONS

The following requirements and conditions are nonnegotiable and the concepts will be included in the Development Agreement and final documentation executed by the Selected Developer and WMATA. By submitting a Proposal in response to this JDS, a Developer is agreeing to accept and comply with these nonnegotiable requirements and conditions.

4.1. WMATA's Reserved Areas and Interests

The location of WMATA's Reserved Areas and Interests shall be determined by WMATA in its sole and absolute discretion. Additionally, the conveyance or lease of any WMATA property shall be subject to a reservation by WMATA of a permanent, exclusive and irrevocable easement for vertical and horizontal support and as otherwise necessary for the operation and maintenance of present and future WMATA Facilities, WMATA Improvements and WMATA Reserved Areas and Interests.

4.2. WMATA's Approval Rights and Adjacent Construction Requirements

The following rights and requirements apply to all Projects:

A. Approval Rights

WMATA shall have the right to approve in its sole and absolute discretion:

1. Matters that affect the integrity, functionality, efficiency, safety, operation, maintenance, legal compliance, cost or profitability of WMATA's business, customers, operations or activities;

2. Matters that affect WMATA Facilities, WMATA Replacement Facilities, WMATA Reserved Areas and Interests, ingress/egress to WMATA Facilities, etc.;

3. Matters that affect any of WMATA's adjacent property;

4. The design and construction of interim and permanent WMATA Replacement Facilities; and

5. Matters that affect the Selected Developer's obligations as they relate to timing (changes in Project schedule) and performance (changes in what will be constructed, i.e., the product mix).

B. WMATA's Comment Rights

WMATA shall have the right to comment on the development plan/site plan and on other matters concerning the Project which do not affect the integrity, functionality, efficiency, safety, operation or maintenance of WMATA Facilities, WMATA Improvements, or WMATA Reserved Areas and Interests. The Selected Developer shall be obligated to consider WMATA's comments and to respond reasonably.

C. WMATA's Construction Requirements

In order to avoid adverse impact on WMATA Facilities, Projects must be built in compliance with WMATA's adjacent construction criteria as

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contained in WMATA's Adjacent Construction Design Manual, Revision I and as further revised, and WMATA's Manual of Design Criteria (Release 8), which are available by e-mailing tbushnag@wmata.com. Additionally, Developers must comply with WMATA's requirements for the relocation and maintenance of operations during construction which include the uninterrupted and unimpeded operation of WMATA Facilities. WMATA will review and approve Developer plans in accordance with established WMATA procedures.

4.3. Relocation or Replacement of WMATA Facilities.
Intentionally omitted.

4.4. Selected Developer's Funding of WMATA Compact Public Hearing
Intentionally omitted.

4.5. No Subordination of WMATA's Fee Interest
WMATA will not subordinate its fee interest in its property. In a lease situation, WMATA will permit lenders to have a leasehold security interest in the Project, which security interest would be subordinate to WMATA's right to terminate the lease upon a default by the Selected Developer (subject to the lender's right to cure).

4.6. Federal Transit Administration (FTA) Requirements
WMATA is subject to the requirements of the FTA. The terms of the Development Agreement negotiated with the Selected Developer, as it pertains to WMATA property, are subject to FTA approval. While FTA may impose additional requirements which cannot be known until FTA reviews a specific Project, FTA requires that the Selected Developer comply with certain laws and regulations barring discrimination on the basis of race, color, national origin or disabilities; and further requires compliance with FTA requirements regarding conflicts of interest and debarment.

FTA also requires, as a covenant running with the land, that the entire Joint Development Project constitute a Transit-Oriented Development as defined in the latest applicable FTA Regulations. See FTA Circular 9300.1A, Appendix B, The Relationship Between Joint Development and Livable Communities on the FTA web site at: www.fta.dot.gov/library/policy/IFT/iftb.html.

4.7. Americans With Disabilities Act (ADA)
All Projects shall be constructed in compliance with Titles II and III of the Americans with Disabilities Act, 42 USCA Section 12101, et seq., as amended, and any regulations promulgated thereunder. Proposals must include a plan indicating how access from the Project to the Metro station will be provided for persons with disabilities. Additionally, if a Project or any subsequent addition, modification or alteration triggers ADA-related improvements to the Metro station, the Selected Developer shall be responsible for the costs of such improvements. The only exceptions are when the ADA-related improvements predate the date of completion of the Project and are required to be made regardless of the Project, or constitute ADA-related improvements that WMATA is implementing at Metro stations in general as part of its system-wide improvements or alterations.

4.8. Direct Connections
Intentionally omitted

4.9. Davis-Bacon Act/Fair Labor Standards Act
The construction of any WMATA Replacement Facility or WMATA Improvement must be built in compliance with the Davis-Bacon Act, 40 USC Section 276a, et seq., and overtime compensation must be paid in compliance with Section 64 of the WMATA Compact, and the Fair Labor Standards Act, 29 USCA Section 201, et seq. (1978), as amended.

4.10. Other Laws, Regulations and Requirements
Developers are responsible for being fully informed of and complying with the requirements of applicable federal, State of Maryland, District of Columbia, Commonwealth of Virginia, and local jurisdictional laws and regulations. Additionally, the Selected Developer shall be responsible for obtaining, at its own cost and expense, all requisite approvals, licenses and permits.

4.11. WMATA's Indemnification Policy
The terms of any Development Agreement and final documentation will require that the Selected Developer and its contractors and subcontractors (and subtenants, where applicable) indemnify WMATA against all claims, liabilities and costs of whatsoever kind and nature including environmental claims which may be imposed upon, or incurred by, or

FOIA CONFIEDENTIAL TREATMENT REQUESTED

asserted against WMATA in connection with the Selected Developer's performance under the Development Agreement or related agreements.

WMATA will accept responsibility for environmental claims of third parties if such claims arise from WMATA's actions prior to the transfer of the site to the Selected Developer.

4.12. WMATA's Insurance Requirements
The terms of any Development Agreement and final documentation will require that the Selected Developer, its contractors and subcontractors procure and maintain insurance coverage in amounts determined by WMATA, which may include, but is not limited to: General Liability, All Risk Property, Builder's Risk, Worker's Compensation, Automobile Liability, Contractors' Pollution Legal Liability, Railroad Protective Liability, Rental Value Insurance, Professional Errors and Omissions Liability and Boiler and Machinery (during operations only).

4.13. Payment, Performance and Completion Bonds
WMATA requires that the Selected Developer secure and file with WMATA a payment bond equal to 100% of the value of each phase of the Project from a federally approved surety company, with sufficient assets. The payment bond must name WMATA for the benefit of laborers, subcontractors, material suppliers and others that have or may have claims or liens against the Project or the realty.

WMATA also requires the Selected Developer to secure and file with WMATA a performance bond equal to 100% of the value of each construction phase of the Project from a federally approved surety company, with sufficient assets and which bond names WMATA for the completion of the planned construction in that phase.

Additionally, if there are WMATA Replacement Facilities being constructed, WMATA requires the Selected Developer to secure and file with WMATA a completion bond equal to 100% of the value of the WMATA Replacement Facilities from a federally approved surety company, with sufficient assets, and which bond names WMATA as the sole obligee for the completion of the Replacement Facilities.

All bonds must be in a form acceptable to WMATA and countersigned by a Commonwealth of Virginia, State of Maryland or District of Columbia resident agent of the surety, with a copy of the agent's license, as issued by the appropriate Insurance Commissioner.

4.14. WMATA's Disclaimer of Liability
WMATA disclaims all responsibility and liability for the completeness or accuracy of any information that it provides.

4.15. Inspection of Accounting Records
The Selected Developer will be required to permit WMATA, or any of its duly authorized representatives, at reasonable times and places, access to any books, documents, papers and records, including certified financial statements, which are directly pertinent to the Development Agreement. WMATA shall be permitted to audit, inspect, examine, copy and transcribe such books, documents, papers and records. The Selected Developer shall retain all records for three years after submission of any statement required for determining any variable payment obligations under the Development Agreement or related agreements.

4.16. WMATA's Tax Exempt Status
WMATA is tax exempt pursuant to the WMATA Compact. Any taxes, assessments or impositions on the Project or the real estate shall be assumed by the Selected Developer. In no event shall the Selected Developer assert or attempt to assert for its own benefit, an exemption or immunity available to WMATA under the WMATA Compact.

4.17. Financing Requirement
The Selected Developer shall be obligated to obtain the requisite financing to consummate the lease/sale of the WMATA Joint Development Site, and the development, construction and final completion of the Project by a reasonable date certain, or WMATA may terminate the Development Agreement.

SECTION 5. ADDITIONAL JOINT DEVELOPMENT REQUIREMENTS AND PROCEDURES

5.1. Assignment of Proposal, Change in Developer or Withdrawal of Developer
WMATA considers the designation of Selected Developer to be in the nature of a personal services contract. The Selected Developer will be designated because of its skills, experience, knowledge and financial standing.

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A Developer who submits a Proposal in response to this JDS may withdraw, assign its Proposal or change the composition of its Development Team only as follows:

A. Withdrawal of Proposal

At any time prior to designation of the Selected Developer, a Developer may elect to withdraw its Proposal. Under such circumstances, WMATA shall return the Proposal Security without interest.

B. Assignment of Proposal

At any time prior to designation of the Selected Developer, a Developer may request WMATA's approval to assign its Proposal to another development entity. No purported assignment is valid unless WMATA has given its prior written approval. The Developer and its proposed assignee shall submit all documents required by WMATA before the request will be considered. WMATA is under no obligation to approve the request. If WMATA refuses to grant approval, and the Developer does not want to proceed in accordance with its Proposal, WMATA will return the Proposal Security without interest. An assignment may be subject to the requirement of a Guaranty pursuant to Section 5.7.

C. Change in Composition of Developer or Development Team

1. Prior to designation of the Selected Developer, a Developer may change its composition or the composition of its Development Team only with WMATA's prior written approval. If WMATA does not approve the change, and the Developer does not want to proceed in accordance with its Proposal, WMATA will return the Proposal Security without interest.

2. After designation as the Selected Developer, the Selected Developer must request WMATA's written approval to change its composition or the composition of its Development Team. If WMATA does not approve the change, and the Selected Developer does not want to proceed in accordance with its Proposal, WMATA may terminate the Selected Developer designation and retain the Proposal Security.

D. Other Situations

An assignment or change in the composition of the Development Team which is not addressed above is at the sole discretion of WMATA's Contracting Officer. For any such assignment or change to be valid, WMATA's prior written approval is required. Any purported assignment occurring without WMATA's prior written approval shall be void.

5.2. Termination of Selected Developer Designation

WMATA may terminate the Selected Developer designation for any of the following reasons and retain the Proposal Security and any other deposit held by WMATA (except as stated otherwise in subsections I and J):

A. The Selected Developer fails to negotiate and execute the Development Agreement within 150 days following the designation of the Selected Developer and approval of the Term Sheet by the WMATA Board of Directors.

In the event that the foregoing schedule is not met, WMATA may terminate the designation of the Selected Developer and retain the Proposal Security without any liability or further obligation to the Selected Developer. The foregoing deadlines can only be extended by action of the WMATA Board of Directors in its sole and non-reviewable discretion.

B. The Selected Developer or any individual or entity holding ownership in or comprising the Development Team declares bankruptcy.

C. The ownership structure of the Selected Developer changes without WMATA's prior written approval. Structural changes include changes in percentages of ownership interests or changes in ownership of any entity holding an ownership interest in the Selected Developer.

D. The Selected Developer assigns its designation or transfers its rights in a WMATA Joint Development Site without WMATA's prior written approval.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

E. The Selected Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team is indicted for, or convicted of, a fraud or a felony.

F. The Selected Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team is found not to have a satisfactory record of integrity and business ethics, in WMATA's sole and non-reviewable discretion.

G. The Selected Developer provided materially incorrect or incomplete information in any of its submissions to WMATA, as determined in WMATA's sole and non-reviewable discretion.

H. The Selected Developer does not comply with this JDS, its Proposal or the terms of the Development Agreement as negotiated by the parties.

I. In accordance with Section 5.5, the Selected Developer conducts environmental due diligence and consequently modifies its Proposal in a manner which is unacceptable to WMATA. Under such circumstances, WMATA shall return the Proposal Security with any interest that may have accrued, less site restoration costs actually incurred by WMATA.

J. WMATA determines (in its sole and non-reviewable discretion) that termination is in its best interest. Under such circumstances, WMATA shall return the Proposal Security with any interest that may have accrued.

5.3. Metro Station Access Roads and Interior Maintenance Roads

Intentionally omitted.

5.4. Developer's Research Obligations

A Developer is expected to know all information reasonably ascertainable concerning the site size, and character, quality, and quantity of surface and subsurface materials or obstacles on the Joint Development Site as well as the existing utilities on the Joint Development Site. Some of this information is available from a visual inspection of the Joint Development Site and may be available from technical drawings and specifications (as built drawings) which WMATA will make available upon request, utility companies serving the area and local land records. WMATA disclaims all responsibility and liability for the completeness or accuracy of any information it provides. All Joint Development Sites are subject to existing physical and legal conditions, whether of record or not.

Additionally, a Developer is expected to know the conditions affecting construction on the Joint Development Site, which include but are not restricted to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, the topography and conditions of the ground, and the character of equipment and facilities needed before and during prosecution of the work.

5.5. Environmental Matters

WMATA has undertaken no comprehensive environmental investigations of the presence or absence of contaminated material or other environmental conditions that may affect development except as specifically identified. Interested Developers may request permission to perform a due diligence environmental site assessment prior to Proposal submission, after Proposal submission or after designation as the Selected Developer. Such due diligence site assessment and all associated costs shall be the sole responsibility of the Developer. Permission will be granted by WMATA subject to the execution of a Right of Entry Agreement with standard insurance and indemnity provisions. A sample Right of Entry Agreement is available from rdoggett@wmata.com.

WMATA shall be provided, in a timely manner, a copy of each test result and report addressing the environmental site investigation. If environmental contamination is found that requires a clean-up or remediation of the Joint Development Site under a governmental regulatory agency's review, the Developer may withdraw its Proposal (including its Final Proposal) but is responsible for site restoration costs. In the event that the due diligence environmental site assessment is performed after the designation of the Selected Developer, but prior to the execution of the Development Agreement, the Selected Developer and WMATA may negotiate the transaction based

FOIA CONFIEDENTIAL TREATMENT REQUESTED

upon the levels of contaminated materials or other environmental conditions encountered which would substantially delay development or substantially increase the costs of excavation, removal or disposal of soil/materials, or the treatment of groundwater. If the parties cannot agree upon the resolution of these issues the Selected Developer may withdraw its Proposal but the Developer is responsible for site restoration costs, and WMATA has the corresponding right to terminate the Selected Developer designation in accordance with Section 5.2.I.

5.6. Protest Policy
The policy and procedure for the administrative resolution of protests involving the designation of a Selected Developer arising pursuant to this JDS are as follows:

A. Only an Interested Party may submit a protest. An Interested Party is defined as a Developer who submitted a Proposal pursuant to this JDS.

B. Protests must be submitted no later than 30 calendar days after WMATA's designation of the Selected Developer. Any protest submitted subsequent to this time may be deemed by WMATA's Contracting Officer to be untimely and denied on that basis unless the Contracting Officer concludes that the issue(s) raised by the protest involves fraud, gross abuse of the selection process, or otherwise indicates substantial prejudice to the integrity of the selection process.

C. The Interested Party wishing to file a protest shall submit a written document to WMATA's Contracting Officer which contains the following:

   1. The name and address of the Interested Party;

   2. Description of the nature of the protest;

   3 Identification of the provision(s) of this JDS, applicable Joint Development Policies and Guidelines or laws upon which the protest is based;

   4. A statement of the specific relief requested; and

   5. Any documents relevant to the protest.

D. WMATA's Contracting Officer shall carefully review the protest in consultation with WMATA staff. At the discretion of the Contracting Officer, a conference may be held with the Interested Party. The Contracting Officer shall have 30 calendar days to render a written decision on the merits of the protest. A determination by the Contracting Officer that a protest is meritorious may result in a change in the terms, conditions or format of this JDS in the form of an Amendment; the rejection of a Proposal; the cancellation of this JDS; or the termination of the designated Selected Developer.

E. This Protest Policy is not applicable to actions taken by WMATA in response to legal proceedings filed in the courts, or actions taken by WMATA in its sole and non-reviewable discretion.

5.7 Guaranty
WMATA may require a third party to guarantee some or all of the obligations of the Selected Developer, including but not limited to construction obligations.

SECTION 6: DEFINITIONS

Contracting Officer
WMATA's Assistant General Manager for Planning and Joint Development, or, if such position is vacant at the time in question, the person designated to act in such capacity at such time.

Developer(s)
The entity submitting or contemplating the submission of a Proposal in response to this Joint Development Solicitation (JDS). The Developer may be any qualified individual or entity with real estate development-related experience and access to financing sufficient to undertake the proposed Project, including real estate brokers, non-profit organizations, public agencies, etc. Real estate brokers are invited to participate as the Developer or as a member of the Development Team as opposed to participating in a purely marketing role. WMATA will not pay any broker's commissions.

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Joint Development Work Program
A document prepared annually of Joint Development opportunities associated with WMATA-owned properties. The Joint Development Work Program is drafted in coordination with the local jurisdictions and approved by the WMATA Board of Directors.

Project
The joint development ideas, concepts and plans that a Developer presents in its Proposal. Also refers to the development plans of the Selected Developer. Project is synonymous with Joint Development Project.

Proposal(s)
The development-related documents submitted in response to this Joint Development Solicitation (JDS). The term Proposal can include both the Initial Proposal and, if requested by WMATA, the Final Proposal.

Selected Developer
The Developer with the exclusive right to negotiate a Development Agreement with WMATA. WMATA's designation of the Selected Developer shall not become final and binding until a Development Agreement has been negotiated and executed by the parties.

Term Sheet
The nonbinding document which summarizes the development concept, financial structure and other major business terms of the Project.

Transit-Oriented Development
Those projects that integrate WMATA's transit facilities, reduce automobile dependency, increase pedestrian/bicycle originated transit trips, foster safe station areas, enhance surrounding area connections to transit stations, provide mixed use including housing and the opportunity to obtain goods and services near transit stations, offer active public spaces and promote and enhance ridership and sound growth in the communities which WMATA serves. See also FTA's definition at www.fta.dot.gov/library/policy/IFT/iftb.html.

WMATA Compact
Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as may be amended.

WMATA Facility
Any improvements, structures, infrastructure components, tangible property and/or areas required, in the judgment of WMATA, for the use, operation, access, maintenance, repair, servicing, replacement or removal of structures and supports, any and all access, parking, operation and service facilities and areas relating to WMATA's operations or activities, including without limitation, the Metro station, tunnels, rails, tracks, bus stations, bus transfer areas, supervision kiosks, employee bathrooms, electric substations, conduits and lines, communications equipment and structures, pedestrian ways, waiting and shelter areas, facilities serving persons with disabilities, cooling towers, chiller plants, vent and fan shafts, bicycle rack and locker areas, storm water management facilities, landscaping, lighting and all other associated facilities.

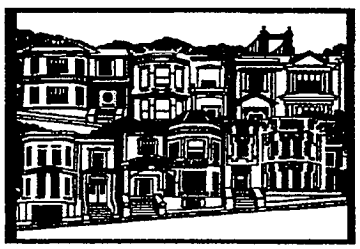
WMATA Improvement(s)
Those improvements, whether an interim replacement facility or a new facility, which will be designed and/or constructed by the Selected Developer for WMATA in a configuration acceptable to WMATA. Upon final acceptance by WMATA, a WMATA Improvement will become a WMATA Facility.

WMATA Replacement Facility
A WMATA Improvement designed and/or constructed by the Selected Developer for WMATA in a configuration acceptable to WMATA that replaces any displaced or disrupted WMATA Facility which will be turned over to WMATA.

WMATA Reserved Areas and Interests
Includes (a) all areas of, within or adjacent to the Joint Development Site containing any WMATA Facility; (b) all areas of, within or adjacent to the Joint Development Site relating to the use, operation, access, maintenance, repair, servicing, replacement or removal of any WMATA Facility; and (c) any and all easements and other reserved rights required by WMATA in connection with its use, operation, access, maintenance, repair, servicing, replacement or removal of any WMATA Facility or WMATA operations and business generally, whether expressly provided for or reasonably contemplated. Such easements and other reserved rights shall include, without limitation, easements and reserved rights (whether at, above or

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ATTACHMENT 2



LeDroit Park

October 4, 2007

Mr. Nat Bottigheimer
Contracting Officer
Office of Property Development and Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Re: Letter of Support – Shaw-Howard/Florida Avenue Joint Development Proposal

Dear Mr. Bottigheimer:

I am writing this letter to thank you for shepherding the Joint Development Solicitation (JDS) for the Shaw-Howard/Florida Avenue site. I am confident that the reviewers appreciate that this is a cornerstone property within the single member district of which I am the Commissioner.

On Tuesday, September 18, 2007, I hosted a community Town Hall meeting to allow the WMATA short-listed development teams to present their vision for redeveloping this site. Each team has solid proposals, only the Banneker Ventures/District Development Group team responds to all the express needs and desires of our community. The fact that the Banner Ventures/District Development Group team is comprised of locally owned LSDBEs, whose principals are long-time advocates for this community and who have experience in successfully developing cornerstone properties within the District of Columbia makes their proposal tremendously compelling. Moreover, the team's architect and general contractor have experience building on WMATA parcels. Finally, the team has a strong financial partner.

I am therefore pleased to lend my exclusive support to the Banneker Ventures/District Development Group proposal. This responder has assured me that the community voice will continue to be represented, LSDBEs will continue to participate, and that a project that is economically viable and beneficial to the community will be created – all of which are key priorities for me, the community which I represent and the ANC which I serve as Vice Chair.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

I will look to your leadership and commitment to quality development to select a developer that best suits the site and the community at large—which I believe to be the Banneker Ventures/District Development Group proposal. Together, we can see this project through and ensure that the Shaw-Howard/Florida Avenue Joint Development Site is developed in a manner that enhances the quality of life for those of us who live and work in the Shaw-Howard/Florida Avenue neighborhood.

Sincerely,

Myla Moss
Commissioner
ANC 1B01

cc: The Honorable Adrian M. Fenty, Mayor, District of Columbia
The Honorable Jim Graham, Ward 1 Councilmember
The Honorable Marion Barry, Ward 8 Councilmember
Emeka C. Moneme, Director, District of Columbia Department of Transportation
Neil O. Albert, Deputy Mayor for Planning and Economic Development

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ATTACHMENT 3

Description of Proposal

- Mixed-use residential and retail
- 103 residential units
- 11,750 sq ft of retail
- Transit-oriented development
- New restaurant, outdoor café and theatrical museum
- 47 parking spaces
- Experienced development team
- Broad-based community support

FOIA CONFIEDENTIAL TREATMENT REQUESTED

The Team

- WMATA (Owner)
- Banneker Ventures, LLC (Developer)
- District Development Group, LLC (Co-Developer)
- Torti Gallas + Partners, Inc. (Architect)
- MacFarlane Partners, Ball Street Funds (Equity Investor)
- DC HFA, Bank of Georgetown, PNC, HSBC (Debt Financing)
- Tompkins Builders, Inc. (General Contractor)
- Holland + Knight LLP (Land Use Counsel)

Banneker Ventures, LLC

- DC-based firm whose management has 15 years of experience in real estate and finance
- Specialize in infill development projects
- Promote TOD principles
- Experience working in public-private partnerships

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Banneker Ventures, LLC

The Driskell Residential

- $22M infill construction project
- 52 residential units
- 35 below-grade parking space
- Transit oriented (2 blks from Metro; Zip cars; bicycle racks)
- Lead on joint venture with Fannie Mae and Four Points, LLC

Banneker Ventures, LLC

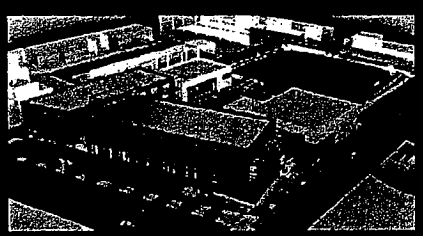
Northwest One

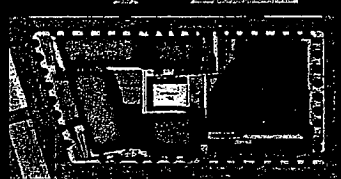
- $700M redevelopment of the NW1 neighborhood
- Partnership includes DC Govt, Banneker Ventures, William C. Smith, Jair Lynch Companies and CPDC
- MacFarlane Partners (Equity)
- Largest housing development in the District (1,630 units of housing)
- 220,000 sq. ft. office space
- 40,000 sq. ft. retail

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Banneker Ventures, LLC

Walker Jones School, Recreation Center and Library

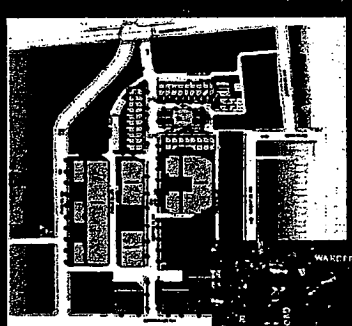




- $47M new construction, mixed-use project
- 100,000 sq. ft. k-8 school
- 20,000 sq. ft. recreation center
- 5,000 sq. ft. library
- Public-private partnership

Banneker Ventures, LLC

The Park Morton Redevelopment Initiative



- Master Planner for D.C. Housing Authority
- 5 acre site located 10 blocks from WMATA site (Ward 1)
- Plan calls for development of 550,000 SF of mixed-income housing
- Plan promotes TOD principles (2 blocks from Petworth Metro and Georgia Avenue bus line)

FOIA CONFIEDENTIAL TREATMENT REQUESTED

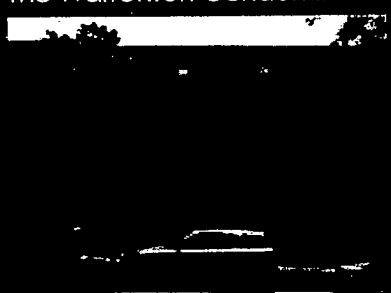
Banneker Ventures, LLC – Principal's Involvement

The Warrenton West

- $7M residential renovation project
- 18 units with mix of 1, 2 and 3 BR flats and duplexes
- 18 parking spaces
- Sold out units in less than 4 months
- Owner/Project Executive

Banneker Ventures, LLC – Principal's Involvement

The Warrenton Condominiums



- Moderate renovations of 1950's era building
- 14 residential condominiums
- Mix of 1 and 2 BRs
- Controlled-access surface parking, hardwood floors, granite countertops, ceramic tile kitchen and baths
- Owner/Project Executive

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Banneker Ventures, LLC – Principal's Involvement

City Vista

- $220M mixed-use project anchoring revitalization of Mount Vernon Triangle
- 685 new residential units
- 55,000 sq. ft. Safeway
- 30,000 sq. ft. fitness center
- Partnership with Lowe Enterprises, Bundy Development Corporation and Neighborhood Development Company
- Served as Assistant Project Manager

Banneker Ventures, LLC – Principal's Involvement

Sixth Street Flats

- New construction project located in China Town
- $14M luxury condominiums
- Six stories with underground parking
- Transit oriented (1 blk from Gallery Place Metro)
- Completed on-time (12 month construction schedule)
- Served as Project Manager

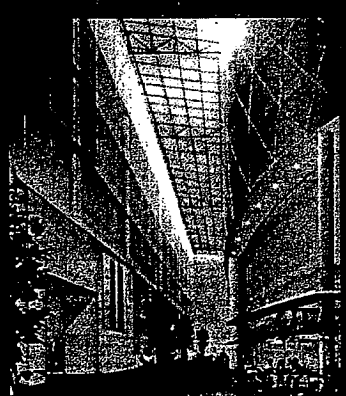
FOIA CONFIEDENTIAL TREATMENT REQUESTED

Banneker Ventures, LLC – Principal's Involvement

The Icon

- New construction project located in Logan Circle
- $5.2M construction costs
- 19 luxury condominium units
- Light gauge-steel (similar to structure recommended for WMATA project)
- Served as Project Manager

District Development Group, LLC



- DC-based firm with 40 years of experience in real estate and urban development
- Currently partnered with Akridge and Clark Construction on proposed 300,000 sq ft office building
- Experience developing office and residential space throughout the District

FOIA CONFIEDENTIAL TREATMENT REQUESTED

District Development Group – Principal's Involvement

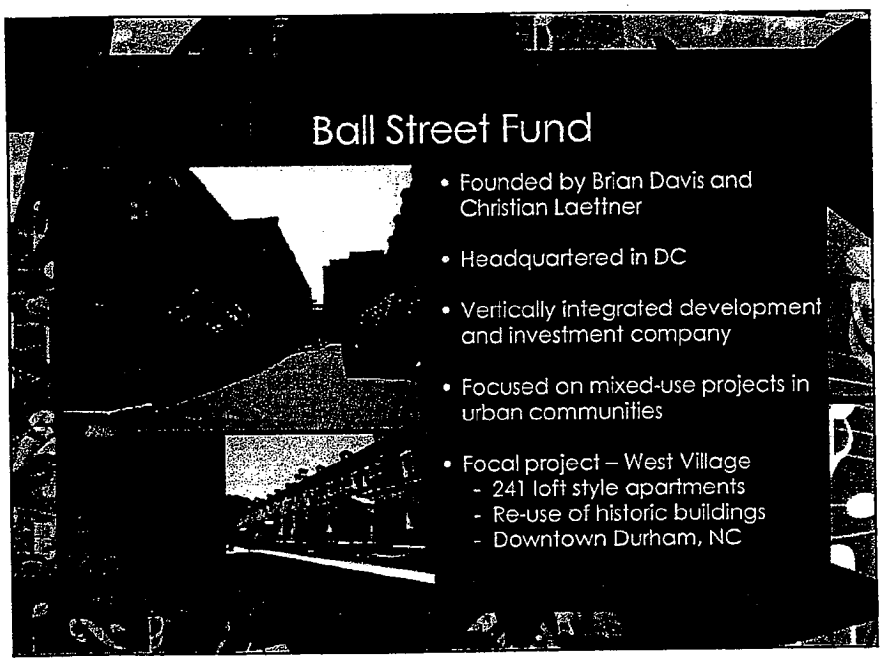
Thurgood Marshall Academy

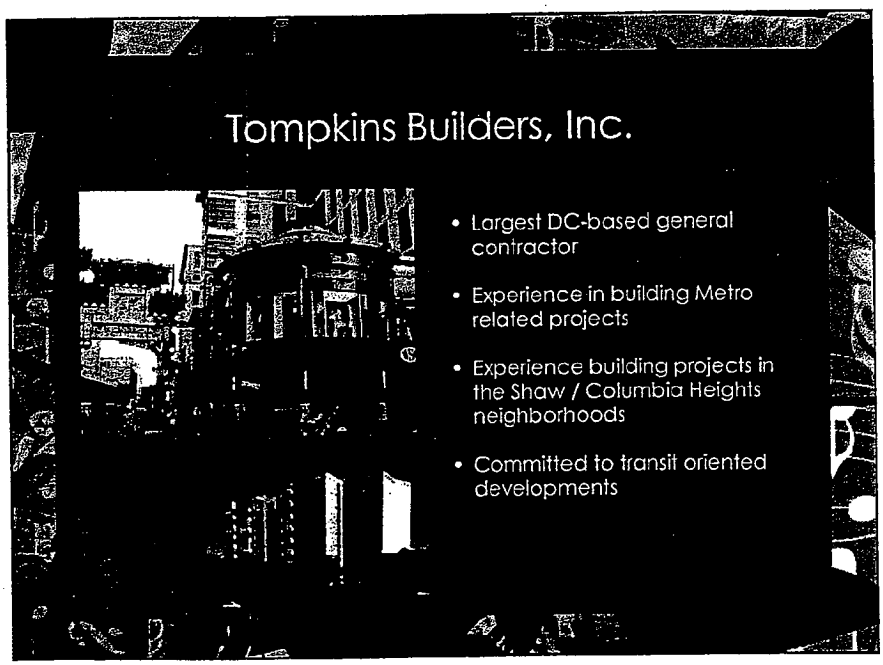
- 60,000 sq. ft. new construction and renovation project
- $14M complex financing structure
- Recognized as Gold Standard for School Construction
- Transit oriented project (directly across street from Anacostia Metro)

MacFarlane Partners

- Largest minority-owned real estate investment management firm in the U.S. with $20B in assets
- Focus on underserved urban neighborhoods, urban-infill sites and smart growth in suburbs
- Helped build 20M sq ft of commercial space and 27,000 multi-family housing units in DC and other major cities

FOIA CONFIEDENTIAL TREATMENT REQUESTED





FOIA CONFIEDENTIAL TREATMENT REQUESTED

Torti Gallas + Partners, Inc.

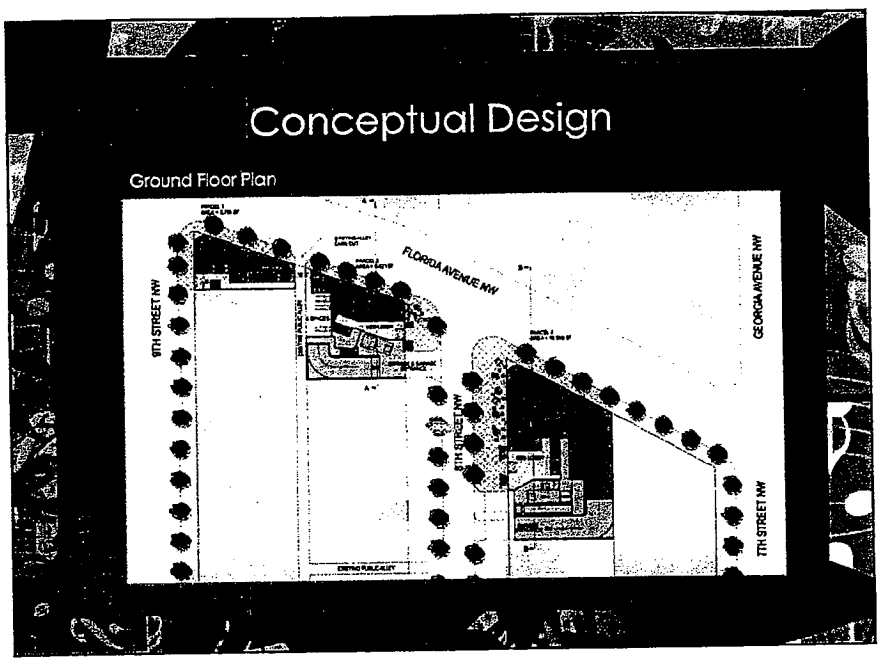
- Established in 1953
- National firm with local presence
- 65 national design awards in the last fifteen years
- Experience designing projects on WMATA land
- Expertise in mixed-use, urban infill projects
- Committed to TOD principles

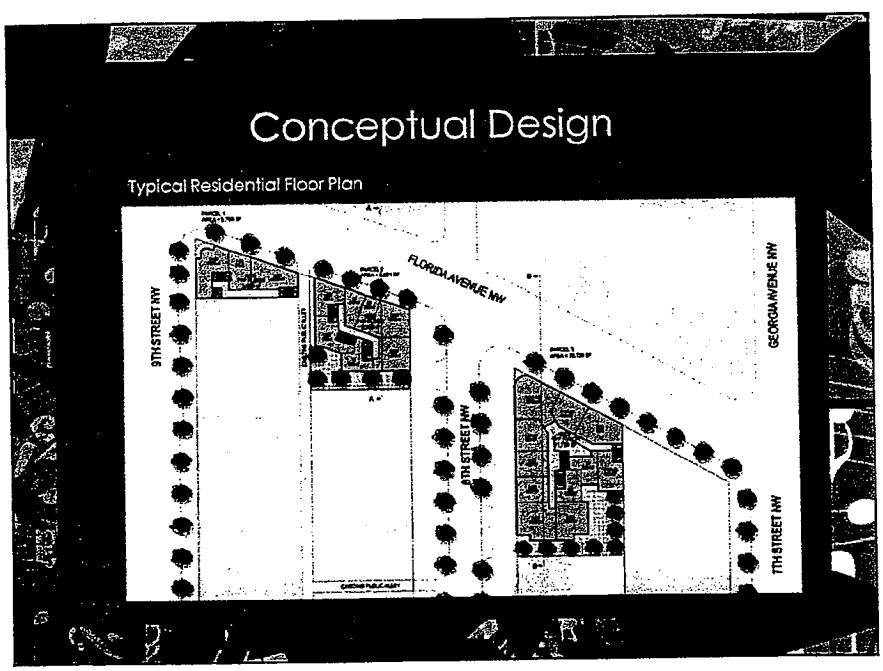
Conceptual Design

View at the corner of 8th Street and Florida Avenue

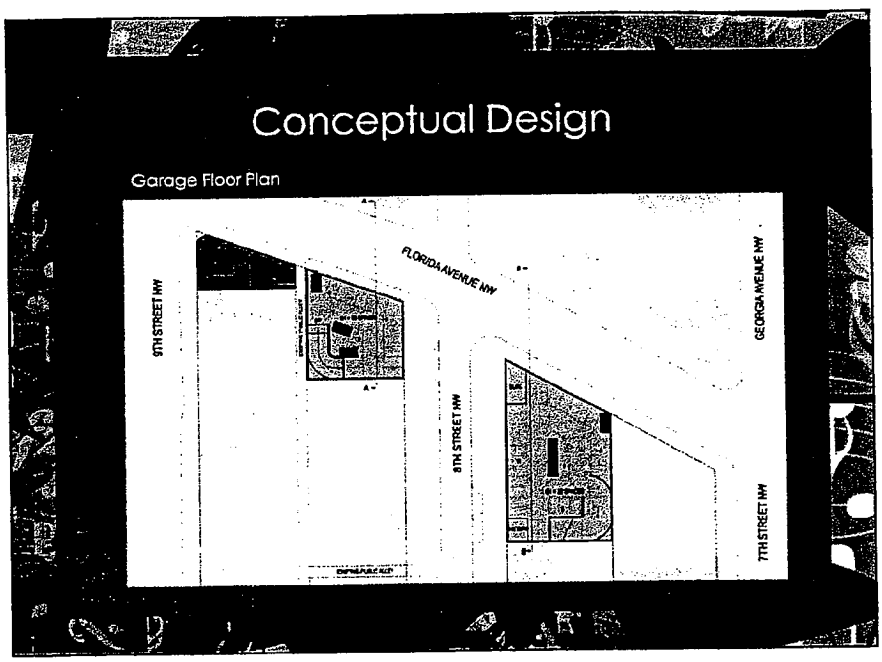
- Mixed-use residential and retail
- 103 residential units
- 11,750 sq. ft. retail
- 47 parking spaces for residential and retail uses
- Promote transit use
- Amenities include:
  - Theatrical Museum/Cafe
  - Utopia Jazz Restaurant
  - Additional neighborhood serving retail space

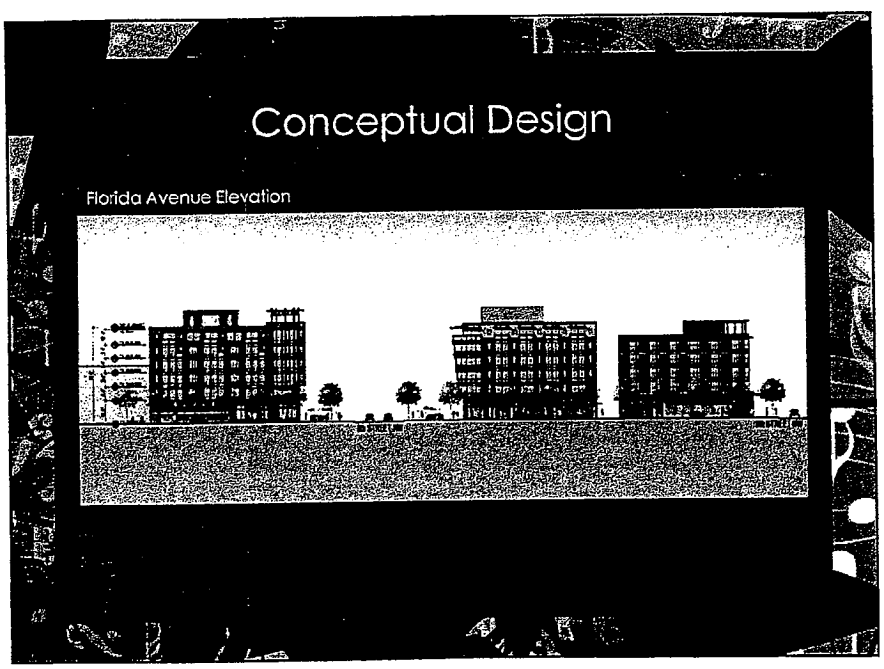
FOIA CONFIEDENTIAL TREATMENT REQUESTED





FOIA CONFIEDENTIAL TREATMENT REQUESTED





FOIA CONFIEDENTIAL TREATMENT REQUESTED

Transit-Oriented Development

- TOD principles:
  - Maximize access to public transportation
  - Help accommodate new growth
  - Create compact, vibrant neighborhood centers within walking distance of transit
- How does The Jazz meet TOD principles?
  - Site within 2 blocks of 2 Metro stations
  - Served by several Metro bus lines, encouraging the use of public transportation over vehicles
  - Public realm and building design provide pedestrian and bicycle access and connectivity to existing street network
  - Mix of uses, with both residential and retail components

Local Jurisdiction and Community Input

- Supported by:
  - ANC Commissioner Myla Moss (1B01 Vice Chair)
  - LeDroit Park Civic Association
  - Columbia Heights Community Development Corp.
  - Lower Georgia Avenue Community Development Corp.
  - Area residents (citizen petition with 160 signatures)
- Design in conformity with:
  - Office of Planning guidelines (DUKE & Comp Plan)
  - Department of Transportation guidelines
- Presented at community charette hosted by ANC 1B

FOIA CONFIEDENTIAL TREATMENT REQUESTED

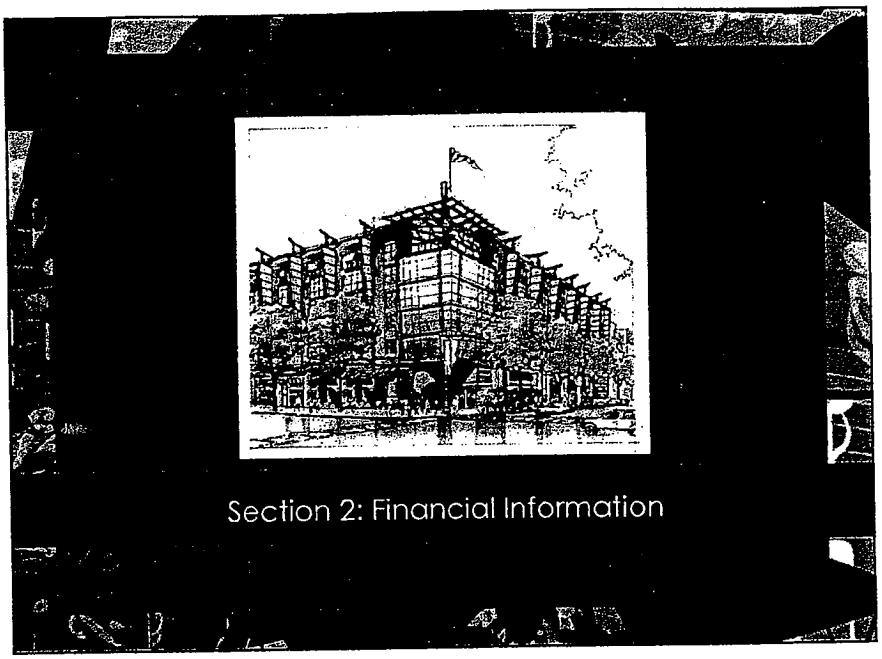
Benefits to Local Jurisdiction

- $36M investment in Shaw
- $268,970 in annual property taxes
- $304,212 in annual sales taxes
- $222,450 in one-time permit fees
- $350,000 in one-time transfer & recordation taxes
- 103 new residential units
- 10-20 units of affordable housing providing economic value of $2.27-$4.54M to the District
- 100 construction jobs for District & neighborhood residents
- 30 permanent jobs for District & neighborhood residents

Anticipated Schedule

- WMATA Negotiations and Approvals (2/08 – 6/08)
- Local Approvals
  - BZA (6/08 – 11/08)
  - HPRB (6/08 – 7/08)
  - ANC 1B (6/08 – 7/08)
- Lease Execution (7/08)
- Pre-Construction (6/08 – 3/09)
- Construction (3/09 – 4/10)
- Stabilization (6/10 – 10/10)

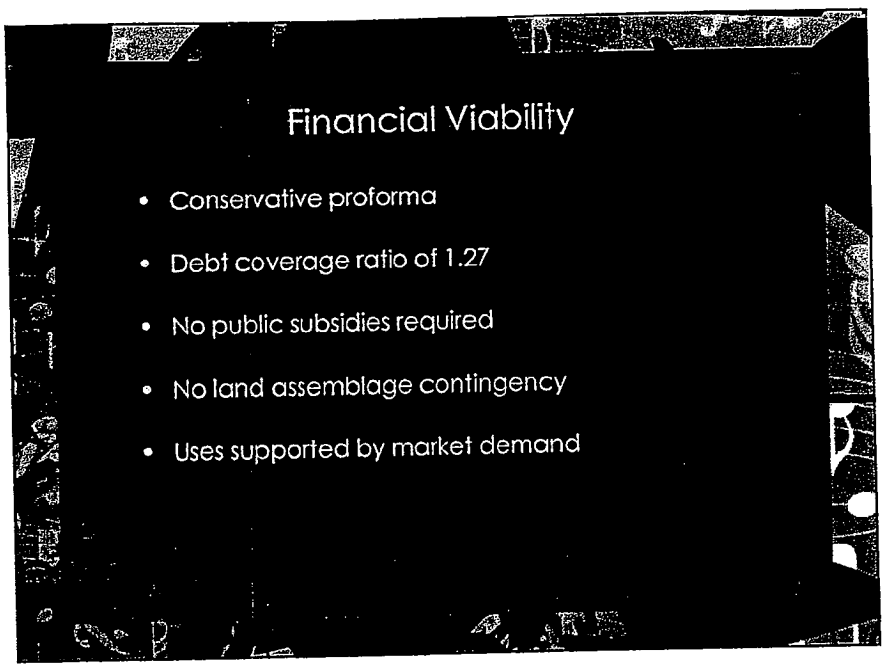
FOIA CONFIEDENTIAL TREATMENT REQUESTED

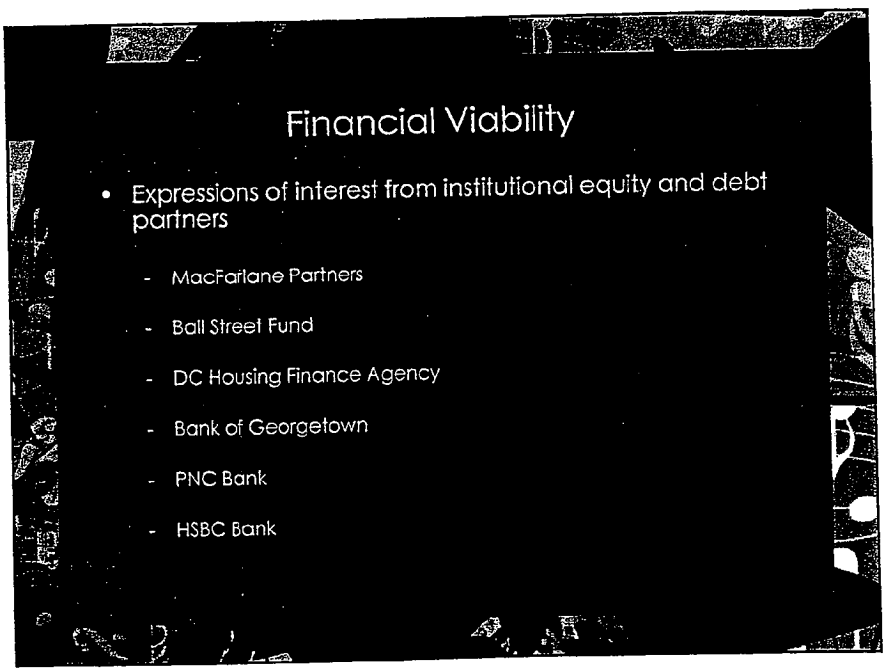


Proposed Business Relationship with WMATA

- Ground lease for 60 years with option to extend
- Payment of $100,000 non-refundable option fee for right to negotiate Development Agreement
- Annual pre-development lease payment of $100,000
- Annual post-development lease payment of $500,000 with 3% annual escalation
- 10.0% share of net proceeds in event of sale or transfer of interest
- $36M improvement to WMATA-owned land

FOIA CONFIEDENTIAL TREATMENT REQUESTED





FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ATTACHMENT 4

BANNEKER VENTURES, LLC

April 23, 2008

Rosalyn Doggett
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

Re: Shaw-Howard Florida Avenue Joint Development

Dear Ms. Doggett:

You have asked that I address concerns that have been brought to your attention, by Jim Graham, District of Columbia Councilmember for Ward 1 and member of the Board of Directors of the Washington Metropolitan Area Transit Authority ("WMATA"), about the selection of Banneker Ventures, LLC ("Banneker") as the lead developer for the Shaw-Howard Florida Avenue Joint Development Site. Specifically, the concerns center on recent allegations and insinuations of questionable business practices involving Warren Williams, Jr., a principal of Banneker. The allegations relate to two matters, the closing of a night club in which Mr. Williams was an owner following the tragic death of a patron and unfounded claims by a tenants' group that Mr. Williams (as landlord) failed to maintain the building.

I hope that the Board of WMATA would not terminate our selection as the designated Developer of the above referenced site as a result of unfounded allegations. While I recognize that the WMATA Board has discretion to reject submissions where the selected developer does not have a satisfactory record of integrity and business ethics, except for the unfounded allegations mentioned above, I am unaware of any record establishing the lack of integrity or business ethics of Mr. Williams or any other member of our development team. To my knowledge, there are no criminal or administrative actions pending against Mr. Williams or any business venture in which he is involved. Notably, with respect to the tenants' group's allegations, a recent listing of District landlords charged criminally as a result of their failure and refusal to maintain their properties did NOT include Mr. Williams.

To address the controversies more directly, as I understand, Mr. Williams and his family were operators of a nightclub in the District's Reeves Center. Any outstanding debts to the District as a result of the tenancy have been paid and no amounts remain owing to the District. I can understand Mr. Graham's concern; however, the light that an unfortunate event shines on a situation can sometimes distort the facts and lead to erroneous conclusions. I respectfully submit that Mr. Graham's concerns about the nightclub do not point to any specific failures by Mr. Williams.

700 12th Street, NW • Suite 700 • Washington, D.C. 20005 • (202) 667-4110
814 Thayer Avenue • Suite 300 • Silver Spring, Maryland 20910 • (301) 565-4980
www.bannekerventures.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Banneker believes that the allegation that Mr. Williams is a "slum lord" is unfair. Mr. Williams reports that his sole remaining rental property located at 804 Taylor Street NW ("Taylor Flats") is currently undergoing a full renovation and repositioning. The 26 unit building is now home to only 3 residents, who have all negotiated transfers in order that the construction might commence. All units will be vacant as of July 1, 2008, with an expected re-occupancy in April 2009. Quite the opposite of being a "slum lord", Mr. Williams is a responsible developer who is actively engaged in the rehabilitation of property to the benefit of its tenants and the District. Please see the enclosed letter of support, dated January 22, 2008, for the rehabilitation of Taylor Flats from Councilmember Muriel Bowser of Ward 4, whose Ward Taylor Flats is located in.

As you are well aware from all of our literature and Bid Proposal documents, Mr. Williams has and continues to play a key role in our venture and our successful Bid proposal. Up to this point, his continued involvement in the development of the site has been unquestioned. As you also know, Mr. Williams has participated in a number of housing development projects across the District, many involving the renovation and/or restoration of apartments and condominiums, bringing both market rate and affordable housing units to underserved areas. Mr. Williams brings a wealth of knowledge and experience to our project.

Other than the unsubstantiated allegations relating to Mr. Williams, there does not appear to be any record upon which WMATA should seek to invoke its discretionary power to terminate our selection as the designated Developer of the above referenced site. Further, I think it worthwhile to point out that none of the allegations involve Banneker Ventures directly. Obviously, Banneker Ventures is a separate legal entity with a distinct management team and track record. Our winning Bid Selection contemplates a joint development with Banneker in the lead. Our team has devoted significant time and resources to this project. We are professional developers in the District and plan to continue our work for a long time. We care very much about our reputation and the quality of our projects. We remain, as always, prepared to meet with you and/or the WMATA Board to discuss the concerns raised by Mr. Graham and any other concerns or issues that need clarification. If you or the Board has specific questions, I am happy to provide answers or any other reasonably requested supplemental information.

Please do not hesitate to contact me if you have any further questions or if you need further information. You may reach me by telephone at (202) 667-4110.

Yours truly,

Omar A. Karim

Enclosure

cc: Guy E. Flynn, Partner, DLA Piper US LLP

ATTACHMENT 5

Minutes
Planning, Development and Real Estate Committee
April 24, 2008

The meeting was called to order at 9:07 a.m. Present were:

Committee Members:

Mrs. Catherine Hudgins, Chair
Mr. Emeka Moneme, Vice Chair
Mr. Christopher Zimmerman
Mr. Jim Graham
Mr. Peter Benjamin
Ms. Elizabeth Hewlett
Mr. William Euille
Mr. Marion Barry
Mr. Gordon Linton
Mr. Jeff McKay

The Committee meeting was called to order at 9:07 am. Mr. Benjamin moved, seconded by Ms. Hewlett, that the Committee convene to Executive Session at 9:09 am. The Committee voted in favor of the motion; the vote was unanimous.

The Committee meeting reconvened at 10:05 a.m.

Certification

Mrs. Hudgins moved that the Board certify, to the best of each member's knowledge, and with no individual member dissenting, that, at the just-concluding Executive Session, only such matters as are authorized for discussion in Executive Session under Board Procedure VI, and only those matters identified in the motion by which the Executive Session was convened, were heard, discussed or considered by the Board. The motion was seconded by Mr. Benjamin. The Committee unanimously voted in favor of the motion.

Approval of Agenda

The agenda was approved.

Approval of Minutes

The minutes from the March 27, 2008 meeting were approved with changes as modified by Mr. Peter Benjamin.

Action Items

A. Sale of Rosslyn Bus Alley

Mr. Zimmerman moved that the Committee recommend the Board approve authorization for staff to enter into a sales agreement with The JBG Companies ("JBG") for purchase of Rosslyn Bus Alley at the Rosslyn Metrorail Station and to allow Arlington County to use the proceeds from the sale of the bus alley to partially fund enhancements to the Rosslyn Metrorail Station. Motion was seconded by Ms. Hewlett. The Committee voted in favor of the motion; the vote was unanimous.

B. Florida Avenue Developer Selection

Mr. Graham moved that this matter be deferred for a period of not less than 60 days. The motion was seconded by Ms. Hewlett. The Committee unanimously voted in favor of the motion.

C. Royal Street Relocation Project

Staff sought to obtain concurrence from the Planning, Development and Real Estate Committee and Board approval to 1) establish a project for the replacement of the Royal Street Bus Garage; 2) establish a $4.3 million project budget; and to 3) authorize tasks to P2d for the alternatives analysis and Public Hearing planning process.

Mr. Requa informed the Committee that whether or not the financing of the alternatives analysis and public hearing process can be completed with federal funds is in question and, even though this project is being recommended, the acceptance of federal government wording changes and legislation will apply to the use of these funds for this project. Also, there is no intent to find other funds at this time not available through the grant process.

Mr. Zimmerman asked Mr. Requa from where the $4.3M was coming and what the $4.3M would buy. Mr. Requa responded there are grants available for construction of the new facility to replace Royal Street. He also responded the $4.3M was to start the construction project but is questioning if it can also be used for the alternatives analysis and public hearing process. Mr. Zimmerman then asked if more money would be needed to acquire a piece of property and build the facility. Mr. Requa responded yes additional funds would be needed.

Mr. Benjamin sought assurance that the $4.3M does not offset Metro Matters. Ms. O'Keeffe recommended to amend the Resolution to read, "That the Board of Directors amend the Capital Budget to establish a Reimbursable Project, separate from Metro Matters to fund an alternatives analysis, preliminary engineering, WMATA management

and the public hearing process for the replace of the Royal Street Bus Garage, subject to the availability of funding from FTA grants in the amount of $3.41M plus the required local match of $0.85M from the Virginia Department of Rail and Public Transportation."

Mr. Euille motioned that the Board approve staff to establish a project for the replacement of the Royal Street Bus Garage; establish a $4.3m project budget; and authorize tasks to P2d for an alternatives analysis and Public Hearing planning process. The motion was seconded by Mr. Zimmerman. The Committee unanimously voted in favor of the motion.

D. Policy Concerning Use of WMATA Property for Non-WMATA Transit Projects

Staff sought to obtain Board approval of a proposed policy allowing the no-cost transfer of WMATA-owned real property to local jurisdictions and state governments for reimbursable and other transit projects and to apply any sale proceeds from land transfers with non-governmental entities in connection with these projects to the particular reimbursable or transit project.

Mr. Benjamin stated that the Authority owns property that does not use federal funds, therefore, Federal Transit Administration (FTA) approval is not always required. He also stated there should be a positive statement that states that the benefits of this transfer would be evaluated and would be commensurate with the value of the land and the value to the region at large.

Mrs. Hudgins stated that the proposed policy is not comprehensive enough to protect the Authority. Mr. Catoe responded that Counsel will review the proposed policy to ensure that any change we make or any easement that we allow on our property or use of the land owned by Metro would be to the benefit either of Metro directly or Transit within the region.

Mr. Bottigheimer stated that there is flexibility to make transactions that are being proposed when something is operationally excessive to make it available and it may not be necessary to include in this policy.

Mr. Graham asked, if adopted, would this policy adversely affect our ability to dispose of property. Mr. Bottigheimer responded that it would not.

Mr. Zimmerman requested staff to prepare the distinction between the different ways property is disposed now. He then mentioned that the Joint Development Policy also has an excess property clause. Mr. Catoe agreed that staff would comply with this request.

Mr. Benjamin moved, seconded by Mr. Linton, that this item be deferred to a later date. The Committee unanimously voted in favor of the motion.

Information Item

A. Future Metrorail Capacity Needs

Mr. Harrington briefed the Board on Metrorail ridership growth trends over the next 25 years, discussed the adequacy of system and station capacity to handle projected ridership growth, and described capital improvements needed to enhance system capacity.

Mr. Zimmerman asked what was the growth in the last ten years. Mr. Harrington responded that over the last five years there has been under three percent a year growth on daily ridership and from analysis shows that peak hour-peak direction had a lower growth rate. Mr. Zimmerman then asked what has the accumulative growth rate been over the last ten years. Mr. Catoe stated it was a little higher than 30 percent and that staff was still working out the numbers.

Mr. Bottigheimer stated ridership associated with Dulles was ridership from the core out to Tysons, transfers coming from Vienna onto the new line inbound, riders from Loudon County into Tysons and being replaced at Tysons coming inbound. He also stated infrastructure associated with the Dulles corridor is really supporting the Dulles corridor's ridership so the conclusions are largely the same whether Dulles is built or not.

Mr. Zimmerman noted that Rosslyn was not in the presentation and asked why Courthouse was included. Mr. Harrington responded that from the ridership forecast Courthouse has high growth. Mr. Zimmerman stated that there is growth anticipated there but there was more growth anticipated in Clarendon. Mr. Bottigheimer replied that the analysis model is much stronger on the grouping of stations forecast than on an individual basis.

Mr. Benjamin asked if staff has evaluated the platforms for growth. Mr. Harrington responded that platforms were not studied in detail but it is something that will be looked at further, particularly for the core stations.

The meeting was adjourned at 11:10 a.m.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ATTACHMENT 6

BANNEKER VENTURES, LLC

May 9, 2008

VIA EMAIL

Joel Washington
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

RE: Shaw-Howard/Florida Avenue Joint Development Site – Follow-up

Dear Mr. Washington:

We are writing to respond to certain questions concerning alleged obligations due to the District of Columbia (the "District") by Mr. Warren Williams, Jr., Principal of Banneker Ventures ("Banneker").

To our knowledge, Mr. Williams, in his personal capacity, does not have any outstanding financial obligations due to the District, except, for local taxes that may be owing but not overdue. Furthermore, Mr. Williams, in his capacity as a Principal of Banneker, does not have any outstanding financial obligations due to the District, except, for local taxes that may be owing but not overdue.

Prior to joining Banneker, Mr. Williams was a co-owner of Levelle, Inc., a company that operated The Coach & Four Restaurant (the "Restaurant") located in The Frank D. Reeves Municipal Center at 2000 14th Street, NW, Washington, DC 20009. It is our understanding that Levelle does not have any outstanding financial obligations due to the District nor has it ever been in arrears to the District under its lease during its more than 10 years of operation in this government facility. The only amount that Levelle has ever paid to the District aside from its normal lease payments and any license fees, local taxes or duties was a $100,000 payment made on January 6, 2005 as part of a settlement agreement and release of certain claims and cross-claims made between Levelle and the District. The settlement agreement resolved any disputes between Levelle and the District. At present, Mr. Williams no longer has any interest in Levelle and Levelle no longer operates the Restaurant. You may confirm that Levelle has satisfied its obligations related to the lease for the Restaurant and otherwise by contacting Bill Rice of the District of Columbia's Office of Property Management at (202) 724-4400.

We hope that this clarifies any questions that WMATA may have regarding financial obligations due by Mr. Williams, Levelle or any company associated with Mr. Williams to the District.

700 12th Street, NW • Suite 700 • Washington, D.C. 20005 • (202) 667-4110
814 Thayer Avenue • Suite 300 • Silver Spring, Maryland 20910 • (301) 565-4980
www.bannekerventures.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Should you have any additional questions, please feel free to contact me at (202) 667-4110 (office) or (301) 523-1810 (cell).

Sincerely,

Omar A. Karim

Cc: Warren C. Williams, Jr.
Guy Flynn, DLA Piper US LLP

ATTACHMENT 7

BOARD AGENDA REVIEW
as of
JUNE 03, 2008

JUNE 12 — **Customer Service, Operations and Safety Committee**

Public Session

Information Agenda:

OPER	Operational Performance (G. Francis)
OPER	Communication Initiative (G. Francis)
SSEM	Metro Transit Police Crime Statistics and Camera Information (M. Taborn)
SSEM	Safety Performance Indicators Report (R. Keele)

JUNE 12 — **Finance, Administration and Oversight Committee**

Public Session

Information Agenda:

CFO	FY08 Monthly Financial Report (April 2008) (R. Harcum)

Action Agenda:

GMGR	FY09 Annual Budget Approval Sent to Full Board (J. Catoe)
CFO	Approval of District of Columbia OneCard Program (G. Garback)
CFO	Diesel Swap Authorization (C. Woodruff)

JUNE 26 — **Planning, Development and Real Estate Committee**

Public Session

Information Agenda:

PLJD	Jackson Graham Building Relocation Analysis (N. Bottigheimer)

Action Agenda:

PLJD	Policy Concerning Use of WMATA Property for Non-WMATA Transit Projects (N. Bottigheimer)
PLJD	Bus Network Evaluation (N. Bottigheimer/J. Hughes)
PLJD	Rhode Island Avenue-Approval of Interim Parking Plan (N. Bottigheimer/J. Washington)

Executive Session

Action Agenda:

PLJD	Florida Avenue Developer Selection (N. Bottigheimer)

JUNE 26 — **Board Meeting**

Public Session

Action Agenda:

SECT	TBD (L. Chambliss)

JULY 10 — **Customer Service, Operations and Safety Committee**

Public Session

Information Agenda:

OPER	Operational Performance (G. Francis)
SSEM	Metro Transit Police Crime Statistics (M. Taborn)
SSEM	Safety Performance Indicators Report (R. Keele)

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005520

ACCS MetroAccess Door-to-Door Service Implementation Update (S. Dalton-Kumins)

JULY 10 **Finance, Administration and Oversight Committee**
Public Session
Information Agenda:
CFO FY08 Monthly Financial Report (May 2008) (R. Harcum)

JULY 24 **Planning, Development and Real Estate Committee**
Public Session
Information Agenda:
PLJD FY11 and Beyond Capital Improvement Plan (N. Bottigheimer/T. Harrington)

Action Agenda:
PLJD Lease with Prince George's Metro Center, Inc. (N. Bottigheimer)
PLJD DBE Program for Joint Development Activities (N. Bottigheimer)
PLJD Approve Term Sheet on Navy Yard Chiller Site (N. Bottigheimer)
OPRS Policy on LEED Certification (J. Requa)

JULY 24 **Board Meeting**
Public Session
Action Agenda:
SECT TBD (L. Sequeira)

SEPTEMBER 11 **Customer Service, Operations and Safety Committee**
Public Session
Information Agenda:
OPER Operational Performance (G. Francis)
SSEM Metro Transit Police Crime Statistics (M. Taborn)
SSEM Safety Performance Indicators Report (R. Keele)

SEPTEMBER 11 **Finance, Administration and Oversight Committee**
Public Session
Information Agenda:
CFO FY08 Monthly Financial Report (June 2008) (R. Harcum)

SEPTEMBER 25 **Board Meeting**
Public Session
Action Agenda:
SECT TBD (L. Sequeira)

OCTOBER 02 **Finance, Administration and Oversight Committee**
Public Session
Information Agenda:
CFO FY09 Monthly Financial Reports (July and August 2008) (R. Harcum)

OCTOBER 16 **Board Meeting**
Public Session
Action Agenda:

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005521

SECT TBD (L. Sequeira)

NOVEMBER 20 **Board Meeting**
Public Session
Action Agenda:
SECT TBD (L. Sequeira)

DECEMBER 18 **Board Meeting**
Public Session
Action Agenda:
SECT TBD (L. Sequeira)

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005522

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ATTACHMENT 8

Omar A. Karim

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Friday, March 06, 2009 3:00 PM
To: 'Emeka Moneme'
Cc: 'Nat Bottigheimer'; 'Tiwana Hicks'; 'Perry, Maurice'
Subject: Banc of AmericaBACDC LOI
Attachments: Banc of America LOI - Jazz @ Florida Avenue.pdf

Importance: High

Emeka,

As promised, attached please find a copy of the LOI between Banc of America CDC and Banneker Ventures in connection with the Jazz @ Florida Avenue project. Will call you to follow-up.

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

-----Original Message-----
From: Perry, Maurice [mailto:maurice.perry@bankofamerica.com]
Sent: Friday, March 06, 2009 2:47 PM
To: okarim@bannekerventures.com
Cc: thicks
Subject: BACDC LOI

Omar,

Please see the attached. I'll send you the original letter as well.

Thanks.
Maurice

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Bank of America

Community Development Banking

March 6, 2009

Mr. Omar A. Karim
Banneker Ventures, LLC
700 12th Street NW, Suite 700
Washington, DC 2005

RE: The Jazz @ Florida Avenue
Washington, DC

Dear Omar:

I am writing to confirm the interest of Banc of America Community Development Corporation ("BACDC") in working with Banneker Ventures, LLC ("BVLLC") or an affiliate of Banneker Ventures, LLC ("Banneker") to become a Co-Developer of and provide direct equity investment into the proposed development known as The Jazz @ Florida Avenue, situated along the 700 and 800 blocks of Florida Avenue in Northwest, Washington, DC. We have been working with you through refinements to the development program and further due diligence and we retain a high level of interest in structuring a partnership that allows for BACDC to become a partner and provide equity investment for gap funding as well as other technical and financial support for the project.

We understand that the proposed development program is a mixed-use community consisting of 153,770 gross square foot of residential and retail space. A total of 20% of the units will be affordable to persons who earn 60% of the area median income. Total development costs for this project are approximately $40,124,371 and BACDC would have interest in providing gap funding via a direct equity investment through a partnership agreement with BVLLC or an affiliate. We intend to work closely with our colleagues at Bank of America to provide a complete financing package that could potentially include both debt and equity syndication, if needed.

Banc of America CDC is the nation's first and most productive Bank-owned community development corporation. We have a broad range of experience on projects similar to The Jazz @ Florida Avenue and in creative equity partnerships. We look forward to working with you on this project and providing support for the continued revitalization of this historic neighborhood.

Sincerely,

Maurice Perry
Vice President
Banc of America CDC

730 15th Street NW, 8th Floor, Washington, DC 20005

Recycled Paper

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005526

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ATTACHMENT 9

June 1, 2009

Ms. Leila Finucane Edwards, Director
Government of the District of Columbia
Department of Housing and Community Development
1800 Martin Luther King, Jr., Ave., SE – Suite 8000
Washington, D.C. 20020

RE: The Jazz @ Florida Avenue

Dear Ms. Edwards:

On behalf of the Washington Metropolitan Area Transit Authority ("WMATA"), this letter shall serve as notice that on April 23, 2009, WMATA's Board of Directors approved a one hundred and twenty (120) day extension of the negotiation period between WMATA and Banneker Ventures, LLC ("Banneker") for the Shaw-Howard University/Florida Avenue parcels, located on the 700 and 900 blocks of Florida Avenue, NW where Banneker and its development partner, Banc of America CDC, intend on developing a mixed-income, mixed-use residential and retail project. WMATA staff anticipates that the remaining terms of the Joint Development Agreement and Ground Lease between WMATA and Banneker/Banc of America will be finalized and submitted for approval to the Board of Directors at its July meeting.

Please contact me with any questions you may have regarding the foregoing.

Sincerely,

Emeka C. Moneme
Chief Administrative Officer

Washington Metropolitan Area Transit Authority

600 Fifth Street, NW
Washington, DC 20001
202/962-1234

By Metrorail:
Judiciary Square—Red Line
Gallery Place-Chinatown—
Red, Green and
Yellow Lines
By Metrobus:
Routes D1, D3, D6, P6,
70, 71, 80, X2

A District of Columbia, Maryland and Virginia Transit Partnership

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ATTACHMENT 10

Omar A. Karim

From: Doggett, Rosalyn [RDoggett@wmata.com]
Sent: Friday, May 29, 2009 4:53 PM
To: Omar A. Karim
Cc: 'thicks'; Maurice' 'Perry; eric.smart@bolansmart.com; Meister, Mark K.; Montague, Joshua W.
Subject: RE: Florida Avenue Terms

Omar, this morning we met with executive staff, including General Counsel and AGM. While there was agreement that we have a possible framework for a deal, there was also agreement that no deal can be finally evaluated until we get an outside appraisal from an independent contractor. Ordering the outside appraisal and obtaining and reviewing its results will take approximately 60 days at best. Therefore, though we can continue to address the point other than rent in the economic terms chart, and I will send you thoughts in a separate e-mail, we will have to await the appraisal to finalize numbers.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Friday, May 29, 2009 3:55 PM
To: Doggett, Rosalyn
Cc: 'thicks'
Subject: Florida Avenue Terms
Importance: High

Mrs. Doggett,

Any word on where we are with the final terms of our negotiations of the economic terms of the Florida Avenue deal?

Omar

Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110 office
(301) 523-1810 cell
okarim@bannekerventures.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ATTACHMENT 11

Omar A. Karim

From: Goldin, Steven [sgoldin@wmata.com]
Sent: Thursday, October 22, 2009 3:08 PM
To: 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; jkass@dccouncil.us; Yohance S. Fuller; Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc: Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat; Sequeira, Loyda; Meister, Mark K.; Mohsberg, Sid; Wallace, Maria A
Subject: Florida Avenue

To All:

As per direction from our Board, we are proceeding with preparing a term sheet for the lease of our property. The matter is to be taken up by the full Board in a special meeting in two weeks.

The lease will be as it was when a lease was first discussed (prior to my arrival): a capitalized payment at closing, an annual % participation in net operating income and a % participation upon various capital events (refinance, sale, etc). My understanding is that the participations had been 1.5% and 10% respectively.

By way of this e-mail, I am asking the following actions to be taken:

Omar: Please advise whether you as the developer are in agreement

Maurice: Please advise whether Bank of America CDC is in agreement

Jonathon: Please confirm that Chairman Graham is in agreement

Yohance: Please Confirm that Mr. Albert is in agreement

Roz/Malcolm: Please call Richard Harps and explain that we need the updated appraisal in hand by 10/30. Please initiate a new BAIS.

Josh/John: Please revise the term sheet to reflect the lease and discuss the co-tenancy agreement

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005535

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ATTACHMENT 12

Omar A. Karim

From: Doggett, Rosalyn [RDoggett@wmata.com]
Sent: Monday, November 16, 2009 8:54 AM
To: Omar A. Karim
Subject: FW: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites

Omar, once again the term sheet was sent out to the Board on Friday for its consideration on Thursday November 16.

Please note the two points below in Josh Montague's e-mail, which we will adhere to. If you want further explanation, which does not appear necessary to us because we have already given you reasons, do feel free to give me a call.
Many thanks,
Roz

From: Goldin, Steven
Sent: Friday, November 13, 2009 6:33 PM
To: Montague, Joshua W.; Doggett, Rosalyn; Bottigheimer, Nat
Subject: Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites

Agreed. Roz; please advise Omar next Monday.
Steve

From: Montague, Joshua W.
To: Goldin, Steven; Doggett, Rosalyn
Sent: Fri Nov 13 18:29:16 2009
Subject: FW: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites
Per our meeting today, this is a reminder that we should inform the developer of the following:

1. There will be no more negotiating of the terms after the board approves the Term Sheet; and
2. The Developer must work off of the Florida Ave Lease draft that was sent to them by WMATA on 7/24/09. We cannot work off of the Rhode Island Ave Lease for reasons previously provided to John Hagner and Omar Karim.

Have a good weekend,

Josh

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, November 04, 2009 10:42 PM
To: Anthony James Ives; Tiwana Hicks; Montague, Joshua W.; John Hagner; O'Keeffe, Carol B.; Bottigheimer, Nat
Cc: Yohance S. Fuller; jkass@dccouncil.us; Marshall, Malcolm; Meister, Mark K.; Doggett, Rosalyn; Goldin, Steven
Subject: Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-FloridaAvenue Sites

Nat,

Thanks for your thoughts. We appreciate them. For purposes of tomorrow, we accept the Term Sheet as sent to us this evening.

Following approval of the Term Sheet, we will give more thought to this particular issue to help come up with a way to meet your goals. Should we be able to come up with an agreeable solution prior to finalizing the JDA

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and Lease, we could include the solution in these docs. Alternatively, there is probably even more time bt approval of these docs and execution of the Lease prior to Closing to come up with solutions. In either case, we promise to provide you and your team with some solutions to address the concerns of all parties.

Thanks for working so hard on this. Finalizing the JDA and Lease should now be a piece of cake.

Omar
Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Bottigheimer, Nat" <NBottigheimer@wmata.com>
Date: Wed, 4 Nov 2009 21:01:52 -0500
To: O'Keeffe, Carol B.<cokeeffe@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>; aives@bannekerventures.com<aives@bannekerventures.com>; okarim@bannekerventures.com<okarim@bannekerventures.com>; thicks@bannekerventures.com<thicks@bannekerventures.com>; jhagner@wcsr.com<jhagner@wcsr.com>
Cc: Goldin, Steven<sgoldin@wmata.com>; Doggett, Rosalyn<RDoggett@wmata.com>; Meister, Mark K.<MMeister@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>; jkass@dccouncil.us<jkass@dccouncil.us>; Yohance S. Fuller<Yohance.Fuller@dc.gov>
Subject: RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

John--

I heard a problem and I didn't hear a solution. Also, for the reasons laid out below, I don't understand at all your concept that we're making an above market imposition on the Developer.

Here are our premises:

It's our land.

Long-term real estate values in the DC region have grown faster than 3%. A location on U Street in between U Street and Shaw/Howard stations has growth potential and value stability unlike the vast majority of property in the region, and its long-term appreciation value is significant.

Agreeing to a lease that is based on an escalation rate less than the the property's probable long-term appreciation rate is selling ourselves short. Marking to market each decade and then holding constant for each 10-year period while property values and lease-rates available to building owners appreciate is leaving significant value on the table each year in a decade.

Without going to a spreadsheet, if we were simply to mark to market each decade, in year one of any given decade we'd get 4% less than the rental income available to a building owner on average. The next year we'd get 8% less than full value, the next year 12% less than full value, each year the same until the last year of the decade, when we'd be getting 42% below full value. That's a lot of value to leave on the table by marking to market each decade and holding constant for 10 years. Having a 3% escalation rate each year through the decade is intended to keep the rent to us, the land-owner, comparable but slightly below the long-term average increase in value until the next reset. The language we've provided is intended to keep us at rent levels close to market value for each year of the remaining 39 years of the lease without giving away the game, as your proposals would appear to have us do.

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Other premises:

[redacted]t Twinbrook, we negotiated a lease with JBG with precisely the terms we proposed.

Long-term leases are finance-able at terms less than 99 years.

If you have a concern about lender certainty and project finance-ability, as you suggest you do, we are open to proposals that do not systematically erode Metro's ability to realize the value of its land over the period 60-99. We're open to a capitalization of future rent at year 60 for the period 60-99, and we're open to rent levels re-set every decade to be constant for the decade, but if rent levels are reset to be constant for a decade for the purpose of certainty, then they should be set above market for the first five years of the decade with the expectation that they'd be below market the second half. Maybe you have other thoughts.

Until we hear a counter that protects our value in a market-rate setting from years 60-99, the proposal we've made is our final proposal.

Respectfully,

Nat

From: John Hagner [mailto:JHagner@wcsr.com]
Sent: Wednesday, November 04, 2009 6:24 PM
To: O'Keeffe, Carol B.; Montague, Joshua W.
Cc: Anthony (Tony) James Ives(aives@bannekerventures.com); Omar A. Karim Esquire (okarim@bannekerventures.com); Tiwana Z. HicksEsquire (thicks@bannekerventures.com)
Subject: RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

[redacted]Carol and Josh: Let me share my response to the final change mandated by WMATA. The effects of this change are as follows:

1. WMATA will charge more than the Fair Rental Value of the Lease Property after the 61st lease year. If the Monthly Lease Payments are based on Fair Rental Value, then the 3% escalation either has to be considered in setting the Monthly Lease Payments or the escalation is an above-market imposition on the DEVELOPER. When the Fair Rental Value is determined by the three appraisers, their determination is for a period of years. WMATA is not recognizing that fact and holding the Monthly Lease Payments to the Fair Rental Value during the time period determined by the three appraisers.

2. Resetting the Monthly Lease Payments to Fair Rental Value every ten years makes the Lease un-financeable after the 60th lease year. No institutional lender will make a loan longer than ten years under these circumstances, which eliminates all the Federal and GSE (Government Sponsored Entities, *i.e.*, Fannie Mae and Freddie Mac) as lenders. To be precise, the lender will only make a loan that self-amortizes in ten years because no institutional lender will take the risk of an unlimited base rent increase while their loan is still unpaid. I'm sharing this from actual experience of litigating an almost identical issue for almost five years in the District of Columbia where the tenant under a long-term ground lease which had periodic repricing to full [redacted]market rent could not refinance the leasehold estate on a permanent loan basis. This meant the tenant could not refinance the leasehold estate to pay for the needed renovation of the building and the substantial tenant improvements and lease brokerage fees to prepare for a full-building

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tenant. As you would expect, the tenant sued the landlord to modify the ground lease. I can't share anymore because the litigation settled under a strict confidentiality agreement. However, the "lesson learned" from this experience is that ground leases with short-term periodic repricing of the ground rent can't be refinanced on the long-term basis needed for major renovations and improvements.

I respectfully believe the last change vitiates the benefit of a lease over 60 years.

John

John D. Hagner
Womble Carlyle Sandridge & Rice, PLLC | 1401 Eye St., NW | Suite 700 | Washington, DC 20005-2225
T: 202.857.4404 | F: 202.261.0004 | E: jhagner@wcsr.com | W: www.wcsr.com

From: Montague, Joshua W. [mailto:jwmontague@wmata.com]
Sent: Wednesday, November 04, 2009 5:57 PM
To: Hagner, John
Cc: O'Keeffe, Carol B.
Subject: FW: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

Attached is the updated Term Sheet described below.

Sincerely,

Josh Montague

\ssistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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From: O'Keeffe, Carol B.
Sent: Wednesday, November 04, 2009 5:43 PM
To: John Hagner
Cc: Montague, Joshua W.
Subject: RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

John, Josh is sending a revision that puts in a different reset that Nat will accept; he had not agreed to 99 years and is only willing to go forward with the reset provisions that Josh will send. We have spoken with Mr. Karim who seems to have accepted it, but this is an impossible way to do a deal. I know that you are not causing it.

From: John Hagner [mailto:JHagner@wcsr.com]
Sent: Wednesday, November 04, 2009 5:38 PM
To: O'Keeffe, Carol B.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005541

Cc: Montague, Joshua W.
Subject: Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

[redacted]arol: I'm on a large conference call which I can't get out of. I'll listen to your voicemail and call you as soon as I'm off.
John
John D. Hagner
Womble Carlyle Sandridge & Rice, PLLC
202.857.4404 Direct
Sent from my Blackberry. Please excuse typos.

From: O'Keeffe, Carol B. <cokeeffe@wmata.com>
To: Yohance S. Fuller <Yohance.Fuller@dc.gov>; Omar A. Karim <okarim@bannekerventures.com>; Montague, Joshua W. <jwmontague@wmata.com>
Cc: aives@bannekerventures.com <aives@bannekerventures.com>; mmckinney@bannekerventures.com <mmckinney@bannekerventures.com>; Tiwana Hicks <thicks@bannekerventures.com>; Neil.Albert@dc.gov <Neil.Albert@dc.gov>; Hagner, John; Bottigheimer, Nat <NBottigheimer@wmata.com>; Doggett, Rosalyn <RDoggett@wmata.com>; Goldin, Steven <sgoldin@wmata.com>
Sent: Wed Nov 04 17:25:10 2009
Subject: RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites
Not yet; we are working on it and will call John Hagner.

From: Yohance (EOM) Fuller [mailto:yohance.fuller@dc.gov]
Sent: Wednesday, November 04, 2009 5:22 PM
To: Omar A. Karim; Montague, Joshua W.
Cc: aives@bannekerventures.com; mmckinney@bannekerventures.com; Tiwana Hicks; Neil.Albert@dc.gov; O'Keeffe, Carol B.; John Hagner; Bottigheimer, Nat; Doggett, Rosalyn; Goldin, Steven
Subject: RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

Josh/Nat –

I'm writing to confirm whether both parties are in agreement and that WMATA staff is prepared to recommend approval of the term sheet during the committee meeting and special board meeting tomorrow. Please advise.

Thanks,

Yohance

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, November 04, 2009 3:45 PM
To: 'Montague, Joshua W.'
Cc: 'Bottigheimer, Nat'; 'O'Keeffe, Carol B.'; 'Goldin, Steven'; 'Doggett, Rosalyn'; Fuller, Yohance (EOM); Albert, Neil (EOM); 'John Hagner'; 'Tiwana Hicks'; mmckinney@bannekerventures.com; aives@bannekerventures.com
Subject: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites
Importance: High

Josh,

In preparation of tomorrow's Board meeting, attached are the following:

[redacted]1. Amended and Restated Term Sheet revised in accordance with the discussions since Monday, which finalizes our understanding; and
2. "Redline...#157; of the Amended and Restated Term Sheet against the version that we provided to WMATA on November 2, 2009 at 6:20p.

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The revised language on Capital Events was taken from the term sheet for Rhode Island Ave., and the concept of adjusting the base rent for additional density stops after the first 60 years because the re-appraisal will be based on the Leased Property as if vacant, thereby assuming the maximum density has been constructed on the land.

Please contact me with any questions or comments.

Omar

Omar A. Karim
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(202) 393-5460 phone
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(301) 523-1810 cell
okarim@bannekerventures.com

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ATTACHMENT 13

Omar A. Karim

From: Goldin, Steven [sgoldin@wmata.com]
Sent: Thursday, November 19, 2009 5:22 PM
To: Omar A. Karim
Cc: Bottigheimer, Nat; O'Keeffe, Carol B.; Doggett, Rosalyn
Subject: Florida Avenue

Omar

The Board took no action today after discussing the matter. Following the meeting, staff has been directed to submit a memo to the Board on Wednesday 11/25/09, addressing these issues in order for the Board to reconsider the approval of a term sheet for the lease on 11/30/09:

1) The initial capitalized lease payment was deemed insufficient and must be increased.
2) The lack of a payment "reset" for the first 60 years was deemed unacceptable. The Board wants to see earlier resets and we propose a reset every ten years as a starting point for discussion.

The Real Estate TOD Team and attorneys in the Counsel's Office will be in a work session all day tomorrow. Understanding the short time frame in which we have to resolve this matter, or not, please get back to me on Monday 11/23/09.

Thank you

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ATTACHMENT 14

Minutes
Planning, Development and Real Estate Committee
January 14, 2010

The meeting was called to order at 9:18 a.m. Present were:

Committee members:

Mr. Neil Albert, Chairman
Ms. Elizabeth Hewlett, Vice Chair
Mr. Jim Graham
Mr. Peter Benjamin
Mrs. Catherine Hudgins
Mr. Christopher Zimmerman
Mr. Michael Brown
Mr. Gordon Linton
Mr. Jeff McKay
Mr. Anthony Giancola

Mr. Albert moved, seconded by Mr. Zimmerman, that the Committee convene in Executive Session at 9:19 a.m. The Committee voted unanimously in favor of the motion.

The Committee meeting reconvened in Public Session at 10:28 a.m.

Approval of Agenda

The agenda was approved as submitted by unanimous consent.

Approval of Minutes

Mr. Albert moved, seconded by Mr. Benjamin, to approve the October 8, 2009, November 5, 2009 and November 19, 2009 minutes as submitted. The Committee voted unanimously in favor of the motion.

Action Items

A1. Sale of Excess Property at 6th Street and Puerto Rico Avenue NE, Washington, DC

Mr. Albert moved, seconded by Mr. Benjamin, approval for the sale of excess Metro property to the Capital Area Food Bank for $170K and that the funds will be placed in the capital budget. The Committee voted unanimously in favor of the motion.

A2. Time Extension for Negotiation and Amended Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site

Mr. Albert moved, seconded by Mr. Giancola, approval for a time extension for an amended term sheet for the Shaw-Howard U./Florida Avenue joint development site to be brought to the Board by March 31, 2010. The Committee voted in favor of the motion. Mr. Benjamin abstained. Mr. Brown voted no.

The meeting adjourned at 10:32 a.m.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

ATTACHMENT 15

PRESENTED and APPROVED: January 28, 2010

PROCEDURES
for
WMATA BOARD OF DIRECTORS

2010

I. Role of the WMATA Board of Directors

The WMATA Board of Directors determines agency policy and provides oversight for the funding, operation and expansion of transit service within the Transit Zone.

The authority of the Board of Directors is vested in the collective body and not in its individual Members. Accordingly, the Board, in establishing or providing any policies, orders, guidance, or instructions to the General Manager or WMATA staff, shall act as a body. No Member individually shall direct or supervise the General Manager or any WMATA employee or contractor.

II. Board Directives

All requests made by Board Members for significant staff action are directed to the General Manager, General Counsel or the Inspector General. Copies of requests shall be provided to all Board Members and the Board Secretary. Unless otherwise agreed to at the time the request is made, the General Manager provides a response within two weeks. For complex requests, the response may be interim, in which case it includes a timetable for a complete response. Should the response require significant resources, the General Manager may forward the request to the next meeting of the Board or its appropriate Committee to discuss how to proceed. All responses to Board Member requests are distributed to all Board Members, as are pertinent inquiries from jurisdictions and the corresponding responses.

Any request for a study, which contemplates a change in the Adopted Regional System or other Board-approved plan, which affects more than one signatory, is referred to the Board for discussion and appropriate action before any staff resources are authorized by the General Manager.

Motioned by Mr. Benjamin, seconded by Mr. Zimmerman
Ayes: 7 – Mr. Benjamin, Mrs. Hudgins, Mr. Albert, Mr. Downey, Mr. Zimmerman, Mrs. Hewlett, Mr. Graham

FOIA CONFIEDENTIAL TREATMENT REQUESTED

III. Election of Board Officers

The Board annually elects a Chair, Vice Chair, and Second Vice Chair. These offices are rotated annually among the three signatory jurisdictions. The election is held at the January Board meeting each year.

IV. Board Meetings

A. Schedule and Quorum

The Board normally meets on the fourth Thursday of each month at a time specified by the Chair. A preliminary schedule for 2010 is shown in Attachment 1. The Board may vote to hold, or the Board Chair may also call, a special meeting of the Board. Except in emergencies, 48 hours advance notification is required to hold a special meeting.

A quorum requires the presence of four voting Board Members, including one from each signatory jurisdiction. In the absence of a principal Board Member, the alternate for that Member shall be considered to be a voting Member except that either alternate from the District of Columbia is considered to be a voting Member if either Principal Director from the District of Columbia is absent.

B. Public Notice

Notifications for the public concerning Board and Board Committee Meetings shall be posted on the WMATA site on the world-wide web ("WMATA website").

C. Voting

If a Principal Director is absent, his or her alternate Director may vote, except that either alternate from the District of Columbia may vote if either Principal Director from the District of Columbia is absent. No action of the Board shall be effective unless a quorum is present and a majority of the voting Board Members vote affirmatively, which majority shall include at least one principal or eligible alternate from each signatory.

D. Agenda Development and Distribution

The final Board agenda and the supporting documents are ordinarily distributed to the Board Members at least five days in advance of the Board meeting, including executive sessions of the Board. Materials distributed to the Board Members for the public Board meeting shall be posted on the WMATA

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005554

website at least four days prior to the Board meeting. Any subsequent changes to the previously submitted agenda or other Board material shall be clearly highlighted and documented.

E. Parliamentary Authority

Except where inconsistent with the provisions of the Compact or these Rules and Regulations, Robert's Rules of Order Newly Revised (10th ed.), as revised from time to time, shall be the Parliamentary authority at all meetings of the Board and of Board Committees.

F. Board Meeting Agenda

The following agenda items shall ordinarily appear on each agenda in the order listed:

1. Call to Order
2. Public Comment (for members of the general public to comment on WMATA issues; 20 minutes total, up to 2 minutes per person (the actual time per individual is determined by the Board Chair), and pre-registration is required)
3. Approval of Agenda
4. Approval of Board Minutes
5. Report by Riders' Council (a report may be made by the Riders' Council, up to 5 minutes)
6. Report by the Chair
7. Report by General Manager
8. Reports by Board Committees (Committee recommendations for Board action, if so referred by the Committees)
9. Administrative Actions
10. Reports by Jurisdictions

Any of the above items may be deleted or additional items included at the discretion of the Board Chair.

A voting Board Member may move parts of, or the entire, Administrative Actions agenda item as a single action.

V. Record of Public Board and Committee Meetings

There shall be an audio recording of every public Board and Committee meeting, to be available for public review at the offices of the Authority and on the WMATA website. In addition, a written record of formal actions taken by the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005555

Board or Committees shall be filed in hard copy and posted on the WMATA website, including:

1. the kind of meeting (e.g. Board, Committee or special);
2. the date and time of the meeting;
3. the names of the Members present;
4. a listing of all actions considered by the Board, identifying the mover and seconder;
5. the votes on each side of each action, and the disposition of the action;
6. explanatory material for each action, such as a resolution, if passed, and staff information material, such as a BAIS;
7. the time of adjournment.

The written records of public Board meetings shall be prepared by the Secretary and shall be approved by the Board.

The Board Secretary shall be responsible for the posting and filing of all written and audio records of Board and Committee meetings, and shall prepare an index to audio records to assist in locating discussions of specific actions taken by the Board.

VI. Executive (Closed) Sessions of the Board

The Board may meet in executive session only to discuss critical, sensitive matters, and confidential or proprietary matters, the untimely disclosure of which may be detrimental to the Authority. Such topics include, but are not limited to, the following:

A. Budgetary matters which may affect legal positions, Authority contracts, or sensitive relationships with local jurisdictions or the Federal government.

B. Litigation, investigations and other legal matters requiring the provision of legal advice or consultation with counsel and staff members

C. Personnel or labor issues including discussions of labor contracts and labor negotiations, consideration or interviews of candidates for employment, and the assignment, appointment, promotion, performance, demotion, or resignation of individuals

D. Contractual matters including discussion involving the award of a contract and other instances involving confidential or proprietary matters or the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005556

investment of public funds where discussion in public would adversely affect the financial interests of the Authority

E. Audit matters

F. Safety and security matters

G. Disposition of Authority property or acquisition of real property for Authority purposes where discussion in public would adversely affect the Authority's negotiating or bargaining position.

H. Legislative strategy

An executive session of the Board shall be scheduled to be held prior to each full Board meeting, subject to cancellation by the Chair should there be no need for such a session. The agenda for each session shall be made available to the public prior to the meeting and shall include the title of each topic to be discussed, reasonably identified without violating confidentiality. Other executive sessions may be authorized by a public action of the Board in which the purposes of the session are reasonably identified. If the Board is not in session, the Chair may convene an executive session, which shall be announced immediately. Committees shall not meet in executive session.

The Board will not take formal action in Executive Session. Actions resulting from discussion in Executive Session must be taken at an open meeting of the Board. Minutes of Executive Sessions will not be kept. Attendance at Executive Sessions of the Board is limited to Board Members, the General Manager, the Board Secretary, the General Counsel, and other staff and persons deemed by the General Manager and the Board to be necessary for the discussion.

VII. Emergency Sessions of the Board

The Board may meet by telephonic, video or other electronic communication means ("teleconference") in either open or executive session with or without a quorum when the Chair (or Vice Chair, if the Chair is unavailable) determines that there is an immediate need to provide Board Members with information regarding significant events which require their immediate notification and/or advice, or when Board action is critically required on an issue that could not reasonably have been foreseen, and that cannot wait until the next Board meeting, provided:

A. The purpose of the meeting is to address the emergency situation.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005557

B. Public notice of the meeting is given using the best available method given the nature of the emergency situation.

C. Procedures governing quorum and voting in a teleconference are the same as at a Board meeting.

D. Actions taken at an emergency teleconference may take effect upon approval, but must be ratified at the next available open Board meeting.

VIII. Board Committees

Board Committees are as follows:

1. Finance and Administration Committee
   a. Subcommittee: Audits and Investigations
2. Customer Service, Operations and Safety Committee
   a. Subcommittee: Technology Review
3. Policy, Program Development and Intergovernmental Relations Committee
4. Joint Development and Real Estate Committee

The Chairs and Members of Board Committees are determined annually by the Board Chair. Each Committee shall be chaired by a Principal Board Member and shall have at least two additional Board Members, except for the Joint Development and Real Estate Committee, which shall be a committee of the whole, chaired by a Principal Member. All Board Members may attend and participate in Committee meetings, but only Committee members may vote on Committee actions. The Board Chair is an ex officio and voting Member of all Board Committees. The Chair may establish special or ad hoc committees as needed, with Board concurrence. Any Committee Chair may establish a special, ad hoc or subcommittee consistent with the Committee's responsibilities. Any question of Committee jurisdiction over an issue is resolved by the Board Chair.

Committee actions are recommendations to the Board of Directors, to be placed on a Board agenda for consideration and action.

Occasionally, an item that would normally be reviewed and forwarded to the Board of Directors by the appropriate Committee may be presented directly to the Board, with the concurrence of the relevant Committee Chair.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005558

A. Board Committee Responsibilities

The **CUSTOMER SERVICE, OPERATIONS AND SAFETY COMMITTEE** shall ensure that WMATA operational activities and programs are designed to produce safe and secure, reliable and clean transit service, responsive to customer needs. The Committee oversees transit system performance and service standards, the quality of operations and safety programs and procedures, emergency response and coordination, crime prevention and police matters, and customer service, communication and outreach activities, including public and media relations.

The **FINANCE AND ADMINISTRATION COMMITTEE** monitors the financial integrity and viability of the Authority and its programs and services. The Committee develops budget preparation guidance, recommends capital and operating budget approval to the Board, monitors capital and operating budget implementation and management, recommends proposed budgetary changes to the Board. The Committee recommends policies and programs for setting fares and fees and creating fare structures, oversees operation and development of fare media and fare collection mechanisms, and explores enhanced and expanded techniques for generating revenue. The development of guidance for administrative matters, including procurement/contracting issues and programs; human resources, compensation and benefits issues; civil rights programs; insurance coverages; and WMATA's business systems implementation also fall within the purview of this Committee.

The **JOINT DEVELOPMENT & REAL ESTATE COMMITTEE** is responsible for coordinating the community development and smart growth aspects of the Authority's system and service development and oversees the Joint Development Program, including the Transit Infrastructure Investment Fund (TIIF) and other Real Estate matters. The Committee specifically reviews and recommends to the Board actions on (1) Real Estate Acquisitions in the amount of $250,000 or higher which have not been previously approved by the Board of Directors as part of a specific line expansion or facility project; and (2) Real Estate Dispositions where the estimated fair market value exceeds $100,000.

The **POLICY, PROGRAM DEVELOPMENT AND INTERGOVERNMENTAL RELATIONS COMMITTEE** is responsible for capital program planning and oversight; regional corridor development and system expansion planning; coordination of regional planning issues through the Transportation Planning Board and other state, local and subregional agencies; regional transit service planning and coordination with other transportation service providers; project development; and transit access planning. In addition, the Committee investigates and develops innovative technological approaches to

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enhance the effectiveness of public transportation services. The Committee oversees WMATA's relationships with local, state and Federal governments, develops state and Federal legislative strategies and coordinated transit advocacy programs and pursues enhanced and expanded governmental funding for the Authority.

B. Committee Meetings

The Finance and Administration Committee, Customer Service, Operations and Safety Committee, and the Policy, Program Development and Intergovernmental Relations Committee normally meet on the second Thursday of each month, and the Joint Development and Real Estate Committee normally meets on the fourth Thursday of the month, except in November and December, when they meet on the first and third Thursdays, respectively, as shown on the calendar in Appendix 1.

C. Committee Agendas

The Chairs of Board Committees shall determine the need for a meeting and develop the agenda for the Committee meetings. To the extent possible, items will be presented to only one Committee, per the Committee responsibilities defined herein.

D. Committee Attendance and Voting

Committee Chairs are responsible for convening Committee meetings at the scheduled time. Except for the Joint Development and Real Estate Committee, one half of the Committee members, excluding the Board Chair sitting as an ex-officio member, shall constitute a Committee quorum. Full Board quorum rules shall apply for the Joint Development and Real Estate Committee.

In recognition of the limited time that is available for the conduct of Committee business, Committee Chairs may limit debate. At the discretion of the Chair, jurisdictional staff members, consultants, members of the Riders' Advisory Council, or other parties may be invited to make a presentation or comment on a particular issue.

IX. Public Hearings

The Board authorizes the conduct of public hearings for construction projects, major bus and rail service reductions, fare increases, and other WMATA activities as required by the WMATA Compact. The hearings will be advertised to the general public, and staff will coordinate with local officials and other interested parties in order to ensure adequate notice. In most cases, the hearing

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officer will be a Board Member. However, the Board Chair may delegate to the Secretary or another WMATA officer/executive the authority to conduct public hearings in the absence of a relevant Board Member, to ensure proper public review of WMATA activities. In an emergency resulting in the unexpected absence of a public hearing officer, the staff presenting the proposed action may conduct the hearing.

X. Jurisdictional Coordinating Committee

The Jurisdictional Coordinating Committee has been established by the Board to facilitate the exchange of information and viewpoints between jurisdictions and the WMATA staff and among the jurisdictions. The agenda for meetings is established by the WMATA staff in coordination with the annually elected Chair of the JCC.

Board Members are provided copies of the agenda and minutes. Results of JCC consideration of items referred by the Board or its Committees are transmitted to the appropriate Board Committee.

XI. Process to Amend These Procedures

A majority vote of the Board can amend these procedures.

XII. Standards of Conduct for Members of the WMATA Board of Directors

The Standards of Conduct for Members of the WMATA Board of Directors, adopted by the Board of Directors on August 22, 1991 and revised January 28, 2010, are attached as Attachment 2 and are incorporated by reference into the Board Procedures.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005561

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28						

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31						

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

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27	28	29	30	31		

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Attachment 2

ADOPTED: August 22, 1991
REVISED: January 27, 1994
REVISED: February 16, 2006
REVISED: January 28, 2010

STANDARDS OF CONDUCT FOR
MEMBERS OF THE WMATA BOARD OF DIRECTORS

Article I. Purpose and Scope.

These Rules shall govern the conduct of all Members of the Board of Directors in all their activities relating to their positions as Board Members. They also apply to all individuals, corporations and other entities who have actual or prospective business relationships with the Authority. These Rules do not supersede or abrogate any laws, rules or regulations of the United States or of the applicable state or local governing body represented by the Members of the Board of Directors.

These Rules address several types of conflicts: those arising from gifts and favors and from financial and employment interests. They prohibit certain actions, including misuse of official positions; set out the nature of financial interests which may cause an appearance of conflict; and provide procedures for disclosure, recusal and enforcement.

Article II. Definitions.

A. "Actual or Prospective Business Relationships with the Authority" means any actual or prospective arrangement whereby an individual, corporation or other entity has entered into or has offered or proposed to enter into or has decided to offer or proposed to enter into a financial transaction with the Authority which obligates the Authority to purchase, sell, lease, transfer, receive or convey any interest in real or personal property; to construct or improve any facility; or to furnish or obtain services including personal and/or consulting services, but does not include consignment sales by the Authority of goods or services (such as fare media) where price is determined without competition or negotiation.

B. "Board Member" or "Member" means a Director and/or Alternate Director of the Board of Directors of the Washington Metropolitan Area Transit Authority.

C. "Direct Financial Interest" means an interest in an enterprise that consists of securities of any kind that constitute ownership of three percent (3%) or more of the total equity of the enterprise. The test for a direct financial interest shall exclude any arrangement with the Authority which is not within the definition of financial transactions contained in these Standards of Conduct.

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D. "Employment" means full-time, part-time, regular or temporary work for compensation and includes work as an independent contractor, but does not include government employment. Employment shall be deemed to exist if there is a regular relationship with a business, even if there is no relationship at the time a matter is before the Board.

E. "Financial Transaction" means any arrangement where a party anticipates receiving or transferring money or any other thing of value including, but not limited to, arrangements for purchase, sale, lease or other transfer or conveyance of any interest in real or personal property; construction or improvement of any facility or property; and procurement of services, both personal and consulting, but does not include consignment sales by the Authority of goods or services (such as fare media) where price is determined without competition or negotiation.

F. "Gratuities" means any gift, favor, entertainment, hospitality, transportation, loan or other tangible item or any intangible benefits (i.e., discounts, passes or similar consideration) offered to a Board Member because of his/her position on the WMATA Board of Directors for which the Member did not pay fair market value and which is not offered to the public generally.

G. "Household Member" means a spouse or minor child and any other dependent who resides in a Board Member's household on other than a temporary basis.

H. "Initiation and Pre-Award Phases of the Procurement Process" means that period beginning on the earliest date upon which an identifiable, specific action is taken by the Board for a particular procurement and ending upon award. Such actions shall include approvals by the Board or by Committees acting on behalf of the Board of any plan or budget which specifically authorizes an identifiable procurement, the drafting of specifications, statements of work or development of procurement requests therefore, or Board issuance of directives or taskings requiring that such actions be undertaken.

I. "Indirect Financial Interest" means income from revenues for services provided to an enterprise by a Director's partnership, business, or other entity when those revenues exceed three percent (3%) of the partnership, business, or entity's gross income for its current or preceding fiscal year. The test for an indirect financial interest shall exclude any arrangement with the Authority which is not within the definition of financial transactions contained in these standards of conduct.

J. "Member's Business Associates" means a person(s) who is engaged with a Board Member in a venture expected to result in a benefit to the Board Member or a resident of the Board Member's household in the form of money or other thing of value.

K. "Participate" means vote, address, or otherwise attempt to influence a decision of the Board of Directors or any action undertaken by WMATA staff.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

L. "Party" means an individual, corporation, partnership or other legal entity.

Article III. Policy.

A. Public funds must be expended in a manner which assures the highest degree of confidence and public trust in WMATA. It is imperative that Board Members in their private financial relationships and in their official conduct strictly avoid engaging in actions which create conflicts of interest or the appearance of a conflict of interest. It is likewise imperative that Board Members act impartially in their official conduct by avoiding any actions which might result in favored treatment or appearances thereof toward any individual, private organization, consultant, contractor or potential consultant or contractor. Each Board Member, while acting in his/her capacity as a WMATA Board Member, has a duty to place the public interest foremost in any dealings involving WMATA.

B. Under the Compact, Board Members shall not (1) be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the Board or the Authority is a party; (2) in connection with services performed within the scope of their official duties, solicit or accept money or any other thing of value in addition to the expenses paid to him by the Authority; (3) offer money or any thing of value for or in consideration of obtaining an appointment, promotion or privilege with the Authority.

C. Financial Interest. No Board Member nor household member may singly or in combination, be a party of or have a direct financial interest in a party with an actual or prospective business relationship with the Authority.

D. Financial Transactions.

1. A Board Member shall neither vote on nor participate in any WMATA financial transaction if:

(i) the Board Member,
(ii) a household member, or
(iii) a Board Member's business associates

has a direct or indirect financial interest in the enterprise.

2. A Board Member shall neither vote on nor participate in any WMATA financial transaction if the Board Member or household member is employed by a party with an actual or prospective business relationship with the Authority.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005566

E. Gratuities and Solicitation.

1. Except as provided in subsection E.3. below, a Board Member or household member shall not solicit or accept anything of value from a party with an actual or prospective business relationship with the Authority.

2. A Board Member may not accept an unsolicited gratuity when it could reasonably be inferred that the gratuity was intended to influence the Board Member or was intended as a reward for any action on the Member's part.

3. Board Members may accept unsolicited gratuities:

(i) whose value is seventy-five dollars ($75) or less, except that a Board Member may not accept gratuities worth more than $200 from a single source in any calendar year; or

(ii) in connection with attendance at a widely attended gathering, such as events held by the American Public Transportation Association and similar organizations.

4. The restriction on the receipt of gratuities shall not apply to the solicitation or acceptance of bona fide religious or charitable donations, or political contributions by a Board Member or a household member provided, with respect to political contributions to or for the benefit of a Board Member or a household member, the contribution has been reported in accordance with the law of the Board Member's jurisdiction.

5. A Board Member shall not personally solicit any support or financial assistance for any political party, candidate, or committee for any political, charitable, or other purpose from the Authority or any WMATA employee. This prohibition is not intended to preclude solicitations by mass mailing or other similar anonymously directed solicitations.

F. Use of Official Position. Board Members shall not use, nor give the appearance that they are using, their official position with the Authority in a manner inconsistent with their responsibilities to the Authority. Board Members shall not:

1. use or permit others to use information not generally available to the public obtained from the Authority through the Board Member's official position with the Authority to further the direct or indirect financial interests of a Board Member, any household member, a Member's business associates, or any party to any actual or prospective financial transaction with the Authority, excluding the Federal government and governmental entities within the Transit Zone;

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005567

2. disclose or permit others to disclose to anyone outside the Authority information obtained through their official position with the Authority and not generally available to the public except where and to the extent necessary to fulfill the Board Member's public responsibility;

3. use WMATA property other than for authorized purposes, nor will they seek assistance from other WMATA personnel, while in duty status, to assist them in connection with business enterprises (including self-employment, home-based businesses, consulting, purchase or sale of real estate or other professional services) or personal matters (non-WMATA matters including a Board Member's social, religious or educational interests);

4. offer money or anything of value for or in consideration of obtaining an appointment or privilege in the Board Member's official position with the Authority; or

5. receive compensation from WMATA except for reimbursement for necessary expenses incurred incident to the performance of their duties.

G. Post WMATA Service Restrictions. Board Members shall not, for a period of one year following the end of their term or effective date of their resignation, accept employment with any private third party to work on a matter upon which the Board Member has voted on or participated in.

H. No party shall have, nor seek to have, actual or prospective business relationships with the Board or the Authority if to do so would create a violation by a Board Member of the provisions of Paragraphs B or C of this article. No party shall induce or seek to induce a Board Member to violate the provisions of Paragraph D of this article.

I. Each Board Member shall disclose, on the form attached as Exhibit B, each contact with a WMATA contractor or bidder, in which the Member has any financial interest, during the Initiation and Pre-Award Phases of the Procurement Process. Notifications will be kept on file for one year beyond the date of the financial closeout of the procurement contract, at which time they shall be destroyed unless otherwise instructed by the filing Board Member.

Article IV. Submission of Disclosure Form.

Upon appointment, a Board Member shall file a disclosure form in substantially the form attached as Exhibit A disclosing employment and other economic interests of the Board Member and household members and gratuities received from any party with an actual or prospective business relationship with the Authority. The Statement shall be available

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005568

for public review in the office of the Board Secretary. Each Board Member shall annually submit a new signed statement by April 30, except that within 30 days of adoption of this new disclosure form requirement by the Board each Board Member must submit a signed statement and the Member will not need to submit another signed statement until April 30 of the succeeding calendar year.

Article V. Disqualification.

If a Board Member is precluded by these Rules or by other applicable laws or regulations from performing the Board Member's duties, the Board Member shall so notify the Chair and request that the Board's official records reflect that the Board Member will abstain from any participation in the matter to which the prohibition applies.

Article VI. Sanctions.

A. Any Board Member who willfully violates any provision of Article III, Section B, hereof, shall, at the discretion of the Board, forfeit the Board Member's position with the Authority. The Board shall provide the Board Member notice and an opportunity to be heard, in writing and in person, directly or through counsel, before taking official action to cause the Board Member to forfeit the position.

B. Any financial transaction, to which the Authority is a party, made in contravention of Article III, Section B hereof, may be declared void by the Board. The Board shall provide notice and an opportunity to be heard, in writing and in person, directly or through counsel, to any party whose financial transaction with the Board or the Authority is considered to contravene these sections before taking action to void the transaction.

Article VII. Severability.

The provisions of these Standards of Conduct shall be severable and if any phrase, clause, sentence or provision is declared invalid, the validity of the remainder shall not be affected thereby.

Article VIII. Effective Date; Duration; Amendment; Responsibility.

These Rules shall become effective when adopted by the Board and shall remain in effect unless and until amended or revoked by the Board in accordance with Article III, Section 8, of the Compact. The Board is responsible for interpreting and enforcing these rules. It may seek general guidance from the General Counsel, but where there are specific allegations of misconduct, it shall, if necessary, employ appropriate outside legal counsel for assistance.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005569

CONFIDENTIAL STATEMENT OF AFFILIATIONS AND FINANCIAL INTERESTS

ALL BOARD MEMBERS ARE REQUIRED TO SUBMIT A STATEMENT OF OUTSIDE EMPLOYMENT AND FINANCIAL INTERESTS UPON APPOINTMENT, BY APRIL 30 OF EACH YEAR, AND AT SUCH OTHER TIME THAT SIGNIFICANT RELEVANT CHANGES HAVE OCCURRED.

EMPLOYMENT BY PARTIES WHO DO NOT HAVE AN ACTUAL OR PROSPECTIVE BUSINESS RELATIONSHIP WITH THE AUTHORITY NEED NOT BE REPORTED ON THE DISCLOSURE FORM.

GOVERNMENT EMPLOYMENT NEED NOT BE DISCLOSED.

THE **PRIVATE INTERESTS** OF A SPOUSE, MINOR CHILD, AND ANY OTHER HOUSEHOLD MEMBERS; OF BUSINESS ASSOCIATES; OF AN ORGANIZATION WHICH EMPLOYS OR IS ABOUT TO EMPLOY ANY OF THE ABOVE ARE INCLUDED IN DETERMINING WHETHER THERE IS A REPORTABLE FINANCIAL INTEREST.

THE FOLLOWING **FINANCIAL INTERESTS** NEED NOT BE DISCLOSED:

(A) CHECKING OR SAVINGS ACCOUNTS, MONEY MARKET ACCOUNTS AND OTHER DEMAND DEPOSITS;
(B) IRAS OR SIMILAR INVESTMENTS;
(C) GOVERNMENT BONDS;
(D) CERTIFICATES OF DEPOSIT; AND
(E) PUBLICLY TRADED MUTUAL FUNDS.

GOVERNMENT PENSIONS OR OTHER INCOME RECEIVED PURSUANT TO A GOVERNMENT RETIREMENT PROGRAM (CIVILIAN OR MILITARY) NEED NOT BE DISCLOSED.

INTERESTS IN **REAL PROPERTY** OUTSIDE THE WMATA TRANSIT ZONE NEED NOT BE DISCLOSED. A BOARD MEMBER'S INTEREST IN HIS/HER PRIMARY RESIDENCE NEED NOT BE DISCLOSED.

Rev. Feb. 16, 2006

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005570

PART I - BACKGROUND INFORMATION

NAME

_____

JURISDICTION

_____

PART II - ACTIVITIES AND INTERESTS

A. FINANCIAL INTEREST

1. DO YOU OR DOES A MEMBER OF YOUR HOUSEHOLD OR A BUSINESS ASSOCIATE HAVE A FINANCIAL INTEREST IN ANY ENTITY WHICH IS A PARTY TO AN ACTUAL OR PROSPECTIVE FINANCIAL TRANSACTION WITH WMATA?

YES _____ NO _____

IF YES, DOES YOUR OWNERSHIP INTEREST EXCEED THE 3% OWNERSHIP INTEREST OR THE 3% GROSS INCOME (FOR BUSINESS ENTERPRISES) THRESHOLD CONTAINED IN SECTIONS II.C AND II.I OF THE STANDARDS OF CONDUCT?

_____

_____

B. NON-WMATA EMPLOYMENT AND OTHER ACTIVITIES

2. DO YOU HAVE ANY NON-GOVERNMENTAL, NON-WMATA EMPLOYMENT WITH A PARTY WHO HAS AN ACTUAL OR PROSPECTIVE BUSINESS RELATIONSHIP WITH WMATA?

YES _____ NO _____

IF YES, EXPLAIN:

_____

_____

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005571

3. Is a member of your household employed by a party who has an actual or prospective business relationship with WMATA?

Yes _____ No _____

If yes, explain:

_____

_____

C. REAL PROPERTY

4. Do you or does a member of your household have any real property interests located within the WMATA Transit Zone other than an interest in the primary residence which you occupy?

Yes _____ No _____

If yes, provide location/address of real property interest:

_____

_____

D. GIFTS

5. List each party with an actual or prospective business relationship with the Authority that, during the past 12 months furnished you with any gifts or entertainment or other gratuity (as defined in Article II.F). Do not list gifts, entertainment or other gratuities received by you at widely attended gatherings (as covered by Article III.E.3).

NAME OF SOURCE	TYPE OF GRATUITY	VALUE

Upon completion of this form, please submit it to the Board Secretary.

Rev. Feb. 16, 2006

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005572

PART III - CERTIFICATION

I CERTIFY THAT THE STATEMENTS I HAVE MADE ARE TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE.

_____ _____

SIGNATURE DATE

PART IV - REVIEW BY BOARD SECRETARY

TO BE COMPLETED ONLY IF THE BOARD MEMBER ANSWERED "YES" TO ANY QUESTION ABOVE.

I HAVE EXAMINED THIS STATEMENT AND ANY ATTACHMENTS.

____ I FIND NO CONFLICTS.

____ I RECOMMEND BOARD REVIEW OF THE FOLLOWING:

_____
_____
_____
_____
_____
_____

_____ _____

SIGNATURE DATE

Rev. Feb. 16, 2006

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005573

CONTACTS WITH BIDDERS AND CONTRACTORS

IDENTIFY EACH WMATA BIDDER OR CONTRACTOR IN WHICH YOU HAVE A FINANCIAL INTEREST WITH WHOM YOU HAVE HAD CONTACT DURING THE INITIATION AND PRE-AWARD PHASES OF THE PROCUREMENT PROCESS, AS DEFINED BY SECTION II.H.

NAME OF CONTRACTOR _____

NATURE OF FINANCIAL INTEREST_____

DATE OF CONTACT_____

SUBJECT(S) DISCUSSED_____

DISPOSITION, IF ANY

_____
_____
_____
_____

_____ _____

SIGNATURE OF BOARD MEMBER DATE

PLEASE SUBMIT EACH COMPLETED FORM TO THE DIRECTOR, PRMT

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005574

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Tuesday, July 21, 2009 4:20 PM
To: richard harps
Cc: Doggett, Rosalyn; Bushnaq, Tariq
Subject: RE: 7th St

To respond to some of your questions:

1 - Yes, the developer can put a level of parking below grade above the easement area

2 - Either foundation type can be used if not overloading the tunnels; loads would have to be calculated

3 - Yes, structures of the height you describe are allowed if not overloading the tunnels.

4 - Examples of extra costs might be: sheeting and shoring to protect the tunnels; monitoring of the short term construction loading effect on the tunnels; foundations requiring above normal support to relieve long term tunnel loading. See WMATA's Adjacent Construction Manual http://www.wmata.com/pdfs/business/ACPM_Rev3_12-09-2008_FINAL.pdf

5 - Lot 18 does not show up on the Sanborn plat that I have either but does show up in the assessment records. You may therefore assume, for appraisal purposes, that it is a part of Lot 31 in Sanford & use 16,472 SF (516 & 15,956) for the total area for the WMATA property in Square 416

6 - The developer has apparently acquired rights at least to Lot 826 immediately to the south of Lot 44 in Square 393 so this may be a highest & best use issue (assemblage v. stand alone).

If you or Eric have specific questions not covered in the manual, Tariq can be reached at 962 2043. I will be out for 5 days starting Thursday, but please contact Ms. Doggett in my absence if you have any questions.

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Monday, July 20, 2009 10:49 AM
To: Marshall, Malcolm
Cc: Eric Colbert
Subject: 7th St

Malcolm - I met with Eric Colbert this morning and we've got a few questions that need answers before we can go much further.

1 - Will the developer be allowed to put one level of parking below grade above the easement area?

2 - Will WMATA require a mat foundation above the easement area or will WMATA allow spread footings to be used above the easement area?

3 - Will WMATA allow a 3, 4 or 5 (maybe 6) story structure above the easement area? Would the height of the structure allowed be dependent on the type of construction - concrete first and basement with stick built on the upper floors? - all poured concrete? - some other combination?

4 - What are the 'excess construction costs' that you referenced and what do they represent?

5 - Where is Lot 18 in Square 416. It looks like the total area shown for Lot 31 on the Sanborn plat includes the area for both L31 and L18 in the Scope and DC Assessment office information.

6 - For the analysis of the site value of the three separate parcels (A: Sq 416 Lot 18/31 combined, B: Sq 393 Lot44, C: Sq 393 Lot 45) we are assuming that each site (A, B and C) would stand alone. The impact of the Draft Duke Plan may play into the potential value assigned to the individual FAR conclusions with caveats, hypothetical conditions and/or extraordinary assumption - all of which are yet to be defined or quantified.

Eric really needs the answers to #1, #2, #3 and #4 before he can get started. So if we're to have any chance to meet the delivery date, we need these ASAP

I'm copying Eric on this so he can let me/us know what I've missed, etc.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005575

Thanks

Richard

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005576

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Tuesday, July 21, 2009 3:47 PM
To: Marshall, Malcolm
Subject: RE: WMATA 7th

What I went over with Tariq. If Eric has specific questions, he can certainly call Tariq after reading the manual! 962 2043

1. Yes, the developer can put a level of parking below grade above the easement area 2. Either foundation type can be used if not overloading the tunnels; loads would have to be calculated 3. Yes, structures of the height you describe are allowed if not overloading the tunnels.
4. Examples of extra costs might be: sheeting and shoring to protect the tunnels; monitoring of the short term construction loading effect on the tunnels; foundations requiring above normal support to relieve long term tunnel loading. See WMATA's Adjacent Construction Manual http://www.wmata.com/pdfs/business/ACPM_Rev3_12-09-2008_FINAL.pdf

-----Original Message-----
From: Marshall, Malcolm
Sent: Tuesday, July 21, 2009 9:10 AM
To: Doggett, Rosalyn
Subject: FW: WMATA 7th

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Tuesday, July 21, 2009 8:50 AM
To: Marshall, Malcolm
Cc: Eric Colbert
Subject: WMATA 7th

Malcolm

Any luck getting the answers to yesterday's questions? With the due date on this thing, Eric's going to need some time to figure out just what can be put on the site, so later probably isn't better than sooner.

Thanks

Richard

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005577

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Tuesday, July 21, 2009 9:10 AM
To: Doggett, Rosalyn
Subject: FW: WMATA 7th

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Tuesday, July 21, 2009 8:50 AM
To: Marshall, Malcolm
Cc: Eric Colbert
Subject: WMATA 7th

Malcolm

Any luck getting the answers to yesterday's questions? With the due date on this thing, Eric's going to need some time to figure out just what can be put on the site, so later probably isn't better than sooner.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005578

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Monday, July 20, 2009 11:08 AM
To: Bushnaq, Tariq
Subject: FW: 7th St

-----Original Message-----
From: Marshall, Malcolm
Sent: Monday, July 20, 2009 10:58 AM
To: Doggett, Rosalyn
Subject: FW: 7th St

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Monday, July 20, 2009 10:49 AM
To: Marshall, Malcolm
Cc: Eric Colbert
Subject: 7th St

Malcolm - I met with Eric Colbert this morning and we've got a few questions that need answers before we can go much further.

1 - Will the developer be allowed to put one level of parking below grade above the easement area?

2 - Will WMATA require a mat foundation above the easement area or will WMATA allow spread footings to be used above the easement area?

3 - Will WMATA allow a 3, 4 or 5 (maybe 6) story structure above the easement area? Would the height of the structure allowed be dependent on the type of construction - concrete first and basement with stick built on the upper floors? - all poured concrete? - some other combination?

4 - What are the 'excess construction costs' that you referenced and what do they represent?

5 - Where is Lot 18 in Square 416. It looks like the total area shown for Lot 31 on the Sanborn plat includes the area for both L31 and L18 in the Scope and DC Assessment office information.

6 - For the analysis of the site value of the three separate parcels (A: Sq 416 Lot 18/31 combined, B: Sq 393 Lot44, C: Sq 393 Lot 45) we are assuming that each site (A, B and C) would stand alone. The impact of the Draft Duke Plan may play into the potential value assigned to the individual FAR conclusions with caveats, hypothetical conditions and/or extraordinary assumption - all of which are yet to be defined or quantified.

Eric really needs the answers to #1, #2, #3 and #4 before he can get started. So if we're to have any chance to meet the delivery date, we need these ASAP

I'm copying Eric on this so he can let me/us know what I've missed, etc.

Thanks

Richard

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005579

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Monday, July 20, 2009 10:58 AM
To: Doggett, Rosalyn
Subject: FW: 7th St

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Monday, July 20, 2009 10:49 AM
To: Marshall, Malcolm
Cc: Eric Colbert
Subject: 7th St

Malcolm - I met with Eric Colbert this morning and we've got a few questions that need answers before we can go much further.

1 - Will the developer be allowed to put one level of parking below grade above the easement area?

2 - Will WMATA require a mat foundation above the easement area or will WMATA allow spread footings to be used above the easement area?

3 - Will WMATA allow a 3, 4 or 5 (maybe 6) story structure above the easement area? Would the height of the structure allowed be dependent on the type of construction - concrete first and basement with stick built on the upper floors? - all poured concrete? - some other combination?

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6 - For the analysis of the site value of the three separate parcels (A: Sq 416 Lot 18/31 combined, B: Sq 393 Lot44, C: Sq 393 Lot 45) we are assuming that each site (A, B and C) would stand alone. The impact of the Draft Duke Plan may play into the potential value assigned to the individual FAR conclusions with caveats, hypothetical conditions and/or extraordinary assumption - all of which are yet to be defined or quantified.

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I'm copying Eric on this so he can let me/us know what I've missed, etc.

Thanks

Richard

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005580

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Monday, July 13, 2009 12:57 PM
To: Montague, Joshua W.
Subject: FW: What WMATA
Attachments: ProposalShawHowardMetro.pdf

fyi

-----Original Message-----
From: Marshall, Malcolm
Sent: Monday, July 13, 2009 11:52 AM
To: Doggett, Rosalyn; Meister, Mark K.
Subject: FW: What WMATA

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Monday, July 13, 2009 11:48 AM
To: Marshall, Malcolm
Subject: What WMATA

Proposal attached - please not the dates - we really need to know that we're doing this ASAP if we're to have a chance to meet the deadline.

Thanks

Richard

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005581

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Monday, July 13, 2009 11:52 AM
To: Doggett, Rosalyn; Meister, Mark K.
Subject: FW: What WMATA
Attachments: ProposalShawHowardMetro.pdf

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Monday, July 13, 2009 11:48 AM
To: Marshall, Malcolm
Subject: What WMATA

Proposal attached - please not the dates - we really need to know that we're doing this ASAP if we're to have a chance to meet the deadline.

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Richard

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rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005582

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Thursday, July 09, 2009 11:20 AM
To: richard harps
Cc: Doggett, Rosalyn; Meister, Mark K.
Subject: RE: New one

Have you heard anything from Eric? I am getting concerned about getting a draft of the appraisal by the end of the month. - MM

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, July 02, 2009 5:30 PM
To: Eric Colbert
Cc: Marshall, Malcolm
Subject: New one

Eric

WMATA has asked for a value of their property at 7th>9th on the south side of U Street. The property is shown below. I'd need you to do a simple workup of the maximum development on the sites, recognizing the tunnel and limitations along the northern side. WMATA says they will supply the 'excess' cost to construct over the tunnel.

**********FROM WMATA**********
OWNER: WMATA

LOCATION: South Side of Florida Avenue between 7th & 9th Streets, NW Washington, DC

LEGAL DESCRIPTION: Square 393, Lots 44 and 45; Square 416, Lots 18 and 31

ZONING: C-2-B in Arts Overlay Zone

ESTIMATED AREA: Lot 44 - 3,800 SF
Lot 45 - 8,600 SF
Lot 18 - 516 SF
Lot 31 - 15,956 SF

COMMENTS: The northern portions of the parcels contains an existing Metrorail tunnel that has an upper limit that is 19 feet below the surface. WMATA can provide to the appraiser cost estimates for extraordinary costs that may be involved in building over the WMATA tunnel.

The Inclusionary Zoning Implementation Act, as amended, and the Duke Plan incorporate affordable housing provisions that should be considered in an analysis of the subject property.
****

Time and fee - no court anticipated - rough areas should be sufficient. We'll work together on the breakdown of uses and densities, and, the inclusionary zoning impact will have to be incorporated into the analysis

Thanks

Richard

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005583

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Thursday, July 09, 2009 9:47 AM
To: Montague, Joshua W.
Subject: FW: New one

-----Original Message-----
From: Meister, Mark K.
Sent: Thursday, July 09, 2009 9:06 AM
To: Doggett, Rosalyn
Subject: RE: New one

We (you, Malcolm and me) agreed that receipt of a draft appraisal by the end of July would work.

-----Original Message-----
From: Doggett, Rosalyn
Sent: Wednesday, July 08, 2009 10:28 PM
To: Meister, Mark K.
Subject: FW: New one

sense of urgency?

From: Marshall, Malcolm
Sent: Wednesday, July 08, 2009 9:40 AM
To: richard harps
Cc: Doggett, Rosalyn
Subject: RE: New one

Can we get a draft of an appraisal on this by the end of the month?

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, July 02, 2009 5:30 PM
To: Eric Colbert
Cc: Marshall, Malcolm
Subject: New one

Eric

WMATA has asked for a value of their property at 7th>9th on the south side of U Street. The property is shown below. I'd need you to do a simple workup of the maximum development on the sites, recognizing the tunnel and limitations along the northern side. WMATA says they will supply the 'excess' cost to construct over the tunnel.

**********FROM WMATA**********

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005584

****

Time and fee - no court anticipated - rough areas should be sufficient. We'll work together on the breakdown of uses and densities, and, the inclusionary zoning impact will have to be incorporated into the analysis

Thanks

Richard

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rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005585

Doggett, Rosalyn

From: Meister, Mark K.
Sent: Thursday, July 09, 2009 9:06 AM
To: Doggett, Rosalyn
Subject: RE: New one

We (you, Malcolm and me) agreed that receipt of a draft appraisal by the end of July would work.

-----Original Message-----
From: Doggett, Rosalyn
Sent: Wednesday, July 08, 2009 10:28 PM
To: Meister, Mark K.
Subject: FW: New one

sense of urgency?

From: Marshall, Malcolm
Sent: Wednesday, July 08, 2009 9:40 AM
To: richard harps
Cc: Doggett, Rosalyn
Subject: RE: New one

Can we get a draft of an appraisal on this by the end of the month?

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, July 02, 2009 5:30 PM
To: Eric Colbert
Cc: Marshall, Malcolm
Subject: New one

Eric

WMATA has asked for a value of their property at 7th>9th on the south side of U Street. The property is shown below. I'd need you to do a simple workup of the maximum development on the sites, recognizing the tunnel and limitations along the northern side. WMATA says they will supply the 'excess' cost to construct over the tunnel.

**********FROM WMATA**********

OWNER:	WMATA
LOCATION:	South Side of Florida Avenue between 7th & 9th Streets, NW Washington, DC
LEGAL DESCRIPTION:	Square 393, Lots 44 and 45; Square 416, Lots 18 and 31
ZONING:	C-2-B in Arts Overlay Zone
ESTIMATED AREA:	Lot 44 - 3,800 SF Lot 45 - 8,600 SF Lot 18 - 516 SF Lot 31 - 15,956 SF
COMMENTS:	The northern portions of the parcels contains an existing Metrorail tunnel that has an upper limit that is 19 feet below the surface. WMATA can provide to the appraiser cost estimates for extraordinary costs that may be involved in building over the WMATA tunnel.

The Inclusionary Zoning Implementation Act, as amended, and the Duke Plan incorporate affordable housing provisions that should be considered in an analysis of the subject property.
****

Time and fee - no court anticipated - rough areas should be sufficient. We'll work together on the breakdown of uses and densities, and, the inclusionary zoning impact will have to be incorporated into the analysis

Thanks

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005586

Richard

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005587

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Wednesday, July 08, 2009 10:28 PM
To: Meister, Mark K.
Subject: FW: New one

sense of urgency?

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Sent: Wednesday, July 08, 2009 9:40 AM
To: richard harps
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Subject: RE: New one

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-----Original Message-----
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Sent: Thursday, July 02, 2009 5:30 PM
To: Eric Colbert
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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005588

rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005589

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Wednesday, July 08, 2009 9:41 AM
To: richard harps
Cc: Doggett, Rosalyn
Subject: RE: New one

Can we get a draft of an appraisal on this by the end of the month?

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, July 02, 2009 5:30 PM
To: Eric Colbert
Cc: Marshall, Malcolm
Subject: New one

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005590

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Monday, July 06, 2009 8:41 AM
To: Doggett, Rosalyn; Meister, Mark K.; Montague, Joshua W.
Subject: FW: New one

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, July 02, 2009 5:30 PM
To: Eric Colbert
Cc: Marshall, Malcolm
Subject: New one

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**********FROM WMATA**********
OWNER: WMATA

LOCATION: South Side of Florida Avenue between 7th & 9th Streets, NW Washington, DC

LEGAL DESCRIPTION: Square 393, Lots 44 and 45; Square 416, Lots 18 and 31

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005591

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Thursday, May 28, 2009 10:39 AM
To: 'Louis J. Slade'
Subject: RE: Agenda for Tomorrow

Things are piling up here and I probably will have to miss the board meeting but will be there for the presentation to do my scribely duty.

From: Louis J. Slade [mailto:ljs@groveslade.com]
Sent: Wednesday, May 27, 2009 1:56 PM
To: Amy Hecker; Anita Morrison; Constance Maffin; Deborah Yogodzinski; Don Edwards; Edward M. Rogers; Elizabeth Davison; Emily Eig; James E. Ellison; Jeff Domber; Jeff Frank; Jeff Lee; Kurt Stout; Louis J. Slade; Mary Fitch; Matt Birenbaum; Maureen McAvey; Richard Harps; Ros Doggett; Steve Sher
Subject: Agenda for Tomorrow

Dear Fellow Board Members,
I'm looking forward to seeing many of you tomorrow; I hope all can attend another great lunch and presentation.

I've attached my agenda and Amy's minutes from last month.

Please think about speaker suggestions for Kurt for September and beyond.

Lou Slade

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005592

Doggett, Rosalyn

From: Thedoggettgroup@cs.com
Sent: Wednesday, May 27, 2009 9:14 PM
To: Doggett, Rosalyn
Subject: Fwd: Agenda for Tomorrow
Attachments: Agenda for Tomorrow

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005593

Doggett, Rosalyn

From: Thedoggettgroup@cs.com
Sent: Wednesday, May 27, 2009 9:14 PM
To: Doggett, Rosalyn
Subject: Fwd: Agenda for Tomorrow
Attachments: Agenda for Tomorrow

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005594

Doggett, Rosalyn

From: Goldin, Steven
Sent: Monday, October 26, 2009 5:18 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Cc: Montague, Joshua W.; Bottigheimer, Nat; Meister, Mark K.
Subject: RE: Florida Avenue

Malcolm

Where are we with getting an appraiser to work on this with a product delivered this Friday?

Steve

From: Doggett, Rosalyn
Sent: Thursday, October 22, 2009 4:18 PM
To: Marshall, Malcolm; Goldin, Steven
Cc: Montague, Joshua W.; Meister, Mark K.
Subject: RE: Florida Avenue

Including the 1.5% of EGI in the capitalized lease payment, per Omar's suggestion, is ok with me. However, that will probably take a little longer as the appraiser will have to estimate gross income (and include a lower number for affordable units and a higher number, maybe, for retail than Harps had) so it probably should be step 2, with step 1 being just an estimate of the capitalized value of the flat rental stream assuming HUD insurance.

From: Marshall, Malcolm
Sent: Thursday, October 22, 2009 3:52 PM
To: Goldin, Steven
Cc: Doggett, Rosalyn; Montague, Joshua W.; Meister, Mark K.
Subject: FW: Florida Avenue

Since Richard Harps appears to be unavailable for the next few weeks (he is out of town this week) and the request does not appear to require any detailed site analysis, I suggest that another appraiser provide the evaluation for the determination of a proposed one lump sum lease payment, exclusive of future rental participation consisting of 1.5% of annual EGI and 10% participation in net proceeds from sale and refinancing. I would think that this can be done relatively quickly but not by Monday.

For this assignment the appraiser would assume a fee value of $2,200,000, a 60-year lease with a renewal option for an additional 39 years at market, and a permitted density of 100,711 sq. ft. In order to determine the lump sum rental, the appraiser would estimate a market ground lease rental rate and terms, a market discount rate, etc. The appraiser would not consider the effect of tax credits unless instructed.

The appraiser would further provide an estimate for determining additional compensation based on increased density.

Is this OK? Should it be run by Omar?

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, October 22, 2009 3:38 PM
To: Maurice Perry; Yohance S. Fuller; jkass@dccouncil.us; Marshall, Malcolm; Montague, Joshua W.; Doggett, Rosalyn; Goldin, Steven
Cc: Tiwana Hicks; John Hagner; O'Keeffe, Carol B.; Moneme, Emeka; Catoe, John B.; Sequeira, Loyda; Wallace, Maria A; Meister, Mark K.; Bottigheimer, Nat; Mohsberg, Sid; Pant, Shiva K.
Subject: Re: Florida Avenue

Steve,

We are in agreement with your email with a few caveats, delineated below:

- Based on the initial format of the lease portion of the old appraisal which capitalized the EGI payments, to reduce wmata's financial exposure, we may go that route depending on where the appraisal comes in at.

- If Malcolm can get at least a verbal of the appraisal with the lease version by tomorrow or Monday, this would allow us to stay on schedule as the term sheet and lease are greatly dependent on the financial terms of the deal.

- In agreeing to go the lease route, Mr. Graham and I agreed that we may replace BOACDC with another

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005595

partner. We will let you know who the new partner will be by the end of next week, if we replace BOACDC.

- The provision dealing with the reversion should be removed from all documents. Carol and I discussed this today as no financier will finance the project with this provision in it.

- Since there are no WMATA facilities to replace (parking lot, chillers, garage, etc), the language requiring a completion guarantee from a guarantor with a financial statement of the value of the cost of the project is no moment and thus should be removed. Instead, we could agree to have comply with the insurance requirements in the indemnification section. Since our design calls for us building about 10 feet above the tunnel, Carol's concerns about the tunnel is greatly mitigated as we are not going close to the tunnel in comparison to the Ellington and other projects where the underground garage is inches from the top of the tunnel. We could also require the Developer or General Contractor to post a completion or payment and performance bond naming WMATA as an insured.

Can we meet early next week to discuss where things stand?

Steve, thanks for moving this along.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Goldin, Steven" <sgoldin@wmata.com>
Date: Thu, 22 Oct 2009 15:07:33 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>; John' 'Hagner<JHagner@wcsr.com>; Maurice' 'Perry<maurice.perry@bankofamerica.com>; jkass@dccouncil.us<jkass@dccouncil.us>; Yohance S. Fuller<Yohance.Fuller@dc.gov>; Doggett, Rosalyn<RDoggett@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>
Cc: Catoe, John B.<jbcatoe@wmata.com>; Pant, Shiva K.<SPant@wmata.com>; O'Keeffe, Carol B.<cokeeffe@wmata.com>; Moneme, Emeka<EMoneme@wmata.com>; Bottigheimer, Nat<NBottigheimer@wmata.com>; Sequeira, Loyda<LSequeira@wmata.com>; Meister, Mark K.<MMeister@wmata.com>; Mohsberg, Sid<SMohsberg@wmata.com>; Wallace, Maria A<mawallace@wmata.com>
Subject: Florida Avenue

To All:

As per direction from our Board, we are proceeding with preparing a term sheet for the lease of our property. The matter is to be taken up by the full Board in a special meeting in two weeks.

The lease will be as it was when a lease was first discussed (prior to my arrival): a capitalized payment at closing, an annual % participation in net operating income and a % participation upon various capital events (refinance, sale, etc). My understanding is that the participations had been 1.5% and 10% respectively.

By way of this e-mail, I am asking the following actions to be taken:

Omar: Please advise whether you as the developer are in agreement

Maurice: Please advise whether Bank of America CDC is in agreement

Jonathon: Please confirm that Chairman Graham is in agreement

Yohance: Please Confirm that Mr. Albert is in agreement

Roz/Malcolm: Please call Richard Harps and explain that we need the updated appraisal in hand by 10/30. Please initiate a new BAIS.

Josh/John: Please revise the term sheet to reflect the lease and discuss the co-tenancy agreement

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Neil (EOM) Albert [Neil.Albert@dc.gov]
Sent: Saturday, October 24, 2009 9:57 AM
To: Goldin, Steven
Cc: Maurice' 'Perry; Omar A. Karim; Yohance S. Fuller; jkass@dccouncil.us; Doggett, Rosalyn; John' 'Hagner; O'Keeffe, Carol B.; Moneme, Emeka; Catoe, John B.; Montague, Joshua W.; Sequeira, Loyda; Wallace, Maria A; Marshall, Malcolm; Meister, Mark K.; Bottigheimer, Nat; Mohsberg, Sid; Pant, Shiva K.
Subject: Re: Florida Avenue

Agree.

Neil Albert

On Oct 22, 2009, at 3:07 PM, "Goldin, Steven" <sgoldin@wmata.com> wrote:

To All:

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Steven E. Goldin

Director, Station Area Planning & Asset Management

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority

sgoldin@wmata.com

202-962-2616

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Thursday, October 22, 2009 6:27 PM
To: 'Maurice' 'Perry'; Yohance S. Fuller; jkass@dccouncil.us; Doggett, Rosalyn; 'John' 'Hagner'; Montague, Joshua W.; Marshall, Malcolm; Goldin, Steven
Cc: O'Keeffe, Carol B.; Moneme, Emeka; Catoe, John B.; Bottigheimer, Nat; Pant, Shiva K.
Subject: RE: Florida Avenue

Steve,

The agreement was a reduction in the capitalized lease amount b/c of the changes the past month, which could be taken from the deposit or allocated somewhere else.

Thanks.

Omar

From: Goldin, Steven [mailto:sgoldin@wmata.com]
Sent: Thursday, October 22, 2009 3:20 PM
To: Goldin, Steven; 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; jkass@dccouncil.us; Yohance S. Fuller; Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc: Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat
Subject: RE: Florida Avenue

Additionally, as per Board direction, there will be a $100,000 reduction in the amount of the security deposit required

We are awaiting clarification on whether there will be a reversion clause included

---

From: Goldin, Steven
Sent: Thursday, October 22, 2009 3:08 PM
To: 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; jkass@dccouncil.us; Yohance S. Fuller; Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc: Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat; Sequeira, Loyda; Meister, Mark K.; Mohsberg, Sid; Wallace, Maria A
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Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005600

Doggett, Rosalyn

From: John Hagner [JHagner@wcsr.com]
Sent: Thursday, October 22, 2009 6:19 PM
To: Montague, Joshua W.
Cc: 'okarim@bannekerventures.com'; Doggett, Rosalyn
Subject: Re: Florida Avenue

Josh: Thanks. I just finished my meetings in NC and am on the plane back to DC. I'll look forward to receiving your draft.
John
John D. Hagner
Womble Carlyle Sandridge & Rice, PLLC
202.857.4404 Direct
Sent from my Blackberry. Please excuse typos.

From: Montague, Joshua W. <jwmontague@wmata.com>
To: Hagner, John
Cc: Omar A. Karim <okarim@bannekerventures.com>; Doggett, Rosalyn <RDoggett@wmata.com>
Sent: Thu Oct 22 15:10:07 2009
Subject: FW: Florida Avenue
Hi John,

I am working on the draft of the term sheet now. I will get to you as soon as possible.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message.

From: Goldin, Steven
Sent: Thursday, October 22, 2009 3:08 PM
To: 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; jkass@dccouncil.us; Yohance S. Fuller; Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc: Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat; Sequeira, Loyda; Meister, Mark K.; Mohsberg, Sid; Wallace, Maria A
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FOIA CONFIEDENTIAL TREATMENT REQUESTED

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Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
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IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005602

Doggett, Rosalyn

From: Goldin, Steven
Sent: Thursday, October 22, 2009 5:36 PM
To: Marshall, Malcolm
Cc: Doggett, Rosalyn; Montague, Joshua W.; Meister, Mark K.
Subject: RE: Florida Avenue

M
Proceed as you suggest ASAP. Also, appraisal needs to account for extraordinary tunnel construction costs and affordable housing requirement
S

From: Marshall, Malcolm
Sent: Thursday, October 22, 2009 3:52 PM
To: Goldin, Steven
Cc: Doggett, Rosalyn; Montague, Joshua W.; Meister, Mark K.
Subject: FW: Florida Avenue

Since Richard Harps appears to be unavailable for the next few weeks (he is out of town this week) and the request does not appear to require any detailed site analysis, I suggest that another appraiser provide the evaluation for the determination of a proposed one lump sum lease payment, exclusive of future rental participation consisting of 1.5% of annual EGI and 10% participation in net proceeds from sale and refinancing. I would think that this can be done relatively quickly but not by Monday.

For this assignment the appraiser would assume a fee value of $2,200,000, a 60-year lease with a renewal option for an additional 39 years at market, and a permitted density of 100,711 sq. ft. In order to determine the lump sum rental, the appraiser would estimate a market ground lease rental rate and terms, a market discount rate, etc. The appraiser would not consider the effect of tax credits unless instructed.

The appraiser would further provide an estimate for determining additional compensation based on increased density.

Is this OK? Should it be run by Omar?

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, October 22, 2009 3:38 PM
To: Maurice Perry; Yohance S. Fuller; jkass@dccouncil.us; Marshall, Malcolm; Montague, Joshua W.; Doggett, Rosalyn; Goldin, Steven
Cc: Tiwana Hicks; John Hagner; O'Keeffe, Carol B.; Moneme, Emeka; Catoe, John B.; Sequeira, Loyda; Wallace, Maria A; Meister, Mark K.; Bottigheimer, Nat; Mohsberg, Sid; Pant, Shiva K.
Subject: Re: Florida Avenue

Steve,

We are in agreement with your email with a few caveats, delineated below:

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- If Malcolm can get at least a verbal of the appraisal with the lease version by tomorrow or Monday, this would allow us to stay on schedule as the term sheet and lease are greatly dependent on the financial terms of the deal.

- In agreeing to go the lease route, Mr. Graham and I agreed that we may replace BOACDC with another partner. We will let you know who the new partner will be by the end of next week, if we replace BOACDC.

- The provision dealing with the reversion should be removed from all documents. Carol and I discussed this today as no financier will finance the project with this provision in it.

- Since there are no WMATA facilities to replace (parking lot, chillers, garage, etc), the language requiring a completion guarantee from a guarantor with a financial statement of the value of the cost of the project is no moment and thus should be removed. Instead, we could agree to have comply with the insurance requirements in the indemnification section. Since our design calls for us building about 10 feet above the tunnel, Carol's concerns about the tunnel is greatly mitigated as we are not going close to the tunnel in comparison to the Ellington and other projects where the underground garage is inches from the top of the tunnel. We could also require the Developer or General Contractor to post a completion or payment and performance bond naming

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA as an insured.

Can we meet early next week to discuss where things stand?

Steve, thanks for moving this along.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Goldin, Steven" <sgoldin@wmata.com>
Date: Thu, 22 Oct 2009 15:07:33 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>; John' 'Hagner<JHagner@wcsr.com>; Maurice' 'Perry<maurice.perry@bankofamerica.com>; jkass@dccouncil.us<jkass@dccouncil.us>; Yohance S. Fuller<Yohance.Fuller@dc.gov>; Doggett, Rosalyn<RDoggett@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>
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Josh/John: Please revise the term sheet to reflect the lease and discuss the co-tenancy agreement

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Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Jonathon (COUNCIL) Kass [JKass@DCCOUNCIL.US]
Sent: Thursday, October 22, 2009 4:06 PM
To: Maurice"Perry; 'Omar A. Karim'; Yohance S. Fuller; Doggett, Rosalyn; John' 'Hagner; Montague, Joshua W.; Marshall, Malcolm; Goldin, Steven
Cc: O'Keeffe, Carol B.; Moneme, Emeka; Catoe, John B.; Bottigheimer, Nat; Pant, Shiva K.
Subject: RE: Florida Avenue

Follow Up Flag: Follow up
Flag Status: Completed

Thanks Steve.

CM Graham agrees that staff should be preparing a term sheet to be taken up by the full Board in two weeks.

He's OK with removing the provision dealing with reversion of the property since we're back to a lease arrangement.

He expects that there would be some documentation of the $100,000 costs leading to the reduction in security deposit.

Generally, he does not think it's appropriate for him to be involved in negotiating the terms.

Jonathon Kass
Committee on Public Works and Transportation
Councilmember Jim Graham, Chair
Council of the District of Columbia
(202) 724-8152
jkass@dccouncil.us
CM Graham: www.grahamwone.com
Committee: www.dccouncil.us/publicworksandtransportation

From: Goldin, Steven [mailto:sgoldin@wmata.com]
Sent: Thursday, October 22, 2009 3:20 PM
To: Goldin, Steven; 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; Kass, Jonathon (COUNCIL); Fuller, Yohance (DMPED); Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc: Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat
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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005605

Yohance: Please Confirm that Mr. Albert is in agreement

Roz/Malcolm: Please call Richard Harps and explain that we need the updated appraisal in hand by 10/30. Please initiate a new BAIS.

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sgoldin@wmata.com
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FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Thursday, October 22, 2009 3:52 PM
To: Goldin, Steven
Cc: Doggett, Rosalyn; Montague, Joshua W.; Meister, Mark K.
Subject: FW: Florida Avenue

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Can we meet early next week to discuss where things stand?

Steve, thanks for moving this along.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005607

Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Goldin, Steven" <sgoldin@wmata.com>
Date: Thu, 22 Oct 2009 15:07:33 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>; John' 'Hagner<JHagner@wcsr.com>; Maurice' 'Perry<maurice.perry@bankofamerica.com>; jkass@dccouncil.us<jkass@dccouncil.us>; Yohance S. Fuller<Yohance.Fuller@dc.gov>; Doggett, Rosalyn<RDoggett@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>
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Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005608

Doggett, Rosalyn

From: Omar Karim [okarim@bannekerventures.com]
Sent: Thursday, October 22, 2009 3:38 PM
To: Maurice Perry; Yohance S. Fuller; jkass@dccouncil.us; Doggett, Rosalyn; Montague, Joshua W.; Marshall, Malcolm; Goldin, Steven
Cc: Tiwana Hicks; John Hagner; O'Keeffe, Carol B.; Moneme, Emeka; Catoe, John B.; Sequeira, Loyda; Wallace, Maria A; Meister, Mark K.; Bottigheimer, Nat; Mohsberg, Sid; Pant, Shiva K.
Subject: Re: Florida Avenue

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Steve, thanks for moving this along.

Omar

Omar A. Karim
Banneker Ventures, LLC
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Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Goldin, Steven" <sgoldin@wmata.com>
Date: Thu, 22 Oct 2009 15:07:33 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>; John' 'Hagner<JHagner@wcsr.com>; Maurice' 'Perry<maurice.perry@bankofamerica.com>; jkass@dccouncil.us<jkass@dccouncil.us>; Yohance S. Fuller<Yohance.Fuller@dc.gov>; Doggett, Rosalyn<RDoggett@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>
Cc: Catoe, John B.<jbcatoe@wmata.com>; Pant, Shiva K.<SPant@wmata.com>; O'Keeffe, Carol B.<cokeeffe@wmata.com>; Moneme, Emeka<EMoneme@wmata.com>; Bottigheimer, Nat<NBottigheimer@wmata.com>; Sequeira, Loyda<LSequeira@wmata.com>; Meister, Mark K.<MMeister@wmata.com>; Mohsberg, Sid<SMohsberg@wmata.com>; Wallace, Maria A<mawallace@wmata.com>
Subject: Florida Avenue

To All:

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005609

As per direction from our Board, we are proceeding with preparing a term sheet for the lease of our property. The matter is to be taken up by the full Board in a special meeting in two weeks.

The lease will be as it was when a lease was first discussed (prior to my arrival): a capitalized payment at closing, an annual % participation in net operating income and a % participation upon various capital events (refinance, sale, etc). My understanding is that the participations had been 1.5% and 10% respectively.

By way of this e-mail, I am asking the following actions to be taken:

Omar: Please advise whether you as the developer are in agreement

Maurice: Please advise whether Bank of America CDC is in agreement

Jonathon: Please confirm that Chairman Graham is in agreement

Yohance: Please Confirm that Mr. Albert is in agreement

Roz/Malcolm: Please call Richard Harps and explain that we need the updated appraisal in hand by 10/30. Please initiate a new BAIS.

Josh/John: Please revise the term sheet to reflect the lease and discuss the co-tenancy agreement

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Goldin, Steven
Sent: Thursday, October 22, 2009 3:20 PM
To: Goldin, Steven; 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; jkass@dccouncil.us; Yohance S. Fuller; Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc: Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat
Subject: RE: Florida Avenue

Additionally, as per Board direction, there will be a $100,000 reduction in the amount of the security deposit required

We are awaiting clarification on whether there will be a reversion clause included

---

From: Goldin, Steven
Sent: Thursday, October 22, 2009 3:08 PM
To: 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; jkass@dccouncil.us; Yohance S. Fuller; Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc: Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat; Sequeira, Loyda; Meister, Mark K.; Mohsberg, Sid; Wallace, Maria A
Subject: Florida Avenue

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Josh/John: Please revise the term sheet to reflect the lease and discuss the co-tenancy agreement

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005611

Doggett, Rosalyn

From: Montague, Joshua W.
Sent: Thursday, October 22, 2009 3:10 PM
To: JHagner@wcsr.com
Cc: Omar A. Karim; Doggett, Rosalyn
Subject: FW: Florida Avenue

Hi John,

I am working on the draft of the term sheet now. I will get to you as soon as possible.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message.

From: Goldin, Steven
Sent: Thursday, October 22, 2009 3:08 PM
To: 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; jkass@dccouncil.us; Yohance S. Fuller; Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc: Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat; Sequeira, Loyda; Meister, Mark K.; Mohsberg, Sid; Wallace, Maria A
Subject: Florida Avenue

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Josh/John: Please revise the term sheet to reflect the lease and discuss the co-tenancy agreement

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005612

Doggett, Rosalyn

From: Goldin, Steven
Sent: Thursday, October 22, 2009 3:08 PM
To: 'Omar A. Karim'; John' 'Hagner; Maurice' 'Perry; jkass@dccouncil.us; Yohance S. Fuller; Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc: Catoe, John B.; Pant, Shiva K.; O'Keeffe, Carol B.; Moneme, Emeka; Bottigheimer, Nat; Sequeira, Loyda; Meister, Mark K.; Mohsberg, Sid; Wallace, Maria A
Subject: Florida Avenue

To All:

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Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005613

Doggett, Rosalyn

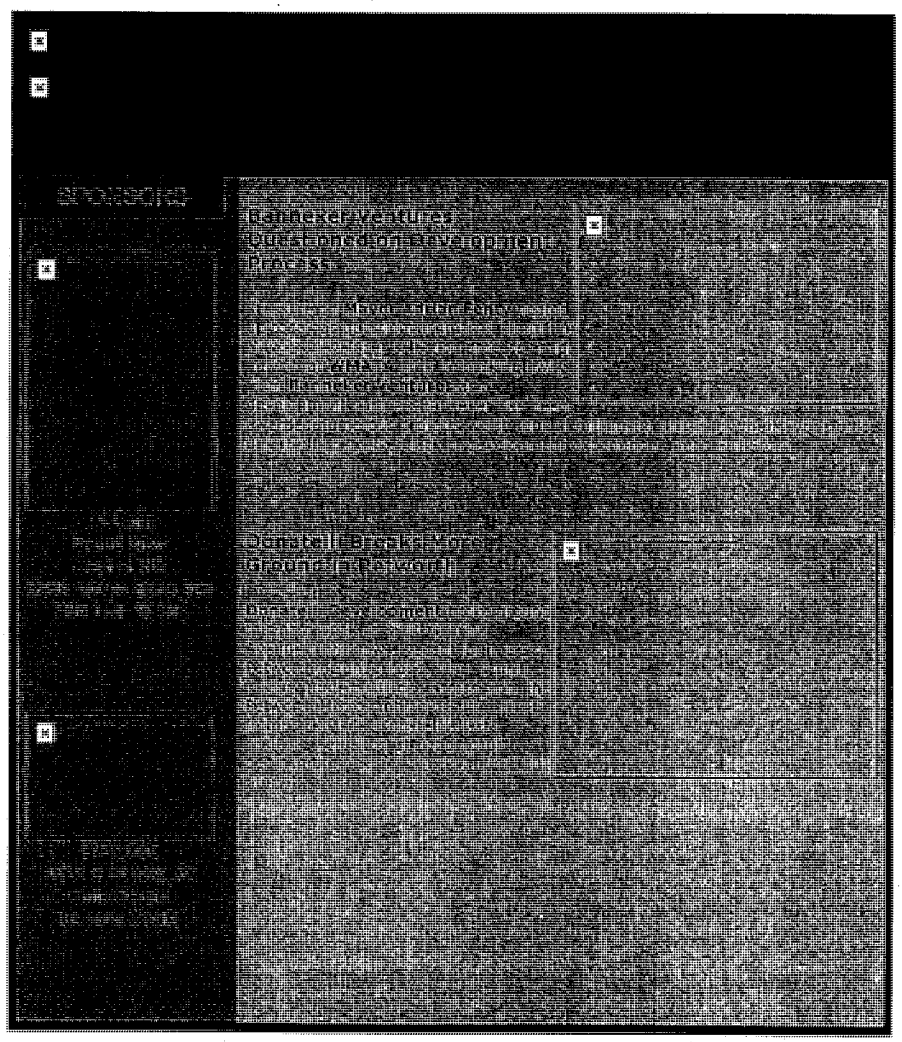
From: Doggett, Rosalyn
Sent: Monday, March 22, 2010 3:20 PM
To: Mohsberg, Sid
Subject: FW: DCRealEstate.com Newsletter - March 22nd

From: richard harps [mailto:rharps@earthlink.net]
Sent: Monday, March 22, 2010 2:59 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: Fw: DCRealEstate.com Newsletter - March 22nd

FYI

-----Forwarded Message-----
From: "DCRealEstate.com"
Sent: Mar 22, 2010 2:14 PM
To: rharps@earthlink.net
Subject: DCRealEstate.com Newsletter - March 22nd

Link to Web Version



FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005614

[illegible]

[illegible]

Classic Urban Circle Home

[illegible]

[illegible]

Sophisticated Interior

[illegible]

Gaming Furniture Adams Morgan

Agent Spotlight

[illegible]

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District to Give Money to Start Rhode Island Mixed-Use

Last week, the District government announced it will provide financing for development team **Urban Atlantic** and **A&R Development Corp.** meaning plans can now move forward to transform the 8.5 acre surface parking lot at the Rhode Island Avenue Metro station, one of DC's most stalled projects, into a sizable mixed-use neighborhood, **Rhode Island Station**. The District will provide $7.2 million in financing through a PILOT note toward the $108 million project, which will bring 274 rental units above 70,000 s.f. of retail in two buildings. Additional financing will come from the federal government. Wednesday's announcement marks a significant step toward the execution of the District's Great Streets Plan for Rhode Island Avenue. Read Full Story

MoCo's Tallest Building Will Be Ready by Summer

The best views in Montgomery County will be up for grabs when JBG begins leasing MoCo's tallest building in the coming days. According to **The JBG Companies Marketing Manager Julie Contos**, the first of North Bethesda Market's 397 rental apartments are scheduled for delivery the Summer of 2010, but will become available for lease by "late Spring." The group has not finalized the rates yet. Read Full Story

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Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005616

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Tuesday, March 16, 2010 5:14 PM
To: 'eric.smart@bolansmart.com'
Subject: FW: Follow-up re Jazz @ Florida Avenue

From: Doggett, Rosalyn
Sent: Wednesday, February 24, 2010 4:47 PM
To: 'Omar A. Karim'
Subject: RE: Follow-up re Jazz @ Florida Avenue

Omar, thanks very much for the response and for the effort that has gone in to improve the offer. I would like to ask you to send as supplemental information a new site plan and elevations showing the configuration and building heights by parcel that you are anticipating. We will need this as soon as possible as we will be reviewing this project with principals of the agency on Monday. Similarly, we will need revised development and operating pro formas as we will most certainly be questioned about whether we have reviewed the numbers and think that they are feasible. Some time has now gone by since receipt of the last set, and the construction method has changed. Both the plans/elevations and pro formas will be needed in order to make the best possible case for the revised offer.

Thanks in advance for your cooperation. Please call me if you need further detail or want to discuss.
Roz

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, February 23, 2010 4:54 PM
To: Doggett, Rosalyn
Cc: 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: Follow-up re Jazz @ Florida Avenue
Importance: High

Roz,

Per our call this morning, Banneker, our develop partner and investors for The Jazz @ Florida Avenue project (collectively, the "Developer") are prepared to increase our offer to WMATA as follows:

1. Make a capitalized lease payment of **$5.2M** at Closing. This is a 130% increase in value over WMATA's appraised value of $2.2M, and a 70% increase in value over our previous base offer of $3.03M, which includes the NPV of the capitalized lease plus the NPV of the EGI payments. This base offer is inclusive of the projected **$2.8M loss in land value** (as calculated by WMATA's appraiser Richard Harps) due to the 8% IZ requirement and the additional hard and soft costs incurred by the Project as a result of building over the WMATA tunnel.

2. Because of some of the concerns raised by WMATA staff, we would are prepared to move forward with developing the Project solely on the WMATA parcels (28,347 SF). We will forgo our purchase of the adjacent 9th Street parcels, thereby relieving any potential complications that would arise with the necessity of a Co-Tenancy Agreement, also allowing us to free up capital that would have been used toward purchasing those parcels, and instead use these funds to pay WMATA more funds at Closing. We will also not pursue an alley closing.

3. We will build the project at 4.5 FAR (as of right if not for the mandatory IZ rules that went into effect after our selection) plus the 20% bonus (0.9 FAR) that we would get because of the IZ units, bringing the total FAR to 5.4 FAR. The Project will consist of 153,000 GSF, with 137 residential units (with 12 IZ units), 14,000 SF and 41 parking spaces. Developer would pay WMATA an agreed upon rate of $ per FAR for any SF that it builds above the 153,000 SF.

4. The initial term of the lease will be for 50 years, with a 49 year option and resets to market value every 10 years after the initial 50 year term.

5. All other terms will remain consistent (i.e., participation in Capital Events, etc.).

A $5.2M upfront, non-contingent payment to WMATA is significantly higher than the recent appraisal completed by WMATA and close to our initial offer to WMATA in 2007, excluding the imposition of the IZ units and market conditions. Based on our analysis of our initial offer, **the NPV of the offer, using reasonable interest rate assumptions, would have been about $11M,** which is no where close to the $14M that WMATA staff informed us that this is what they calculated our offer to be. If this is the case, assuming that the market conditions brought the value down by 20% (which is conservative), this would bring the offer from $11M to $8.8M. Because we have to build IZ units, which force us to go from a stick build construction type to a light gauge steel product, and at the same time loose money on all of the IZ units as they do not support themselves without a subsidy, which the District does not provide for IZ units, this causes

FOIA CONFIEDENTIAL TREATMENT REQUESTED

the value of the offer to go from $8.8M to the $5.2M that we are now offering, excluding WMATA's other participation rights in the Project.

As we have discussed previously, to date, the Developer has incurred over $1M since being selected by WMATA. We continue to remain hopeful that the exhaustive amount of money and time spent by Developer and WMATA in bringing this Project will produce a TOD project that all parties can be proud of. We look forward to seeing you on Friday at 2:30 and finalizing this last term of the deal so that we can get the JDA and Lease complete and presented to the Board at the next possible Board meeting. Should you have any questions prior to Friday, please feel free to contact us.

Warmest regards, I remain

Sincerely,

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Thursday, February 25, 2010 9:41 AM
To: Goldin, Steven; Bushnaq, Tariq
Subject: FW: Follow-up re Jazz @ Florida Avenue

Josh's issues. I'll bring some copies.

From: Montague, Joshua W.
Sent: Wednesday, February 24, 2010 10:26 AM
To: Doggett, Rosalyn
Subject: RE: Follow-up re Jazz @ Florida Avenue

Thanks for forwarding. Are we meeting anytime before Friday to discuss?

The exclusion of the adjacent parcels alleviates a major legal risk from WMATA's perspective.

Here are some outstanding issues that should be discussed before the meeting with the Developer:

1. Cap Event / Participation rent payments – WMATA should review/fix the formulas for these payments as they are described in the last term sheet.

2. Indemnification – WMATA should have a coherent strategy before discussing this issue with the Developer. Indemnification was a "non-negotiable" requirement of the JDS. The Developer has previously indicated that they are obtaining financing which would limit their indemnification to "surplus cash." While the Developer will likely argue that their insurance will provide WMATA all of the protection that we need, that may not be true. There are unique risks because the Developer is building over the tunnel. A $10M policy may not cover the repair of the damage.

   Additionally, the indemnification provisions offer protections that WMATA does not get from insurance. For example, environmental liability protection, payments due under the lease, payments that Developer fails to make related to the property (ex. mechanic's liens or government violations), or damages/lawsuits that might be outside of the scope of our insurance coverage.

3. Additional Costs Credit – Are we still providing this credit? Was this ever verified with either J. Graham or J. Catoe?

4. Guaranty – Are we accepting a guaranty from Banneker? What should it cover?

5. Project schedule – At the meeting without Omar, in response to J. Graham's concerns about the Developer just sitting on the property without building (i.e., the reversion issue), John Hagner came up with an alternative route to getting this project built on time. He suggested that we attach a project schedule to the lease. If the Developer does not meet any of the project schedule milestones then it is a default of the lease. J. Hagner said he had to verify this with his client before he could officially offer this to us. This should be included in the term sheet.

From: Doggett, Rosalyn
Sent: Wednesday, February 24, 2010 9:04 AM
To: Montague, Joshua W.
Subject: FW: Follow-up re Jazz @ Florida Avenue
Importance: High

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, February 23, 2010 4:54 PM
To: Doggett, Rosalyn
Cc: 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: Follow-up re Jazz @ Florida Avenue
Importance: High

Roz,

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005619

Per our call this morning, Banneker, our develop partner and investors for The Jazz @ Florida Avenue project (collectively, the "Developer") are prepared to increase our offer to WMATA as follows:

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Warmest regards, I remain

Sincerely,

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Wednesday, February 24, 2010 4:48 PM
To: Goldin, Steven
Subject: FW: Follow-up re Jazz @ Florida Avenue

This is what I sent

From: Doggett, Rosalyn
Sent: Wednesday, February 24, 2010 4:47 PM
To: 'Omar A. Karim'
Subject: RE: Follow-up re Jazz @ Florida Avenue

Omar, thanks very much for the response and for the effort that has gone in to improve the offer. I would like to ask you to send as supplemental information a new site plan and elevations showing the configuration and building heights by parcel that you are anticipating. We will need this as soon as possible as we will be reviewing this project with principals of the agency on Monday. Similarly, we will need revised development and operating pro formas as we will most certainly be questioned about whether we have reviewed the numbers and think that they are feasible. Some time has now gone by since receipt of the last set, and the construction method has changed. Both the plans/elevations and pro formas will be needed in order to make the best possible case for the revised offer.

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Sent: Tuesday, February 23, 2010 4:54 PM
To: Doggett, Rosalyn
Cc: 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: Follow-up re Jazz @ Florida Avenue
Importance: High

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

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Warmest regards, I remain

Sincerely,

Omar

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Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Wednesday, February 24, 2010 4:47 PM
To: 'Omar A. Karim'
Subject: RE: Follow-up re Jazz @ Florida Avenue

Omar, thanks very much for the response and for the effort that has gone in to improve the offer. I would like to ask you to send as supplemental information a new site plan and elevations showing the configuration and building heights by parcel that you are anticipating. We will need this as soon as possible as we will be reviewing this project with principals of the agency on Monday. Similarly, we will need revised development and operating pro formas as we will most certainly be questioned about whether we have reviewed the numbers and think that they are feasible. Some time has now gone by since receipt of the last set, and the construction method has changed. Both the plans/elevations and pro formas will be needed in order to make the best possible case for the revised offer.

Thanks in advance for your cooperation. Please call me if you need further detail or want to discuss.
Roz

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, February 23, 2010 4:54 PM
To: Doggett, Rosalyn
Cc: 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: Follow-up re Jazz @ Florida Avenue
Importance: High

Roz,

Per our call this morning, Banneker, our develop partner and investors for The Jazz @ Florida Avenue project (collectively, the "Developer") are prepared to increase our offer to WMATA as follows:

1. Make a capitalized lease payment of **$5.2M** at Closing. This is a 130% increase in value over WMATA's appraised value of $2.2M, and a 70% increase in value over our previous base offer of $3.03M, which includes the NPV of the capitalized lease plus the NPV of the EGI payments. This base offer is inclusive of the projected **$2.8M loss in land value** (as calculated by WMATA's appraiser Richard Harps) due to the 8% IZ requirement and the additional hard and soft costs incurred by the Project as a result of building over the WMATA tunnel.

2. Because of some of the concerns raised by WMATA staff, we would are prepared to move forward with developing the Project solely on the WMATA parcels (28,347 SF). We will forgo our purchase of the adjacent 9th Street parcels, thereby relieving any potential complications that would arise with the necessity of a Co-Tenancy Agreement, also allowing us to free up capital that would have been used toward purchasing those parcels, and instead use these funds to pay WMATA more funds at Closing. We will also not pursue an alley closing.

3. We will build the project at 4.5 FAR (as of right if not for the mandatory IZ rules that went into effect after our selection) plus the 20% bonus (0.9 FAR) that we would get because of the IZ units, bringing the total FAR to 5.4 FAR. The Project will consist of 153,000 GSF, with 137 residential units (with 12 IZ units), 14,000 SF and 41 parking spaces. Developer would pay WMATA an agreed upon rate of $ per FAR for any SF that it builds above the 153,000 SF.

4. The initial term of the lease will be for 50 years, with a 49 year option and resets to market value every 10 years after the initial 50 year term.

5. All other terms will remain consistent (i.e., participation in Capital Events, etc.).

A $5.2M upfront, non-contingent payment to WMATA is significantly higher than the recent appraisal completed by WMATA and close to our initial offer to WMATA in 2007, excluding the imposition of the IZ units and market conditions. Based on our analysis of our initial offer, **the NPV of the offer, using reasonable interest rate assumptions, would have been about $11M,** which is no where close to the $14M that WMATA staff informed us that this is what they calculated our offer to be. If this is the case, assuming that the market conditions brought the value down by 20% (which is conservative), this would bring the offer from $11M to $8.8M. Because we have to build IZ units, which force us to go from a stick build construction type to a light gauge steel product, and at the same time loose money on all of the IZ units as they do not support themselves without a subsidy, which the District does not provide for IZ units, this causes the value of the offer to go from $8.8M to the $5.2M that we are now offering, excluding WMATA's other participation rights in the Project.

As we have discussed previously, to date, the Developer has incurred over $1M since being selected by WMATA. We continue to remain hopeful that the exhaustive amount of money and time spent by Developer and WMATA in bringing this Project will produce a TOD project that all parties can be proud of. We look forward to seeing you on Friday at 2:30

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005623

and finalizing this last term of the deal so that we can get the JDA and Lease complete and presented to the Board at the next possible Board meeting. Should you have any questions prior to Friday, please feel free to contact us.

Warmest regards, I remain

Sincerely,

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Wednesday, February 24, 2010 3:02 PM
To: Bushnaq, Tariq
Subject: FW: Follow-up re Jazz @ Florida Avenue

Importance: High

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, February 23, 2010 4:54 PM
To: Doggett, Rosalyn
Cc: 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: Follow-up re Jazz @ Florida Avenue
Importance: High

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Warmest regards, I remain

Sincerely,

Omar

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005625

Omar A. Karim
Banneker Ventures, LLC
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(202) 393-5462 fax
(301) 523-1810 cell

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Wednesday, February 24, 2010 10:50 AM
To: Montague, Joshua W.
Subject: RE: Follow-up re Jazz @ Florida Avenue

Yes. When I finish current task I will arrange.

From: Montague, Joshua W.
Sent: Wednesday, February 24, 2010 10:26 AM
To: Doggett, Rosalyn
Subject: RE: Follow-up re Jazz @ Florida Avenue

Thanks for forwarding. Are we meeting anytime before Friday to discuss?

The exclusion of the adjacent parcels alleviates a major legal risk from WMATA's perspective.

Here are some outstanding issues that should be discussed before the meeting with the Developer:

1. Cap Event / Participation rent payments – WMATA should review/fix the formulas for these payments as they are described in the last term sheet.

2. Indemnification – WMATA should have a coherent strategy before discussing this issue with the Developer. Indemnification was a "non-negotiable" requirement of the JDS. The Developer has previously indicated that they are obtaining financing which would limit their indemnification to "surplus cash." While the Developer will likely argue that their insurance will provide WMATA all of the protection that we need, that may not be true. There are unique risks because the Developer is building over the tunnel. A $10M policy may not cover the repair of the damage.

   Additionally, the indemnification provisions offer protections that WMATA does not get from insurance. For example, environmental liability protection, payments due under the lease, payments that Developer fails to make related to the property (ex. mechanic's liens or government violations), or damages/lawsuits that might be outside of the scope of our insurance coverage.

3. Additional Costs Credit – Are we still providing this credit? Was this ever verified with either J. Graham or J. Catoe?

4. Guaranty – Are we accepting a guaranty from Banneker? What should it cover?

5. Project schedule – At the meeting without Omar, in response to J. Graham's concerns about the Developer just sitting on the property without building (i.e., the reversion issue), John Hagner came up with an alternative route to getting this project built on time. He suggested that we attach a project schedule to the lease. If the Developer does not meet any of the project schedule milestones then it is a default of the lease. J. Hagner said he had to verify this with his client before he could officially offer this to us. This should be included in the term sheet.

From: Doggett, Rosalyn
Sent: Wednesday, February 24, 2010 9:04 AM
To: Montague, Joshua W.
Subject: FW: Follow-up re Jazz @ Florida Avenue
Importance: High

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, February 23, 2010 4:54 PM
To: Doggett, Rosalyn
Cc: 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: Follow-up re Jazz @ Florida Avenue
Importance: High

Roz,

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005627

Per our call this morning, Banneker, our develop partner and investors for The Jazz @ Florida Avenue project (collectively, the "Developer") are prepared to increase our offer to WMATA as follows:

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4. The initial term of the lease will be for 50 years, with a 49 year option and resets to market value every 10 years after the initial 50 year term.

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Warmest regards, I remain

Sincerely,

Omar

Omar A. Karim
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729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Wednesday, February 24, 2010 9:18 AM
To: 'eric.smart@bolansmart.com'; Montague, Joshua W.
Subject: FW: Follow-up re Jazz @ Florida Avenue

Importance: High

After you have reviewed this, let's talk about additional information needed, npv, other

---

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, February 23, 2010 4:54 PM
To: Doggett, Rosalyn
Cc: 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: Follow-up re Jazz @ Florida Avenue
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Sincerely,

Omar

FOIA CONFIEDENTIAL TREATMENT REQUESTED

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(301) 523-1810 cell

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Wednesday, February 24, 2010 9:04 AM
To: Montague, Joshua W.
Subject: FW: Follow-up re Jazz @ Florida Avenue

Importance: High

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, February 23, 2010 4:54 PM
To: Doggett, Rosalyn
Cc: 'Anthony James Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance.Fuller@dc.gov; Bottigheimer, Nat; Goldin, Steven
Subject: Follow-up re Jazz @ Florida Avenue
Importance: High

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Omar

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005631

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005632

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Thursday, October 22, 2009 4:18 PM
To: Marshall, Malcolm; Goldin, Steven
Cc: Montague, Joshua W.; Meister, Mark K.
Subject: RE: Florida Avenue

Including the 1.5% of EGI in the capitalized lease payment, per Omar's suggestion, is ok with me. However, that will probably take a little longer as the appraiser will have to estimate gross income (and include a lower number for affordable units and a higher number, maybe, for retail than Harps had) so it probably should be step 2, with step 1 being just an estimate of the capitalized value of the flat rental stream assuming HUD insurance.

From: Marshall, Malcolm
Sent: Thursday, October 22, 2009 3:52 PM
To: Goldin, Steven
Cc: Doggett, Rosalyn; Montague, Joshua W.; Meister, Mark K.
Subject: FW: Florida Avenue

Since Richard Harps appears to be unavailable for the next few weeks (he is out of town this week) and the request does not appear to require any detailed site analysis, I suggest that another appraiser provide the evaluation for the determination of a proposed one lump sum lease payment, exclusive of future rental participation consisting of 1.5% of annual EGI and 10% participation in net proceeds from sale and refinancing. I would think that this can be done relatively quickly but not by Monday.

For this assignment the appraiser would assume a fee value of $2,200,000, a 60-year lease with a renewal option for an additional 39 years at market, and a permitted density of 100,711 sq. ft. In order to determine the lump sum rental, the appraiser would estimate a market ground lease rental rate and terms, a market discount rate, etc. The appraiser would not consider the effect of tax credits unless instructed.

The appraiser would further provide an estimate for determining additional compensation based on increased density.

Is this OK? Should it be run by Omar?

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, October 22, 2009 3:38 PM
To: Maurice Perry; Yohance S. Fuller; jkass@dccouncil.us; Marshall, Malcolm; Montague, Joshua W.; Doggett, Rosalyn; Goldin, Steven
Cc: Tiwana Hicks; John Hagner; O'Keeffe, Carol B.; Moneme, Emeka; Catoe, John B.; Sequeira, Loyda; Wallace, Maria A; Meister, Mark K.; Bottigheimer, Nat; Mohsberg, Sid; Pant, Shiva K.
Subject: Re: Florida Avenue

Steve,

We are in agreement with your email with a few caveats, delineated below:

- Based on the initial format of the lease portion of the old appraisal which capitalized the EGI payments, to reduce wmata's financial exposure, we may go that route depending on where the appraisal comes in at.

- If Malcolm can get at least a verbal of the appraisal with the lease version by tomorrow or Monday, this would allow us to stay on schedule as the term sheet and lease are greatly dependent on the financial terms of the deal.

- In agreeing to go the lease route, Mr. Graham and I agreed that we may replace BOACDC with another partner. We will let you know who the new partner will be by the end of next week, if we replace BOACDC.

- The provision dealing with the reversion should be removed from all documents. Carol and I discussed this today as no financier will finance the project with this provision in it.

- Since there are no WMATA facilities to replace (parking lot, chillers, garage, etc), the language requiring a completion guarantee from a guarantor with a financial statement of the value of the cost of the project is no moment and thus should be removed. Instead, we could agree to have comply with the insurance requirements in the indemnification section. Since our design calls for us building about 10 feet above the tunnel, Carol's concerns about the tunnel is greatly mitigated as we are not going close to the tunnel in comparison to the Ellington and other projects where the underground garage is inches from the top of the tunnel. We could also

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005633

require the Developer or General Contractor to post a completion or payment and performance bond naming WMATA as an insured.

Can we meet early next week to discuss where things stand?

Steve, thanks for moving this along.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Goldin, Steven" <sgoldin@wmata.com>
Date: Thu, 22 Oct 2009 15:07:33 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>; John' 'Hagner<JHagner@wcsr.com>; Maurice' 'Perry<maurice.perry@bankofamerica.com>; jkass@dccouncil.us<jkass@dccouncil.us>; Yohance S. Fuller<Yohance.Fuller@dc.gov>; Doggett, Rosalyn<RDoggett@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>
Cc: Catoe, John B.<jbcatoe@wmata.com>; Pant, Shiva K.<SPant@wmata.com>; O'Keeffe, Carol B.<cokeeffe@wmata.com>; Moneme, Emeka<EMoneme@wmata.com>; Bottigheimer, Nat<NBottigheimer@wmata.com>; Sequeira, Loyda<LSequeira@wmata.com>; Meister, Mark K.<MMeister@wmata.com>; Mohsberg, Sid<SMohsberg@wmata.com>; Wallace, Maria A<mawallace@wmata.com>
Subject: Florida Avenue

To All:

As per direction from our Board, we are proceeding with preparing a term sheet for the lease of our property. The matter is to be taken up by the full Board in a special meeting in two weeks.

The lease will be as it was when a lease was first discussed (prior to my arrival): a capitalized payment at closing, an annual % participation in net operating income and a % participation upon various capital events (refinance, sale, etc). My understanding is that the participations had been 1.5% and 10% respectively.

By way of this e-mail, I am asking the following actions to be taken:

Omar: Please advise whether you as the developer are in agreement

Maurice: Please advise whether Bank of America CDC is in agreement

Jonathon: Please confirm that Chairman Graham is in agreement

Yohance: Please Confirm that Mr. Albert is in agreement

Roz/Malcolm: Please call Richard Harps and explain that we need the updated appraisal in hand by 10/30. Please initiate a new BAIS.

Josh/John: Please revise the term sheet to reflect the lease and discuss the co-tenancy agreement

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005634

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Wednesday, October 14, 2009 12:19 PM
To: Meister, Mark K.; Medina, Ed
Cc: Montague, Joshua W.
Subject: FW: Fla 9th
Attachments: Sq 393 Lot 0044 Title Report.pdf; Sq 393 Lot 0045 Title Report.pdf; Sq 416 Lot 0031 Title Report.pdf; The Jazz Boundary & Topo Survey.PDF

Sorry for the serial e-mails, but assuming you have a chance to look at these this afternoon, I would like to get together at 4 in the conference room to develop a response. Please let me know if this is possible.

-----Original Message-----
From: Tiwana Hicks [mailto:thicks@bannekerventures.com]
Sent: Wednesday, October 07, 2009 11:07 AM
To: 'Omar A. Karim'; Doggett, Rosalyn
Cc: Montague, Joshua W.
Subject: RE: Fla 9th

Ms. Doggett,
Attached please find the Survey and title reports. Please call us with any questions.
Thanks.
Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, D.C. 20005
T: (202) 393-5460
F: (202) 393-5462
C: (202) 486-1863
thicks@bannekerventures.com

-----Original Message-----
From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Wednesday, October 07, 2009 10:47 AM
To: Omar A. Karim
Cc: Tiwana Hicks; Montague, Joshua W.
Subject: RE: Fla 9th

Thank you for the reply; I'm working on the term sheet now. Can you please send me a copy of your survey and title report as previously requested? Many thanks. R.

-----Original Message-----
From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Tuesday, October 06, 2009 6:13 PM
To: Yohance S. Fuller; Doggett, Rosalyn
Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Marshall, Malcolm; Goldin, Steven
Subject: RE: Fla 9th

Ms. Doggett,

Thank you for the memo summarizing the updated appraisal. Based on the final value provided by the appraiser in the memo dated October 1, 2009, we are prepared to enter into the term sheet with you all based on this final value and other terms previously discussed with WMATA staff, and move forward to Committee and Board approval on the 22nd. We look forward to receiving the Term Sheet and final appraisal from you all on Friday.

My best,

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax

FOIA CONFIEDENTIAL TREATMENT REQUESTED

(301) 523-1810 cell
okarim@bannekerventures.com

-----Original Message-----
From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Tuesday, October 06, 2009 5:21 PM
To: Yohance S. Fuller; okarim@bannekerventures.com
Cc: Marshall, Malcolm; Goldin, Steven
Subject: FW: Fla 9th

Per your request

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, October 01, 2009 1:57 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: Fla 9th

attached

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005636

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Wednesday, October 14, 2009 12:17 PM
To: Medina, Ed; Meister, Mark K.
Cc: Montague, Joshua W.
Subject: FW: Fla 9th
Attachments: Sq 393 Lot 0044 Title Report.pdf; Sq 393 Lot 0045 Title Report.pdf; Sq 416 Lot 0031 Title Report.pdf; The Jazz Boundary & Topo Survey.PDF

Further on the "survey" they include also the two lots that they own.

-----Original Message-----
From: Tiwana Hicks [mailto:thicks@bannekerventures.com]
Sent: Wednesday, October 07, 2009 11:07 AM
To: 'Omar A. Karim'; Doggett, Rosalyn
Cc: Montague, Joshua W.
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Attached please find the Survey and title reports. Please call us with any questions.
Thanks.
Tiwana

Tiwana Z. Hicks
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C: (202) 486-1863
thicks@bannekerventures.com

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Cc: Tiwana Hicks; Montague, Joshua W.
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My best,

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005637

-----Original Message-----
From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Tuesday, October 06, 2009 5:21 PM
To: Yohance S. Fuller; okarim@bannekerventures.com
Cc: Marshall, Malcolm; Goldin, Steven
Subject: FW: Fla 9th

Per your request

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, October 01, 2009 1:57 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: Fla 9th

attached

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005638

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Wednesday, October 14, 2009 12:16 PM
To: Medina, Ed; Meister, Mark K.
Cc: Montague, Joshua W.
Subject: FW: Fla 9th
Attachments: Sq 393 Lot 0044 Title Report.pdf; Sq 393 Lot 0045 Title Report.pdf; Sq 416 Lot 0031 Title Report.pdf; The Jazz Boundary & Topo Survey.PDF

Are these adequate? I am dubious. Further, they have included "of 3" with Sq 416, Lot 31 which our surveyor says is an underground easement. Our surveyor measured 15,923 sf for lot 31; we have continued to use the DC number of 15,956 sf.

-----Original Message-----
From: Tiwana Hicks [mailto:thicks@bannekerventures.com]
Sent: Wednesday, October 07, 2009 11:07 AM
To: 'Omar A. Karim'; Doggett, Rosalyn
Cc: Montague, Joshua W.
Subject: RE: Fla 9th

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thicks@bannekerventures.com

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Sent: Tuesday, October 06, 2009 6:13 PM
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Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Marshall, Malcolm; Goldin, Steven
Subject: RE: Fla 9th

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My best,

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
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FOIA CONFIEDENTIAL TREATMENT REQUESTED

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Cc: Marshall, Malcolm; Goldin, Steven
Subject: FW: Fla 9th

Per your request

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Sent: Thursday, October 01, 2009 1:57 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: Fla 9th

attached

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005640

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Friday, October 09, 2009 5:44 PM
To: Marshall, Malcolm
Subject: FW: signed mv only
Attachments: WMATA 9th 100909 MV Only a.pdf

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Friday, October 09, 2009 3:12 PM
To: Doggett, Rosalyn
Subject: signed mv only

attached

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Friday, October 09, 2009 3:16 PM
To: 'richard harps'
Cc: Marshall, Malcolm
Subject: RE: unsigned mv only

Thanks, Richard
It arrived in time
R.

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Friday, October 09, 2009 2:58 PM
To: Doggett, Rosalyn
Subject: unsigned mv only

attached

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005642

Doggett, Rosalyn

From: richard harps [rharps@earthlink.net]
Sent: Friday, October 09, 2009 3:12 PM
To: Doggett, Rosalyn
Subject: signed mv only
Attachments: WMATA 9th 100909 MV Only a.pdf

attached

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005643

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Friday, October 09, 2009 3:00 PM
To: Marshall, Malcolm
Subject: FW: unsigned mv only
Attachments: WMATA 9th 100909 MV Only a.pdf

Steve asked you and me to read immediately to make sure all references to leasing Are Out ---
--Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Friday, October 09, 2009 2:58 PM
To: Doggett, Rosalyn
Subject: unsigned mv only

attached

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005644

Doggett, Rosalyn

From: richard harps [rharps@earthlink.net]
Sent: Friday, October 09, 2009 2:58 PM
To: Doggett, Rosalyn
Subject: unsigned mv only
Attachments: WMATA 9th 100909 MV Only a.pdf

attached

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Friday, October 09, 2009 2:51 PM
To: 'richard harps'
Subject: just left you a phone message re schedule...

Rosalyn P. Doggett
Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

rdoggett@wmata.com
202-962-2208 phone
202-962-2396 fax

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005646

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Friday, October 09, 2009 1:53 PM
To: richard harps
Cc: Doggett, Rosalyn
Subject: Shaw Howard
Attachments: ScopeShawHoward4.doc

Attached is revised scope

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005647

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Friday, October 09, 2009 12:33 PM
To: 'richard harps'
Cc: Goldin, Steven
Subject: apppraisal

Please call me at 962 2208 or Malcolm at 962 1584 ASAP. Thank you.

Rosalyn P. Doggett
Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

rdoggett@wmata.com
202-962-2208 phone
202-962-2396 fax

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005648

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Friday, October 09, 2009 8:36 AM
To: Montague, Joshua W.
Subject: FW: CORRECTED WMATA 9th
Attachments: WMATA 9th 2009 a.pdf

fyi

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, October 08, 2009 5:31 PM
To: Doggett, Rosalyn
Subject: CORRECTED WMATA 9th

Roz

Here's the corrected copy - the title page was changed to correct a name.

PLEASE DO NOT KEEP the first one that came over earlier. Use this second one

Thanks

R

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005649

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Thursday, October 08, 2009 5:54 PM
To: Marshall, Malcolm
Subject: FW: CORRECTED WMATA 9th

I know that Steve will be looking for your review and approval first thing in the a.m.!

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, October 08, 2009 5:37 PM
To: Doggett, Rosalyn
Subject: RE: CORRECTED WMATA 9th

many thanks

-----Original Message-----
>From: "Doggett, Rosalyn" <RDoggett@wmata.com>
>Sent: Oct 8, 2009 5:33 PM
>To: richard harps <rharps@earthlink.net>
>Subject: RE: CORRECTED WMATA 9th
>
>I deleted the first
>
>-----Original Message-----
>From: richard harps [mailto:rharps@earthlink.net]
>Sent: Thursday, October 08, 2009 5:31 PM
>To: Doggett, Rosalyn
>Subject: CORRECTED WMATA 9th
>
>Roz
>
>Here's the corrected copy - the title page was changed to correct a name.
>
>PLEASE DO NOT KEEP the first one that came over earlier. Use this second one
>
>Thanks
>
>R
>
>
>Harps & Harps Inc
>1111 14th Street, NW Suite 600
>Washington, DC 20005
>202-682-2194
>202-682-1579 (fax)
>rharps@earthlink.net

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1111 14th Street, NW Suite 600
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202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005650

Doggett, Rosalyn

From: richard harps [rharps@earthlink.net]
Sent: Thursday, October 08, 2009 5:37 PM
To: Doggett, Rosalyn
Subject: RE: CORRECTED WMATA 9th

many thanks

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>From: "Doggett, Rosalyn" <RDoggett@wmata.com>
>Sent: Oct 8, 2009 5:33 PM
>To: richard harps <rharps@earthlink.net>
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202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005651

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Thursday, October 08, 2009 5:35 PM
To: Marshall, Malcolm
Subject: FW: CORRECTED WMATA 9th
Attachments: WMATA 9th 2009 a.pdf

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, October 08, 2009 5:31 PM
To: Doggett, Rosalyn
Subject: CORRECTED WMATA 9th

Roz

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Thanks

R

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202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005652

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Thursday, October 08, 2009 5:33 PM
To: 'richard harps'
Subject: RE: CORRECTED WMATA 9th

I deleted the first

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, October 08, 2009 5:31 PM
To: Doggett, Rosalyn
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Thanks

R

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rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Tiwana Hicks [thicks@bannekerventures.com]
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To: 'Omar A. Karim'; Doggett, Rosalyn
Cc: Montague, Joshua W.
Subject: RE: Fla 9th
Attachments: Sq 393 Lot 0044 Title Report.pdf; Sq 393 Lot 0045 Title Report.pdf; Sq 416 Lot 0031 Title Report.pdf; The Jazz Boundary & Topo Survey.PDF

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Thanks.
Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, D.C. 20005
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thicks@bannekerventures.com

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From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
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To: Omar A. Karim
Cc: Tiwana Hicks; Montague, Joshua W.
Subject: RE: Fla 9th

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005655

Per your request

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Sent: Thursday, October 01, 2009 1:57 PM
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attached

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1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005656

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Wednesday, October 07, 2009 10:47 AM
To: 'Omar A. Karim'
Cc: 'Tiwana Hicks'; 'jmontague@wmata.com'
Subject: RE: Fla 9th

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Omar

Omar A. Karim
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(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

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Sent: Tuesday, October 06, 2009 5:21 PM
To: Yohance S. Fuller; okarim@bannekerventures.com
Cc: Marshall, Malcolm; Goldin, Steven
Subject: FW: Fla 9th

Per your request

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Sent: Thursday, October 01, 2009 1:57 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: Fla 9th

attached

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202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005657

Doggett, Rosalyn

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Tuesday, October 06, 2009 6:13 PM
To: Yohance S. Fuller; Doggett, Rosalyn
Cc: 'Maurice Perry'; 'Anthony Ives'; 'Tiwana Hicks'; Neil.Albert@dc.gov; Marshall, Malcolm; Goldin, Steven
Subject: RE: Fla 9th

Ms. Doggett,

Thank you for the memo summarizing the updated appraisal. Based on the final value provided by the appraiser in the memo dated October 1, 2009, we are prepared to enter into the term sheet with you all based on this final value and other terms previously discussed with WMATA staff, and move forward to Committee and Board approval on the 22nd. We look forward to receiving the Term Sheet and final appraisal from you all on Friday.

My best,

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

-----Original Message-----
From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Tuesday, October 06, 2009 5:21 PM
To: Yohance S. Fuller; okarim@bannekerventures.com
Cc: Marshall, Malcolm; Goldin, Steven
Subject: FW: Fla 9th

Per your request

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, October 01, 2009 1:57 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: Fla 9th

attached

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005658

Doggett, Rosalyn

From: Goldin, Steven
Sent: Tuesday, October 06, 2009 5:26 PM
To: Doggett, Rosalyn
Cc: Bottigheimer, Nat; Meister, Mark K.; Marshall, Malcolm
Subject: RE: Shaw Howard

Friday by 1:00 is fine but Thursday AM is even better

From: Doggett, Rosalyn
Sent: Tuesday, October 06, 2009 12:57 PM
To: Goldin, Steven
Cc: Bottigheimer, Nat; Meister, Mark K.; Marshall, Malcolm
Subject: FW: Shaw Howard

My response below was not acceptable to Yohance; he called to say he must have the appraisal tomorrow.

I called Richard Harps who said that he really cannot promise tomorrow. He WILL aim for Thursday morning and let us know around lunch time tomorrow how he is doing.

From: Doggett, Rosalyn
Sent: Tuesday, October 06, 2009 12:29 PM
To: Yohance S. Fuller; 'okarim@bannekerventures.com'
Cc: Marshall, Malcolm
Subject: FW: Shaw Howard

As soon as the appraisal comes in, I will forward to you both.
Rosalyn

From: Marshall, Malcolm
Sent: Tuesday, October 06, 2009 10:52 AM
To: Meister, Mark K.
Cc: Bottigheimer, Nat; Goldin, Steven; Doggett, Rosalyn
Subject: Shaw Howard

The appraiser, Richard Harps, expects to send over a revised appraisal, incorporating the latest changes, this Friday

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Tuesday, October 06, 2009 5:21 PM
To: Yohance S. Fuller; 'okarim@bannekerventures.com'
Cc: Marshall, Malcolm; Goldin, Steven
Subject: FW: Fla 9th
Attachments: MM Memo 100109.pdf

Per your request

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, October 01, 2009 1:57 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: Fla 9th

attached

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005660

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Tuesday, October 06, 2009 12:57 PM
To: Goldin, Steven
Cc: Bottigheimer, Nat; Meister, Mark K.; Marshall, Malcolm
Subject: FW: Shaw Howard

My response below was not acceptable to Yohance; he called to say he must have the appraisal tomorrow.

I called Richard Harps who said that he really cannot promise tomorrow. He WILL aim for Thursday morning and let us know around lunch time tomorrow how he is doing.

From: Doggett, Rosalyn
Sent: Tuesday, October 06, 2009 12:29 PM
To: Yohance S. Fuller; 'okarim@bannekerventures.com'
Cc: Marshall, Malcolm
Subject: FW: Shaw Howard

As soon as the appraisal comes in, I will forward to you both.
Rosalyn

From: Marshall, Malcolm
Sent: Tuesday, October 06, 2009 10:52 AM
To: Meister, Mark K.
Cc: Bottigheimer, Nat; Goldin, Steven; Doggett, Rosalyn
Subject: Shaw Howard

The appraiser, Richard Harps, expects to send over a revised appraisal, incorporating the latest changes, this Friday

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005661

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Tuesday, October 06, 2009 12:29 PM
To: Yohance S. Fuller; 'okarim@bannekerventures.com'
Cc: Marshall, Malcolm
Subject: FW: Shaw Howard

As soon as the appraisal comes in, I will forward to you both.
Rosalyn

From: Marshall, Malcolm
Sent: Tuesday, October 06, 2009 10:52 AM
To: Meister, Mark K.
Cc: Bottigheimer, Nat; Goldin, Steven; Doggett, Rosalyn
Subject: Shaw Howard

The appraiser, Richard Harps, expects to send over a revised appraisal, incorporating the latest changes, this Friday

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005662

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Tuesday, October 06, 2009 10:52 AM
To: Meister, Mark K.
Cc: Bottigheimer, Nat; Goldin, Steven; Doggett, Rosalyn
Subject: Shaw Howard

The appraiser, Richard Harps, expects to send over a revised appraisal, incorporating the latest changes, this Friday

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005663

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Thursday, October 01, 2009 2:30 PM
To: Goldin, Steven; Meister, Mark K.
Subject: FW: Fla 9th
Attachments: MM Memo 100109.pdf

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, October 01, 2009 1:57 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: Fla 9th

attached

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005664

Doggett, Rosalyn

From: richard harps [rharps@earthlink.net]
Sent: Thursday, October 01, 2009 1:57 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: Fla 9th
Attachments: MM Memo 100109.pdf

attached

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005665

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Thursday, October 01, 2009 1:40 PM
To: Marshall, Malcolm
Subject: FW: 9th
Attachments: MM Memo 100109.pdf

For your immediate review. Harps has a plane to catch..
+.

-----Original Message-----
From: richard harps [mailto:rharps@ YTR

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005666

Doggett, Rosalyn

From: richard harps [rharps@earthlink.net]
Sent: Thursday, October 01, 2009 1:21 PM
To: Doggett, Rosalyn
Subject: 9th
Attachments: MM Memo 100109.pdf

Draft

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005667

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Tuesday, September 29, 2009 7:50 PM
To: Goldin, Steven
Subject: FW: Shaw Howard Florida Avenue Properties Appraisal

From: richard harps [rharps@earthlink.net]
Sent: Friday, September 25, 2009 4:27 PM
To: Doggett, Rosalyn
Subject: Re: Shaw Howard Florida Avenue Properties Appraisal

Roz - Call me please

-----Original Message-----
From: "Doggett, Rosalyn"
Sent: Sep 25, 2009 3:50 PM
To: "okarim@bannekerventures.com" , "Moneme, Emeka" , "Bottigheimer, Nat" , "Goldin, Steven" , "Meister, Mark K." , "Marshall, Malcolm" , "rharps@earthlink.net" , "Yohance S. Fuller"
Subject: Shaw Howard Florida Avenue Properties Appraisal

When: Tuesday, September 29, 2009 3:00 PM-4:00 PM (GMT-05:00) Eastern Time (US & Canada).
Where: Room JGB 5B Land Conference

~~*~*~*~*~*~*~*~*

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005668

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Monday, September 28, 2009 2:55 PM
To: richard harps
Cc: Doggett, Rosalyn; Meister, Mark K.
Subject: Shaw Howard
Attachments: Jazz.pdf

As discussed, attached are copies of 2 contracts for sites on the block acquired by Omar. Price was $91/FAR

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005669

Doggett, Rosalyn

From: richard harps [rharps@earthlink.net]
Sent: Friday, September 25, 2009 4:28 PM
To: Doggett, Rosalyn
Subject: Re: Shaw Howard Florida Avenue Properties Appraisal

Roz - Call me please

-----Original Message-----
From: "Doggett, Rosalyn"
Sent: Sep 25, 2009 3:50 PM
To: "okarim@bannekerventures.com" , "Moneme, Emeka" , "Bottigheimer, Nat" , "Goldin, Steven" , "Meister, Mark K." , "Marshall, Malcolm" , "rharps@earthlink.net" , "Yohance S. Fuller"
Subject: Shaw Howard Florida Avenue Properties Appraisal

When: Tuesday, September 29, 2009 3:00 PM-4:00 PM (GMT-05:00) Eastern Time (US & Canada).
Where: Room JGB 5B Land Conference

~~*~*~*~*~*~*~*~*~*

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202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005670

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Thursday, September 24, 2009 5:13 PM
To: 'eric.smart@bolansmart.com'
Subject: FW: Shaw Howard

From: Marshall, Malcolm
Sent: Thursday, September 24, 2009 2:07 PM
To: Doggett, Rosalyn
Subject: FW: Shaw Howard

From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, September 24, 2009 2:06 PM
To: Marshall, Malcolm
Subject: RE: Shaw Howard

DC Max Rents for 80% AMI units of $1,438 per month less $108 for utilities or $1,330 compared to newer units in that area at $1,600 to $1,800 per month for efficiencies and $1,643 less $150 for 1 BRs less $150 for utils or $1,493 per month compared to $1,800 to $2,000 for market. Rough differential $400 (operating expenses on the IZ units would likely be lower as RETaxes should be lower)

-----Original Message-----
From: "Marshall, Malcolm"
Sent: Sep 24, 2009 1:56 PM
To: richard harps
Cc: "Doggett, Rosalyn"
Subject: RE: Shaw Howard

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005671

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Thursday, September 24, 2009 2:07 PM
To: Doggett, Rosalyn
Subject: FW: Shaw Howard

From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, September 24, 2009 2:06 PM
To: Marshall, Malcolm
Subject: RE: Shaw Howard

DC Max Rents for 80% AMI units of $1,438 per month less $108 for utilities or $1,330 compared to newer units in that area at $1,600 to $1,800 per month for efficiencies and $1,643 less $150 for 1 BRs less $150 for utils or $1,493 per month compared to $1,800 to $2,000 for market. Rough differential $400 (operating expenses on the IZ units would likely be lower as RETaxes should be lower)

-----Original Message-----
From: "Marshall, Malcolm"
Sent: Sep 24, 2009 1:56 PM
To: richard harps
Cc: "Doggett, Rosalyn"
Subject: RE: Shaw Howard

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005672

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Thursday, September 24, 2009 1:57 PM
To: richard harps
Cc: Doggett, Rosalyn
Subject: RE: Shaw Howard

For your monthly rent deficiency of $400/unit, what did you use for market v. affordable?

From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, September 24, 2009 1:16 PM
To: Marshall, Malcolm
Subject: Re: Shaw Howard

Malcolm- here's the minimum IZ test results based on moderate (80% AMI) on the minimum IZ requirements on the three WMATA sites. This is NOT an analysis of the impact of IZ and the Duke Plan on the combined development.

With luck, I can get to that later today or maybe tomorrow

Richard

Also, I have NOT had a chance to look at the material you sent me today, so nothing therein has been considered or factored into anything so far.

-----Original Message-----
From: "Marshall, Malcolm"
Sent: Sep 24, 2009 12:16 PM
To: richard harps
Subject: Shaw Howard

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005673

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Thursday, September 24, 2009 1:41 PM
To: Doggett, Rosalyn; Meister, Mark K.
Subject: FW: Shaw Howard
Attachments: MM Memo 092409.pdf

From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, September 24, 2009 1:16 PM
To: Marshall, Malcolm
Subject: Re: Shaw Howard

Malcolm- here's the minimum IZ test results based on moderate (80% AMI) on the minimum IZ requirements on the three WMATA sites. This is NOT an analysis of the impact of IZ and the Duke Plan on the combined development.

With luck, I can get to that later today or maybe tomorrow.

Richard

Also, I have NOT had a chance to look at the material you sent me today, so nothing therein has been considered or factored into anything so far.

-----Original Message-----
From: "Marshall, Malcolm"
Sent: Sep 24, 2009 12:16 PM
To: richard harps
Subject: Shaw Howard

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005674

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Monday, September 21, 2009 10:56 AM
To: 'eric.smart@bolansmart.com'
Subject: FW: 7th
Attachments: WMATA 7th 2009a.pdf

fyi

-----Original Message-----
From: Marshall, Malcolm
Sent: Thursday, September 17, 2009 11:14 AM
To: Doggett, Rosalyn
Cc: Meister, Mark K.
Subject: FW: 7th

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, September 17, 2009 10:47 AM
To: Marshall, Malcolm
Subject: 7th

draft attached - still need market data map, wmata section and r-o-w drawings and, I'm sure, one more major edit and proofread

Richard

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005675

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Thursday, September 17, 2009 11:14 AM
To: Doggett, Rosalyn
Cc: Meister, Mark K.
Subject: FW: 7th
Attachments: WMATA 7th 2009a.pdf

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, September 17, 2009 10:47 AM
To: Marshall, Malcolm
Subject: 7th

draft attached - still need market data map, wmata section and r-o-w drawings and, I'm sure, one more major edit and proofread

Richard

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rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005676

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Friday, September 04, 2009 11:00 AM
To: Bottigheimer, Nat
Subject: RE: OME for Shaw Howard

I apologize for my part in this confusion. I have talked to Malcolm this morning and think that he is on the right track now. I further urged him to consult with Eric who is well versed in this project if he has any questions about affordabilty.

Should anyone need me, my cell phone will be on, and it is 202 431 4904. Have a good holiday.
Roz

From: Bottigheimer, Nat
Sent: Thursday, September 03, 2009 4:35 PM
To: Doggett, Rosalyn; Meister, Mark K.; Marshall, Malcolm
Subject: Re: OME for Shaw Howard

Please. I'm trying to put a number on paper that will match the plan's goal. I don't want the City to complain that we are not reflecting the plan goals. It is the BOARD's role to state whether the difference between appraised value and what we're proposing is acceptable or not, and then for the FTA after that. We need to go in and say we've got a value that matches the plan goals; say what it costs Metro to provide that social benefit; and wait for Board response on whether they want to give that value away.

Please stop using different assumptions embedded in appraisal instructions as a negotiating tactic for this project. Reflect the impact of the housing goals at 50 percent AMI so we can get it to the Board for action.

I really thought I'd been clear on this months ago. I'm very frustrated.

From: Doggett, Rosalyn
To: Meister, Mark K.; Marshall, Malcolm
Cc: Bottigheimer, Nat
Sent: Thu Sep 03 16:10:48 2009
Subject: RE: OME for Shaw Howard
It is fine as is, but I would be prepared for a possible next round once you send it out. I expect that Omar will ask if you took into account 50% of AMI as the rent level. Harps would have looked at 80% of AMI which is what mandatory IZ allows. Omar will attempt to use the 50% number to further beat down the rental number. The response would be that there is really no guidance in the various Duke Plan goals as to what AMI level constitutes "affordable" and, if Omar wishes to use a financing mechanism geared to 50%, then there are other means of subsidy to get there.

From: Meister, Mark K.
Sent: Thursday, September 03, 2009 3:50 PM
To: Marshall, Malcolm; Doggett, Rosalyn
Cc: Bottigheimer, Nat
Subject: RE: OME for Shaw Howard

Looks OK to me.

From: Marshall, Malcolm
Sent: Thursday, September 03, 2009 3:49 PM
To: Meister, Mark K.; Doggett, Rosalyn
Cc: Bottigheimer, Nat
Subject: OME for Shaw Howard

Using an analysis similar to that of our third party appraiser, Richard Harps, the market rent for a fixed, 60-year lease with rent participation equal to 1% of gross revenue per year and 2% of the net proceeds from refinancing or sales could be estimated at $271,000 per annum if the 20% affordable housing goals of the Duke Plan are used, rather than the lower affordable housing requirement estimated by the appraiser. Please note that this rental estimate does not take into account the value of some tax benefits generated by the higher amount of affordable housing and is merely an Order of Magnitude based on an analysis of the property performed by Harps.

The lump sum rental payment assuming WMATA's 6.8% discount rate is estimated at $4,175,000.

See the attachment for the calculation of the estimated rent.

If this looks OK, I will send the proposed rents to Omar.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005677

Doggett, Rosalyn

From: Bottigheimer, Nat
Sent: Thursday, September 03, 2009 4:35 PM
To: Doggett, Rosalyn; Meister, Mark K.; Marshall, Malcolm
Subject: Re: OME for Shaw Howard

Please. I'm trying to put a number on paper that will match the plan's goal. I don't want the City to complain that we are not reflecting the plan goals. It is the BOARD's role to state whether the difference between appraised value and what we're proposing is acceptable or not, and then for the FTA after that. We need to go in and say we've got a value that matches the plan goals; say what it costs Metro to provide that social benefit; and wait for Board response on whether they want to give that value away.

Please stop using different assumptions embedded in appraisal instructions as a negotiating tactic for this project. Reflect the impact of the housing goals at 50 percent AMI so we can get it to the Board for action.

I really thought I'd been clear on this months ago. I'm very frustrated.

From: Doggett, Rosalyn
To: Meister, Mark K.; Marshall, Malcolm
Cc: Bottigheimer, Nat
Sent: Thu Sep 03 16:10:48 2009
Subject: RE: OME for Shaw Howard
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From: Meister, Mark K.
Sent: Thursday, September 03, 2009 3:50 PM
To: Marshall, Malcolm; Doggett, Rosalyn
Cc: Bottigheimer, Nat
Subject: RE: OME for Shaw Howard

Looks OK to me.

From: Marshall, Malcolm
Sent: Thursday, September 03, 2009 3:49 PM
To: Meister, Mark K.; Doggett, Rosalyn
Cc: Bottigheimer, Nat
Subject: OME for Shaw Howard

Using an analysis similar to that of our third party appraiser, Richard Harps, the market rent for a fixed, 60-year lease with rent participation equal to 1% of gross revenue per year and 2% of the net proceeds from refinancing or sales could be estimated at $271,000 per annum if the 20% affordable housing goals of the Duke Plan are used, rather than the lower affordable housing requirement estimated by the appraiser. Please note that this rental estimate does not take into account the value of some tax benefits generated by the higher amount of affordable housing and is merely an Order of Magnitude based on an analysis of the property performed by Harps.

The lump sum rental payment assuming WMATA's 6.8% discount rate is estimated at $4,175,000.

See the attachment for the calculation of the estimated rent.

If this looks OK, I will send the proposed rents to Omar.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005678

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Thursday, September 03, 2009 4:26 PM
To: Montague, Joshua W.
Subject: FW: OME for Shaw Howard

To keep you up to date.

From: Doggett, Rosalyn
Sent: Thursday, September 03, 2009 4:11 PM
To: Meister, Mark K.; Marshall, Malcolm
Cc: Bottigheimer, Nat
Subject: RE: OME for Shaw Howard

It is fine as is, but I would be prepared for a possible next round once you send it out. I expect that Omar will ask if you took into account 50% of AMI as the rent level. Harps would have looked at 80% of AMI which is what mandatory IZ allows. Omar will attempt to use the 50% number to further beat down the rental number. The response would be that there is really no guidance in the various Duke Plan goals as to what AMI level constitutes "affordable" and, if Omar wishes to use a financing mechanism geared to 50%, then there are other means of subsidy to get there.

From: Meister, Mark K.
Sent: Thursday, September 03, 2009 3:50 PM
To: Marshall, Malcolm; Doggett, Rosalyn
Cc: Bottigheimer, Nat
Subject: RE: OME for Shaw Howard

Looks OK to me.

From: Marshall, Malcolm
Sent: Thursday, September 03, 2009 3:49 PM
To: Meister, Mark K.; Doggett, Rosalyn
Cc: Bottigheimer, Nat
Subject: OME for Shaw Howard

Using an analysis similar to that of our third party appraiser, Richard Harps, the market rent for a fixed, 60-year lease with rent participation equal to 1% of gross revenue per year and 2% of the net proceeds from refinancing or sales could be estimated at $271,000 per annum if the 20% affordable housing goals of the Duke Plan are used, rather than the lower affordable housing requirement estimated by the appraiser. Please note that this rental estimate does not take into account the value of some tax benefits generated by the higher amount of affordable housing and is merely an Order of Magnitude based on an analysis of the property performed by Harps.

The lump sum rental payment assuming WMATA's 6.8% discount rate is estimated at $4,175,000.

See the attachment for the calculation of the estimated rent.

If this looks OK, I will send the proposed rents to Omar.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005679

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Thursday, September 03, 2009 4:11 PM
To: Meister, Mark K.; Marshall, Malcolm
Cc: Bottigheimer, Nat
Subject: RE: OME for Shaw Howard

It is fine as is, but I would be prepared for a possible next round once you send it out. I expect that Omar will ask if you took into account 50% of AMI as the rent level. Harps would have looked at 80% of AMI which is what mandatory IZ allows. Omar will attempt to use the 50% number to further beat down the rental number. The response would be that there is really no guidance in the various Duke Plan goals as to what AMI level constitutes "affordable" and, if Omar wishes to use a financing mechanism geared to 50%, then there are other means of subsidy to get there.

From: Meister, Mark K.
Sent: Thursday, September 03, 2009 3:50 PM
To: Marshall, Malcolm; Doggett, Rosalyn
Cc: Bottigheimer, Nat
Subject: RE: OME for Shaw Howard

Looks OK to me.

From: Marshall, Malcolm
Sent: Thursday, September 03, 2009 3:49 PM
To: Meister, Mark K.; Doggett, Rosalyn
Cc: Bottigheimer, Nat
Subject: OME for Shaw Howard

Using an analysis similar to that of our third party appraiser, Richard Harps, the market rent for a fixed, 60-year lease with rent participation equal to 1% of gross revenue per year and 2% of the net proceeds from refinancing or sales could be estimated at $271,000 per annum if the 20% affordable housing goals of the Duke Plan are used, rather than the lower affordable housing requirement estimated by the appraiser. Please note that this rental estimate does not take into account the value of some tax benefits generated by the higher amount of affordable housing and is merely an Order of Magnitude based on an analysis of the property performed by Harps.

The lump sum rental payment assuming WMATA's 6.8% discount rate is estimated at $4,175,000.

See the attachment for the calculation of the estimated rent.

If this looks OK, I will send the proposed rents to Omar.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Meister, Mark K.
Sent: Thursday, September 03, 2009 3:50 PM
To: Marshall, Malcolm; Doggett, Rosalyn
Cc: Bottigheimer, Nat
Subject: RE: OME for Shaw Howard

Looks OK to me.

From: Marshall, Malcolm
Sent: Thursday, September 03, 2009 3:49 PM
To: Meister, Mark K.; Doggett, Rosalyn
Cc: Bottigheimer, Nat
Subject: OME for Shaw Howard

Using an analysis similar to that of our third party appraiser, Richard Harps, the market rent for a fixed, 60-year lease with rent participation equal to 1% of gross revenue per year and 2% of the net proceeds from refinancing or sales could be estimated at $271,000 per annum if the 20% affordable housing goals of the Duke Plan are used, rather than the lower affordable housing requirement estimated by the appraiser. Please note that this rental estimate does not take into account the value of some tax benefits generated by the higher amount of affordable housing and is merely an Order of Magnitude based on an analysis of the property performed by Harps.

The lump sum rental payment assuming WMATA's 6.8% discount rate is estimated at $4,175,000.

See the attachment for the calculation of the estimated rent.

If this looks OK, I will send the proposed rents to Omar.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Thursday, September 03, 2009 3:49 PM
To: Meister, Mark K.; Doggett, Rosalyn
Cc: Bottigheimer, Nat
Subject: OME for Shaw Howard
Attachments: ShawHoward20%.xlsx

Using an analysis similar to that of our third party appraiser, Richard Harps, the market rent for a fixed, 60-year lease with rent participation equal to 1% of gross revenue per year and 2% of the net proceeds from refinancing or sales could be estimated at $271,000 per annum if the 20% affordable housing goals of the Duke Plan are used, rather than the lower affordable housing requirement estimated by the appraiser. Please note that this rental estimate does not take into account the value of some tax benefits generated by the higher amount of affordable housing and is merely an Order of Magnitude based on an analysis of the property performed by Harps.

The lump sum rental payment assuming WMATA's 6.8% discount rate is estimated at $4,175,000.

See the attachment for the calculation of the estimated rent.

If this looks OK, I will send the proposed rents to Omar.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Thursday, August 27, 2009 8:53 AM
To: 'eric.smart@bolansmart.com'
Subject: FW: Shaw Howard Appraisal

This is what the appraiser was instructed to do.

From: Marshall, Malcolm
Sent: Wednesday, August 26, 2009 11:13 AM
To: richard harps
Cc: Doggett, Rosalyn
Subject: Shaw Howard Appraisal

WMATA's estimate of the extra costs associated with building over and next to the tunnel (hard cost only) is an estimated $1,770,000.

The ground lease for the property is likely to be structured based on a 60-year term with the tenant paying a one-time base rent payment on lease commencement, annual participating rent equal to 1% of gross revenues, and a participation equal to 2% of the net proceeds of sale or refinancing.

For the market rental estimate in your appraisal, please include the following:

1. The market rent/terms for a longterm ground lease
2. The annual market rent assuming a 60-year lease at a fixed rental rate with participation outlined above
3. The market rent assuming the payment of one-time base rent with participation outlined above

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Wednesday, August 26, 2009 12:15 PM
To: Meister, Mark K.
Subject: FW: Shaw Howard Appraisal

FYI Based on intelligence from Eric Smart and the fact that Banneker has hired John Hagner, Mid City's lawyer, I sent Malcolm a copy of the RI Ave lease forwarded by Josh. I assume Malcolm is quoting from the RI Ave lease, which I have yet to read.... But I think that Banneker will try to replicated the RI deal. They are supposed to send us a marked up contract on Friday the 28th.

From: Marshall, Malcolm
Sent: Wednesday, August 26, 2009 11:13 AM
To: richard harps
Cc: Doggett, Rosalyn
Subject: Shaw Howard Appraisal

WMATA's estimate of the extra costs associated with building over and next to the tunnel (hard cost only) is an estimated $1,770,000.

The ground lease for the property is likely to be structured based on a 60-year term with the tenant paying a one-time base rent payment on lease commencement, annual participating rent equal to 1% of gross revenues, and a participation equal to 2% of the net proceeds of sale or refinancing.

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1. The market rent/terms for a longterm ground lease
2. The annual market rent assuming a 60-year lease at a fixed rental rate with participation outlined above
3. The market rent assuming the payment of one-time base rent with participation outlined above

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005684

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Wednesday, August 26, 2009 11:13 AM
To: richard harps
Cc: Doggett, Rosalyn
Subject: Shaw Howard Appraisal

WMATA's estimate of the extra costs associated with building over and next to the tunnel (hard cost only) is an estimated $1,770,000.

The ground lease for the property is likely to be structured based on a 60-year term with the tenant paying a one-time base rent payment on lease commencement, annual participating rent equal to 1% of gross revenues, and a participation equal to 2% of the net proceeds of sale or refinancing.

For the market rental estimate in your appraisal, please include the following:

1. The market rent/terms for a longterm ground lease
2. The annual market rent assuming a 60-year lease at a fixed rental rate with participation outlined above
3. The market rent assuming the payment of one-time base rent with participation outlined above

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Monday, August 17, 2009 11:07 AM
To: Meister, Mark K.
Subject: FW: 7th Fla /Estimate costs for building above WMATA tunnel
Attachments: THE JAZZ AT FLORIDA AVE.pdf

fyi

From: Bushnaq, Tariq
Sent: Monday, August 17, 2009 10:34 AM
To: Doggett, Rosalyn
Cc: Nemi, Irving K.; Marshall, Malcolm
Subject: FW: 7th Fla /Estimate costs for building above WMATA tunnel

Roz,

Please refer to the second and third sheet of attached construction cost estimates for Parcels 2 and 3 for both normal and over Metro tunnels construction scenarios. In summary, there will be approximately 10% cost premium for building over Metro tunnels. Please note that the attached estimates were based on the conceptual plans provided by Developer.

Tariq

From: Nemi, Irving K.
Sent: Thursday, August 13, 2009 10:46 AM
To: Bushnaq, Tariq
Cc: Viner, Louis R.
Subject: RE: 7th Fla /Estimate costs for building above WMATA tunnel

Tariq:

Attached please find our estimates for the above subject task/project. The cost impact for building over metro Guideway is about $17.88 per SF for the smaller (Parcel 2 Lot Building) and $13.27 per SF for the bigger Parcel 3 lot. The definite amounts are $590,710 cost impact for the small lot and $1,116,270 for the bigger lot. The total cost impact for the two lots is $1,706,980. These SF costs and amounts includes 10% design contingency.

-----Original Message-----
From: Bushnaq, Tariq
Sent: Monday, August 03, 2009 5:32 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Cc: Robinson, Thomas; Nemi, Irving K.; Ghanta, Venkata
Subject: 7th Fla /Estimate costs for building above WMATA tunnel

Malcolm/Roz,

We need more details from developer such as their proposed foundation/column layout plans superimposed on Metro tunnels to better evaluate construction costs. Please advise whether the third attachment reflects the project latest conceptual plans.

In my opinion, 25-30% additional project construction costs associated with building over the tunnel are not farfetched.

Tariq

-----Original Message-----
From: Marshall, Malcolm
Sent: Monday, August 03, 2009 4:08 PM
To: Bushnaq, Tariq; Robinson, Thomas
Cc: Doggett, Rosalyn
Subject: FW: 7th Fla

Can you review the attached memo ASAP, particularly with regard to the estimated costs for building over the WMATA tunnel? I will also forward for your review a letter from the architect on the proposed development of the above site. Thanks - MM

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Friday, July 31, 2009 4:25 PM

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005686

To: Marshall, Malcolm
Subject: 7th Fla

Memo attached with values

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005687

Doggett, Rosalyn

From: Bushnaq, Tariq
Sent: Monday, August 17, 2009 10:34 AM
To: Doggett, Rosalyn
Cc: Nemi, Irving K.; Marshall, Malcolm
Subject: FW: 7th Fla /Estimate costs for building above WMATA tunnel
Attachments: THE JAZZ AT FLORIDA AVE.pdf

Roz,

Please refer to the second and third sheet of attached construction cost estimates for Parcels 2 and 3 for both normal and over Metro tunnels construction scenarios. In summary, there will be approximately 10% cost premium for building over Metro tunnels. Please note that the attached estimates were based on the conceptual plans provided by Developer.

Tariq

From: Nemi, Irving K.
Sent: Thursday, August 13, 2009 10:46 AM
To: Bushnaq, Tariq
Cc: Viner, Louis R.
Subject: RE: 7th Fla /Estimate costs for building above WMATA tunnel

Tariq:

Attached please find our estimates for the above subject task/project. The cost impact for building over metro Guideway is about $17.88 per SF for the smaller (Parcel 2 Lot Building) and $13.27 per SF for the bigger Parcel 3 lot. The definite amounts are $590,710 cost impact for the small lot and $1,116,270 for the bigger lot. The total cost impact for the two lots is $1,706,980. These SF costs and amounts includes 10% design contingency.

-----Original Message-----
From: Bushnaq, Tariq
Sent: Monday, August 03, 2009 5:32 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Cc: Robinson, Thomas; Nemi, Irving K.; Ghanta, Venkata
Subject: 7th Fla /Estimate costs for building above WMATA tunnel

Malcolm/Roz,

We need more details from developer such as their proposed foundation/column layout plans superimposed on Metro tunnels to better evaluate construction costs. Please advise whether the third attachment reflects the project latest conceptual plans.

In my opinion, 25-30% additional project construction costs associated with building over the tunnel are not farfetched.

Tariq

-----Original Message-----
From: Marshall, Malcolm
Sent: Monday, August 03, 2009 4:08 PM
To: Bushnaq, Tariq; Robinson, Thomas
Cc: Doggett, Rosalyn
Subject: FW: 7th Fla

Can you review the attached memo ASAP, particularly with regard to the estimated costs for building over the WMATA tunnel? I will also forward for your review a letter from the architect on the proposed development of the above site. Thanks - MM

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Friday, July 31, 2009 4:25 PM
To: Marshall, Malcolm
Subject: 7th Fla

Memo attached with values

Harps & Harps Inc
1111 14th Street, NW Suite 600

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005689

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Tuesday, August 11, 2009 6:22 PM
To: Meister, Mark K.; Marshall, Malcolm
Subject: FW: 7th Fla

Let's discuss in a.m.

-----Original Message-----
From: Bushnaq, Tariq
Sent: Tuesday, August 11, 2009 5:55 PM
To: Doggett, Rosalyn
Cc: Ghanta, Venkata
Subject: RE: 7th Fla

Roz,

As discussed on voicemail, mid-rise construction as proposed in developer's concept plans can be constructed above WMATA tunnel using mat foundation under the entire building even though the buildings are located in the zone of influence. It is conceivable that few piles might be required to support end of two buildings adjacent to tunnels.

If the developer is contesting WMATA assumptions for a full buildout of the site under current zoning due to their assumptions of site constraints related to the presence of underground tunnels, please have them submit their proposed foundations plan for review by WMATA structural group.

Thanks..Tariq

-----Original Message-----
From: Doggett, Rosalyn
Sent: Tuesday, August 11, 2009 5:19 PM
To: Bushnaq, Tariq
Subject: FW: 7th Fla

I'm stumped

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Tuesday, August 11, 2009 4:30 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: 7th Fla

Talked to EC today - Said my assumption about only part of site being subject to higher cost is incorrect. Wouldn't building two buildings on a site, zone of influence extends from foundations at 45 degree angle, tunnel would likely impact most of development.

Site he's working on is Minn/Benning

I'll try to get a revised spreadsheet to you tomorrow morning

Again - if your engineers disagree with EC and give me something that I can use, I'll incorporate that into the analysis, but as things stand, I need to go with EC

Richard

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1111 14th Street, NW Suite 600
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202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005690

Doggett, Rosalyn

From: Bushnaq, Tariq
Sent: Tuesday, August 11, 2009 5:55 PM
To: Doggett, Rosalyn
Cc: Ghanta, Venkata
Subject: RE: 7th Fla

Roz,

As discussed on voicemail, mid-rise construction as proposed in developer's concept plans can be constructed above WMATA tunnel using mat foundation under the entire building even though the buildings are located in the zone of influence. It is conceivable that few piles might be required to support end of two buildings adjacent to tunnels.

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Thanks..Tariq

-----Original Message-----
From: Doggett, Rosalyn
Sent: Tuesday, August 11, 2009 5:19 PM
To: Bushnaq, Tariq
Subject: FW: 7th Fla

I'm stumped

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Tuesday, August 11, 2009 4:30 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: 7th Fla

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Richard

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202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005691

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Tuesday, August 11, 2009 5:19 PM
To: Bushnaq, Tariq
Subject: FW: 7th Fla

I'm stumped

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Tuesday, August 11, 2009 4:30 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: 7th Fla

Talked to EC today - Said my assumption about only part of site being subject to higher cost is incorrect. Wouldn't building two buildings on a site, zone of influence extends from foundations at 45 degree angle, tunnel would likely impact most of development.

Site he's working on is Minn/Benning

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Richard

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Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005692

Doggett, Rosalyn

From: richard harps [rharps@earthlink.net]
Sent: Tuesday, August 11, 2009 4:30 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: 7th Fla

Talked to EC today - Said my assumption about only part of site being subject to higher cost is incorrect. Wouldn't building two buildings on a site, zone of influence extends from foundations at 45 degree angle, tunnel would likely impact most of development.

Site he's working on is Minn/Benning

I'll try to get a revised spreadsheet to you tomorrow morning

Again - if your engineers disagree with EC and give me something that I can use, I'll incorporate that into the analysis, but as things stand, I need to go with EC

Richard

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rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005693

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Monday, August 10, 2009 4:21 PM
To: 'ecolbert@ECA-PC.com'
Subject: FW: Florida Avenue properties

Correction for wrong address

From: Doggett, Rosalyn
Sent: Monday, August 10, 2009 4:18 PM
To: 'EricColbert@ECA-PC.com'
Cc: 'rharps@earthlink.net'; Marshall, Malcolm
Subject: Florida Avenue properties

Eric, please contact Richard Harps immediately with answers to the questions that he asked of you two weeks ago. This is essential to finishing his appraisal and to meeting sensitive time deadlines here in WMATA, one of which is tomorrow. We will very much appreciate your cooperation.
Thanks,
Rosalyn

Rosalyn P. Doggett
Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

rdoggett@wmata.com
202-962-2208 phone
202-962-2396 fax

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005694

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Monday, August 10, 2009 4:18 PM
To: 'EricColbert@ECA-PC.com'
Cc: 'rharps@earthlink.net'; Marshall, Malcolm
Subject: Florida Avenue properties

Eric, please contact Richard Harps immediately with answers to the questions that he asked of you two weeks ago. This is essential to finishing his appraisal and to meeting sensitive time deadlines here in WMATA, one of which is tomorrow. We will very much appreciate your cooperation.
Thanks,
Rosalyn

Rosalyn P. Doggett
Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

rdoggett@wmata.com
202-962-2208 phone
202-962-2396 fax

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005695

Doggett, Rosalyn

From: richard harps [rharps@earthlink.net]
Sent: Wednesday, August 05, 2009 5:40 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: 7th Fla
Attachments: Memo - WMATA 7th.pdf

Memo attached - I still haven't heard back from Eric, on either of the questions, but have made my best attempt on the answer based on his earlier comments and our discussion on monday

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005696

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Tuesday, August 04, 2009 8:38 AM
To: Bushnaq, Tariq; Marshall, Malcolm
Cc: Robinson, Thomas; Nemi, Irving K.; Ghanta, Venkata
Subject: RE: 7th Fla /Estimate costs for building above WMATA tunnel

The project is at a conceptual stage and I don't think I can get that information. Would you envision such a high (editorial adjective) premium for this plan-- 1 story underground parking. 1 floor retail with concrete roof that provides the podium for 3-4 story stick built housing?

-----Original Message-----
From: Bushnaq, Tariq
Sent: Monday, August 03, 2009 5:32 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Cc: Robinson, Thomas; Nemi, Irving K.; Ghanta, Venkata
Subject: 7th Fla /Estimate costs for building above WMATA tunnel

Malcolm/Roz,

We need more details from developer such as their proposed foundation/column layout plans superimposed on Metro tunnels to better evaluate construction costs. Please advise whether the third attachment reflects the project latest conceptual plans.

In my opinion, 25-30% additional project construction costs associated with building over the tunnel are not farfetched.

Tariq

-----Original Message-----
From: Marshall, Malcolm
Sent: Monday, August 03, 2009 4:08 PM
To: Bushnaq, Tariq; Robinson, Thomas
Cc: Doggett, Rosalyn
Subject: FW: 7th Fla

Can you review the attached memo ASAP, particularly with regard to the estimated costs for building over the WMATA tunnel? I will also forward for your review a letter from the architect on the proposed development of the above site. Thanks - MM

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Friday, July 31, 2009 4:25 PM
To: Marshall, Malcolm
Subject: 7th Fla

Memo attached with values

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005697

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Tuesday, August 04, 2009 8:29 AM
To: Bushnaq, Tariq
Subject: RE: 7th Fla

I'm the one who asked Malcolm to send it to you!

-----Original Message-----
From: Bushnaq, Tariq
Sent: Monday, August 03, 2009 5:09 PM
To: Doggett, Rosalyn
Subject: FW: 7th Fla

-----Original Message-----
From: Marshall, Malcolm
Sent: Monday, August 03, 2009 4:08 PM
To: Bushnaq, Tariq; Robinson, Thomas
Cc: Doggett, Rosalyn
Subject: FW: 7th Fla

Can you review the attached memo ASAP, particularly with regard to the estimated costs for building over the WMATA tunnel? I will also forward for your review a letter from the architect on the proposed development of the above site. Thanks - MM

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Friday, July 31, 2009 4:25 PM
To: Marshall, Malcolm
Subject: 7th Fla

Memo attached with values

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005698

Doggett, Rosalyn

From: Bushnaq, Tariq
Sent: Monday, August 03, 2009 5:32 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Cc: Robinson, Thomas; Nemi, Irving K.; Ghanta, Venkata
Subject: 7th Fla /Estimate costs for building above WMATA tunnel
Attachments: Memo - WMATA 7th.pdf; Harps Richard re Metro tunnel 090731.pdf; Proposed Conceptual Plans.pdf

Malcolm/Roz,

We need more details from developer such as their proposed foundation/column layout plans superimposed on Metro tunnels to better evaluate construction costs. Please advise whether the third attachment reflects the project latest conceptual plans.

In my opinion, 25-30% additional project construction costs associated with building over the tunnel are not farfetched.

Tariq

-----Original Message-----
From: Marshall, Malcolm
Sent: Monday, August 03, 2009 4:08 PM
To: Bushnaq, Tariq; Robinson, Thomas
Cc: Doggett, Rosalyn
Subject: FW: 7th Fla

Can you review the attached memo ASAP, particularly with regard to the estimated costs for building over the WMATA tunnel? I will also forward for your review a letter from the architect on the proposed development of the above site. Thanks - MM

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Friday, July 31, 2009 4:25 PM
To: Marshall, Malcolm
Subject: 7th Fla

Memo attached with values

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005699

Doggett, Rosalyn

From: Bushnaq, Tariq
Sent: Monday, August 03, 2009 5:09 PM
To: Doggett, Rosalyn
Subject: FW: 7th Fla
Attachments: Memo - WMATA 7th.pdf

-----Original Message-----
From: Marshall, Malcolm
Sent: Monday, August 03, 2009 4:08 PM
To: Bushnaq, Tariq; Robinson, Thomas
Cc: Doggett, Rosalyn
Subject: FW: 7th Fla

Can you review the attached memo ASAP, particularly with regard to the estimated costs for building over the WMATA tunnel? I will also forward for your review a letter from the architect on the proposed development of the above site. Thanks - MM

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Friday, July 31, 2009 4:25 PM
To: Marshall, Malcolm
Subject: 7th Fla

Memo attached with values

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005700

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Monday, August 03, 2009 4:09 PM
To: Bushnaq, Tariq; Robinson, Thomas
Cc: Doggett, Rosalyn
Subject: FW: eric letter
Attachments: Harps, Richard re Metro tunnel 090731.pdf

Attached is the architect's letter for development of the site

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Monday, August 03, 2009 10:53 AM
To: Marshall, Malcolm
Subject: eric letter

attached

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005701

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Monday, August 03, 2009 4:08 PM
To: Bushnaq, Tariq; Robinson, Thomas
Cc: Doggett, Rosalyn
Subject: FW: 7th Fla
Attachments: Memo - WMATA 7th.pdf

Can you review the attached memo ASAP, particularly with regard to the estimated costs for building over the WMATA tunnel? I will also forward for your review a letter from the architect on the proposed development of the above site. Thanks - MM

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Friday, July 31, 2009 4:25 PM
To: Marshall, Malcolm
Subject: 7th Fla

Memo attached with values

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005702

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Monday, August 03, 2009 8:39 AM
To: Doggett, Rosalyn
Subject: FW: 7th Fla
Attachments: Memo - WMATA 7th.pdf

See attached

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Friday, July 31, 2009 4:25 PM
To: Marshall, Malcolm
Subject: 7th Fla

Memo attached with values

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005703

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Thursday, July 30, 2009 12:01 PM
To: Doggett, Rosalyn
Subject: FW: New one

-----Original Message-----
From: Marshall, Malcolm
Sent: Monday, July 06, 2009 8:41 AM
To: Doggett, Rosalyn; Meister, Mark K.; Montague, Joshua W.
Subject: FW: New one

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, July 02, 2009 5:30 PM
To: Eric Colbert
Cc: Marshall, Malcolm
Subject: New one

Eric

WMATA has asked for a value of their property at 7th>9th on the south side of U Street. The property is shown below. I'd need you to do a simple workup of the maximum development on the sites, recognizing the tunnel and limitations along the northern side. WMATA says they will supply the 'excess' cost to construct over the tunnel.

**********FROM WMATA**********
OWNER: WMATA

LOCATION: South Side of Florida Avenue between 7th & 9th Streets, NW Washington, DC

LEGAL DESCRIPTION: Square 393, Lots 44 and 45; Square 416, Lots 18 and 31

ZONING: C-2-B in Arts Overlay Zone

ESTIMATED AREA: Lot 44 - 3,800 SF
Lot 45 - 8,600 SF
Lot 18 - 516 SF
Lot 31 - 15,956 SF

COMMENTS: The northern portions of the parcels contains an existing Metrorail tunnel that has an upper limit that is 19 feet below the surface. WMATA can provide to the appraiser cost estimates for extraordinary costs that may be involved in building over the WMATA tunnel.

The Inclusionary Zoning Implementation Act, as amended, and the Duke Plan incorporate affordable housing provisions that should be considered in an analysis of the subject property.
****

Time and fee - no court anticipated - rough areas should be sufficient. We'll work together on the breakdown of uses and densities, and, the inclusionary zoning impact will have to be incorporated into the analysis

Thanks

Richard

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005704

Doggett, Rosalyn

From: richard harps [rharps@earthlink.net]
Sent: Tuesday, July 21, 2009 5:36 PM
To: Eric Colbert
Cc: Doggett, Rosalyn; Marshall, Malcolm
Subject: Fw: RE: 7th St

Eric - here are the answers. I'll put together the plat for Lot 826 south of lot 44 and get it to you tomorrow

Thanks

Richard

-----Forwarded Message-----
>From: "Marshall, Malcolm" <MMarshall@wmata.com>
>Sent: Jul 21, 2009 4:20 PM
>To: richard harps <rharps@earthlink.net>
>Cc: "Doggett, Rosalyn" <RDoggett@wmata.com>, "Bushnaq, Tariq" <TBushnaq@wmata.com>
>Subject: RE: 7th St
>
>To respond to some of your questions:
>
>1 - Yes, the developer can put a level of parking below grade above the easement area
>
>2 - Either foundation type can be used if not overloading the tunnels; loads would have to be calculated
>
>3 - Yes, structures of the height you describe are allowed if not overloading the tunnels.
>
>4 - Examples of extra costs might be: sheeting and shoring to protect the tunnels; monitoring of the short term construction loading effect on the tunnels; foundations requiring above normal support to relieve long term tunnel loading. See WMATA's Adjacent Construction Manual http://www.wmata.com/pdfs/business/ACPM_Rev3_12-09-2008_FINAL.pdf
>
>5 - Lot 18 does not show up on the Sanborn plat that I have either but does show up in the assessment records. You may therefore assume, for appraisal purposes, that it is a part of Lot 31 in Sanford & use 16,472 SF (516 & 15,956) for the total area for the WMATA property in Square 416
>
>6 - The developer has apparently acquired rights at least to Lot 826 immediately to the south of Lot 44 in Square 393 so this may be a highest & best use issue (assemblage v. stand alone).
>
>If you or Eric have specific questions not covered in the manual, Tariq can be reached at 962 2043. I will be out for 5 days starting Thursday, but please contact Ms. Doggett in my absence if you have any questions.
>
>-----Original Message-----
>From: richard harps [mailto:rharps@earthlink.net]
>Sent: Monday, July 20, 2009 10:49 AM
>To: Marshall, Malcolm
>Cc: Eric Colbert
>Subject: 7th St
>
>Malcolm - I met with Eric Colbert this morning and we've got a few questions that need answers before we can go much further.
>
>1 - Will the developer be allowed to put one level of parking below grade above the easement area?
>
>2 - Will WMATA require a mat foundation above the easement area or will WMATA allow spread footings to be used above the easement area?
>
>3 - Will WMATA allow a 3, 4 or 5 (maybe 6) story structure above the easement area? Would the height of the structure allowed be dependent on the type of construction - concrete first and basement with stick built on the upper floors? - all poured concrete? - some other combination?
>
>4 - What are the 'excess construction costs' that you referenced and what do they represent?

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005705

>
>5 - Where is Lot 18 in Square 416. It looks like the total area shown for Lot 31 on the Sanborn plat includes the area for both L31 and L18 in the Scope and DC Assessment office information.
>
>6 - For the analysis of the site value of the three separate parcels (A: Sq 416 Lot 18/31 combined, B: Sq 393 Lot44, C: Sq 393 Lot 45) we are assuming that each site (A, B and C) would stand alone. The impact of the Draft Duke Plan may play into the potential value assigned to the individual FAR conclusions with caveats, hypothetical conditions and/or extraordinary assumption - all of which are yet to be defined or quantified.
>
>Eric really needs the answers to #1, #2, #3 and #4 before he can get started. So if we're to have any chance to meet the delivery date, we need these ASAP
>
>
>I'm copying Eric on this so he can let me/us know what I've missed, etc.
>
>Thanks
>
>Richard
>
>
>
>Harps & Harps Inc
>1111 14th Street, NW Suite 600
>Washington, DC 20005
>202-682-2194
>202-682-1579 (fax)
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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005706

Montague, Joshua W.

From: Marshall, Malcolm
Sent: Monday, July 06, 2009 8:41 AM
To: Doggett, Rosalyn; Meister, Mark K.; Montague, Joshua W.
Subject: FW: New one

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Thursday, July 02, 2009 5:30 PM
To: Eric Colbert
Cc: Marshall, Malcolm
Subject: New one

Eric

WMATA has asked for a value of their property at 7th>9th on the south side of U Street. The property is shown below. I'd need you to do a simple workup of the maximum development on the sites, recognizing the tunnel and limitations along the northern side. WMATA says they will supply the 'excess' cost to construct over the tunnel.

**********FROM WMATA**********
OWNER: WMATA

LOCATION: South Side of Florida Avenue between 7th & 9th Streets, NW Washington, DC

LEGAL DESCRIPTION: Square 393, Lots 44 and 45; Square 416, Lots 18 and 31

ZONING: C-2-B in Arts Overlay Zone

ESTIMATED AREA: Lot 44 - 3,800 SF
Lot 45 - 8,600 SF
Lot 18 - 516 SF
Lot 31 - 15,956 SF

COMMENTS: The northern portions of the parcels contains an existing Metrorail tunnel that has an upper limit that is 19 feet below the surface. WMATA can provide to the appraiser cost estimates for extraordinary costs that may be involved in building over the WMATA tunnel.

The Inclusionary Zoning Implementation Act, as amended, and the Duke Plan incorporate affordable housing provisions that should be considered in an analysis of the subject property.
****

Time and fee - no court anticipated - rough areas should be sufficient. We'll work together on the breakdown of uses and densities, and, the inclusionary zoning impact will have to be incorporated into the analysis

Thanks

Richard

FOIA CONFIEDENTIAL TREATMENT REQUESTED

7/30: Tariq Tunnel projects

– Gary Malasky 14th : Ellington

INTEGRA Realty Resources
WASHINGTON, DC
Local Expertise...Nationally

October 30, 2009

Mr. Malcolm Marshall
Washington Metropolitan Area Transit Authority
600 Fifth Street NW
Washington, District of Columbia 20001

SUBJECT: Hypothetical Ground Lease Analysis
9th Street NW & Florida Avenue NW
Washington, District of Columbia 20001
Integra Washington, DC File No. 141-2009-0440

Dear Mr. Marshall:

Per your request, Integra Realty Resources – Washington, DC has performed an analysis of market terms for a proposed ground lease in the vicinity of Florida Avenue and 9th Street NW. As discussed, our analysis stipulates to the following parameters:

- The fee simple market value of the subject site is $2,200,000;
- WMATA (lessor) proposes to lease the site for 60 years at a level annual rent;
- The lessee would have a 39-year renewal option at then-market rent upon expiration of the 60 year base lease term, with market rent to be determined at the time of renewal.

It is noted that proposed terms call for the lessor to receive additional income of 1.5% of gross income and 10% of the net proceeds of any refinancing or sale. However, at your request, we have excluded the impact of this provision from our analysis.

The purpose of our analysis is twofold: first, to develop an opinion of market rent for the 60-year base term as proposed; second, to develop an opinion of the present value of the payment stream that would be generated by the lease at the concluded market rent.

In the course of our investigation, we have spoken to several brokers and developers active in the Washington, DC land development market, including Jayne Shister of Cassidy & Pinkard Colliers, Timothy Smith of LCOR, Ari Firoozabadi of Marcus & Millichap, and John Begert of Fraser Forbes to determine an appropriate methodology for calculating annual rental payments for long-term ground leases. The responses indicate

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005709

that the typical methodology is to first value the land to be leased, then estimate a desired rate of return. The rate of return, expressed as a percentage of the total land value paid annually, is analogous to a capitalization rate, which reflects the income generated in a single year expressed as a percentage of total value. The relationship between the annual rental rate (as a percentage of site value) and capitalization rate reflects the fact that a landowner would not encumber a property with a lease that reflected a lower annual percentage return of the site value than indicated by a market-derived capitalization rate.

Accordingly, we have surveyed capitalization rates reflected by land-leased sales on a national basis over the past year, as well as several current listings.

Capitalization Rate Comparables

No.	Location	Tenant	Sale Date	Annual Rent	Sale Price	Overall Cap Rate
1.	Richland, PA	Lowe's	Listing	$774,900	$11,070,000	7.00%
2.	Jacksonville, IL	Blue Cross Blue Shield	Listing	$579,158	$7,473,000	7.75%
3.	Norcross, GA	Local office user	Listing	$151,965	$1,842,000	8.25%
4.	Lawrence, KS	Taco Bell	July-09	$70,012	$920,000	7.61%
5.	Carmel, IN	Multiple (Retail & Office)	May-09	$394,785	$4,650,000	8.49%
6.	Ooltewah, TN	BB&T	May-09	$95,000	$1,461,538	6.50%
7.	Richland, PA	Multiple (Retail & Restaurant)	January-09	$388,208	$4,775,000	8.13%
8.	Upper Arlington, OH	Chase Bank	January-09	$130,000	$2,080,000	6.25%
9.	Leesburg, VA	Pizza Hut	December-08	$109,545	$1,542,888	7.10%

The sales and listings reflect a range of capitalization rates from 6.25% to 8.49%, with an average of 7.45%. These transactions reflect a range of factors that can significantly influence the capitalization rate, including creditworthiness of the tenant, rental rate escalations, length of lease term remaining, and the anticipated value of the underlying property upon reversion. In general, the lower end of the range of rates are characterized by leases with significant escalations throughout the lease term and favorable credit factors, while the high end of the range reflects shorter lease terms, weaker credit tenancy, low escalations, and/or weak location.

Include ? Escalation.

The hypothetical lease under consideration would reflect a mix of positive and negative factors. It would be located in the rapidly growing U Street corridor of Washington, DC, which is expected to have a very strong long-term value trend. However, the lease as proposed will not include escalations, and over a long lease period inflation will diminish the real value of the income stream. Based on a review of the comparable data and considering these factors, it appears that an annual ground rent payment for the subject site should fall in the range of 7% to 8% of site value, or $154,000 to $176,000 per year.

In order to conclude to an appropriate annual rental rate, we also consider the impact of a given rental rate on the present value of the future payment stream relative to overall site value. Timothy Smith of LCOR reports that while he has not been involved in any land lease transactions over the past year due to the general slowdown in the land development market, he has been involved in several negotiations that may ultimately result in deals as

the market recovers. According to Mr. Smith, several landowners in the DC area who had been planning to sell their properties have expressed interest in leasing their properties for 60 to 99 years in exchange for a lump sum payment in the range of 80% to 90% of what they believe to be the fee simple market value. Deals structured in this manner would allow the property owner to eliminate carrying costs and receive a substantial payoff for the land, while allowing the lessee to acquire a site at a discount in exchange for losing rights to the property in the distant future. Accordingly, we have tested a range of discount and rental rates (as a percentage of land value) to determine an annual rental rate that results in a present value of the payment stream equivalent to 80% to 90% of the stipulated market value.

To discount the stream of payments to present value, we rely primarily on the Kopacz Real Estate Investor Survey published by PriceWaterhouseCoopers. Korpacz reports a range of discount rates employed by investors as of Q3 2009 at 7.50% to 13.00%, with an average of 9.24%, for CBD office properties nationally. For Washington, DC, the range is from 7.00% to 8.11%. Suburban Maryland and Virginia capitalization rates are significantly higher, ranging up to 12.00%. Because the subject is located outside the CBD of Washington, DC, it is our opinion that a rate at the upper end of the CBD range is most appropriate. We therefore apply a discount rate of 9% in our analysis.

Using a discount rate of 9%, the lump sum value of payments at annual rental rates ranging from 7% to 8% of land value result in the following ratios of payment stream present value to land value:

Rental Rate %	6.50%	6.75%	7.00%	7.25%	7.50%	7.75%	8.00%
PV of Payments at 9%	$1,722,050	$1,788,283	$1,854,516	$1,920,748	$1,986,981	$2,053,214	$2,119,447
Land Value	$2,200,000	$2,200,000	$2,200,000	$2,200,000	$2,200,000	$2,200,000	$2,200,000
PV/Land Value Ratio	78.3%	81.3%	84.3%	87.3%	90.3%	93.3%	96.3%

Based on our conversations with Mr. Timothy Smith, we conclude that an appropriate rental rate should result in a present value to land value ratio of 80% to 90%. We therefore conclude to a range of rental rates from 6.75% to 7.50% or land value is appropriate.

Our analysis of capitalization rates extracted from sales indicated a range from 7% to 8%, while the analysis of the ratio of the present value of the payment stream to land value indicates that a reasonable range is from 6.75% to 7.50%. Viewing both methodologies together, it appears that a rate from 7.0% to 7.5%, the overlap range, is appropriate for the subject lease.

We perform an additional test of reasonableness to conclude to a percentage rental rate within this range. This test recognizes that a prudent landowner would not lease their property on a long-term basis unless the present value of the rental payments plus an expected reversion upon expiration is equal to the current land value. Using a discount

rate of 9%, we test a range of percentage rental rates to determine what level of escalation in the value of the subject site would be required to create a sufficient reversion value that, when added to the present value of the income stream, exceeds the current value of the site.

At a rental rate of 6.75% of land value, the underlying site would be required to appreciate at an average rate of 5.95% per year (compounding) in order to meet this hurdle. Investor expectations of rental rate growth over the next 7 to 10 years range from 2% to 4% (average 2.44%) for Washington, DC office properties and from 0% to 5% (average 2.56%) for office properties. While expected income growth in the subject submarket is expected to allow for appreciation somewhat in excess of these parameters, average appreciation of 6% is clearly unreasonable. Required land price escalation to achieve feasibility within the range of rental rates from 7% to 8% is shown below:

Rental Rate %	7.00%	7.25%	7.50%	7.75%	8.00%
Required Land Value Escalation	5.65%	5.25%	4.75%	4.10%	3.10%

This analysis indicates that the range of feasible rental rates is somewhat higher than indicated by our present value to land value ratio analysis. Given that typical investor expectations of 60-year average appreciation are in the range of 3%, a rental rate of 8% of land value appears reasonable. However, our analysis does not consider the value of a possible reversion of improvements to the landowner upon expiration, which is typical for the marketplace. In addition, some investors utilize lower discount rates when calculating acceptable rates of return on land holdings as opposed to income streams. Accordingly, the required appreciation to meet feasibility for the landowner may be overstated slightly in this analysis. This methodology, however, illustrates the significant detrimental impact of level rents on a long-term lease from the landowner's perspective, as the value of the future payments diminishes significantly in the later years of the lease. As Jayne Shister of Cassidy & Pinkard Colliers noted, "escalation terms are the most difficult aspect of negotiating a ground lease," and long-term leases at level rent are highly unusual. This final analysis indicates that a somewhat higher rental rate is required to account for the level rent stipulated in the hypothetical lease terms.

Considering all of these factors, it is our opinion that a market rental rate for the subject site, at the stipulated land value and lease terms, is **7.75% of land value, or $170,500 annually**.

Applying the previously utilized discount rate of 9% to a 60-year stream of annual payments of $170,500, paid in advance, results in a lump sum present value indication of the stream of rental payments at **$2,050,000** ($2,053,214, rounded).

A schedule of present value calculations supporting our analysis is appended to this letter. Thank you for the opportunity to be of service.

Best regards,

Patrick C. Kerr, MAI, MRICS, SRA
Managing Director
Certified General Real Estate Appraiser
DC Certificate #GA00010274

Samuel D. Sherwood
Analyst

Shaw/Howard Appraisal Florida Ave 5150 7109

Doggett, Rosalyn

From: thicks [thicks@bannekerventures.com]
Sent: Monday, July 06, 2009 6:41 PM
To: Doggett, Rosalyn
Cc: Maurice' 'Perry; arashid@bannekerventures.com; okarim@bannekerventures.com; eric.smart@bolansmart.com; Moneme, Emeka; Montague, Joshua W.; Meister, Mark K.; Bottigheimer, Nat
Subject: FW: The Jazz Economic Terms (as of June 23, 2009)

Importance: High

Mrs. Doggett,
We are following up with regards to items #1, 5, and 11 below. Please advise us as to the status of each. Thanks kindly.
Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
Office: (202) 393-5460
Fax: (202) 347-9047
Cell: (202) 486-1863
thicks@bannekerventures.com

From: thicks [mailto:thicks@bannekerventures.com]
Sent: Thursday, June 25, 2009 1:51 PM
To: 'Doggett, Rosalyn'
Cc: 'jwmontague@wmata.com'; 'MMeister@wmata.com'; 'eric.smart@bolansmart.com'; 'nbottigheimer@wmata.com'; 'emoneme@wmata.com'; 'okarim@bannekerventures.com'; 'Perry, Maurice'; 'arashid@bannekerventures.com'
Subject: The Jazz Economic Terms (as of June 23, 2009)
Importance: High

Mrs. Doggett,
As a follow-up to our conference call on June 23, 2009, below please find a status update for each item in red font.

no $800k up front

1. PROJECT - For purposes of accounting for revenue/rent, the base rent of $250,000 that we are agreeing to pay WMATA remains unchanged. The 1.5% of EGI generated by the improvements on the WMATA parcels (which is about 79% of the total project improvements) excludes any EGI generated by the improvements on the adjacent properties. We are in the process of consulting with legal counsel on how to structure a financial scenario to account for the adjacent parcels in the event of a default on the mortgage and will get back with you soon. WMATA is waiting on the results of Appraisal due in July. Developer has requested abstract of Appraisal. WMATA will advise Developer if abstract of Appraisal will be shown to Developer. Developer would like to be informed of this decision by July 2, 2009. Developer to provide formalized financial scenario regarding adjacent parcels by July 9, 2009.
2. FTA APPROVAL – Yes, we agree to add the language contained in the WMATA Draft Column. Parties are in agreement. Issue resolved.
3. CHANGE OF CONTROL – We agree that there shall be no Change of Control prior to execution of the Lease Agreement. After execution of the Lease Agreement there shall be no Change of Control without WMATA's prior written approval, which shall not be unreasonably withheld. Parties are in agreement. Issue resolved.
4. PRE-STABILIZATION PERIOD AMOUNTS – Our offer remains unchanged. Issue remains contingent upon results of Appraisal.
5. INSURANCE – Has Josh received a response from the Risk Management division? WMATA to provide response to Developer's comments by July 2, 2009.
6. GUARANTOR – Banc of America CDC is the Guarantor. BoA CDC to provide updated financial information to WMATA by July 2, 2009.
7. STABILIZATION – Please explain how the results of the outside appraisal will affect Stabilization? Has the new appraisal been ordered? Does the appraisal company have experience doing appraisals that include affordable housing? When do you expect to have the results of the new appraisal? Pursuant to WMATA, issue remains contingent upon results of Appraisal.
8. AFFORDABLE HOUSING – We are in agreement to delete "minimum". 20% is fine. We are in the process of reviewing the IZ regulations. Based on our preliminary review of the IZ regulations, the regulations will apply to

FOIA CONFIEDENTIAL TREATMENT REQUESTED

our development. Moreover, we will be required to set aside 8% of the residential gross floor area for eligible moderate-income (between 51% and 80% of Metropolitan Statistical Area Median). We will satisfy this requirement with the Project's 20% affordable component.

9. TERM – We will agree to a 99 year lease term with the land being revalued as if vacant after 60 years. After 60 years, the base lease rate will be 5% of the land value. Also, after the first 60 years, we could agree to pay an annual escalation of 1.5%. Following the first 99 years, we would like an option to extend for an additional 99 years under the same terms of the final 39 terms of the initial lease.

10. BASE RENT – See response to #9 above. Developer agrees to WMATA's offer of 99 year lease with the land being revalued after 60 years and Developer paying 5% of the land value in lease payments.

11. CAPITAL EVENTS – We agree that WMATA participates in 10% of capital event proceeds following: (a) repayment of all debt (including any subordinated debt provided by a government agency), (b) repayment of principal of member loans/non-tax credit equity, (c) payment of 20% return on member loans/non-tax credit equity; and (d) payment of transaction costs. Parties in agreement with (a), (b) and (d). WMATA to provide any comments to (c) by July 2, 2009.

Please confirm receipt of this email. We look forward to speaking with you soon. Thanks.
Tiwana

Tiwana Z. Hicks
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
Office: (202) 393-5460
Fax: (202) 347-9047
Cell: (202) 486-1863
thicks@bannekerventures.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005716

Doggett, Rosalyn

From: Omar Karim [okarim@bannekerventures.com]
Sent: Thursday, September 03, 2009 10:56 AM
To: Meister, Mark K.
Cc: Tiwana Hicks; Malcolm Marshall; Neil.Albert@dc.gov; Yohance S. Fuller; Doggett, Rosalyn; Lawson, Arthuro V.; Bottigheimer@wmata.com; Moneme, Emeka
Subject: Re: Shaw Howard Sites

Mark,

Thank you for the call today. As discussed, the results of the appraisal number that Marshall provided to us yesterday did not include the 20% affordable housing requirement as mandated by the DUKE Plan. You mentioned that you requested from the appraiser yesterday afternoon that they provide an updated appraisal which includes the 20% afford housing @ 50% AMI and that you plan on forwarding the results of the appraisal later today. Thank you; we look forward to receiving this information.

As soon as we receive the results, we will provide you with an elevation and sections, a new pro forma, terms of the financial structure (capitalized lease) and how the WMATA and adjacent properties which we control will be handled under one development; you should receive this information by next Thursday in anticipation of the mtv bt WMATA and BV/BACDC next Friday to begin getting to a final agreement on the final terms of the deal.

In addition, by tomorrow you will receive our full comments to the JDA. By next week, you will our full comments to the Lease.

Finally, as discussed, we are hoping to get all terms of the JDA and Lease agreed to by WMATA and BV/BACDC in the coming weeks so as to get these docs approved by the committee and Board at the October Board meeting. As discussed earlier this morning, if we don't go to the Board in October, we risk loosing our tax credits as the project has to be put into service w/n 24 months of award. Thus, any further delay would certainly put our ability to deliver this project in jeopardy.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Bottigheimer, Nat"
Date: Wed, 2 Sep 2009 17:50:35 -0400
To: 'okarim@bannekerventures.com'<okarim@bannekerventures.com>; Marshall, Malcolm<MMarshall@wmata.com>
Subject: Re: Shaw Howard Sites

Omar-

I'm asking Mark Meister to reach out to you to address your questions about the appraisal parameters. I believe Mark is out of the office now, but he can call you first thing tomorrow morning.

I've already spoken with Mark about the 8 percent / 20 percent issue. We need to take to the Board an agreement that's

From: Omar A. Karim
To: Marshall, Malcolm
Cc: 'Tiwana Hicks' ; Neil.Albert@dc.gov; Yohance S. Fuller; Bottigheimer, Nat; Moneme, Emeka; Meister, Mark K.; Doggett, Rosalyn
Sent: Wed Sep 02 17:01:17 2009
Subject: RE: Shaw Howard Sites
Mr. Marshall,

This is very confusing. Is the $375,000 lease payment exclusive of (1) rent participation and (2) share of proceeds or is the appraiser saying that if the 1% rent participation and 2% net proceeds was included, the estimated flat lease payment would be $375,000?

Also, your email does not state that the appraisal includes the 20% affordable housing at 50% of AMI. Since zoning for the site (which is governed by the DUKE Plan) requires a **minimum of 20% affordable housing**, coupled with the WMATA Board requirement that 20% affordable housing be included in the project per the amendment to the Board approval of our Term Sheet back in July 2008 and subsequent meeting with Chairman Graham, please have the appraiser provide you with what a lease payment would be with this 20% affordable housing requirement and forward the results to us. We cannot begin to provide WMATA with a pro forma until we get the results of the appraisal which includes 20% affordable housing at 50% AMI. We are at a lost of why **more than 90 days** after WMATA stated that it needed a new appraisal to justify our lease payments that you all still do not have the results of a comprehensive appraisal in hand.

Moreover, since we are proposing to capitalize our lease payments, please also ask the appraiser what a capitalized lease payment would be under the above assumptions.

Finally, as you may know, it is **1 ½ years** after we negotiated a Term Sheet with WMATA and we seem to be no closer today than where we were back in March 2008. This is extremely discouraging as we have been working in good faith to get this deal done expending more than $600,000 in legal, design and other fees to date. As a local, small, minority-owned development firm, these delays have severely increased the risk that our financing and JV partner might walk should the delays continue.

Please let us know when we might expect to receive this information.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: Marshall, Malcolm [mailto:MMarshall@wmata.com]
Sent: Wednesday, September 02, 2009 3:58 PM
To: OKarim@BannekerVentures.com
Cc: Doggett, Rosalyn; Meister, Mark K.; Bottigheimer, Nat
Subject: Shaw Howard Sites

We have not as yet received a draft of the appraisal of the above property. However, based on discussions with the appraiser, the base market rental for the lease of the above property, assuming a lease structure with a fixed rental for 60 years plus rent participation equal to 1% of gross revenue per year and 2% of the net proceeds from refinancing or sales, is estimated at $375,000 per year. In his evaluation the appraiser assumed 124,000 SF of density to be used for the combined sites and made downward rental adjustments for

Doggett, Rosalyn

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Wednesday, September 02, 2009 5:01 PM
To: Marshall, Malcolm
Cc: 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Doggett, Rosalyn; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
Subject: RE: Shaw Howard Sites

Importance: High

Mr. Marshall,

This is very confusing. Is the $375,000 lease payment exclusive of (1) rent participation and (2) share of proceeds or is the appraiser saying that if the 1% rent participation and 2% net proceeds was included, the estimated flat lease payment would be $375,000?

Also, your email does not state that the appraisal includes the 20% affordable housing at 50% of AMI. Since zoning for the site (which is governed by the DUKE Plan) requires a **minimum of 20% affordable housing**, coupled with the WMATA Board requirement that 20% affordable housing be included in the project per the amendment to the Board approval of our Term Sheet back in July 2008 and subsequent meeting with Chairman Graham, please have the appraiser provide you with what a lease payment would be with this 20% affordable housing requirement and forward the results to us. We cannot begin to provide WMATA with a pro forma until we get the results of the appraisal which includes 20% affordable housing at 50% AMI. We are at a lost of why **more than 90 days** after WMATA stated that it needed a new appraisal to justify our lease payments that you all still do not have the results of a comprehensive appraisal in hand.

Moreover, since we are proposing to capitalize our lease payments, please also ask the appraiser what a capitalized lease payment would be under the above assumptions.

Finally, as you may know, it is **1½ years** after we negotiated a Term Sheet with WMATA and we seem to be no closer today than where we were back in March 2008. This is extremely discouraging as we have been working in good faith to get this deal done expending more than $600,000 in legal, design and other fees to date. As a local, small, minority-owned development firm, these delays have severely increased the risk that our financing and JV partner might walk should the delays continue.

Please let us know when we might expect to receive this information.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: Marshall, Malcolm [mailto:MMarshall@wmata.com]
Sent: Wednesday, September 02, 2009 3:58 PM
To: OKarim@BannekerVentures.com
Cc: Doggett, Rosalyn; Meister, Mark K.; Bottigheimer, Nat
Subject: Shaw Howard Sites

From: Marshall, Malcolm [mailto:MMarshall@wmata.com]
Sent: Wednesday, September 02, 2009 3:58 PM
To: OKarim@BannekerVentures.com
Cc: Doggett, Rosalyn; Meister, Mark K.; Bottigheimer, Nat
Subject: Shaw Howard Sites

We have not as yet received a draft of the appraisal of the above property. However, based on discussions with the appraiser, the base market rental for the lease of the above property, assuming a lease structure with a fixed rental for 60 years plus rent participation equal to 1% of gross revenue per year and 2% of the net proceeds from refinancing or sales, is estimated at $375,000 per year. In his evaluation the appraiser assumed 124,000 SF of density to be used for the combined sites and made downward rental adjustments for additional costs associated with building over the WMATA tunnel and for mandatory IZ requirements.

ORDER OF MAGNITUDE
Shaw Howard Base Rent
20% Affordable Housing

Land Value (124,000 FAR @ $55/FAR)		$6,820,000
Reductions:		
Additional Hard Costs Due to WMATA Tunnel	33%	$1,770,000
Additional Soft Costs (26%)		$460,000
Lost Land Value with 20% Affordable Housing Assumed*	51%	$3,464,000
		$5,694,000
Net Value (exclusive of consideration of tax benefits)	16%	$1,126,000
Net Value Per FAR ($1,126,000/124,000)		$9.08
Net Value PSF of Land		$38.97
Base Rent (8.4%)		$95,000
Base Rent Paid in a Lump Sum**		$1,905,000

*Estimate from Eric Smart. Spread between market rent of $30 PSF per year and affordable rent of $13.20 PSF per year less lower real estate taxes of $1.15 PSF per year equals an adjusted cost per year of $15.65 PSF per rentable area of affordable housing. $15.65 PSF capitalized at 7.5% equals $208.67 PSF. 16,600 rentable SF @$208.67 PSF equals $3,464,000.

**Assumes WMATA's discount rate of 6.8%. Participation rent is not included & would be paid in addition to the lump sum payment. The estimated lump sum rental value is greater than the fee value since WMATA's discount rate is below market.

$\frac{3464}{6820} = 50\%$

$855 = \$$

Doggett, Rosalyn

From: Meister, Mark K.
Sent: Tuesday, September 08, 2009 1:56 PM
To: Doggett, Rosalyn
Subject: RE: Shaw Howard
Attachments: ShawHoward20%Rev..xlsx

Attached Is what I forwarded to Nat.

From: Doggett, Rosalyn
Sent: Tuesday, September 08, 2009 1:46 PM
To: Meister, Mark K.
Subject: RE: Shaw Howard

Yes, there is a small retail component, of under 12,000 sf. Which Malcolm took into account.
I have not seen what you passed on to and what puzzled Nat. (see below)

From: Meister, Mark K.
Sent: Monday, September 07, 2009 5:49 PM
To: Bottigheimer, Nat
Cc: Marshall, Malcolm; Doggett, Rosalyn
Subject: RE: Shaw Howard

Nat,

The estmated lump sum rental value is greater than the fee value of the property since WMATA's discount rate (6.8%) is below market, which I believe is about 8.4%. I will verify this with Malcolm or Roz tomorrow. We definitely should be prepared to discuss highest and best use with both the Board and FTA, and I will talk to Malcolm about this as well.

By copy of this email, I am requesting Roz to prepare a timeline for you.

I'm all for restricting use of the property to residential development, but I believe Omar has a retail component. Roz, is that correct?

Mark

From: Bottigheimer, Nat
Sent: Monday, September 07, 2009 1:36 PM
To: Meister, Mark K.
Cc: Moneme, Emeka
Subject: FW: Shaw Howard

Mark --

Thanks for passing this on. I'm a little confused as to the relationship between the 1.9 and the 1.2 million dollar numbers. Can you clarify for me, please?

Also, do we have an estimate for the value of the land in its highest and best use? We will need to be able to speak to that in committee.

Related, can we condition the agreement on the development of a residential project so that it can not be used for anything but that? The Board's decision would then be an endorsement of both a residential use of the site and a substantial affordable development component.

I can't imagine that the FTA will approve this, but that does not bother me.

Emeka, the market value of the property without the onerous affordable housing requirements is about 4.6 million. The value with the Duke plan goals and the stringent AMI requirements is a really substantial deduction from the value of the land. How the Board deals with this is very difficult to foresee.

Nat,

For our meeting with Omar on Tuesday, it looks like our number for a capitalized lease is $1,905,000. My only concern is Malcolm's statement at the end that residential development with a 20% affordable housing component does not represent the highest and best use of the property. This may be hard to defend, especially if this is Harps' concusion as well. I will speak with Malcolm on Tuesday.

Mark

From: Marshall, Malcolm
Sent: Friday, September 04, 2009 5:11 PM
To: Meister, Mark K.; Doggett, Rosalyn
Subject: Shaw Howard

I have a doctor's appointment Tuesday morning but should be in about 10:00 AM.

As shown on the attachment, if Eric Smart's estimated cost of approximately $3,464,000 for providing 20% affordable housing at 50% AMI is deducted from the estimated land value after adjustments for the costs of building over the tunnel, the net land value is estimated at $1,126,000 which equates to $9 per SF of FAR and $39 per SF of land. Please note that proposed development with 20% affordable housing clearly does not appear to be the highest and best use of the site since higher values can be generated from commercial development of the site.

Doggett, Rosalyn

From: Bottigheimer, Nat
Sent: Monday, September 07, 2009 7:16 PM
To: Meister, Mark K.
Cc: Marshall, Malcolm; Doggett, Rosalyn
Subject: RE: Shaw Howard

I guess what I meant was not to restrict it to retail, but if we're negotiating a value that is dependent on a land use that is less than the highest and best, we should make sure that if the development concept changes from what's proposed -- predominantly residential with heavy affordable component -- to something that's more like what Lakritz Adler originally proposed, which was more retail dominated, then we should have a chance to come back and revisit the value we receive.

From: Meister, Mark K.
Sent: Monday, September 07, 2009 5:48 PM
To: Bottigheimer, Nat
Cc: Marshall, Malcolm; Doggett, Rosalyn
Subject: RE: Shaw Howard

Nat,

The estmated lump sum rental value is greater than the fee value of the property since WMATA's discount rate (6.8%) is below market, which I believe is about 8.4%. I will verify this with Malcolm or Roz tomorrow. We definitely should be prepared to discuss highest and best use with both the Board and FTA, and I will talk to Malcolm about this as well.

By copy of this email, I am requesting Roz to prepare a timeline for you.

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Mark

From: Bottigheimer, Nat
Sent: Monday, September 07, 2009 1:36 PM
To: Meister, Mark K.
Cc: Moneme, Emeka
Subject: FW: Shaw Howard

Mark --

Thanks for passing this on. I'm a little confused as to the relationship between the 1.9 and the 1.2 million dollar numbers. Can you clarify for me, please?

Also, do we have an estimate for the value of the land in its highest and best use? We will need to be able to speak to that in committee.

Related, can we condition the agreement on the development of a residential project so that it can not be used for anything but that? The Board's decision would then be an endorsement of both a residential use of the site and a substantial affordable development component.

I can't imagine that the FTA will approve this, but that does not bother me.

Emeka, the market value of the property without the onerous affordable housing requirements is about 4.6 million. The value with the Duke plan goals and the stringent AMI requirements is a really substantial deduction from the value of the land. How the Board deals with this is very difficult to foresee.

Mark, one last thing: for Thursday's committee meeting, I would like to have a timeline that explains why it has taken us the amount of time that it has to get to this point. I do not have the words in my brain right now to tell this story to the Board. I think Mr. Graham will be energetically curious about this, and I need to have some words to say.

Thanks,

Nat

From: Meister, Mark K.
Sent: Sunday, September 06, 2009 3:07 PM
To: Bottigheimer, Nat
Subject: FW: Shaw Howard

Nat,

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005724

For our meeting with Omar on Tuesday, it looks like our number for a capitalized lease is $1,905,000. My only concern is Malcolm's statement at the end that residential development with a 20% affordable housing component does not represent the highest and best use of the property. This may be hard to defend, especially if this is Harps' concusion as well. I will speak with Malcolm on Tuesday.

Mark

From: Marshall, Malcolm
Sent: Friday, September 04, 2009 5:11 PM
To: Meister, Mark K.; Doggett, Rosalyn
Subject: Shaw Howard

I have a doctor's appointment Tuesday morning but should be in about 10:00 AM.

As shown on the attachment, if Eric Smart's estimated cost of approximately $3,464,000 for providing 20% affordable housing at 50% AMI is deducted from the estimated land value after adjustments for the costs of building over the tunnel, the net land value is estimated at $1,126,000 which equates to $9 per SF of FAR and $39 per SF of land. Please note that proposed development with 20% affordable housing clearly does not appear to be the highest and best use of the site since higher values can be generated from commercial development of the site.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: eric.smart@bolansmart.com
Sent: Friday, September 04, 2009 12:12 PM
To: Marshall, Malcolm
Cc: Doggett, Rosalyn
Subject: RE: Florida Ave. affordables valuation

Malcolm

Have not seen an updated proforma or detailed project description, but based on the numbers Omar presented in late spring there was 15,680 net square feet of affordable units, or 871 nsf per unit for 18 units.
Assuming a $1.40 spread between the $2.50 market rent and $1.10 affordable rent he provided you, an approach valuing the net cost of the affordables compared with the market is as follows: this is from market not 80% AMI

a) $1.40 delta times 12 months = $16.80 per nsf per year

b) subtract $1,000 per unit, or $1.15 per nsf per year for the lower real estate taxes paid on the affordables compared with the market units =
$15.65 adjusted differential cost per nsf per year from market (not 80%)

c) possible deduction for limited vacancy for affordables compared with market units and is considered offset by the added cost of administering the affordables

d) $15.65 capitalized at 7.5% = $208.67 per nsf represents value differential with market units

e) possible deduction for moderately lower cost finishes and fixtures in affordable units compared with market units not considered, with affordable and market units be allocated randomly

f) possible deduction for lower costs of financing or other reduced applicable development related fees for affordable units compared with market units not considered

g) $208.67 net cost per nsf multiplied by 15,680 net square feet = $3,271,893, or $181,772 per affordable unit.

The above computation more or less conforms with the typical range of the cost delta found in other building of this type throughout the Washington region.

Eric

Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037 202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general) www.bolansmart.com

Doggett, Rosalyn

From: eric.smart@bolansmart.com
Sent: Friday, September 04, 2009 3:27 PM
To: Marshall, Malcolm
Cc: Doggett, Rosalyn
Subject: RE: Florida Ave. affordables valuation

Marshall

Watch out for Omar quoting gross square feet instead of net sf. The computation using a rent delta only applies to rentable area, which based on his proforma from March showed the following:

Residential Gross SF (residential flrs only)			94,457sf
Residential Net SF	83% efficiency		78,399sf
Residential Net SF - Market		80%	62,720sf
Residential Net SF - Affordable		20%	15,680sf
Total No. of Residential Units	850	SF avg92	
Market Rate Units	80%	74	
Affordable Units	20%	18	

Really need to see a most recent proforma before going along with any assumptions he suggests. If he is saying 20,000 nsf, then he is saying that the residential gsf for the combined market and affordables is over 115,000 gsf. Adding 14,000 gsf retail takes the total over 129,000 gsf.
If he is saying that the greater project is now 157,000 gsf, and 79% is on WMATA land, there would actually be 124,000 gsf on WMATA portion, meaning something is off even based on gsf??

Eric

On Fri, 04 Sep 2009 19:10:21 -0000 (GMT), "Marshall, Malcolm"
<MMarshall@wmata.com> wrote:
> Omar indicates that there will be 20 affordable units at 1,000 SF per
unit.
> Is 20,000 times $208.67 or $4,173,000 a good rough number for the
deduction
> for the affordable housing?
>
> -----Original Message-----
> From: eric.smart@bolansmart.com [mailto:eric.smart@bolansmart.com]
> Sent: Friday, September 04, 2009 12:12 PM
> To: Marshall, Malcolm
> Cc: Doggett, Rosalyn
> Subject: RE: Florida Ave. affordables valuation
>
> Malcolm
>
> Have not seen an updated proforma or detailed project description, but
> based on the numbers Omar presented in late spring there was 15,680
> net square feet of affordable units, or 871 nsf per unit for 18 units.
> Assuming a $1.40 spread between the $2.50 market rent and $1.10
> affordable rent he provided you, an approach valuing the net cost of
> the affordables compared with the market is as follows:
>
> a) $1.40 delta times 12 months = $16.80 per nsf per year
>
> b) subtract $1,000 per unit, or $1.15 per nsf per year for the lower
real
> estate taxes paid on the affordables compared with the market units =
> $15.65 adjusted cost per nsf per year

RE: Florida Ave.

Doggett, Rosalyn

Sent: Thursday, September 03, 2009 5:19 PM

To: eric.smart@bolansmart.com; Marshall, Malcolm

I won't be here tomorrow but you can respond to Malcolm. On your attachment you show capitalized base rent being paid in year 4 or 5. Wouldn't it be paid at closing?

-----Original Message-----
From: eric.smart@bolansmart.com [mailto:eric.smart@bolansmart.com]
Sent: Friday, August 28, 2009 11:23 AM
To: Doggett, Rosalyn
Subject: Florida Ave.

Roz

Attached are some quickly crafted illustrations of the discussed cash flows. No getting around that they are grim in constrast to where everyone has been at one time or another before. Note that the file
prints on legal, one page.

Eric

--
Eric Smart, Bolan Smart Associates, Inc.
1250 24th Street, NW, Suite 300, Washington, DC 20037 202-776-7740 (direct), 202-841-2227 (cell), 202-371-1333 (BSA general) www.bolansmart.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005728

RE: Shaw Howard Sites

Omar A. Karim [okarim@bannekerventures.com]

Sent: Thursday, September 03, 2009 5:45 PM
To: Marshall, Malcolm
Cc: Tiwana Hicks [thicks@bannekerventures.com]; Neil.Albert@dc.gov; Yohance S. Fuller; Doggett, Rosalyn; Meister, Mark K.; Bottigheimer, Nat
Importance: High

Marshall,

Thank you for the information. When do you expect to receive a draft of the appraisal? Can you explain how the appraiser came up with the $271,000 in fixed rent with 20% affordable housing at 50% AMI. This seems very high considering for example if the market rate rent for the project is $2.50 per SF and the affordable rate rent is $1.10 per SF, the different in income that a project could generate because of the affordable units is $1.40 per SF. If we have 20 units of affordable housing (the project actually has 26, but WMATA's portion is 20 since it represents 79% of the project) and we assume that each unit is 1000 gross SF, this would give us 20,000 gross SF of affordable housing allocated to WMATA. If we then multiplied the net loss per SF ($1.40) b/c of the inclusion of the affordable units by the gross affordable SF (20,000), this would give us $28,000 net loss per month or $336,000 net loss per year due to the inclusion of the affordable units. These calculations don't even include any concessions which every new apartment project in the District is offering (2-3 months free rent, free parking, no amenity fee, etc. Please see last week's Washington Post article dated August 25, 2009 by Dina El Boghdady "Concessions Help Upscale Buildings Fill Apartments"). If the appraiser initially gave you a value of $375,000 in rent per year for a 92% market-rate and 8% IZ (at 80% AMI) project, including the 20% affordable units at 50% AMI rent would result in a much lower rent than the $271,000 that you sent us. Can you provide some detail (as requested earlier, such as discount rate used, cost of the project due to the WMATA tunnels, rent assumptions for the market and affordable units, etc.) as we are still somewhat confused as to how the appraiser came up with this new value.

Thank you in advance.

Omar

From: Marshall, Malcolm [mailto:MMarshall@wmata.com]
Sent: Thursday, September 03, 2009 4:41 PM
To: Omar A. Karim
Cc: 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Meister, Mark K.; Bottigheimer, Nat; Doggett, Rosalyn
Subject: RE: Shaw Howard Sites

We have not as yet received a draft of the appraisal. Applying the Duke Plan 20% affordable housing requirement, base rent can be estimated at a fixed rent of $271,000 for 60 years plus 1% of gross revenue per year and 2% of the net proceeds from refinancing or sales.

If the base, fixed rent of $271,000 for 60 years is paid in a lump sum, the rent would be $4,175,000.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, September 03, 2009 1:07 PM
To: Marshall, Malcolm
Cc: 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Meister, Mark K.; Bottigheimer, Nat; Doggett, Rosalyn
Subject: RE: Shaw Howard Sites

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005729

Marshall,

When you send the results of the appraisal, please provide us with the assumptions that the appraiser used (i.e., any discount rate used, cap rate, assumed cost of the project, cost of impact of designing and building a project on WMATA tunnels, etc.). Thank you.

Omar

From: Marshall, Malcolm [mailto:MMarshall@wmata.com]
Sent: Thursday, September 03, 2009 12:11 PM
To: Omar A. Karim
Cc: Meister, Mark K.; Doggett, Rosalyn
Subject: RE: Shaw Howard Sites

So we can complete the appraisal under a 20% affordable housing scenario can you please provide details on the tax credits you mentioned. 4%? 9%? Have the tax credits have been awarded, by what agency, date of agency and Council action, if known, etc. Thanks - Malcolm

---

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, September 02, 2009 6:26 PM
To: Marshall, Malcolm; Bottigheimer, Nat
Cc: 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Lawson, Arthuro V.; Moneme, Emeka; Meister, Mark K.; Doggett, Rosalyn
Subject: RE: Shaw Howard Sites
Importance: High

Nat,

Thank you for your email. I look forward to hearing from Mark. My office # is 202-393-5460 and my cell # is 301-523-1810. I am still unclear whether the appraisal includes 20% affordable housing in it or not; can you or Mark clarify this for us.

As for the affordability in the project, for more than a year, we have been working with 20% affordable housing as the requirement in the project which the DUKE Plan requires as a minimum. As you may know, tax credit guidelines require a minimum of 20% affordable housing requirement at 50% Area Median Income. Thus, if you all are changing the affordable housing requirement, or want to change the requirement (although I don't think a project can get approved by the Office of Planning w/o this 20% in the DUKE area), please advise AS SOON AS POSSIBLE as our financing would be adversely affected by this as we would automatically loose any tax credits that we were expecting.

Also, we would welcome getting together in the coming days with you and your team to hash out details of the deal. If we do this, I am confident that we can hammer out what's needed to get the Joint Development Agreement and Lease to the Board at the October meeting, as oppose to simply asking the Board to approve another Term Sheet, in which case, this would certainly further delay the project, and most certainly expose us to the risk of loosing any tax credits that we may get as the tax credit guidelines require that any project that receive tax credits be put into service within 24 months of award of such credits.

Again, thank you for reaching out. I look forward to hearing from you and Mark.

Omar

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005730

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: Bottigheimer, Nat [mailto:NBottigheimer@wmata.com]
Sent: Wednesday, September 02, 2009 5:51 PM
To: 'okarim@bannekerventures.com'; Marshall, Malcolm
Cc: 'thicks@bannekerventures.com'; Neil.Albert@dc.gov; Yohance S. Fuller; Moneme, Emeka; Meister, Mark K.; Doggett, Rosalyn; Lawson, Arthuro V.
Subject: Re: Shaw Howard Sites

Omar-

I'm asking Mark Meister to reach out to you to address your questions about the appraisal parameters. I believe Mark is out of the office now, but he can call you first thing tomorrow morning.

I've already spoken with Mark about the 8 percent / 20 percent issue. We need to take to the Board an agreement that's based on the Duke Plan goals as you point out, but if ultimately the project has lower affordable housing requirements than that, we need to be able to reflect that in our final agreement. For these immediate purposes, we will modify the lease payments accordingly, but subject to Board approval of course and also subject to the final affordable housing requirement.

We may need to meet all together in the coming days to hash out details for an October Board committee item. I will participate in such a meeting as needed to make sure Metro provides information needed to hit the October target.

Best wishes,

Nat

From: Omar A. Karim
To: Marshall, Malcolm
Cc: 'Tiwana Hicks' ; Neil.Albert@dc.gov; Yohance S. Fuller; Bottigheimer, Nat; Moneme, Emeka; Meister, Mark K.; Doggett, Rosalyn
Sent: Wed Sep 02 17:01:17 2009
Subject: RE: Shaw Howard Sites
Mr. Marshall,

This is very confusing. Is the $375,000 lease payment exclusive of (1) rent participation and (2) share of proceeds or is the appraiser saying that if the 1% rent participation and 2% net proceeds was included, the estimated flat lease payment would be $375,000?

Also, your email does not state that the appraisal includes the 20% affordable housing at 50% of AMI. Since zoning for the site (which is governed by the DUKE Plan) requires a **minimum of 20% affordable housing**,

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005731

coupled with the WMATA Board requirement that 20% affordable housing be included in the project per the amendment to the Board approval of our Term Sheet back in July 2008 and subsequent meeting with Chairman Graham, please have the appraiser provide you with what a lease payment would be with this 20% affordable housing requirement and forward the results to us. We cannot begin to provide WMATA with a pro forma until we get the results of the appraisal which includes 20% affordable housing at 50% AMI. We are at a lost of why **more than 90 days** after WMATA stated that it needed a new appraisal to justify our lease payments that you all still do not have the results of a comprehensive appraisal in hand.

Moreover, since we are proposing to capitalize our lease payments, please also ask the appraiser what a capitalized lease payment would be under the above assumptions.

Finally, as you may know, it is **1 ½ years** after we negotiated a Term Sheet with WMATA and we seem to be no closer today than where we were back in March 2008. This is extremely discouraging as we have been working in good faith to get this deal done expending more than $600,000 in legal, design and other fees to date. As a local, small, minority-owned development firm, these delays have severely increased the risk that our financing and JV partner might walk should the delays continue.

Please let us know when we might expect to receive this information.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: Marshall, Malcolm [mailto:MMarshall@wmata.com]
Sent: Wednesday, September 02, 2009 3:58 PM
To: OKarim@BannekerVentures.com
Cc: Doggett, Rosalyn; Meister, Mark K.; Bottigheimer, Nat
Subject: Shaw Howard Sites

We have not as yet received a draft of the appraisal of the above property. However, based on discussions with the appraiser, the base market rental for the lease of the above property, assuming a lease structure with a fixed rental for 60 years plus rent participation equal to 1% of gross revenue per year and 2% of the net proceeds from refinancing or sales, is estimated at $375,000 per year. In his evaluation the appraiser assumed 124,000 SF of density to be used for the combined sites and made downward rental adjustments for additional costs associated with building over the WMATA tunnel and for mandatory IZ requirements.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005732

Doggett, Rosalyn

From: Meister, Mark K.
Sent: Friday, October 30, 2009 2:29 PM
To: Goldin, Steven; Bottigheimer, Nat; Marshall, Malcolm
Cc: Doggett, Rosalyn
Subject: RE: Ground Lease Memo

This appears to be a reasoned and well-supported analysis.

From: Goldin, Steven
Sent: Friday, October 30, 2009 2:18 PM
To: Meister, Mark K.; Bottigheimer, Nat; Marshall, Malcolm
Subject: Re: Ground Lease Memo

That seeks fine. Do you agree?

From: Meister, Mark K.
To: Bottigheimer, Nat; Goldin, Steven
Sent: Fri Oct 30 14:12:02 2009
Subject: FW: Ground Lease Memo
FYI.

From: Marshall, Malcolm
Sent: Friday, October 30, 2009 2:00 PM
To: Meister, Mark K.; Montague, Joshua W.
Subject: FW: Ground Lease Memo

Attached is the opinion letter. The actual present value calculations in the Appendix were not included but are expected later. From this it appears that the $50 FAR figure for lump sum rental payments will be $46.59; the $80 FAR figure will be $74.55.

Let me know your thoughts before I get back to the appraiser. Thanks - MM

From: Sam Sherwood [mailto:ssherwood@irr.com]
Sent: Friday, October 30, 2009 1:30 PM
To: marshmortg@aol.com; Marshall, Malcolm
Cc: Julianne Skarwecki; Kelly Raynor; Linda Kerr; Patrick C. Kerr
Subject: Ground Lease Memo

Hi Malcolm,
I've attached a copy of our ground lease analysis memo to this email. You should be getting an official delivery through our Datapoint system shortly.
Please give us a call with any questions.

Samuel D. Sherwood
Senior Analyst

Integra Realty Resources - Washington, DC
The Calverton Tower
11785 Beltsville Drive, Suite 925
Beltsville, MD 20705-4048

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Phone: 301-586-9320 ext. 110
Fax: 301-586-9322
ssherwood@irr.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Omar A. Karim [okarim@bannekerventures.com]
Sent: Monday, November 02, 2009 8:21 AM
To: Marshall, Malcolm
Cc: aives@bannekerventures.com; mmckinney@bannekerventures.com; 'Tiwana Hicks'; Doggett, Rosalyn; 'John Hagner'; Goldin, Steven
Subject: Appraisal for Howard/Shaw-Florida Avenue sites

Importance: High

Malcolm,

Are you avail for a quick call with Pat Kerr of Integra Realty Resources (IRR) later this morning to discuss IRR updating their appraisal to a 99-year lease vs the 60-year lease with an option that they based on the initial appraisal on? If so, would 9:30 or 11:30 work? IRR can provide the update by this afternoon; it's a quick calculation for them. Alternatively, we are okay with you simply calling them to request the update so long as we can get it this afternoon. We're hoping that we can meet with Steve and Roz this afternoon to come to an agreement on the outstanding issues of the Term Sheet and the updated appraisal would help us do this. By getting the updated appraisal today, we should be able to finalize all of the terms of the Term Sheet by COB today so that the Term Sheet or summary of the Term Sheet can go to the Board this week.

Thanks in advance.

Omar

Omar A. Karim
Banneker Ventures, LLC
729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 phone
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Thursday, October 22, 2009 4:18 PM
To: Marshall, Malcolm; Goldin, Steven
Cc: Montague, Joshua W.; Meister, Mark K.
Subject: RE: Florida Avenue

Including the 1.5% of EGI in the capitalized lease payment, per Omar's suggestion, is ok with me. However, that will probably take a little longer as the appraiser will have to estimate gross income (and include a lower number for affordable units and a higher number, maybe, for retail than Harps had) so it probably should be step 2, with step 1 being just an estimate of the capitalized value of the flat rental stream assuming HUD insurance.

From: Marshall, Malcolm
Sent: Thursday, October 22, 2009 3:52 PM
To: Goldin, Steven
Cc: Doggett, Rosalyn; Montague, Joshua W.; Meister, Mark K.
Subject: FW: Florida Avenue

Since Richard Harps appears to be unavailable for the next few weeks (he is out of town this week) and the request does not appear to require any detailed site analysis, I suggest that another appraiser provide the evaluation for the determination of a proposed one lump sum lease payment, exclusive of future rental participation consisting of 1.5% of annual EGI and 10% participation in net proceeds from sale and refinancing. I would think that this can be done relatively quickly but not by Monday.

For this assignment the appraiser would assume a fee value of $2,200,000, a 60-year lease with a renewal option for an additional 39 years at market, and a permitted density of 100,711 sq. ft. In order to determine the lump sum rental, the appraiser would estimate a market ground lease rental rate and terms, a market discount rate, etc. The appraiser would not consider the effect of tax credits unless instructed.

The appraiser would further provide an estimate for determining additional compensation based on increased density.

Is this OK? Should it be run by Omar?

From: Omar Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, October 22, 2009 3:38 PM
To: Maurice Perry; Yohance S. Fuller; jkass@dccouncil.us; Marshall, Malcolm; Montague, Joshua W.; Doggett, Rosalyn; Goldin, Steven
Cc: Tiwana Hicks; John Hagner; O'Keeffe, Carol B.; Moneme, Emeka; Catoe, John B.; Sequeira, Loyda; Wallace, Maria A; Meister, Mark K.; Bottigheimer, Nat; Mohsberg, Sid; Pant, Shiva K.
Subject: Re: Florida Avenue

Steve,

We are in agreement with your email with a few caveats, delineated below:

- Based on the initial format of the lease portion of the old appraisal which capitalized the EGI payments, to reduce wmata's financial exposure, we may go that route depending on where the appraisal comes in at.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

- If Malcolm can get at least a verbal of the appraisal with the lease version by tomorrow or Monday, this would allow us to stay on schedule as the term sheet and lease are greatly dependent on the financial terms of the deal.

- In agreeing to go the lease route, Mr. Graham and I agreed that we may replace BOACDC with another partner. We will let you know who the new partner will be by the end of next week, if we replace BOACDC.

- The provision dealing with the reversion should be removed from all documents. Carol and I discussed this today as no financier will finance the project with this provision in it.

- Since there are no WMATA facilities to replace (parking lot, chillers, garage, etc), the language requiring a completion guarantee from a guarantor with a financial statement of the value of the cost of the project is no moment and thus should be removed. Instead, we could agree to have comply with the insurance requirements in the indemnification section. Since our design calls for us building about 10 feet above the tunnel, Carol's concerns about the tunnel is greatly mitigated as we are not going close to the tunnel in comparison to the Ellington and other projects where the underground garage is inches from the top of the tunnel. We could also require the Developer or General Contractor to post a completion or payment and performance bond naming WMATA as an insured.

Can we meet early next week to discuss where things stand?

Steve, thanks for moving this along.

Omar

Omar A. Karim
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729 15th Street, NW, Suite 400
Washington, DC 20005
(202) 393-5460 office
(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

From: "Goldin, Steven" <sgoldin@wmata.com>
Date: Thu, 22 Oct 2009 15:07:33 -0400
To: 'Omar A. Karim'<okarim@bannekerventures.com>; John' 'Hagner<JHagner@wcsr.com>; Maurice' 'Perry<maurice.perry@bankofamerica.com>; jkass@dccouncil.us<jkass@dccouncil.us>; Yohance S. Fuller<Yohance.Fuller@dc.gov>; Doggett, Rosalyn<RDoggett@wmata.com>; Marshall, Malcolm<MMarshall@wmata.com>; Montague, Joshua W.<jwmontague@wmata.com>
Cc: Catoe, John B.<jbcatoe@wmata.com>; Pant, Shiva K.<SPant@wmata.com>; O'Keeffe, Carol B.<cokeeffe@wmata.com>; Moneme, Emeka<EMoneme@wmata.com>; Bottigheimer, Nat<NBottigheimer@wmata.com>; Sequeira, Loyda<LSequeira@wmata.com>; Meister, Mark K.<MMeister@wmata.com>; Mohsberg, Sid<SMohsberg@wmata.com>; Wallace, Maria A<mawallace@wmata.com>
Subject: Florida Avenue

To All:

As per direction from our Board, we are proceeding with preparing a term sheet for the lease of our property. The matter is to be taken up by the full Board in a special meeting in two weeks.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

The lease will be as it was when a lease was first discussed (prior to my arrival): a capitalized payment at closing, an annual % participation in net operating income and a % participation upon various capital events (refinance, sale, etc). My understanding is that the participations had been 1.5% and 10% respectively.

By way of this e-mail, I am asking the following actions to be taken:

Omar: Please advise whether you as the developer are in agreement

Maurice: Please advise whether Bank of America CDC is in agreement

Jonathon: Please confirm that Chairman Graham is in agreement

Yohance: Please Confirm that Mr. Albert is in agreement

Roz/Malcolm: Please call Richard Harps and explain that we need the updated appraisal in hand by 10/30. Please initiate a new BAIS.

Josh/John: Please revise the term sheet to reflect the lease and discuss the co-tenancy agreement

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005738

Instructions for the appraiser:

1. Calculate the land value (done) and the rent at an appropriate percentage. The rent should be capitalized at an appropriate market percentage.
2. Include 10% capital event net proceeds and 1.5% of EGI. (We want to because of Carol's risk concern.) This will involve making assumptions of course as Harps did, incl. net capital event proceeds.
3. 60 year lease with 39-year renewal when land is appraised as if vacant.
4. Add 12 k sf retail, adjust for 6,414 sf affordable in figuring out EGI
5. Go right to lease, no term sheet?
6. Etc Malcolm has my sheet

Burns / Scope

Marshall, Malcolm

To: richard harps
Cc: Doggett, Rosalyn; Bushnaq, Tariq
Subject: RE: 7th St

We are gathering some of the information requested. To respond to some of your questions:

1 - Yes, the developer can put a level of parking below grade above the easement area

2 - Either can be used if not overloading the tunnels; loads would have to be calculated

3 - These types of structures would be allowed depending more on the highest & best use

4 - ~~We need to get back to you on the~~ Extra costs would have to do ~~under~~ Sheeting & shoring to protect tunnels, monitoring of construction effect on tunnels, costs to span tunnels by which structure support method used

5 - Lot 18 does not show up on the Sanborn plat that I have either but does show up in the assessment records. You may therefore assume, for appraisal purposes, that it is a part of Lot 31 in Sanford & use 16,472 SF (516 & 15,956) for the total area for the WMATA property in Square 416

6 - The developer has apparently acquired rights at least to Lot 826 immediately to the south of Lot 44 in Square 393 so this is really seems to be a highest & best use issue.

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Monday, July 20, 2009 10:49 AM
To: Marshall, Malcolm
Cc: Eric Colbert
Subject: 7th St

Malcolm - I met with Eric Colbert this morning and we've got a few questions that need answers before we can go much further.

1 - Will the developer be allowed to put one level of parking below grade above the easement area?

2 - Will WMATA require a mat foundation above the easement area or will WMATA allow spread footings to be used above the easement area?

3 - Will WMATA allow a 3, 4 or 5 (maybe 6) story structure above the easement area? Would the height of the structure allowed be dependent on the type of construction - concrete first and basement with stick built on the upper floors? - all poured concrete? - some other combination?

4 - What are the 'excess construction costs' that you referenced and what do they represent?

5 - Where is Lot 18 in Square 416. It looks like the total area shown for Lot 31 on the Sanborn plat includes the area for both L31 and L18 in the Scope and DC Assessment office information.

6 - For the analysis of the site value of the three separate parcels (A: Sq 416 Lot 18/31 combined, B: Sq 393 Lot44, C: Sq 393 Lot 45) we are assuming that each site (A, B and C) would stand alone. The impact of the Draft Duke Plan may play into the potential value assigned to the individual FAR conclusions with caveats, hypothetical conditions and/or extraordinary assumption - all of which are yet to be defined or quantified.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

5/27/09

$380

$1.4M is difference between $380 +

$250,000 = 5% year
1½ % EGI better in inflationary

BSA Table 1 (May 27/09)

Florida Avenue / Shaw - Proposals (60 year Term)

		July	1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019		60 2068
Banneker (May 26, 2009 illustrative) with 60 year ground lease															
Revenues															
Option Fee			$100,000												
Predevelopment Rent			$50,000	$57,500	$72,500	$80,000	$40,000								
Base Rent (at 95% ocp)	prepaid				$800,000										
	annual						$125,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000		$250,000
Total WMATA Base Rent			$150,000	$57,500	$872,500	$80,000	$165,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000		$250,000
Effective Gross Income	Banneker projected							$2,631,000							
	3.00% EGI growth BSA adjusted							$2,500,000	$2,575,000	$2,652,250	$2,731,818	$2,813,772	$2,898,185		$12,335,312
	1.50% WMATA payment							$37,500	$38,625	$39,784	$40,977	$42,207	$43,473		$185,030
Total WMATA Base Rent With Percentage of EGI								$287,500	$288,625	$289,784	$290,977	$292,207	$293,473		$435,030
WMATA Participation	~~10.00% of defined capital events~~														
Implied Initial Land Value	$5,088,000 2009 value estimate (OME)														
	3.00% annual compounded increase														
Terminal Value	$29,103,375 on land only														$29,103,375
Cash Flow			$150,000	$57,500	$872,500	$80,000	$165,000	$287,500	$288,625	$289,784	$290,977	$292,207	$293,473		$435,030
Cash Flow w/ residual			$150,000	$57,500	$872,500	$80,000	$165,000	$287,500	$288,625	$289,784	$290,977	$292,207	$293,473		$29,538,405
NPV Base Rent	5.73% discount rate		$4,512,977												
~~With Residual~~	5.73% discount rate		~~$5,600,022~~												
With EGI	5.73% discount rate		$6,438,472												
With Participation			not considered												

one time payment

+ 250 = $300,000

WMATA-INV 005741

Doggett, Rosalyn

From: Bushnaq, Tariq
Sent: Tuesday, August 11, 2009 5:55 PM
To: Doggett, Rosalyn
Cc: Ghanta, Venkata
Subject: RE: 7th Fla

Roz,

As discussed on voicemail, mid-rise construction as proposed in developer's concept plans can be constructed above WMATA tunnel using mat foundation under the entire building even though the buildings are located in the zone of influence. It is conceivable that few piles might be required to support end of two buildings adjacent to tunnels.

If the developer is contesting WMATA assumptions for a full buildout of the site under current zoning due to their assumptions of site constraints related to the presence of underground tunnels, please have them submit their proposed foundations plan for review by WMATA structural group.

Thanks..Tariq

-----Original Message-----
From: Doggett, Rosalyn
Sent: Tuesday, August 11, 2009 5:19 PM
To: Bushnaq, Tariq
Subject: FW: 7th Fla

I'm stumped

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Tuesday, August 11, 2009 4:30 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: 7th Fla

Talked to EC today - Said my assumption about only part of site being subject to higher cost is incorrect. Wouldn't build [redacted] two buildings on a site, zone of influence extends from foundations at 45 degree angle, tunnel would likely impact most of development.

Site he's working on is Minn/Benning

I'll try to get a revised spreadsheet to you tomorrow morning

Again - if your engineers disagree with EC and give me something that I can use, I'll incorporate that into the analysis, but as things stand, I need to go with EC

Richard

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202-682-1579 (fax)
rharps@earthlink.net

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1111 14th Street, NW, Suite 600, Washington, DC 20005
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M E M O R A N D U M

To:	Malcolm Marshall, WMATA Rosalyn Doggett, WMATA
From:	Richard Harps
Date:	August 5, 2009
Re:	WMATA 7th – Sq 393/44,45 and Sq 416/31

Summary of Conclusions:
Indicated Value on these three sites, considering the Inclusionary Zoning requirements and the impact of the WMATA tunnel.

General Assumptions per WMATA

- Construction of one level of below grade parking above the tunnel/easement would be permitted, but would required engineering and other approvals by WMATA

General Findings (per Eric Colbert, AIA)

- Each site can accommodate required parking in one basement below grade
- Sq 393/44 would be limited to a four (4) story structure with one (1) below grade parking level
- Sq 393/45 and Sq 416/31 would each permit a six (6) story structure but only four (4) stories over the tunnel, all over oce (1) below grade parking level.
- Efficiency of residential units is impacted by the small size of the site on Sq 393/44.
- Additional construction costs associated with building over the tunnel are estimated at $25/sf.

Analysis of each site as a Stand-Alone development

Site	Sq 393/44	Sq 393/45	Sq 416/31
Site Area	3,799 sf	8,621 sf	16,472 sf
Zone	Arts/C2B	Arts/C2B	Arts/C2B
Max FAR M/R	3.5	3.5	3.5
Max Height M/R	65'	65'	65'
Max FAR w/Bonus	4.5	4.5	4.5
Max Height w/Bonus	70'	70'	70'
Lot Occup Max Non-Resid	100%	100%	100%
Lot Occup Max Resid	80%	80%	80%

Land values in area as of July 30, 2009, the effective date of value, would be estimated at $55 per FAR.[1]

[11] Please understand that there haa been only almost no land sales activity since the 3rd Quarter of 2008 and this estimate relies upon older sales and data from sales of existing condominiums indicating a downward trend in prices over the recent past.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

General Land Value BEFORE consideration of Inclusionary Zoning and WMATA tunnel.

Site		Sq 393/44	Sq 393/45	Sq 416/31
Site Area		3,799 sf	8,621 sf	16,472 sf
Max FAR M/R		3.5	3.5	3.5
Max Density		13,297 sf	30,174 sf	57,652 sf
Max FAR ARTS Bonus		4.5	4.5	4.5
Max Density ARTS Bonus		17,096 sf	38,795 sf	74,124 sf

Maximum Density (Building Envelop) With WMATA tunnel (per EC)

Site		Sq 393/44	Sq 393/45	Sq 416/31
Max Envelop AG		12,717 sf	33,041 sf	67,683 sf

Value of Max Density Before IZ But With WMATA Density Limitation

Site		Sq 393/44	Sq 393/45	Sq 416/31
GFA		12,717 sf	33,041 sf	67,683 sf
Value Bldg Envelop w/WMATA		$699,435	$1,817,255	$3,722,565

Inclusionary Zoning required GREATER of 8% of M/R density OR 50% of Achievable Bonus Density (0.7 FAR). IZ becomes effective at 10 dwelling units. — Note I assume Lot 44 would contain LESS than 10 units.

Site		Sq 393/44	Sq 393/45	Sq 416/31
M/R Max Density		13,297 sf	30,174 sf	57,652 sf
% of M/R	8.00%	1,064 sf	2,414 sf	4,612 sf
IZ Bonus Potential	0.7	2,659 sf	6,035 sf	11,530 sf
50% Bonus	50.00%	1,330 sf	3,017 sf	5,765 sf
Max of ^^		1,330 sf	3,017 sf	5,765 sf
Max Envelop AG		12,717 sf	33,041 sf	67,683 sf
IZ Requirement		0 sf	3,017 sf	5,765 sf

Impact of Inclusionary Zoning:
Loss 'A' — Loss due to $-0- Land Value for IZ units

Site	Sq 393/44	Sq 393/45	Sq 416/31
IZ Requirement	0 sf	3,017 sf	5,765 sf
IZ Loss 'A' Value at $55	$-0-	-$165,935	-$317,075

Loss 'B' - Potential Loss on construction (inability of rent/sales price to cover full construction cost) Preliminary residual indicates that impact could be $0 to -$50 depending on unit size, mix, sale rental, etc. This analysis uses a -$25 allowance

Site	Sq 393/44	Sq 393/45	Sq 416/31
IZ Loss 'B'—Cost Δ/Unit Value	$0	-$75,425	-$144,125

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Allowance for Loss 'C' due to excess construction costs over WMATA tunnel at a minimum of -$25 per sq. ft. Applied to only the affected by the tunnel on the two larger sites plus a 10% 'tunnel impact' area (i.e., 110% of the area affected by the tunnel). The area affected by the tunnel is considered equivalent to the area on which EC determined that only a four (4) story structure, would be likely.

Site		Sq 393/44	Sq 393/45	Sq 416/31	
Tunnel Impact Area		3,039 sf	3,560 sf	6,590 sf	
Plus	10.00%	304 sf	356 sf	659 sf	
Total Impact Area				3,343 sf	3,9
Floors of Impact		4 sf	4 sf	4 sf	
Ttl GFA of Impact Area		13,372 sf	15,664 sf	28,996 sf	
GFA Potential on Site		12,717 sf	33,041 sf	67,683 sf	
Impacted GFA (Min of above)		12,717 sf	15,664 sf	28,996 sf	
Excess Cost	-$25	-$317,925	-$391,600	-$724,900	

(NOTE: This has NOT been finalized, but is my best guess based on EC's comments and our discussion on Monday.)

Summary of Adjustments to Value for IZ and WMATA Tunnel

Site	Sq 393/44	Sq 393/45	Sq 416/31
Site Before IZ/WMATA	$699,435	$1,817,255	$3,722,565
Less IZ Loss 'A'	$0	-$165,935	-$317,075
Less IZ Loss 'B'	$0	-$75,425	-$144,125
Less WMATA Loss 'C'	-$317,925	-$391,600	-$724,900
Net Value	$381,510	$1,184,295	$2,536,465

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Land Value = $55 (versus $57 in 8/07 appraisal)

land sf	28,892sf		
4.5FAR sf	130,174sf		
$57.50FARs sf Integra			$7,500,000
$55FAR sf Harps		($349,175)	$7,150,825
Extra Constr. Cost		($1,967,000)	$5,183,825
limited sf	118,457	($635,635)	$4,548,190
IZ sf rqt.	8,782sf	($483,010)	$4,065,180
50% bonus density			
IZ rent coverage		($219,550)	not incl.
TOTAL w/o line 16			$4,065,180
HARPS	total/w16	($219,550)	$3,845,630
20% aff. (Nat) .8x$6,239,255			$4,991,425

8/20/2009

Land Value = $55 (versus $57 in 8/07 appraisal)

land sf	28,892sf		
4.5FAR sf	130,174sf		
$57 FARsf	Integra		$7,500,000
$55FAR sf	Harps	($349,175)	$7,150,825
limited sf	113,441sf	($911,570)	$6,239,255 MODIFY
IZ sf rqt.	8,782sf		$5,756,245
50% bonus density		($483,010)	
IZ rent coverage		($219,550)	not incl. NO
Extra Constr cost $25/sf		($1,981,551)	$3,774,694
TOTAL w/o line 16		($3,725,306)	$3,774,694 +276
HARPS	total/w16	($3,944,856)	$3,555,144 x .07 = $248K
20% aff. .8x$6,239,255	(Nat)	($1,247,851)	$4,991,404

+702

$5,756,245
- 219,550
5,536,695

8/12/2009

7,151
(-1,967) 1,981 Xtra cost
5,170
-483 IZ
4,687
-911 Density Deduct
3,776
+276
4,052
+14
4,065

4052 x 6.5 = 263
4052 x 7 = 283,64

add base density
118,457
- 113,441
5,016

Harps & Harps, Inc.
1111 14th Street, NW, Suite 600, Washington, DC 20005
Tel.: (202) 682-2194 Fax: (202) 682-1579

M E M O R A N D U M

To: Malcolm Marshall, WMATA
From: Richard Harps
Date: July 31, 2009
Re: WMATA 7th – Sq 393/44,45 and Sq 416/31

Summary of Conclusions:
Indicated Value on these three sites, considering the Inclusionary Zoning requirements and the impact of the WMATA tunnel.

General Assumptions per WMATA

- Construction of one level of below grade parking above the tunnel/easement would be permitted, but would required engineering and other approvals by WMATA

General Findings (per Eric Colbert, AIA)

- Each site can accommodate required parking in one basement below grade
- Sq 393/44 would be limited to a four (4) story structure with one (1) below grade parking level
- Sq 393/45 and Sq 416/31 would each permit a six (6) story structure but only four (4) stories over the tunnel, all over oce (1) below grade parking level.
- Efficiency of residential units is impacted by the small size of the site on Sq 393/44.
- Additional construction costs associated with building over the tunnel are estimated at from 20% to 25%.

Analysis of each site as a Stand-Alone development

Site	Sq 393/44	Sq 393/45	Sq 416/31
Site Area	3,799 sf	8,621 sf	16,472 sf
Zone	Arts/C2B	Arts/C2B	Arts/C2B
Max FAR M/R	3.5	3.5	3.5
Max Height M/R	65'	65'	65'
Max FAR w/Bonus	4.5	4.5	4.5
Max Height w/Bonus	70'	70'	70'
Lot Occup Max Non-Resid	100%	100%	100%
Lot Occup Max Resid	80%	80%	80%

Land values in area as of July 30, 2009, the effective date of value, would be estimated at $55 per FAR.[1]

[1] Please understand that there haa been only almost no land sales activity since the 3rd Quarter of 2008 and this estimate relies upon older sales and data from sales of existing condominiums indicating a downward trend in prices over the recent past.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Rs Harps Only 4 stories on small site - can't max out to 4.5

1 retail 3 residential above tunnel 6 south of tunnel

over tunnel

1 retail 3 residential above tunnel 6 south of tunnel

General Land Value BEFORE consideration of Inclusionary Zoning and WMATA tunnel.

		3.8	4.11	
Site	Sq 393/44	Sq 393/45	Sq 416/31	
Site Area	3,799 sf	8,621 sf	16,472 sf	
Max FAR M/R	3.5	3.5	3.5	
Max Density	13,297 sf	30,174 sf	57,652 sf	
Land Value per FAR	$55	$55	$55	
Before IZ/WMATA Site Value	$731,308	$1,659,543	$3,170,860	$5,561,000

Maximum Density (Building Envelop) With WMATA tunnel (per EC)

how does Eric get this?

Site	Sq 393/44	Sq 393/45	Sq 416/31
Max Envelop AG	2,900 sf rentable per floor 3600 sf floorplate 12,717 sf stand alone	33,041 sf 6 stories?	67,683 sf 6 stories?

Value of Max Density Before IZ But With WMATA Density Limitation — What does this mean?

Site	Sq 393/44	Sq 393/45	Sq 416/31	
GFA	12,717 sf	33,041 sf	67,683 sf	× ±114,000 sf
Value Bldg Envelop w/WMATA	$699,435	$1,817,255	$3,722,565	$6,239,000

Bermelker has 4.1 FAR 119,000 s.f.

Value Before is minimum of Before IZ/WMATA Site Value and Value Bldg Envelop w/WMATA

RH to redo

Site	Sq 393/44	Sq 393/45	Sq 416/31
Before IZ/WMATA Site Value	$731,308	$1,659,543	$3,170,860
Value Bldg Envelop w/WMATA	$699,435	$1,817,255	$3,722,565
Final Value Before	× $699,435	$1,659,543 why lower?	$3,170,860 why do you use the lowest density?

Inclusionary Zoning required GREATER of 8% of M/R density OR 50% of Achievable Bonus Density, in this case equivalent to Potential Bonus Density. IZ becomes effective at 10 dwelling units.

Impact of Inclusionary Zoning:

Loss 'A' — Loss due to $-0- Land Value for IZ units

how did they get there? Can't use bonus density?

Site	Sq 393/44	Sq 393/45	Sq 416/31
Area of required IZ sq. ft.	0 sf	2440 1,816 sf 6%	5,271 sf 8%
IZ Loss 'A' Value at $55	$-0-	-$99,880 $400,000	-$289,905

RH to redo

Loss 'B' - Minimum Loss on construction (inability of rent/sales price to cover full construction cost) — Allow -$50/sf

Rich says Means says costs $175/sf/du

what affordability level? RH = 80% median

Site	Sq 393/44	Sq 393/45	Sq 416/31
IZ Loss 'B'—Cost Δ/Unit Value	$0	-$90,800	-$263,550

Allowance for Loss 'C' due to excess construction costs over WMATA tunnel at a minimum of $25 per sq. ft.

Site	Sq 393/44	Sq 393/45	Sq 416/31	
GFA	12,717 sf	33,041 sf	67,683 sf	
Loss 'C' Excess Cost	-$317,925	-$826,025	-$1,692,075	$2,836,025

Summary of Adjustments to Value for IZ and WMATA Tunnel

Site	Sq 393/44	Sq 393/45	Sq 416/31
Final Value Before	$699,435	$1,659,543	$3,170,860
IZ Loss 'A' Value at $55	$-0-	-$99,880	-$289,905
IZ Loss 'B'—Cost Δ/Unit Value	$0	-$90,800	-$263,550
Loss 'C' Excess Cost	-$317,925	-$826,025	-$1,692,075
Net Value	$413,383	$642,838	$925,330

= ? $1.981 M

$1,981,551

2 lots $1,568,168

Doggett, Rosalyn

From: Marshall, Malcolm
Sent: Monday, August 03, 2009 8:39 AM
To: Doggett, Rosalyn
Subject: FW: 7th Fla
Attachments: Memo - WMATA 7th.pdf

See attached

-----Original Message-----
From: richard harps [mailto:rharps@earthlink.net]
Sent: Friday, July 31, 2009 4:25 PM
To: Marshall, Malcolm
Subject: 7th Fla

Memo attached with values

Harps & Harps Inc
1111 14th Street, NW Suite 600
Washington, DC 20005
202-682-2194
202-682-1579 (fax)
rharps@earthlink.net

Land Value = $55 (versus $57 in 8/07 appraisal)

land sf	28,892sf		
4.5FAR sf	130,174sf		
$57 FARsf	Integra		$7,500,000
$55FAR sf	Harps	($349,175)	$7,150,825
limited sf	113,441sf	($911,570)	$6,239,255 MODIFY
IZ sf rqt.	8,782sf		$5,756,245
50% bonus density		($483,010)	
IZ rent coverage		($219,550)	not incl. NO
Extra Constr cost $25/sf		($1,981,551)	$3,774,694
TOTAL w/o line 16		($3,725,306)	$3,774,694 +276
HARPS	total/w16	($3,944,856)	$3,555,144 x .07 = $248K
20% aff. .8x$6,239,255	(Nat)	($1,247,851)	$4,991,404

$5,756,245
- 219,550
5,536,695

7,151
1,981 Xtra cost
5,170
-483 IZ
4,687
-911 Density Deduct
3,776
+276
4,052

4,052 x 6.5 = 263
4,052 x 7 = 283,64

add back density deduct
+ 118,457
- 113,441
5,016

8/12/2009

Land Value = $55 (versus $57 in 8/07 appraisal)

land sf	28,892sf			
4.5FAR sf	130,174sf			
$57 FARsf	Integra		$7,500,000	
$55FAR sf	Harps	($349,175)	$7,150,825	
limited sf	113,441sf	($911,570)	$6,239,255	118,000
IZ sf rqt.	8,782sf		$5,756,245	
50% bonus density		($483,010)		
IZ rent coverage line 16		($219,550)	not incl.	—
Extra Constr cost $25/sf		($1,981,551)	$3,774,694	
TOTAL w/o line 16		($3,725,306)	$3,774,694	
HARPS	total/w16	($3,944,856)	$3,555,144	
20% aff. .8x$6,239,255	(Nat)		$4,991,425	

$\frac{9}{113}$

$\frac{104}{113} \cdot 92$

$\frac{94}{102} = 92\%$

8/12/2009

$\frac{483,010}{5,756,245} = 8\%$

FOIA CONFIDENTIAL TREATMENT REQUESTED

(1) Start in 2008? Later
(2) Gave Moodie 130,000 SF (3) More payments more all dates are yea

ERIC SMART 776 7940 1/4/18

BSA Table 1
Florida Avenue / Shaw - Mid December 2007 Proposals

		1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	11 2018	12 2019	13 2020	14 2021	15 2022	16 2023	60 2068
Banneker / District - lease																		
Revenues																		
Option Fee		$100,000																
Predevelopment Rent		$60,000	$100,000															
Offeror Land Valuation	$8.2 million																	
Base Rent	3.00% fixed annual escalations			$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880		$2,695,826
Other Base Rent Adjustment	not applicable																	
Total Gross Revenue		$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880		$2,695,826
WMATA Participation	10.00% of defined capital events																	
Implied Initial Land Value	~~$7,647,280 FY08 assessed values~~ NO																	
	3.00% annual compounded increase																	
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ residual		$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880		$48,154,291
NPV																		
Base Rent	5.73% discount rate	$13,037,046																
With Residual	5.73% discount rate	$14,734,973																

Moodie Turay / Clark - lease (Option One: illustrative without alley closing, assumed 127,000 FAR with initial value held at $65 / FAR)

Revenues																		
Option Fee		$100,000																
Predevelopment Rent	$10,000 per month	$90,000	$120,000	$120,000														
Offeror Land Valuation	2.00% pre stabilization escalator	$8,255,000	$8,420,100	$8,588,502	$8,760,272													
Base Rent	8.00% of offeror land valuation	$0	$0	$0	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822		$700,822
Base Rent Adjustment	3.00% 10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$241,024		$241,024	$2,371,515
Total Gross Revenue		$190,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846		$941,846	$3,072,337
WMATA Participation	5.00% of defined capital events																	
Implied Initial Land Value	$0 FY08 assessed values																	
	3.00% annual compounded increase																	
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ Residual		$190,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846		$941,846	$48,530,802
NPV																		
Base Rent	5.73% discount rate	$10,310,276																
With Residual	5.73% discount rate	$11,916,185																
With Base Rent Escal	9.00% disc rate on escalation	$13,567,933 (illustrative)																
With Base Rent Escal	5.73% disc rate on escalation	$16,916,124 (illustrative)																

Moodie Turay / Clark - lease (Option Two: illustrative without alley closing, assumed 127,000 FAR with initial value held at $61.50 / FAR)

Revenues																		
Option Fee		$100,000																
Predevelopment Rent	$10,000 per month	$90,000	$120,000	$120,000														
Offeror Land Valuation	3.00% pre stabilization escalator	$7,810,500	$8,044,815	$8,286,159	$8,534,744													
Base Rent	8.00% of offeror land valuation	$0	$0	$0	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760		$682,760
Base Rent Adjustment	3.00% 10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$234,819		$234,819	$2,310,462
Total Gross Revenue		$190,000	$120,000	$120,000	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$917,599		$917,599	$2,993,241
WMATA Participation	5.00% of defined capital events																	
Implied Initial Land Value	$0 FY08 assessed values																	
	3.00% annual compounded increase																	
Terminal Value	$45,458,466 on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0		$45,458,466
Cash Flow w/ Residual		$190,000	$120,000	$120,000	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$682,760	$917,599		$917,599	$48,451,707
NPV																		
Base Rent	5.73% discount rate	$10,054,995																
With Residual	5.73% discount rate	$11,660,904																
With Base Rent Escal	9.00% disc rate on escalation	$13,367,555 (illustrative)																
With Base Rent Escal	5.73% disc rate on escalation	$16,532,123 (illustrative)																

WMATA-INV 005753

FOIA CONFIEDENTIAL TREATMENT REQUESTED

301 523 1810

1/4/08

BSA Table 2
Florida Avenue / Shaw - December 2007 Proposals

			1 2009	2 2010	3 2011	4 2012	5 2013	6 2014	7 2015	8 2016	9 2017	10 2018	11 2019	12 2020	13 2021	14 2022	15 2023	60 2068
Lakritz Adler - lease																		
Revenues																		
Option Fee			$100,000															
Predevelopment Rent																		
Offeror Land Valuation					$4,860,000													
Base Rent	1.80%	fixed annaul escalations					$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$595,559
Other Base Rent Adjustment		not applicable																
Total Gross Revenue			$100,000	$0	$0	$0	$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$595,559
WMATA Participation	0.00%	not offered																
Implied Initial Land Value	$7,947,260	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual			$100,000	$0	$0	$0	$223,253	$227,272	$231,362	$235,527	$239,766	$244,082	$248,476	$252,948	$257,501	$262,136	$266,855	$46,054,025
NPV																		
Base Rent	5.73%	discount rate	$4,330,076															
With Residual	5.73%	discount rate	$6,028,003															
Banneker / District - lease																		
Revenues																		
Option Fee			$100,000															
Predevelopment Rent			$60,000	$100,000														
Offeror Land Valuation																		
Base Rent	3.00%	fixed annaul escalations			$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,826
Other Base Rent Adjustment		not applicable																
Total Gross Revenue			$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$2,695,826
WMATA Participation	10.00%	of defined capital events																
Implied Initial Land Value	$7,947,260	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ residual			$160,000	$100,000	$500,000	$515,000	$530,450	$546,364	$562,754	$579,637	$597,026	$614,937	$633,385	$652,387	$671,958	$692,117	$712,880	$48,154,291
NPV																		
Base Rent	5.73%	discount rate	$13,037,046															
With Residual	5.73%	discount rate	$14,734,973															
Moodie Turay / Clark - lease	(illustrative without alley closing, assumed 127,000 FAR with initial value held at $85 / FAR)																	
Revenues																		
Option Fee			$100,000															
Predevelopment Rent	$10,000	per month	$90,000	$120,000	$120,000													
Offeror Land Valuation	2.00%	pre stabilization escalator	$8,255,000	$8,420,100	$8,588,502	$8,760,272												
Base Rent	8.00%	of offeror land valuation	$0	$0	$0	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822
Base Rent Adjustment	3.00%	10 yr compounded	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$241,024	$241,024	$2,371,515
Total Gross Revenue			$190,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$3,072,337
WMATA Participation	5.00%	of defined capital events																
Implied Initial Land Value	$0	FY08 assessed values																
	3.00%	annual compounded increase																
Terminal Value	$45,458,466	on land only	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$45,458,466
Cash Flow w/ Residual			$190,000	$120,000	$120,000	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$700,822	$941,846	$941,846	$48,530,802
NPV																		
Base Rent	5.73%	discount rate	$10,310,278															
With Residual	5.73%	discount rate	$11,916,185															
With Base Rent Escal	9.00%	disc rate on escalation	$13,667,933	(illustrative)														
With Base Rent Escal	5.73%	disc rate on escalation	$16,916,124	(illustrative)														

WMATA-INV 005754

Land Value = $55 (versus $57 in 8/07 appraisal)

land sf	28,892sf		
4.5FAR sf	130,174sf		
$57 FARsf	Integra		$7,500,000
$55FAR sf	Harps	($349,175)	$7,150,825
limited sf	113,441sf	($911,570)	$6,239,255
IZ sf rqt.	8,782sf		$5,756,245
50% bonus density		($483,010)	
IZ rent coverage		($219,550)	not incl.
Extra Constr cost $25/sf		($1,981,551)	$3,774,694
TOTAL w/o line 16		($3,725,306)	$3,774,694
HARPS	total/w16	($3,944,856)	$3,555,144
20% aff. .8x$6,239,255	(Nat)		$4,991,425

8/12/2009

no, says Milner

• ~~Need State of Maryland Environmental~~

Irving Nemi has $1.7M difference - extra cost of building over Metro for the 2 big lots
Eric Colbert has ~~$1,981,551~~ 2,800,000 for 3 lots

~~[illegible]~~ 4' thick MAT foundation

Release From PGP Env. Services " Boales & requested Inspector Report 8/8

Ask for Maint Contract from Taylor - Tariq asked Jennifer 8/14

Land Value = $55 (versus $57 in 8/07 appraisal)

land sf	28,892sf		
4.5FAR sf	130,174sf		
~~$57 FARsf~~	~~Integra~~		~~$7,500,000~~
$55FAR sf	Harps	($349,175)	$7,150,825
limited sf	113,441sf	($911,570)	$6,239,255 MODIFY
IZ sf rqt.	8,782sf		$5,756,245
50% bonus density		($483,010)	
IZ rent coverage		($219,550)	not incl. NO
Extra Constr cost $25/sf		($1,981,551)	$3,774,694
TOTAL w/o line 16		($3,725,306)	$3,774,694 +2%
HARPS	total/w16	($3,944,856)	$3,555,144 x .07 = $248K
20% aff. (Nat) .8x$6,239,255		($1,247,851)	$4,991,404

$5,756,245
- 219,550
5,536,695

8/12/2009

4052 x 6.5 = 263,476

4052 x 7 = 283,64

7,151
1,981 X tra cost
5,170
-483 IZ
4,687
- 911 Density Deduct
3,776
+ 276 density add back
4,052

add back density
to 118,457
- 113,441
5,016

1.5% payable only from cash flow

Can't overleverage must always be DSCR of 1.2
Can't over-equity 30% max

Need Current pro forma
" " Sources + use
Actual HUD insurance program #

have a direct impact on the valuation. The analysis and reasoning leading to the conclusions, along with the assumptions and conditions on the conclusions, which may be material, are set forth within the attached summary report, containing 57 pages.

We trust this information is of assistance to you. If you have any questions or comments, please contact us. Thank you for this opportunity to be of service.

Very truly yours,

Richard R. Harps
DC Certified General License #10003

Stephen C. Brennan
DC Certified General License #10011

Attachment

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005759

have a direct impact on the valuation. The analysis and reasoning leading to the conclusions, along with the assumptions and conditions on the conclusions, which may be material, are set forth within the attached summary report, containing 57 pages.

We trust this information is of assistance to you. If you have any questions or comments, please contact us. Thank you for this opportunity to be of service.

Very truly yours,

Richard R. Harps
DC Certified General License #10003

Stephen C. Brennan
DC Certified General License #10011

Attachment

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005760

have a direct impact on the valuation. The analysis and reasoning leading to the conclusions, along with the assumptions and conditions on the conclusions, which may be material, are set forth within the attached summary report, containing 57 pages.

We trust this information is of assistance to you. If you have any questions or comments, please contact us. Thank you for this opportunity to be of service.

Very truly yours,

Richard R. Harps
DC Certified General License #10003

Stephen C. Brennan
DC Certified General License #10011

Attachment

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005761

have a direct impact on the valuation. The analysis and reasoning leading to the conclusions, along with the assumptions and conditions on the conclusions, which may be material, are set forth within the attached summary report, containing 57 pages.

We trust this information is of assistance to you. If you have any questions or comments, please contact us. Thank you for this opportunity to be of service.

Very truly yours,

Richard R. Harps
DC Certified General License #10003

Stephen C. Brennan
DC Certified General License #10011

Attachment

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005762

Doggett, Rosalyn

From: Goldin, Steven
Sent: Tuesday, October 27, 2009 4:50 PM
To: Doggett, Rosalyn; Marshall, Malcolm
Subject: RE: Shaw Howard

$50/sf. – pro rata rent

How is the appraiser dealing with the issue of the 100,000 sf and subsquent approvals for more than 100,000? Remember, we were getting $2.2 M upfront and then $1.2 M more if he got additional sf approved

---

From: Doggett, Rosalyn
Sent: Tuesday, October 27, 2009 4:00 PM
To: Marshall, Malcolm
Cc: Goldin, Steven
Subject: RE: Shaw Howard

If HUD insurance is used as proposed, the lease will be a flat rate for a probable term of 40 years so 2% annual ground rent escalation is not relevant.

The appraiser should appraise items 1 and 2 only, a 60 year lease at a flat base rent for the term of the lease. We will have a provision in the term sheet for reappraisal within the 60-year term if HUD insurance is no longer used but cannot anticipate the future.

He should include assumptions and methodology in the report.

From: Marshall, Malcolm
Sent: Tuesday, October 27, 2009 3:38 PM
To: Doggett, Rosalyn
Subject: FW: Shaw Howard

See the appraisal proposal below.

Since the proposed lease will not likely provide for 2% annual escalations, this assumption would be eliminated. Also, since apparently the proposed ground lease provides for 1.5% of "cash flow" after mortgage payments, etc. and 10% of net proceeds of sale or refinancing after return of equity, etc., not 1.5% of collected revenues and 10% of net proceeds of sale or refinance, any revenues estimated from participation are highly speculative and would likely be discounted considerably by appraisers. In any case, it appears that revenue from participation cannot be estimated by appraisers in a timely fashion. Because of time constraints and the limited effect on value, it is recommended that the appraiser proceed with only passing consideration of the participation income. (The participation feature may, for example, have a very slight effect on the estimate of base rent or possibly the discount rate used, or the appraiser may choose to entirely ignore this possible source of revenue.)

Should we proceed with Integra & expect an analysis by Friday or should we obtain a more detailed analysis with a 2 week time frame?

From: Patrick C. Kerr
Sent: Tuesday, October 27, 2009 1:13 PM
To: 'Marshall, Malcolm'
Subject: FW: Florida Ave. between 7th & 9th Streets, Washington, DC

Patrick C. Kerr, MAI, MRICS, SRA

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005763

Managing Director-Washington, DC
Integra Realty Resources
11785 Beltsville Drive, Suite 925
Calverton, MD 20705
Phone: 301-586-9320 Ext. 105
Fax: 301-586-9322
Email: pkerr@irr.com
Internet: www.irr.com

From: Patrick C. Kerr
Sent: Tuesday, October 27, 2009 11:52 AM
To: 'Marshall, Malcolm'; Sam Sherwood
Cc: Doggett, Rosalyn; Meister, Mark K.
Subject: RE: Florida Ave. between 7th & 9th Streets, Washington, DC

Hi Malcolm-

We can deliver our letter opinion by this Friday and our fee would be $3,000. Based on our conversation in addition to the assumptions stated below, we will:

1) Stipulate to a market value of the land at $2,200,000, and
2) The kickers of additional payments of 1.5% of gross collected income and 10% of net proceeds from refinancing and sale will not be considered in our analysis, as stated in #3 below.

Thanks, Pat.

Patrick C. Kerr, MAI, MRICS, SRA
Managing Director-Washington, DC
Integra Realty Resources
11785 Beltsville Drive, Suite 925
Calverton, MD 20705
Phone: 301-586-9320 Ext. 105
Fax: 301-586-9322
Email: pkerr@irr.com
Internet: www.irr.com

From: Marshall, Malcolm [mailto:MMarshall@wmata.com]
Sent: Monday, October 26, 2009 12:01 PM
To: Patrick C. Kerr; Sam Sherwood
Cc: Doggett, Rosalyn; Meister, Mark K.
Subject: Florida Ave. between 7th & 9th Streets, Washington, DC

We are seeking an analysis to estimate a lump sum ground lease payment for a 60 year term with the following assumptions:

1. Land has estimated value of $2,200,000
2. Lease term is 60 years with a base annual rent prepaid each year and escalated at 2% per year
3. Lessor receives additional income of 1.5% of gross collected income & 10% of net proceeds of refinancing or sale. This participation income would be excluded from determination of the lump sum ground lease payment
4. Lessee has a 39-year renewal option at market with compensation to be determined at the time of lease renewal

We need an analysis this week. Please a proposal ASAP Thanks - MM

FOIA CONFIEDENTIAL TREATMENT REQUESTED

INTEGRA Realty Resources
WASHINGTON, DC
Local Expertise...Nationally

October 30, 2009

Mr. Malcolm Marshall
Washington Metropolitan Area Transit Authority
600 Fifth Street NW
Washington, District of Columbia 20001

SUBJECT: Hypothetical Ground Lease Analysis
9th Street NW & Florida Avenue NW
Washington, District of Columbia 20001
Integra Washington, DC File No. 141-2009-0440

Dear Mr. Marshall:

Per your request, Integra Realty Resources – Washington, DC has performed an analysis of market terms for a proposed ground lease in the vicinity of Florida Avenue and 9th Street NW. As discussed, our analysis stipulates to the following parameters:

- The fee simple market value of the subject site is $2,200,000;
- WMATA (lessor) proposes to lease the site for 60 years at a level annual rent;
- The lessee would have a 39-year renewal option at then-market rent upon expiration of the 60 year base lease term, with market rent to be determined at the time of renewal.

It is noted that proposed terms call for the lessor to receive additional income of 1.5% of gross income and 10% of the net proceeds of any refinancing or sale. However, at your request, we have excluded the impact of this provision from our analysis.

The purpose of our analysis is twofold: first, to develop an opinion of market rent for the 60-year base term as proposed; second, to develop an opinion of the present value of the payment stream that would be generated by the lease at the concluded market rent.

In the course of our investigation, we have spoken to several brokers and developers active in the Washington, DC land development market, including Jayne Shister of Cassidy & Pinkard Colliers, Timothy Smith of LCOR, Ari Firoozabadi of Marcus & Millichap, and John Begert of Fraser Forbes to determine an appropriate methodology for calculating annual rental payments for long-term ground leases. The responses indicate

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005765

that the typical methodology is to first value the land to be leased, then estimate a desired rate of return. The rate of return, expressed as a percentage of the total land value paid annually, is analogous to a capitalization rate, which reflects the income generated in a single year expressed as a percentage of total value. The relationship between the annual rental rate (as a percentage of site value) and capitalization rate reflects the fact that a landowner would not encumber a property with a lease that reflected a lower annual percentage return of the site value than indicated by a market-derived capitalization rate.

Accordingly, we have surveyed capitalization rates reflected by land-leased sales on a national basis over the past year, as well as several current listings.

Capitalization Rate Comparables

No.	Location	Tenant	Sale Date	Annual Rent	Sale Price	Overall Cap Rate
1.	Richland, PA	Lowe's	Listing	$774,900	$11,070,000	7.00%
2.	Jacksonville, IL	Blue Cross Blue Shield	Listing	$579,158	$7,473,000	7.75%
3.	Norcross, GA	Local office user	Listing	$151,965	$1,842,000	8.25%
4.	Lawrence, KS	Taco Bell	July-09	$70,012	$920,000	7.61%
5.	Carmel, IN	Multiple (Retail & Office)	May-09	$394,785	$4,650,000	8.49%
6.	Ooltewah, TN	BB&T	May-09	$95,000	$1,461,538	6.50%
7.	Richland, PA	Multiple (Retail & Restaurant)	January-09	$388,208	$4,775,000	8.13%
8.	Upper Arlington, OH	Chase Bank	January-09	$130,000	$2,080,000	6.25%
9.	Leesburg, VA	Pizza Hut	December-08	$109,545	$1,542,888	7.10%

The sales and listings reflect a range of capitalization rates from 6.25% to 8.49%, with an average of 7.45%. These transactions reflect a range of factors that can significantly influence the capitalization rate, including creditworthiness of the tenant, rental rate escalations, length of lease term remaining, and the anticipated value of the underlying property upon reversion. In general, the lower end of the range of rates are characterized by leases with significant escalations throughout the lease term and favorable credit factors, while the high end of the range reflects shorter lease terms, weaker credit tenancy, low escalations, and/or weak location.

The hypothetical lease under consideration would reflect a mix of positive and negative factors. It would be located in the rapidly growing U Street corridor of Washington, DC, which is expected to have a very strong long-term value trend. However, the lease as proposed will not include escalations, and over a long lease period inflation will diminish the real value of the income stream. Based on a review of the comparable data and considering these factors, it appears that an annual ground rent payment for the subject site should fall in the range of 7% to 8% of site value, or $154,000 to $176,000 per year.

In order to conclude to an appropriate annual rental rate, we also consider the impact of a given rental rate on the present value of the future payment stream relative to overall site value. Timothy Smith of LCOR reports that while he has not been involved in any land lease transactions over the past year due to the general slowdown in the land development market, he has been involved in several negotiations that may ultimately result in deals as

FOIA CONFIEDENTIAL TREATMENT REQUESTED

the market recovers. According to Mr. Smith, several landowners in the DC area who had been planning to sell their properties have expressed interest in leasing their properties for 60 to 99 years in exchange for a lump sum payment in the range of 80% to 90% of what they believe to be the fee simple market value. Deals structured in this manner would allow the property owner to eliminate carrying costs and receive a substantial payoff for the land, while allowing the lessee to acquire a site at a discount in exchange for losing rights to the property in the distant future. Accordingly, we have tested a range of discount and rental rates (as a percentage of land value) to determine an annual rental rate that results in a present value of the payment stream equivalent to 80% to 90% of the stipulated market value.

To discount the stream of payments to present value, we rely primarily on the Kopacz Real Estate Investor Survey published by PriceWaterhouseCoopers. Korpacz reports a range of discount rates employed by investors as of Q3 2009 at 7.50% to 13.00%, with an average of 9.24%, for CBD office properties nationally. For Washington, DC, the range is from 7.00% to 8.11%. Suburban Maryland and Virginia capitalization rates are significantly higher, ranging up to 12.00%. Because the subject is located outside the CBD of Washington, DC, it is our opinion that a rate at the upper end of the CBD range is most appropriate. We therefore apply a discount rate of 9% in our analysis.

Using a discount rate of 9%, the lump sum value of payments at annual rental rates ranging from 7% to 8% of land value result in the following ratios of payment stream present value to land value:

Rental Rate %	6.50%	6.75%	7.00%	7.25%	7.50%	7.75%	8.00%
PV of Payments at 9%	$1,722,050	$1,788,283	$1,854,516	$1,920,748	$1,986,981	$2,053,214	$2,119,447
Land Value	$2,200,000	$2,200,000	$2,200,000	$2,200,000	$2,200,000	$2,200,000	$2,200,000
PV/Land Value Ratio	78.3%	81.3%	84.3%	87.3%	90.3%	93.3%	96.3%

Based on our conversations with Mr. Timothy Smith, we conclude that an appropriate rental rate should result in a present value to land value ratio of 80% to 90%. We therefore conclude to a range of rental rates from 6.75% to 7.50% of land value is appropriate.

Our analysis of capitalization rates extracted from sales indicated a range from 7% to 8%, while the analysis of the ratio of the present value of the payment stream to land value indicates that a reasonable range is from 6.75% to 7.50%. Viewing both methodologies together, it appears that a rate from 7.0% to 7.5%, the overlap range, is appropriate for the subject lease.

We perform an additional test of reasonableness to conclude to a percentage rental rate within this range. This test recognizes that a prudent landowner would not lease their property on a long-term basis unless the present value of the rental payments plus an expected reversion upon expiration is equal to the current land value. Using a discount

rate of 9%, we test a range of percentage rental rates to determine what level of escalation in the value of the subject site would be required to create a sufficient reversion value that, when added to the present value of the income stream, exceeds the current value of the site.

At a rental rate of 6.75% of land value, the underlying site would be required to appreciate at an average rate of 5.95% per year (compounding) in order to meet this hurdle. Investor expectations of rental rate growth over the next 7 to 10 years range from 2% to 4% (average 2.44%) for Washington, DC office properties and from 0% to 5% (average 2.56%) for office properties. While expected income growth in the subject submarket is expected to allow for appreciation somewhat in excess of these parameters, average appreciation of 6% is clearly unreasonable. Required land price escalation to achieve feasibility within the range of rental rates from 7% to 8% is shown below:

Rental Rate %	7.00%	7.25%	7.50%	7.75%	8.00%
Required Land Value Escalation	5.65%	5.25%	4.75%	4.10%	3.10%

This analysis indicates that the range of feasible rental rates is somewhat higher than indicated by our present value to land value ratio analysis. Given that typical investor expectations of 60-year average appreciation are in the range of 3%, a rental rate of 8% of land value appears reasonable. However, our analysis does not consider the value of a possible reversion of improvements to the landowner upon expiration, which is typical for the marketplace. In addition, some investors utilize lower discount rates when calculating acceptable rates of return on land holdings as opposed to income streams. Accordingly, the required appreciation to meet feasibility for the landowner may be overstated slightly in this analysis. This methodology, however, illustrates the significant detrimental impact of level rents on a long-term lease from the landowner's perspective, as the value of the future payments diminishes significantly in the later years of the lease. As Jayne Shister of Cassidy & Pinkard Colliers noted, "escalation terms are the most difficult aspect of negotiating a ground lease," and long-term leases at level rent are highly unusual. This final analysis indicates that a somewhat higher rental rate is required to account for the level rent stipulated in the hypothetical lease terms.

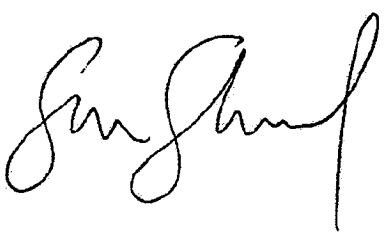
Considering all of these factors, it is our opinion that a market rental rate for the subject site, at the stipulated land value and lease terms, is **7.75% of land value, or $170,500 annually**.

Applying the previously utilized discount rate of 9% to a 60-year stream of annual payments of $170,500, paid in advance, results in a lump sum present value indication of the stream of rental payments at **$2,050,000** ($2,053,214, rounded). to 2,200,000 also is marked up by r undiscounted land value

A schedule of present value calculations supporting our analysis is appended to this letter.
Thank you for the opportunity to be of service.

Best regards,

Patrick C. Kerr, MAI, MRICS, SRA
Managing Director
Certified General Real Estate Appraiser
DC Certificate #GA00010274



Samuel D. Sherwood
Analyst

Harps & Harps, Inc.
1111 14th Street, NW, Suite 600, Washington, DC 20005
Tel.: (202) 682-2194 Fax: (202) 682-1579

M E M O R A N D U M

To: Malcolm Marshall, WMATA Real Estate

From: Richard Harps

Date: October 1, 2009

Re: WMATA 9th Street/Florida Avenue

Per your request, I have reviewed my original appraisal, to which this memorandum is an attachment. The review was related to the decision by the parties to use the developable area for the three WMATA parcels determined by Mr. Colbert, but based on a maximum five story building. It is my understanding that any additional developable area, over that envisioned by Mr. Colbert, gained by the developer throughout the approval process would result in a future adjustment in the final price. Additionally, we researched additional land sales and reviewed our adjustment for market conditions. As a result of this review, the following analysis summarizes the revised conclusions.

One – Re-compute Areas Using Colbert - Eliminating 6th Floor

Colbert Areas Sq/Lot		393/44	393/45	416/31	Combined
Site Area		3,799 sf	8,621 sf	15,956 sf	28,376 sf
Garage (B-1)		3,799 sf	8,621 sf	15,956 sf	
1st		3,600 sf	7,621 sf	14,456 sf	25,677 sf
AG 2nd		3,039 sf	6,100 sf	12,661 sf	
AG 3rd		3,039 sf	6,100 sf	12,661 sf	
AG 4th		3,039 sf	6,100 sf	12,661 sf	
AG 5th		0 sf	3,560 sf	6,074 sf	
AG 6th	OUT	0 sf	0 sf	0 sf	
Gross Floor Area AG (FAR Ø)		12,717 sf	29,481 sf	58,513 sf	100,711 sf

Two - Base Inclusionary Zoning On Entire WMATA Component

IZ requirement estimated at greater of 8% of GFA devoted to residential or 50% of bonus density. Under Colbert area assumptions, 8% of residential GFA would be controlling.

Allowing for 20% of the first floor and all of the upper floors to be residential GFA, IZ requirement would be

Colbert Areas – Harps Residential Assumption					
Sq/Lot		393/44	393/45	416/31	Combined
Site Area		3,799 sf	8,621 sf	15,956 sf	28,376 sf
1st	0.2	720 sf	1,524 sf	2,891 sf	
AG 2nd	1	3,039 sf	6,100 sf	12,661 sf	
AG 3rd	1	3,039 sf	6,100 sf	12,661 sf	
AG 4th	1	3,039 sf	6,100 sf	12,661 sf	
AG 5th	1	0 sf	3,560 sf	6,074 sf	
AG 6th		0 sf	0 sf	0 sf	
		9,837 sf	23,384 sf	46,948 sf	80,169 sf

Three – Review Land Sales, Research Additional Sales (Expand Geographic Search Area)

Land Value per FAR for mixed use project at subject's location, given its frontage along Florida Avenue and 9th Street, corners and proximity to Metro, estimated at $50 per FAR.

Summary of Land Value Subject to WMATA Tunnels and Inclusionary Zoning Using Revised Areas As Of August 31, 2009

GFA (FAR Ø) for Analysis		100,711 sf	
Value per FAR	$50/FAR	$5,035,550	$5,035,550
IZ Loss A			
Site Area Total		28,376 sf	
M/R FAR	3.5 FAR	99,316 sf	
M/R Max Density		80,169 sf	
% of M/R	8.00%	6,414 sf	
IZ Bonus Potential	0	0 sf	
50% Bonus	50.00%	0 sf	
Max of 8% of M/R OR 50% Bonus		6,414 sf	
Loss in Land Value	$50/FAR	$320,700	-$320,700
IZ Loss B		6,414 sf	
Operating Deficit	$30/FAR	$192,420	-$192,420
Additional Hard Costs Due To WMATA Tunnel		-$1,770,000	
Allow for Soft Costs	30%	-$530,000	
Total WMATA cost Differential		-$2,300,000	-$2,300,000
Net Land Value W/IZ+WMATA Tunnel			$2,222,430
Final Value Rounded			$2,200,000

M E M O R A N D U M

SUBJECT: Order of Magnitude (OME) DATE: 5/26/09
WMATA Property at
Florida Ave., NW
Washington, DC
Square 416, Lots 18 & 31
Square 393, Lots 44 & 45

FROM: LAND - Malcolm Marshall

TO: File

Introduction

An appraisal was performed for the subject property as of the effective date of August 9, 2007 concluding a fee simple value of $7,500,000 or approximately $57.50 per sq. ft. of FAR assuming that the sites will support the maximum density development of 130,014 sq. ft. An Order of Magnitude (OME) has been requested in order to establish a current value and rental rate for the subject properties. *Any development or use of the sites is predicated on the sites being clean of any unlawful levels of soil contaminants. The following market value estimates are for clean properties and are subject to change once cleanup costs (if any) are established.*

Even though a higher density project is permitted[1], the selected developer, Banneker, is proposing a stick-built, 5-story mixed use project for the subject properties because of the costs savings for stick-built construction. Under this proposal, there would be approximately 14,000 sq. ft. of retail and 104,457 sq. ft. of residential construction for the properties providing a total density of 118,457 sq. ft. for an effective FAR of 4.1. The District has apparently mandated that 20% of the proposed residential portion of the property be affordable dwelling units.

Washington
Metropolitan Area
Transit Authority

Value Assuming "By-Right" Density of 4.5 FAR & No Affordable Housing

As indicated, the August, 2007 appraisal report concluded that the properties had a value of $57.50 per sq. ft. of the maximum permitted density of 4.5 FAR. Due to poor market conditions, there has been only one sale in this submarket since the time of this appraisal report. A vacant lot in a mid-block location a block west of the subject property at 1932 9th Street, NW sold in January 31,

[1]The maximum density permitted on the site is 4.5, although development per a PUD would permit an 8 story structure at a maximum total density of 6.0 FAR of which no more than 2.0 FAR could be a commercial use.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005772

2008 for $1,400,000. The site had the same zoning as the subject property and was also situated in the Arts Overlay zone. The $1,400,000 price for the 5,436 sq. ft. parcel equates to a consideration of $57.23 per sq. ft. of FAR at the maximum permitted density of 4.5 FAR. The purchaser planned to build a museum at the site using 2.0 FAR that equates to a price of $128.77 per sq. ft. of FAR.

There have been no other reported sales in this submarket and very few arms-length sales in the general market area due to poor market conditions, although there have been some distressed sales at discounts of 20% to 35% to previous market values. Since the selected developer of the subject property is not expected to initiate full lease rental payments for several years, the market can be expected to recover at least some of the recent losses in market value.

Taking into account the proposed deferred commencement of lease payments, the subject properties are estimated to have a value of approximately $50 per sq. ft. of FAR for market rate units with stick-built construction and $45 per sq. ft. for highrise construction. The value of the retail portion of the project is estimated at $65 per sq. ft. of FAR for 1st level space and $35 per sq. ft. of FAR for 2nd level space. The estimated market value of the property assuming maximum density and no affordable housing is as follows:

Market Rate Residential Portion (116,014[2] FAR @ $45/FAR)	$5,220,000
Retail Portion (28,000 FAR @ $50/FAR)	$1,400,000
Value of Market Rate Portion	$6,620,000

Value Assuming "By-Right" Density of 4.5 FAR With Affordable Housing

As discussed, the District has apparently imposed a 20% affordable housing requirement. I do not profess to be an expert in the area of affordable housing, where property evaluations are generally evaluated based on sales of similar projects with affordable housing, but understand from our consultant, Eric Smart, that under this program the net effective economic cost for the affordable housing component, exclusive of possible tax abatement and tax credits, can be estimated at approximately $175,000 per affordable unit.[3] This cost ***may diminish*** the effective value of the properties for residential development if this cost is deducted from the estimated land value before consideration of affordable housing as shown on the following page.

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[2]130,014 total sq. ft. of permitted FAR (28,892 sq. ft. x 4.5 FAR) less 14,000 sq. ft. of retail FAR

[3]I have no working knowledge of the affordable housing requirements outlined above, but Eric Smart, who is more familiar with this affordable program, estimates the costs as high as $200,000 to $250,000 per affordable unit.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005773

Estimated Net Value:

Market Rate Residential Portion (92,811[4] FAR @ $45/FAR)	$4,175,000	
Retail Portion (28,000 FAR @ $50/FAR)	$1,400,000	
Value of Market Rate Portion	$5,575,000	
Affordable Housing Portion (23,203[5] FAR @ $175,000/FAR)	-$4,060,000	
Net Value	$1,515,000	

Please note that Eric Smart has indicated that the tax abatement and tax credits could offset any losses generated from the affordable housing component, and it is doubtful that the sites would be appraised by an outside appraiser at this value.

Value Assuming Developer's Density of 4.1 FAR With Affordable Housing

Even though a higher density project is permitted, the selected developer, Banneker, is proposing a stick-built, 5-story mixed use project for the subject properties because of the costs savings for stick-built construction. Under this proposal, there would be approximately 14,000 sq. ft. of retail and 104,457 sq. ft. of residential construction for the properties providing a total density of 118,457 sq. ft. for an effective FAR of 4.1. The District has apparently mandated that 20% of the proposed residential portion of the property be affordable dwelling units.

This proposal could be evaluated as follows:

Market Rate Residential Portion (83,566[6] FAR @ $50/FAR)	$4,178,000	
Retail Portion (14,000 FAR @ $65/FAR)	$910,000	
Value of Market Rate Portion	$5,088,000	
Affordable Housing Portion (20,891[7] FAR)	-$3,655,000	
Net Value	$1,433,000	

Please note that Eric Smart has indicated that the tax abatement and tax credits could offset any losses generated from the affordable housing component, and it is doubtful that the sites would be appraised by an outside appraiser at this value.

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[4]80% of 116,014 sq. ft. of the proposed residential development

[5]20% of 116,014 sq. ft. of the proposed residential development

[6]80% of 104,457 sq. ft. of the proposed residential development

[7]20% of 104,457 sq. ft. of the proposed residential development

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005774

Lease Rental Rate

The 2007 appraisal report estimated a market ground rental rate of 7% of land value. Because of the difficulty involved in financing leasehold interests in the current market, there have no known recent land lease transactions. It seems clear, however, that land lease rental rates have not diminished since the time of this appraisal report except in those situations where there are meaningful future rental increases. However, where the rent is fixed for 40 years, as proposed by the developer, the market rental rate is likely closer to the 7.5% to 8% range.

As distinguished from an appraisal, wherein the estimate of value advanced is supported by the presentation and analyses of factual and relevant data, an OME is usually based upon the appraiser's general knowledge of the realty market and/or a cursory overview of market activity within a subject's general vicinity. Under no circumstances should an OME be construed (or used) as an appraisal. The OME estimate also does not reflect valuation based on Environmental Assessment.

_____ _____

Malcolm Marshall Date
Head, Appraisal Branch
DC Certified General Real Estate Appraiser #10123

Approved and Accepted:

_____ _____

Mark K. Meister Date
Program Manager, Real Estate
Acting Director, Station Area Planning & Asset Management

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005775

M E M O R A N D U M

SUBJECT: Order of Magnitude (OME)
WMATA Property at
Florida Ave., NW
Washington, DC
Square 416, Lots 18 & 31
Square 393, Lots 44 & 45

DATE: 5/26/09

5/27 revision

FROM: LAND - Malcolm Marshall

TO: File

Introduction

An appraisal was performed for the subject property as of the effective date of August 9, 2007 concluding a fee simple value of $7,500,000 or approximately $57.50 per sq. ft. of FAR assuming that the sites will support the maximum density development of 130,014 sq. ft. An Order of Magnitude (OME) has been requested in order to establish a current value and rental rate for the subject properties. *Any development or use of the sites is predicated on the sites being clean of any unlawful levels of soil contaminants. The following market value estimates are for clean properties and are subject to change once cleanup costs (if any) are established.*

Even though a higher density project is permitted[1], the selected developer, Banneker, is proposing a stick-built, 5-story mixed use project for the subject properties because of the costs savings for stick-built construction. Under this proposal, there would be approximately 14,000 sq. ft. of retail and 104,457 sq. ft. of residential construction for the properties providing a total density of 118,457 sq. ft. for an effective FAR of 4.1. The District has apparently mandated that 20% of the proposed residential portion of the property be affordable dwelling units.

Washington Metropolitan Area Transit Authority

Value Assuming "By-Right" Density of 4.5 FAR & No Affordable Housing

As indicated, the August, 2007 appraisal report concluded that the properties had a value of $57.50 per sq. ft. of the maximum permitted density of 4.5 FAR. Due to poor market conditions, there has been only one sale in this submarket since the time of this appraisal report. A vacant lot in a mid-block location a block west of the subject property at 1932 9th Street, NW sold in January 31,

[1] The maximum density permitted on the site is 4.5, although development per a PUD would permit an 8 story structure at a maximum total density of 6.0 FAR of which no more than 2.0 FAR could be a commercial use.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

2008 for $1,400,000. The site had the same zoning as the subject property and was also situated in the Arts Overlay zone. The $1,400,000 price for the 5,436 sq. ft. parcel equates to a consideration of $57.23 per sq. ft. of FAR at the maximum permitted density of 4.5 FAR. The purchaser planned to build a museum at the site using 2.0 FAR that equates to a price of $128.77 per sq. ft. of FAR.

There have been no other reported sales in this submarket and very few arms-length sales in the general market area due to poor market conditions, although there have been some distressed sales at discounts of 20% to 35% to previous market values. Since the selected developer of the subject property is not expected to initiate full lease rental payments for several years, the market can be expected to recover at least some of the recent losses in market value.

Taking into account the proposed deferred commencement of lease payments, the subject properties are estimated to have a value of approximately $50 per sq. ft. of FAR for market rate units with stick-built construction and $45 per sq. ft. for highrise construction. The value of the retail portion of the project is estimated at $65 per sq. ft. of FAR for 1st level space and $35 per sq. ft. of FAR for 2nd level space. The estimated market value of the property assuming maximum density and no affordable housing is as follows:

Market Rate Residential Portion (116,014[2] FAR @ $45/FAR)	$5,220,000
Retail Portion (28,000 FAR @ $50/FAR)	$1,400,000
Value of Market Rate Portion	$6,620,000

Value Assuming "By-Right" Density of 4.5 FAR With Affordable Housing

As discussed, the District has apparently imposed a 20% affordable housing requirement. I do not profess to be an expert in the area of affordable housing, where property evaluations are generally evaluated based on sales of similar projects with affordable housing, but understand from our consultant, Eric Smart, that under this program the net effective economic cost for the affordable housing component, exclusive of possible tax abatement and tax credits, can be estimated at approximately $175,000 per affordable unit.[3] This cost ***may diminish*** the effective value of the properties for residential development if this cost is deducted from the estimated land value before consideration of affordable housing as shown on the following page.

---

[2]130,014 total sq. ft. of permitted FAR (28,892 sq. ft. x 4.5 FAR) less 14,000 sq. ft. of retail FAR

[3]I have no working knowledge of the affordable housing requirements outlined above, but Eric Smart, who is more familiar with this affordable program, estimates the costs as high as $200,000 to $250,000 per affordable unit.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005777

Estimated Net Value:

Market Rate Residential Portion (81,611[4] FAR @ $45/FAR)	$3,672,000
Retail Portion (28,000 FAR @ $50/FAR)	$1,400,000
Value of Market Rate Portion	$5,072,000
Affordable Housing Portion (20,403[5] FAR @ $175,000/FAR)	-$3,570,000
Net Value	$1,502,000

Please note that Eric Smart has indicated that the tax abatement and tax credits could offset any losses generated from the affordable housing component, and it is doubtful that the sites would be appraised by an outside appraiser at this value.

Value Assuming Developer's Density of 4.1 FAR With Affordable Housing

Even though a higher density project is permitted, the selected developer, Banneker, is proposing a stick-built, 5-story mixed use project for the subject properties because of the costs savings for stick-built construction. Under this proposal, there would be approximately 14,000 sq. ft. of retail and 104,457 sq. ft. of residential construction for the properties providing a total density of 118,457 sq. ft. for an effective FAR of 4.1. The District has apparently mandated that 20% of the proposed residential portion of the property be affordable dwelling units.

This proposal could be evaluated as follows:

Market Rate Residential Portion (83,566[6] FAR @ $50/FAR)	$4,178,000
Retail Portion (14,000 FAR @ $65/FAR)	$910,000
Value of Market Rate Portion	$5,088,000
Affordable Housing Portion (20,891[7] FAR)	-$3,655,000
Net Value	$1,433,000

Please note that Eric Smart has indicated that the tax abatement and tax credits could offset any losses generated from the affordable housing component, and it is doubtful that the sites would be appraised by an outside appraiser at this value.

---

[4]80% of 102,014 sq. ft. of the proposed residential development

[5]20% of 102,014 sq. ft. of the proposed residential development

[6]80% of 104,457 sq. ft. of the proposed residential development

[7]20% of 104,457 sq. ft. of the proposed residential development

Lease Rental Rate

The 2007 appraisal report estimated a market ground rental rate of 7% of land value. Because of the difficulty involved in financing leasehold interests in the current market, there have no known recent land lease transactions. It seems clear, however, that land lease rental rates have not diminished since the time of this appraisal report except in those situations where there are meaningful future rental increases. However, where the rent is fixed for 40 years, as proposed by the developer, the market rental rate is likely closer to the 7.5% to 8% range. project can't support

As distinguished from an appraisal, wherein the estimate of value advanced is supported by the presentation and analyses of factual and relevant data, an OME is usually based upon the appraiser's general knowledge of the realty market and/or a cursory overview of market activity within a subject's general vicinity. Under no circumstances should an OME be construed (or used) as an appraisal. The OME estimate also does not reflect valuation based on Environmental Assessment.

_____ _____

Malcolm Marshall Date
Head, Appraisal Branch
DC Certified General Real Estate Appraiser #10123

Approved and Accepted:

_____ _____

Mark K. Meister Date
Program Manager, Real Estate
Acting Director, Station Area Planning & Asset Management

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005779

SCOPE OF WORK [DRAFT]

FLORIDA AVENUE SITE

OWNER:	WMATA
LOCATION:	Florida Avenue, NW
LAND AREA:	28,892 sq. ft.
ZONING:	C-2-B in Arts Overlay Zone
LEGAL DESCRIPTION:	Square 416, Lots 18 and 31 and Square 393, Lots 44 and 45
IMPROVEMENTS:	Existing sf of actual improvements
TYPE OF REPORT:	Summary Appraisal Report
REQUIREMENTS:	The appraiser shall provide the fair market value of the above property and the fair market rental value of the property based on the existing improvements on the property.
COMMENTS:	The appraisal shall provide a fair market value per sf for each type of land use on the site. The appraisal shall further indicate the fair market rental value per sf for each type of existing land use on the site. The appraisal shall take into account any affordable housing existing on the site as required by the District of Columbia.

Harps & Harps, Inc.
1111 14th Street, NW, Suite 600, Washington, DC 20005
Tel.: (202) 682-2194 Fax: (202) 682-1579

M E M O R A N D U M

To: Malcolm Marshall, WMATA Real Estate

From: Richard Harps

Date: October 1, 2009

Re: WMATA 9th Street/Florida Avenue

Per your request, I have reviewed my original appraisal, to which this memorandum is an attachment. The review was related to the decision by the parties to use the developable area for the three WMATA parcels determined by Mr. Colbert, but based on a maximum five story building. It is my understanding that any additional developable area, over that envisioned by Mr. Colbert, gained by the developer throughout the approval process would result in a future adjustment in the final price. Additionally, we researched additional land sales and reviewed our adjustment for market conditions. As a result of this review, the following analysis summarizes the revised conclusions.

One – Re-compute Areas Using Colbert - Eliminating 6th Floor

Colbert Areas Sq/Lot		393/44	393/45	416/31	Combined
Site Area		3,799 sf	8,621 sf	15,956 sf	28,376 sf
Garage (B-1)		3,799 sf	8,621 sf	15,956 sf	
1st		3,600 sf	7,621 sf	14,456 sf	25,677 sf
AG 2nd		3,039 sf	6,100 sf	12,661 sf	
AG 3rd		3,039 sf	6,100 sf	12,661 sf	
AG 4th		3,039 sf	6,100 sf	12,661 sf	
AG 5th		0 sf	3,560 sf	6,074 sf	
AG 6th	OUT	0 sf	0 sf	0 sf	
Gr Flr Area AG (FAR Ø)		12,717 sf	29,481 sf	58,513 sf	100,711 sf

Two - Base Inclusionary Zoning On Entire WMATA Component

IZ requirement estimated at greater of 8% of GFA devoted to residential or 50% of bonus density. Under Colbert area assumptions, 8% of residential GFA would be controlling.

Allowing for 20% of the first floor and all of the upper floors to be residential GFA, IZ requirement would be

Colbert Areas – Harps Residential Assumption					
Sq/Lot		393/44	393/45	416/31	Combined
Site Area		3,799 sf	8,621 sf	15,956 sf	28,376 sf
1st	0.2	720 sf	1,524 sf	2,891 sf	
AG 2nd	1	3,039 sf	6,100 sf	12,661 sf	
AG 3rd	1	3,039 sf	6,100 sf	12,661 sf	
AG 4th	1	3,039 sf	6,100 sf	12,661 sf	
AG 5th	1	0 sf	3,560 sf	6,074 sf	
AG 6th	1	0 sf	0 sf	0 sf	
		9,837 sf	23,384 sf	46,948 sf	80,169 sf

Three – Review Land Sales, Research Additional Sales (Expand Geographic Search Area)

Land Value per FAR for mixed use project at subject's location, given its frontage along Florida Avenue and 9th Street, corners and proximity to Metro, estimated at $50 per FAR.

Summary of Land Value Subject to WMATA Tunnels and Inclusionary Zoning Using Revised Areas As Of August 31, 2009

GFA (FAR Ø) for Analysis		100,711 sf	
Value per FAR	$50/FAR	$5,035,550	$5,035,550
IZ Loss A			
Site Area Total		28,376 sf	
M/R FAR	3.5	99,316 sf	
M/R Max Density		80,169 sf	
% of M/R	8.00%	6,414 sf	
IZ Bonus Potential	0	0 sf	
50% Bonus	50.00%	0 sf	
Max of ^^		6,414 sf	
Loss in LV	$50/FAR	$320,700	-$320,700
IZ Loss B		6,414 sf	
Operating Deficit	$30	$192,420	-$192,420
Additional Hard Costs Due To WMATA Tunnel		-$1,770,000	
Allow for Soft Costs	30%	-$530,000	
Total WMATA cost Differential		-$2,300,000	-$2,300,000
Net Land Value W/IZ+WMATA Tunnel			$2,222,430
Final Value Rounded			$2,200,000

80.160
6,414
73,715

FOIA CONFIEDENTIAL TREATMENT REQUESTED

T. Hicks
~~[illegible]~~ M. Perry M. Marshall S. Goldin 9/29/09
~~[illegible]~~ O. Karim N. Bottigheimer R. Doggett
Y. Fuller K. Gada R. Harps
Ives

---

maybe I give up 6,590
+ 3,560
Jim Colbert 10,150 too readily

Check Rick

Harps
1. Recalibrate 12 sf to include small parcel
2. Can lease 1st two comps out
3. ~~Robert~~ Colbert lead to floors

Rick will call Malcolm with an unofficial number tomorrow –

Check Loyda

Blackout is Friday — for PD & RE
OR Neil can call a special meeting on the day of the Board

FOIA CONFIEDENTIAL TREATMENT REQUESTED

for any 12 sqft over 8,782 = $79.71
$80/SF

8,782 / 700,000

Maurice – apparent take into account 9% tax credit

Dev Fee goes up bec.

Bozzuto says:
Rent Concessions are permanent & go up
Maurice says that it is what his
underwriters require

FOIA CONFIEDENTIAL TREATMENT REQUESTED

New Construction

Representative Projects

~~Soft~~ as % of

	Developer Fee as % of total cost	Hard Cost		Tot
FL Ave	6.4	59	possibly been high land cost	[illegible]
Parkside	8	34		[illegible]
RI Ave C	3	46		[illegible]
4100 GA	12.4	52		[illegible]
~~Arthur Capper (12.1 no land cost)~~	~~no land cost~~	~~69~~	~~Skewed~~	~~4~~
GA Commons	8.7	41		2
St Martins Apts	11.9	43		2

9/24/

1. S.F. - land 124,000 is our number
2. 124,000 ~~$50~~
3. ~~2.~~ } $50
4. }
5. Rick to do (1) Cap rate + (2) 12 deduct +
6.

7. Omar to do
~~x~~ Metes & Bounds to Ed Medina

124,000 sf $50 12 deduct (rent

Family of 4

		weighted average sf			weighted average rent
2br	$1,849	913 nsf x 32	31,776	1.86 x 32	1.2 81.93
1 br	$1,643	646 nsf x 56	36,176	2.54 x 56	142.24
Studio	$1438	511 x 44	22,484	2.81 x 44	123.64
			90,436	132	347.81 = 2.63

685 sf

2br	1br	Studio
3,680	4800	7680
11,460	7500	1960
11,680	7620	6720
3920	5160	
4160	11120	
8480	36,200 ÷ 1	
4300		
43,680		

10/8/09

WMATA 9th

APPRAISAL OF LOTS 44 AND 45 IN SQUARE 393 AND LOT 31 IN SQUARE 416 NORTHWEST, WASHINGTON, DC AS OF AUGUST 31, 2009 FOR WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005788

Harps & Harps, Inc.
1111 14th Street, NW, Suite 600
Washington, DC 20005-5603
Tel. 202-682-2194 Fax 202-682-1579

October 9, 2009

Mr. Mark K. Meister
Office of Station Area Planning
And Asset Management
Washington Metrorail Area
Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Re: Lots 44 and 45 in Square 393 and Lot 31 in Square in 416, vacant lots on Florida Avenue between 7th and 9th Streets, Northwest, Washington, District of Columbia.

Dear Mr. Meister:

Pursuant to your request, we have arrived at an opinion of the fair market value of the parcels set forth above subject to the WMATA easements. The intended user of the report is the client, the Washington Metrorail Area Transit Authority (WMATA). The intended use of the report is to assist the client in determining a course of action regarding the possible sale of the property. The effective date of this analysis is August 31, 2009.

The properties, located on the south side of Florida Avenue between 7th and 9th Streets, NW, are vacant lots situated above a WMATA tunnel. Given the prior uses to which the subject sites and the adjacent sites have been put to over the years, including gas stations, restaurants, industrial and parking, there may be environmental contaminants impacting the properties. This appraisal assumes that the subject sites are clean of environmental contamination. This limitation, which could have an impact on the value conclusion set forth herein, should be considered by the client in evaluating the conclusions set forth.

As a result of the analysis, we are of the opinion that the market value of the property, as of August 31, 2009, is as set forth on the Summary of Conclusions located on pages 5 and 6 of the attached summary report, of which this letter is an integral part. The extraordinary assumption and client instructions regarding extraordinary cost of constructing over the WMATA tunnel and the client instruction regarding development density (Gross Floor Area or FAR sq. ft.), development height and combined development are critical components of the analysis and

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005789

have a direct impact on the valuation. The analysis and reasoning leading to the conclusions, along with the assumptions and conditions on the conclusions, which may be material, are set forth within the attached summary report, containing 57 pages.

We trust this information is of assistance to you. If you have any questions or comments, please contact us. Thank you for this opportunity to be of service.

Very truly yours,

Richard R. Harps
DC Certified General License #10003

Stephen C. Brennan
DC Certified General License #10011

Attachment

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005790

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005791

SUMMARY OF CONCLUSIONS

Subject Properties	Three unimproved lots located on the south side of Florida Avenue between 7th and 9th Streets, NW, Washington, DC
Legal Description	Lots 44 and 45 in Square 393, and Lot 31 in Square 416, District of Columbia
Client	Washington Metropolitan Area Transit Authority
Date of Valuation	August 31, 2009
Date of Inspection	July 30, 2009
Date of Report	October 9, 2009
Property Rights	Fee Simple Interest subject to easements and restrictions to be retained by WMATA
Site Areas	Square 393 Lot 44 - 3,799 Sq. Ft. Square 393 Lot 45 – 8,621 Sq. Ft. Square 416 Lot 31 – 15,956 Sq. Ft.
Zoning	Arts/C-2-B
Improvements:	None, Vacant lots
Highest and Best Use	Assemble with adjacent land and develop a mixed-used complex.
Extraordinary Assumption	Extraordinary hard costs associated with building over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA.
Client Instructions	One - Development density (Gross Floor Area or FAR sq. ft.) to be valued was to be the total GFA estimated by Eric Colbert EXCLUDING the 6th floor on Lot 45 in Square 393 and EXCLUDING the 6th floor on Lot 31 in Square 416. Two – Analysis of Inclusionary Zoning is to assume the three sites are considered as a unit and not sold separately.

As a result of our analysis, we have reached the following opinions, all as of August 31, 2009, the effective date of this appraisal, an all subject to the WMATA tunnel and easements and considering the impact of the Inclusionary Zoning.

Market Value of Land Subject to WMATA Easements and Tunnel and Inclusionary Zoning - $2,200,000.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005792

This opinion is subject to all general and specific assumptions and conditions contained within the report, including an environmental assumption. Please note that the conclusions reached were based on the information as set forth herein, and are specifically and generally limited by the assumptions and conditions set forth within the report and subject to the certification attached hereto. Additional analyses, in the event that additional or new information is made available, are outside the scope of this assignment, and supplementary arrangements would be necessary before additional analyses could be undertaken. The assumptions and conditions set forth throughout the report are an integral part of this analysis and have a bearing on the conclusions reached herein.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005793

ASSUMPTIONS AND LIMITING CONDITIONS

This analysis, the function of which is to assist the client in determining a course of action regarding the possible sale of the property, has been made with the following general and specific assumptions:

One extraordinary assumptions was utilized in this analysis - The extraordinary hard costs associated with building over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA.

Two Client Instruction were utilized in this analysis. One – the Gross Floor Area (FAR sq. ft.) to be valued was to be the total GFA estimated by Eric Colbert EXCLUDING the 6th floor on Lot 45 in Square 393 and EXCLUDING the 6th floor on Lot 31 in Square 416. Two – the impact of the Inclusionary Zoning is to be reviewed as if all three sites are sold and developed as a unit and not sold and developed separately.

This analysis is not to be used in connection with a Real Estate Syndicate(s) or Securities related activity. Real Estate Syndicate means a general or limited partnership, joint venture, unincorporated association or similar organization formed for the purpose of, and engaged in, investment or gain from an interest in real property, including but not limited to a sale, exchange, trade or development of such real property on behalf of others and which is required to be registered with the United States Securities and Exchange Commission or any state regulatory agency which regulates investments made as a public offering. Securities related activity means but is not limited to transactions involving Real Estate Investment Trusts, Limited Partnerships, Mortgage Backed Securities and any other transaction which is subject to the Securities Exchange Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Advisors act of 1940, or state Blue Sky or securities laws or any amendments thereto.

1. This analysis assumes that there are no unusual soil or property characteristics, including any environmental implications, not set forth herein, which would adversely impact the ability of an owner to utilize the site or property for any legally permitted use.

2. Except as set forth herein, the analysts have not been informed of, nor has any knowledge of, the existence of any environmental or health impediment, which if known, could have a negative impact on the market value of the property or could subject the property or its past, present or future owners or agents or other parties to the requirements of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), and the subsequent Superfund Amendments Reauthorization Act (SARA). It is assumed that there has been no contamination of the soil from any existing or former oil tank or any other tank or equipment utilized in the operation of the buildings or any use of the building. This appraisal assumes that the property has met, or will be able to meet, all requirements of laws pertaining to environmental considerations, as they may pertain to the subject. It is also assumed that the property will comply with all

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005794

provisions of Maryland and Federal laws and regulations regarding underground and above grade storage tanks as they pertain to subject

It is recommended that, prior to any transfer of title or other interest in the property, all appropriate studies, including but not limited to environmental studies, be performed, that all problems and/or conditions that are subsequently uncovered be corrected, mitigated, or otherwise reduced in liability, prior to any transfer, and that the parties seek appropriate professional and legal counsel regarding environmental and other issues.

3. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable.

No opinion is intended to be expressed for matters that require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.

4. The property is analyzed free and clear of any and all liens or encumbrances unless otherwise stated. Responsible ownership and competent property management are assumed.

5. This analysis assumes that all real estate taxes, personal property taxes, or other taxes owed to any governmental or other body are current. This analysis has not looked at, nor reviewed, any transfers of any partnership interests in the property and this report assumes no adverse effect on values due to the nature of property ownership.

6. The analysis assumes that current insurance policies are adequate to protect all parties with an interest in the property.

7. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy. It is assumed that all information known to the client and relative to the valuation has been accurately furnished and that there is no undisclosed information or documents affecting the use of the property or the valuation herein.

8. All engineering information is assumed to be correct. Maps, plats and exhibits included in the report are for illustration only as an aid in visualizing matters discussed within the report. Area of sites herein were taken from City records. Maps, right-of-way drawings and other information supplied by the client was relied upon in the analysis. Exhibits should not be considered as surveys, or relied upon for any other purpose, nor should they be removed from, reproduced, or used apart from this report.

9. According to the November 15, 1985 National Flood Insurance Maps, subject lies within Zone C, which is an area of minimal flooding. This map is for flood insurance purposes only; it does not necessarily show all areas subject to flooding in the community or all planimetric features outside the special flood hazard areas.

10. It is assumed that all required licenses, certificates of occupancy, certificates of need, consents, or other legislative or

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005795

administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based, including all necessary zoning approvals for any building.

11. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings, if any, must not be used in conjunction with any other analysis and are invalid if so used.

12. The liability of Harps & Harps, Inc. is limited to the client only, not subsequent parties or users, and to the amount of the fee actually received by the appraisers. Further, there is no accountability, obligation or liability to any other party. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of the report and the assignment. The appraisers are in no way to be responsible for any costs incurred to discover or correct any deficiencies of any type present in the property, physically, financially and/or legally. In the event the report is placed in the hands of a third party, it is required that such party be made cognizant of any and all limiting conditions resulting from the basis of appraiser's employment and discussions related thereto as well as those set forth in the report. Acceptance of and/or use of this analysis report by the client or any third party constitutes acceptance of the above conditions.

13. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the analysts, and in any event only with proper written qualification and only in its entirety.

14. The analysts herein by reason of this analysis are not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.

15. Neither all nor any part of the contents of this report (especially any conclusion as to value, the identity of the analyst, or the firm with which the analyst is connected) shall be disseminated to the public through advertising, public relations, news, sales or other media without the prior written consent and approval of the analysts.

16. The appraisers reserve the right, subject to agreement for time and fee, to make such adjustments to the analyses, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.

17. The value reported in dollars is on the basis of the currency prevailing as of the effective date of the analysis. The values estimated in this analysis are based on economic, physical and tax conditions existing as of the effective date of analysis.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005796

PART I – PURPOSE OF APPRAISAL AND GENERAL DATA

Appraisal of Lots 44 and 45 in Square 363, and Lot 31 in Square 416, vacant lots situated on the south side of Florida Avenue between 7th and 9th Streets, Northwest, Washington, District of Columbia.

Purpose of the Appraisal

The purpose of the appraisal is to estimate the fair market value subject to assumptions and conditions specified. The date of value is August 31, 2009. The function of the appraisal is to assist the client in determining a course of action involving a possible sale of the property. The analysis is being presented in a summary report.

For the purposes of this analysis, market value is defined as "The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) Buyer and seller are typically motivated; (2) Both parties are well informed or well advised and acting in what they consider their own best interest; (3) A reasonable time is allowed for exposure in the open market; (4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."[1] In this case the value opinions are limited by an environmental assumption that the property is not impacted by contaminants that would materially affect the ability to develop the site or materially impact demolition and/or excavation costs.

Date of Appraisal and Report

The effective date of this appraisal is August 31, 2009. The exterior of the property was inspected on July 30, 2009. The analysis was performed between July and October 2009. The date of the report is October 9, 2009.

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[1]General definition used for federally related financial institutions and set forth in the Federal Register, Vol. 55 No., 165 August 1990, section 34.42.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005797

Client, Intended use and Intended Users

The client in this appraisal is WMATA, the owner of the property. The intended user of the report is the client. The intended use of the report is to assist the client in determining a course of action regarding the possible sale of the property.

Property Rights Appraised

The property rights appraised consist of fee simple interest subject to existing WMATA easements and restrictions relating to the Metrorail tunnels and underground easements affecting the sites. Applicable definitions are:

> Fee Simple Estate: "Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat."[2]
>
> Easement: "An interest in real property that conveys use, but not ownership, of a portion of an owner's property."[3]

The WMATA easements are permanent underground easements for the construction, support and operation of a regional rapid rail transit system, and restrict the mass and density of any structure that may be constructed above the easement and within its zone of influence. The purpose of this analysis is to estimate the market value of the property interests free and clear of all trusts, but subject to these easements. The effect, if any, which any existing trust might have on the potential "price" of the property is not considered pertinent to the estimate of market value of the property, and all existing trusts are being disregarded.

No title report was furnished the appraisers, and it is assumed that, except for the WMATA easements as set forth herein, there are no adverse easements or encumbrances that affect the property. It is assumed for the purposes of this analysis that, except for the aforementioned WMATA easements, any other easements, rights-of-way, encroachments, projections, occupancies, etc., which exist or may be found to exist in a current or future title search of the property would have no detrimental effect on the ability of an owner to utilize the property for its highest and best use, including but not limited to assembly, development, sale, use and occupancy, or any other use.

---

[2] Dictionary of Real Estate Appraisal, 4th Edition, The Appraisal Institute, Chicago, Illinois, 2002, pg. 113.

[3] ibid, pg. 90

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005798

Extent of Data Collecting, Confirming, and Reporting

The first step in the analysis was to inspect the subject property. Next, an investigation of pertinent market data was undertaken. Market surveys of comparable data were undertaken. Sales of similar properties were researched using published sources, such as Comps Inc., CoStar, MRIS and First American CoreLogic and court records. Discussions with agents, and other individuals familiar with this market and the subject property were held. The data compiled was analyzed, and the data considered susceptible of comparison was verified, where possible, by the grantees, grantors, or brokers, as well as through recorded information at the D.C. Recorder of Deeds office and other sources as specified in the report. The data was used to arrive at the estimated value of the fee simple interest of the property. Excluded from the scope are issues that are outside the scope of these appraisers' expertise, such as, but not limited to, environmental considerations and other considerations set forth in the report.

Extraordinary Assumptions

This analysis utilizes an extraordinary assumption that has a direct impact on the conclusions set forth herein. The extraordinary hard costs associated with building over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA.

Client Instruction

Per the instruction of the client, the Gross Floor Area (FAR sq. ft.) to be valued was to be the total GFA estimated by Eric Colbert EXCLUDING the 6th floor on Lot 45 in Square 393 and EXCLUDING the 6th floor on Lot 31 in Square 416, and the Inclusionary Zoning impact is to be computed as if all three sites are sold and developed together as a unit and not sold and developed separately.

Personalty, Equipment and Fixtures

The sites are vacant and there are no personalty, equipment or fixtures onsite.

History of the Property

WMATA acquired the sites over 25 years ago. There have reportedly been no recent arms length sales transactions since the purchases and the properties are not on the market as of the date of valuation. In 2007 WMATA received an unsolicited bid for the sites. WMATA did not accept the bid but sent out an RFP for the sites to obtain competitive bids. In 2008 WMATA selected a bid from Banneker Ventures, LLC to develop the sites. Banneker proposed to build 104 apartments and 11,750 square feet

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005799

of ground-floor retail and arts space. WMATA is currently in the process of negotiating an agreement with Banneker.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005800

Real Estate Assessment and Taxes

Real estate taxes in the District of Columbia are paid on a Tax Year basis (October 1 through September 30), and are based on an assessment of 100% of market value as determined by the Assessor. The recent assessment history is as set forth below:

Real Estate Assessment

Square 393 Lot 44	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$1,052,590	$1,052,590	$1,052,590
Improvements	$0	$0	$0
Total	$1,052,590	$1,052,590	$1,052,590

Square 393 Lot 45	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$2,388,620	$2,388,620	$2,388,620
Improvements	$0	$0	$0
Total	$2,388,620	$2,388,620	$2,388,620

Square 416 Lot 31	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$4,420,930	$4,420,930	$4,420,930
Improvements	$0	$0	$0
Total	$4,420,930	$4,420,930	$4,420,930

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005801

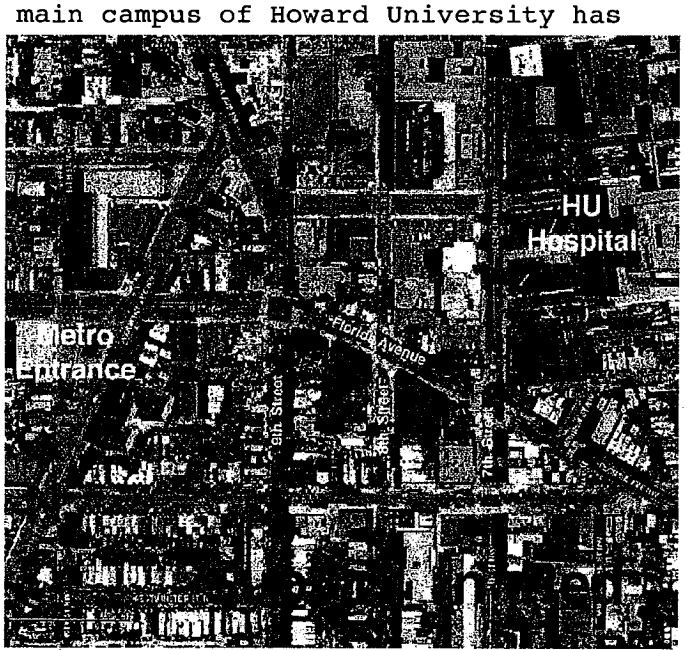
PART II – FACTUAL DATA

Legal Description

The properties are situated on three lots in two squares; Lots 44 and 45 in Square 363 and Lot 31 in Square 416. The sites are located on the south side of Florida Avenue between 7th and 9th Streets, NW.

Neighborhood Description

The subject sites are located in the Howard University and Shaw/U Street submarket of Northwest, DC, with the LeDroit Park neighborhood to the east and 14th Street/U Street corridor to west. The area just to the north of Florida Avenue had historically been a light industrial, storage and warehouse area, located along Georgia Avenue and Sherman Avenue, extending from Florida to the south up to Euclid Street on the north. Northeast of subject the main campus of Howard University has been the predominant landowner for over 140 years. West and north of the area, uses are typically moderate density residential (row houses, flats and apartments) with strip commercial uses along Georgia Avenue, Florida and U Streets. South of subject, the expansion eastward of the Shaw redevelopment trend continues with new and renovated residential units predominating. New and renovated commercial uses are principally located along U Street.



Aerial Map – DC Property Quest with Annotations

Subject's immediate blocks consist of the three story office building of the DC Housing Finance Agency at the northeast corner of 9th and Florida Avenue, a vacant two story boarded up commercial building at the northwest corner of 9th and Florida, small commercial row buildings along the east and west sides of 9th Street south of Florida Avenue. The north side of Florida between 7th and 9th Streets has a mixture of one, two and three story commercial structures occupied by carryout restaurants, offices and retail users. A CVS store is located

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005802

at the southwest corner of 7th and Florida Avenue. Eighth Street, south of Florida Avenue is improved with a Zipcar rental car parking lot, a new six-unit condominium, a small vacant lot for sale and several small residential row buildings. Eighth Street north of Florida Avenue is improved with a carryout restaurant, a nightclub, residential flats and parking lots. The condition of the buildings in subject's neighborhood ranges from boarded-up and vacant, to renovated and good. The commercial building at the northeast corner of 7th and Florida was recently remodeled and is currently for lease with the Douglas Development Company.

Access to the area is good. Georgia Avenue affords direct access to Montgomery County north of subject and to Downtown Washington to the south (via 7th Street). U Street and Florida Avenue offer easy east-west vehicular access. Metrobus routes along Georgia Avenue and U Street are available and the Metrorail has station entrances at 10th and U Streets, and 7th and S Street, both less than three blocks from subject.

During the late 1980s and early 1990s, the area was the focal point of a major re-zoning effort on the part of the City, during which most of the industrial zoned land (C-M-1, C-M-2 and C-M-3) in the area was changed to C-2-A, C-2-B, C-3-A and CR, all within an ARTS overlay south and west of subject, that gave bonuses for residential and preferred uses and significantly limited new industrial uses. Subject's immediate area was rezoned to C-2-B/Arts.

Howard University has occupied its campus east of Georgia Avenue for over 140 years, and continues to expand its campus area. The former Wonder Bread bakery structure, located north of subject on the east side of Georgia Avenue at Bryant Street, was converted to office and retail and subsequently acquired by the University in 1993. The University owns approximately 70% of the total private land between Georgia Avenue, V Street, Sherman Avenue and Barry Place. Two large dormitories have been constructed at Barry Place and much of the remainder is planned for residential and retail uses.

The major trend in this market continues to be the expansion and growth of the residential market, with numerous sites being developed with condominiums and apartments, and significant redevelopment and renovation of the retail commercial uses along U Street south of subject. An eight story 118 unit two-tower condominium was completed in 2008 just north of subject at 919 and 929 Florida Avenue. Broadway Management, Inc. has planned for 750 residential units in the immediate area under a planned unit development. The WMATA site at between 7th and 9th Streets on Florida Avenue is proposed for 104 apartment units and 11,750 sq. ft. of retail and arts.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005803

The trend of residential renovations and redevelopment continues, but the pace has slowed considerably in the past two years. As of the date of valuation Broadway Management, Inc. has not broken ground on their three planned developments in the neighborhood. In July 2009, a foreclosure notice was filed on a planned 29-unit condominium development at 11th and V Streets, NW. A number of developers have pulled out of the condominium market while others have converted planned condominium buildings into apartment buildings. An 11,942 sq. ft. site at 2143 9th Street was under contract to a residential developer in the summer of 2006. The developer backed out due to the sluggish residential market and the site sold a year later for 25% less than the former contract price. Sales in the past year at the 162 unit Rhapsody Condominiums just north of subject at 2120 Vermont Avenue indicate a 15% drop in sale prices since 2006. The Floridian Condominium, at 919 and 929 Florida Avenue, has seen slow sales even with deep discounts to attract purchasers. The owners of the building are currently having problems with lenders that have prevented recent buyers from settling on their purchases. The current recession and tight financial market has made it difficult for developers and purchasers to obtain financing, further slowing down development in the area.

Looking east along the 700 and 800 blocks of Florida Avenue. Subject sites are on the right. 7/30/09

Looking south along the 1900 block of 9th Street, NW Subject on left. 7/30/09

While the condominium and residential markets have seen lower prices and less activity in the past year, subject's location near Howard University, the U Street retail corridor and within walking distance of two Metrorail stations is considered a desirable location for a mixed-use building. New development is planned for sites near subject. A new towncenter development is planned for a large site in the 2200 block of Georgia Avenue to the northeast. These new mixed-use developments will bring additional retail and foot traffic to the neighborhood. Therefore, subject's site is well situated

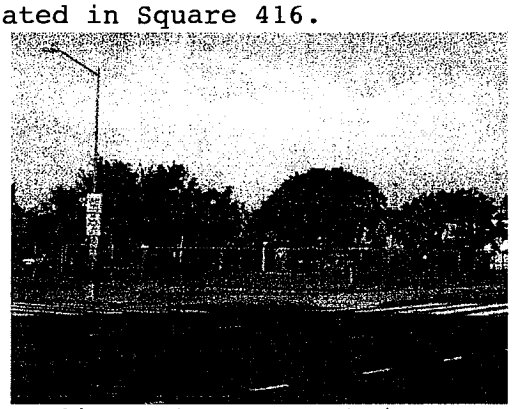
FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005804

and would be a desirable location for a mixed-use property once the economy recovers from the current recession.

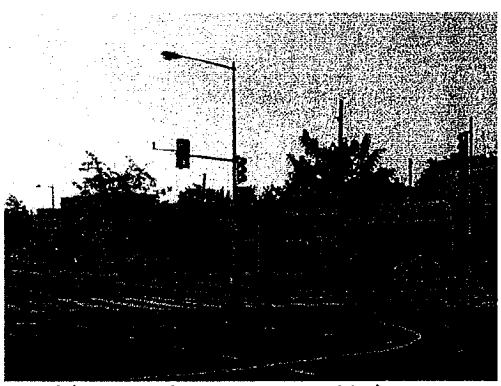
Site Description

Subject's sites are located on the south side of Florida Avenue between 7th and 9th Streets. Two lots are located in Square 393 and one large lot is located in Square 416.

Lot 45 in Square 393 contains 8,621 sq. ft. of irregularly shaped land with 75 feet of frontage on 8th Street, 100 feet of frontage on Florida Avenue and 108 feet along a 10-foot wide side alley to the west.



Looking southwest at Lot 45 in Square 393 on the southwest corner of 8th and Florida Avenue, NW. 7/30/09



Looking southeast at Lot 44 in Square 393. 7/30/09

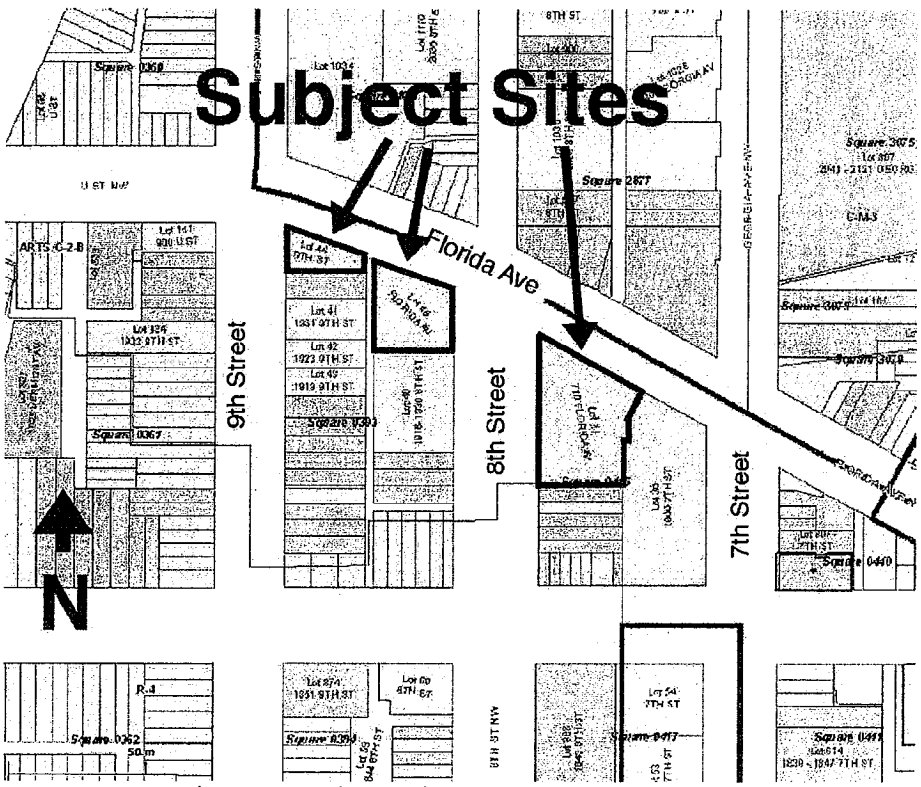
Lot 44 in Square 393 contains 3,799 sq. ft. of irregularly shaped land with 100 feet of frontage on Florida Avenue, 57 feet on 9th Street and 23 feet on a 10-foot wide side alley.

Lot 31 in Square 416 contains 15,956 sq. ft. of irregularly shaped land with 114 feet of frontage on Florida Avenue and 177 feet of frontage on 8th Street.

Looking southeast at Lot 31 in Square 416, on the southeast corner of 8th and Florida Avenue, NW. CVS in background. 7/30/09

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005805

The sites are level and on grade with street frontages. According to the most recent flood insurance rate map effective November 15, 1985, the subject sites lie within Zone C, an area of minimal flooding. The appraisers were not furnished with any report of soil conditions, and this appraisal assumes that there are no adverse soil or sub-soil conditions that would cause unusual construction problems.



Location of subject sites From DC Property Quest

No environmental information on the site was made available and the appraisers are not experts in environmental matters. The sites have been used as parking lots and used car lots. Whether the construction of the Metrorail tunnel resulted in the removal of any environmental contamination is not known. If the site were to be redeveloped by any prudent developer, the potential for environmental contamination of the soil should be considered. The conclusions set forth herein are predicated upon an environmentally clean property. If information regarding environmental factors is made available, the conclusions set forth herein are subject to change.

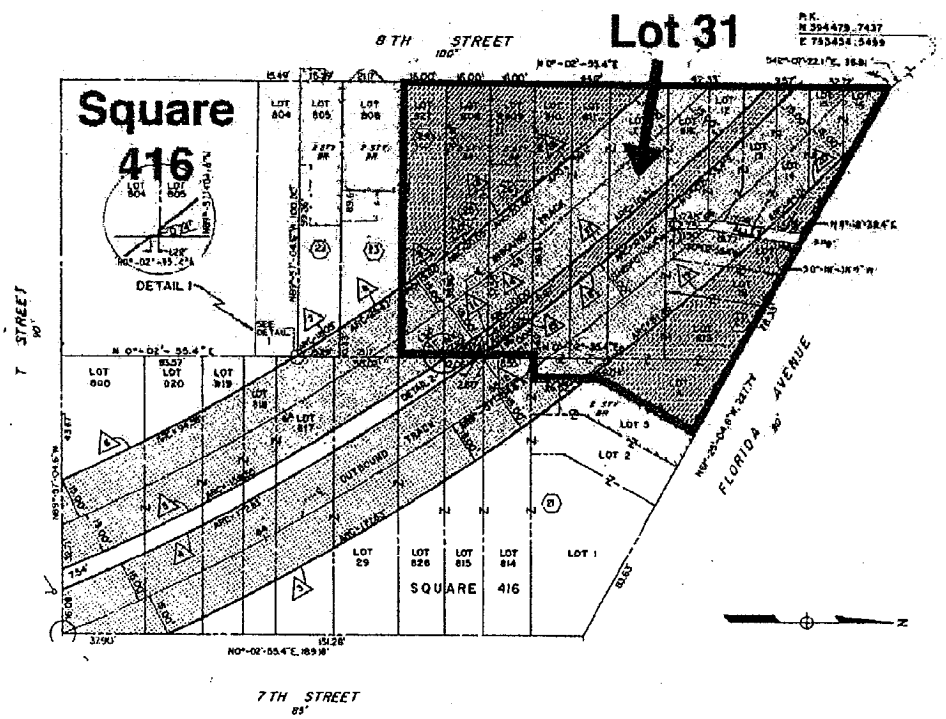
The sites appear to be served with all underground utilities. No title report was furnished to the appraiser, and

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005806

it is assumed that there are no detrimental easements or encumbrances that adversely affect the property.

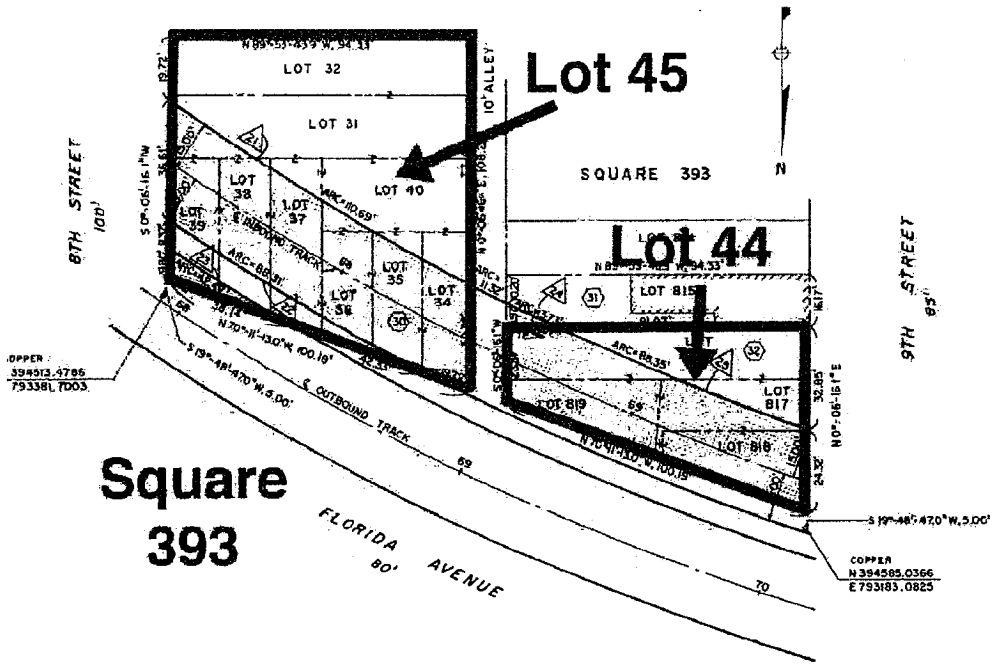
The sites are currently fenced-in along the perimeters. Seventh, Eighth and Ninth Streets and Florida Avenue are fully improved streets with sidewalks, curbs and gutters. All Streets are two-way streets. Street rights-of-way, according to Baist's Atlas for the sites, are 100 feet on 8th Street, 85 feet of 9th Street, 85 feet on 7th and 80 feet on Florida Avenue. There is a 10-foot alley separating Lots 44 and 45 in Square 393.

The principal factor affecting the subject sites is the Metrorail tunnel and easement running along the Florida Avenue frontage (northern portion) of the sites. Copies of sections of the right-of-way drawings, set forth below, show the relation of the underground easements and the sites.



On Lot 31 in Square 416, the two underground tunnel easements split the site from north to site.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005807



On Lot 44 in Square 393, the underground tunnel easement occupied the majority of the site and the entire frontage along Florida Avenue on the north. On Lot 45 in Square 393, the underground tunnel easement occupies the majority of the northern portion of the site, with a small area between the outbound track easement and the inbound track easement available for footings or supports, subject to WMATA restrictions and on tunnel and easement impact.

The distance from the surface to the upper level of the easements on all the properties appears to range from 18 to 20 feet, allowing, according to information from WMATA, for one level of below grade structure to be placed above the underground easements, again, subject to WMATA restrictions and on tunnel and easement impact.

According to the analysis from Mr. Colbert, the proximity of the tunnel and the likely reviews and restrictions on development above the tunnel will impact the maximum density that can be put above the tunnel and will cause an increase in the overall construction cost of the project. Mr. Colbert estimated that the tunnel will reduce the maximum likely density on each of the sites, taken as separate development sites, to from 3.35 FAR to 4.24 FAR, as will be shown in a later section of the report. The impact on the overall costs of the development was estimated by Mr. Colbert at from 20% to 25%, i.e., the total costs of developing the three sites, due to likely special foundation requirements above the tunnel,

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005808

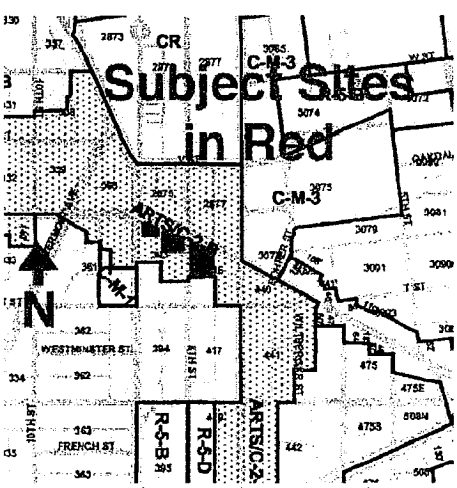
additional reviews, and other differences between normal mid-rise construction and construction over the tunnels.

WMATA's engineers have determined that the additional costs would be approximately $1,770,000 for the project as proposed. This level of additional cost is significantly less than that envisioned by Mr. Colbert, but, is reportedly based on the proposed development of the unified sites, rather than three separate developments. Per the instruction of the client, this analysis will utilize the cost figure derived by WMATA engineers, of $1,770,000, for the additional costs of constructing over and complying with, the various WMATA tunnels, easements and requirements. It would not be unreasonable for WMATA to adjust this number to reflect actual additional costs as the project proceeds, or, in the alternative, to negotiate a fixed 'additional costs' with the developer, after further consultation with appropriate cost estimators. As stated, for the purpose of this analysis, WMATA's estimate of $1,770,000 is adopted. This estimate of additional hard costs is adjusted upward by 30% to account for all of the soft costs associated with developing these complicated properties, resulting in a total deduction of

$1,770,000 x 1.3	=	$2,301,000
Rounded to		$2,300,000

Zoning and Land Use Controls

Subject's sites are zoned Arts/C-2-B, a commercial district designed to serve commercial and residential functions similar to the C-2-A District, but with high density residential and mixed uses. The district shall be compact and located on arterial streets, in uptown centers, and at rapid transit stops. The building use may be entirely residential or a mixture of commercial and residential.



DC Online Zoning Map with annotations

The sites are also included in the Uptown Arts Overlay District. The purpose of the Arts Overlay District is to encourage a scale of development, a mixture of building uses and other attributes such as safe and efficient conditions for pedestrians and vehicular movement. Specific requirements of

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005809

the district, set forth in Chapters 7 and 19 of the Zoning Regulations, are summarized as follows:

Summary of Arts/C-2-B Zoning Requirements

Height	65 feet maximum
Floor Area Ratio (FAR)	3.5 - Apartment house or other Residential
	1.5 - other permitted uses.
FAR with Bonus for Preferred Uses	4.5
Percentage of Lot Occupancy	80% maximum for residential uses.
Rear Yard	15 ft. minimum, below 20 foot height may be measured from center line of rear alley, above 20 foot height must be measured from rear lot line.
Side Yards	None required for other than one-family detached and one-family semi-detached dwellings, but if provided 2 inches per foot of height with a 6 foot minimum.
Parking:	
Apartment	1 for each 3 dwelling units
General Office	In excess of 2,000 sf, 1 for each additional 1,800 sf GFA and cellar floor area.
Medical/Dental	Twice the number of spaces required for general office use.
Retail/Service	In excess of 3,000 sf, 1 for each 750 sf GFA and cellar floor area.
Loading-Requirements	
Office	20,000 to 50,000 sq. ft.: 1 berth-30 ft., 1 platform-100 sq. ft., 1 service space at 20 ft.
	>50,000 to 200,000 sq. ft: 2 berth-30 ft., and 2 platform-100 sq. ft., 1 service space at 20 ft.
Residential	50 or more dwelling units: 1 berth-55 ft., and 1 platform-200 sq. ft., 1 service space at 20 ft.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005810

Inclusionary Zoning

Subject's sites are also included in the Inclusionary Zoning regulations of Chapter 26 of the Zoning Regulations. Under Inclusionary Zoning there is a mandatory housing requirement for any new development consisting of 10 or more units. The developer of these sites is required to set aside a certain percentage of units for low and moderate-income households. The developer is given bonus density of 20% more than is allowed under matter of right developments to compensate for building low and moderate-income housings. As of the date of valuation the Inclusionary Zoning requirements have not been enacted. The Inclusionary Zoning requirements shall become effective on the date of publication of the notice of final rulemaking (5/15/2009) in the D.C. Register, but pursuant to and with the exception of 225, shall not become applicable until ninety days after such publication or the date on which the final Maximum Rent and Price Schedule is published in the D.C. Register, whichever is later. The Maximum Rent and Price Schedule was published August 14, 2009. As of the date of the report, the Maximum Rent and Price Schedule had been published and 90 days had passed since the publication of the Final Rulemaking. As of the date of value, the impending implementation of the Inclusionary Zoning provisions was expected by the market and would have been considered by any prudent purchaser.

WMATA's second instruction was to assume that the total site would be used as the basis for the Inclusionary Zoning computation and that a sale of the individual parcels would not be entertained. Therefore, while it would be possible to develop Lot 44 in such a way as to not result in an IZ requirement, this analysis utilizes the total area of all three lots for the IZ requirement. The first test for required IZ density is 8% of the residential density in the project. The second test is 50% of the bonus density attributable to IZ. As the sites, per the WMATA instruction to use only a five story building, considering the impact of the WMATA tunnel can achieve only a maximum envelop of a 3.54 FAR, there is no effective place to put any potential bonus density on these three sites. Therefore, the controlling test would be 8% of the residential density.

Using Colbert's adjusted areas, the total residential density on the sites would be 80,169 sq. ft. of GFA, as shown below.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005811

Residential Density Computation (Allow 20% of 1st Floor)

Sq/Lot		393/44	393/45	416/31
Site Area		3,799 sf	8,621 sf	15,956 sf
1st	20%	720 sf	1,524 sf	2,891 sf
AG 2nd	100%	3,039 sf	6,100 sf	12,661 sf
AG 3rd	100%	3,039 sf	6,100 sf	12,661 sf
AG 4th	100%	3,039 sf	6,100 sf	12,661 sf
AG 5th	100%	0 sf	3,560 sf	6,074 sf
AG 6th	Out	0 sf	0 sf	0 sf
		9,837 sf	23,384 sf	46,948 sf
Total All Three Sites				80,169 sf

The requirement for affordable housing units at an 8% of residential GFA yields a total IZ requirement of 6,414 sq. ft. of GFA.

80,169 sq. ft. GFA x 8% = 6,414 sq. ft. GFA

The adjustment for the affordable housing (IZ) requirement is estimated at a base loss of $80 per FAR. This represents the loss in unit value due to the requirement for renting units at a level affordable to a household making 80% of the Area Median Income, the effective requirement under the IZ for the Arts/C-2-B district. To the extent that the developer is able to obtain subsidies, assistance, or other help from local or federal sources that provided for affordable housing, or obtain subsidies, assistance, or other help from local or federal sources that provide for assistance to developments that incorporate affordable housing, part of this loss may be offset at some future date and WMATA should monitor the development approval process and financing process to ensure that any offsets due to the 80% AMI affordable unit requirement are adjusted for.

Duke Draft Development Framework for a Cultural Destination District within Washington, DC's Greater Shaw/U Street[4]

The District submitted the Duke Draft Development Framework to the DC Council for approval in February 2005. The Council adopted the document as a "small area plan" in June 2005. The plan provides guidance in public policy decision-making to District agencies and commissions on affordable housing needs, local business development, existing and new cultural facilities and programming, quality public realm investments, transportation and traffic, zoning and local resident participation. The plan calls for subject's sites to be developed with mixed-use developments with active, ground floor

[4] DC Office Of Planning September 2004

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005812

retail and residential or office uses above. In the event that the approval process 'forces' the developer to meet an affordable housing requirement different than that discussed above, the impact on the value of the land could be significant.

Land Use Element of the Comprehensive Plan

Subject's sites are located within the moderate density residential and moderate density commercial mixed use zoning category. The current zoning is not inconsistent with the Plan.

Historic Status

Subject's sites are located in the Greater U Street Historic District. The Greater U Street Historic District is a Victorian-era neighborhood, developed largely between 1862 and 1900.[5] The Greater U Street Historic District, listed in the National Register of Historic Places in 1998, extends roughly from 16th Street on the west to 7th Street on the east and from S Street on the south to Florida Avenue on the north, and includes over 1,500 historic buildings.

[5] The District of Columbia Inventory of Historic Sites, February 23, 2004 update.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005813

PART III - DATA ANALYSIS AND VALUE CONCLUSION

Highest and Best Use

Highest and best use is defined in the text "The Appraisal of Real Estate", 13th ed., published by The Appraisal Institute, 2008, as "The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible and that results in the highest value." In this case, the value sought is of the fee simple value of the land, as if vacant and unimproved, and available for development to its highest and best use.

Subject's three sites are currently vacant and unimproved, zoned Arts/C-2-B, and impacted by underground easements benefiting WMATA for tunnels carrying the regional rapid rail transit system. As individual development sites, these three parcels contain 3,799 sq. ft. (Lot 44 in Square 393), 8,621 sq. ft. (Lot 45 in Square 393) and 15,956 sq. ft. (Lot 31 in Square 416).

Under the Arts/C-2-B zoning, the maximum density developable on the site is a 3.5 FAR as a matter-of-right, with the potential for up to 4.5 FAR with additional preferred, mainly residential, uses. However, with the presence of the WMATA underground easements and tunnels, and the resulting inability to place more than one level below grade, along with development restrictions on the weight and density that may be placed above the tunnel structure, the likely reasonable density that could be placed on the sites would be less than the maximum density permitted. Consultations with Mr. Eric Colbert, AIA, a well known local architect familiar with development over a Metrorail tunnel[6], yielded estimated maximum densities achievable on each of the sites as follows:

[6] Mr. Colbert is currently consulting with a developer on another site impacted by a WMATA easement in Northeast Washington, DC. Qualifications are set forth in the addenda.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005814

Colbert Estimate of Gross Floor Area (FAR) Subject to WMATA Tunnel and Underground Easement And Excluding The Sixth Floor

Sq/Lot	393/44	393/45	416/31
Site Area	3,799 sf	8,621 sf	15,956 sf
1st	3,600 sf	7,621 sf	14,456 sf
AG 2nd	3,039 sf	6,100 sf	12,661 sf
AG 3rd	3,039 sf	6,100 sf	12,661 sf
AG 4th	3,039 sf	6,100 sf	12,661 sf
AG 5th		3,560 sf	6,074 sf
GFA AG – 1st to 5th	12,717 sf	29,481 sf	58,513 sf
Site Area	3,799 sf	8,621 sf	15,956 sf
Developable FAR Max	3.35 FAR	3.42 FAR	3.67 FAR

These densities are less than the maximum 'potential' density with bonus density permitted under the Arts/C-2-B district, but reflect the physical limitations of development. The estimates are, however, of each site as a standalone site. The current proposal for the development of these sites, according to information from the client, incorporates the three subject sites into a larger development including additional land owned or controlled by the prospective purchaser. Under the proposed development of the combined project, a total of 157,000 sq. ft. of Gross Floor Area (FAR SF) will be constructed. Of this amount, 124,000 sq. ft., or roughly 79%, is reportedly attributable to the inclusion of the three WMATA sites. While this represents a premium of 23.1% more FAR than the three sites could generate as standalone sites, instructions are to use the adjusted area derived from the Colbert summary with WMATA and assume an agreement to 'make the other whole' once approvals are in place and development is ready to proceed.

Additionally, the purpose of this analysis is to arrive at an opinion of the value of the site as combined and as part of the larger development of which these sites will be a part. It would typically be appropriate to view the entirety of the development density that is generated by the subject sites as part of the larger development and not as standalone sites. The 'future make whole' agreement referenced above is reportedly intended to accomplish this.

The valuation of the three sites, therefore, will focus on the sum of the development density generated by the WMATA sites as determined by Colbert with the exclusion of the 6th floor.

The proposed development on the sites incorporates residential uses on the upper floors and retail uses on the first floor. This development scheme is consistent with the other newer developments along Florida Avenue and U Street. It is the development scheme envisioned by Mr. Colbert. It is the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005815

development scheme that is expected by the market and conforms with the market. While a full highest and best use analysis could be undertaken regarding development timing, the purpose of this analysis is ultimately to set the price (rent) that the developer will pay to WMATA for the inclusion of the sites into the larger development. Therefore, the highest and best use of the sites is the proposed use, as a part of the larger assembly by the developer.[7]

Finally, the issue of the Inclusionary Zoning will have an impact on the value, and rent, that the subject sites can generate. The requirement for including affordable housing units into the development create two issues that must be addressed. As set forth earlier, approximately 6,414 sq. ft. of the potential FAR will be set aside for affordable housing. The value of the FAR attributable to the IZ affordable FAR is approximately $80 per FAR LESS than the value attributable to a market rate unit. In other words, not only does the land underlying these units have a $-0- land value, but there is an additional loss that must be subtracted from the total land value, as the potential for sufficient revenue to offset both the cost of construction AND return additional monies as a residual to the land is virtually non-existent.

Approaches to Value and Valuation

The property, consisting of the three sites as a development project and including the total allocated to the WMATA properties, has been valued utilizing a direct sales comparison approach to value, which is consistent with current market practices involving values of vacant, unimproved and underimproved land. Recent sales of similarly zoned unimproved sites in the general area were utilized to estimate the value of the land as if vacant and unimproved, on a per square foot basis. Analysis of these sales will result in a price per FAR for residential uses, and subject's highest and best use, assuming that the land was vacant, unimproved and available for development. This will result in an indicated land value before any adjustments for Inclusionary Zoning or WMATA tunnel and easement impact. Next, the financial impact of the Inclusionary Zoning and WMATA tunnels and easements will be applied to the unadjusted value to arrive at the value of the properties, as a unit, subject to both Inclusionary Zoning and WMATA tunnels and easements.

[7] Note that the larger developer is able to generate additional density by virtue of the assembly. At the same time, the assembly is able to achieve Florida Avenue frontages by virtue of the inclusion of the WMATA sites.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005816

Sales of sites zoned for mixed-use, primarily residential, development, in subject's larger neighborhood have been researched, verified and analyzed as to price per FAR, the most applicable unit of measurement for medium and high density residential and mixed-use residential-retail land sales. The analysis leading to the land value opinion is set forth on the following pages.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005817

Land Sales Analysis

Subject is generally level and on grade with Florida Avenue, 8th Street and 9th Street. One of the sites, Lot 44 in Square 393, is generally triangular, two, Lot 45 in Square 393 and Lot 31 in Square 416 are irregular but generally rectangular. The zoning on these sites is Arts/C-2-B. As stated earlier, the enactment of Inclusionary Zoning on August 21, 2009 will require any new development of more than 10 units to include a percentage of affordable housing units. Additional FAR beyond the matter of right allowed on the site will be allowed to compensate for the cost of the affordable units. Adjustments to the comparable sales for the Inclusionary Zoning requirement is difficult to estimate since the exact cost of providing the affordable units on each of the sites is unknown. Most brokers or developers contacted report that the Inclusionary Zoning will probably have a negative affect. As the adjustments for Inclusionary Zoning will be made to the sites after the 'base' land value is determined, no adjustment to most of the sales is required.

Other adjustments considered include financing, location, size, site topography and site configuration. All of the comparable sales were purchased with cash or conventional financing so no adjustment will be made for financing. The six comparable sales are all level, interior sites, located in similar locations within a few blocks of subject. Comparable #4 is a sale of four non-contiguous lots and comparable #5 is a sale of very narrow site. These comparable sales would be adjusted up for inferior site configuration and lack of corner. Most of the comparables are smaller, one is larger than two of the individual subject sites but smaller than Lot 31, the largest.

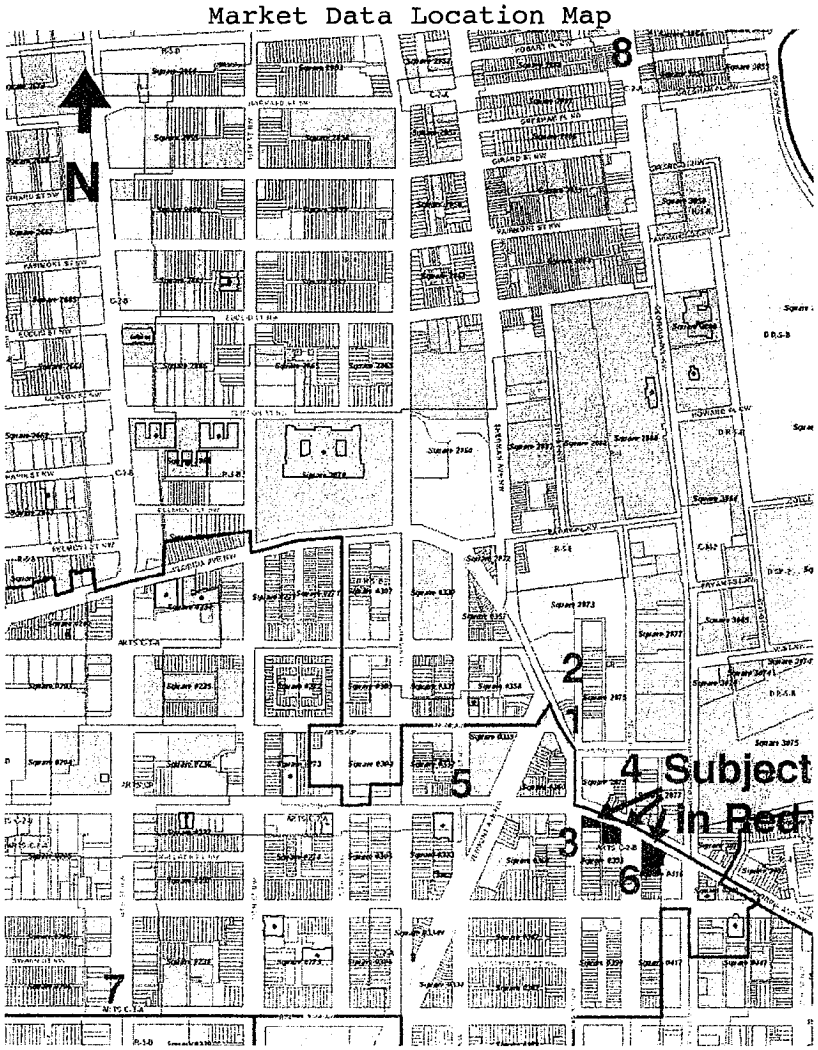
Summary of Comparable Sales

Sale-Location	Zone	FAR	Sale Date	Land Area	$/FAR
1-2047 9th	CR	6.0	Nov-06	4,073	$102
2-2143 9th	CR	6.0	Sep-07	11,942	$46
3-1932 9th	Arts/C-2-B	3.68	Jan-08	5,436	$70
4-2004+ 8th	Arts/C-2-B	4.5	Aug-08	3,537	$50
5-2006 10th	Arts/C-2-B	4.5	Sep-08	1,142	$43
6-1912 8th	Arts/C-2-B	4.5	Contract	1,887	$45
7-1407 S	Arts/C-3-A	4.99	Jun-08	20,418	$79
8-2908 Ga	C-2-A	2.5	Contr 8/09	6,477	$39

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005818

The sales above indicate prices in the range of $39 to $102 per FAR. The highest indication came from sale #1 at 2047 9th Street, NW. This site was purchased almost three years ago, during the height of the residential market activity, by the adjacent property owner for future expansion of his nightclub. It is currently improved with a small warehouse used for storage and a parking lot. Eliminating this sale results in a range, before adjustments, of from $39 per FAR to $79 per FAR, with an average of $46 per FAR. Set forth below is a location map, showing the location of the sales in relation to subject.

Market Data Location Map



As stated in the neighborhood section values have declined in the past two years. All of the sales are adjusted downward 15% per year for the change in market conditions. Set forth

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005819

below is a summary of these sales adjusted for market conditions to the date of value.

Sales Adjusted for Market Conditions

Sale-Location	Zone	FAR	Sale Date	Land Area	$/FAR
2-2143 9th	CR	6.0	Sep-07	11,942	$34
3-1932 9th	Arts/C-2-B	3.68	Jan-08	5,436	$55
4-2004+ 8th	Arts/C-2-B	4.5	Aug-08	3,537	$43
5-2006 10th	Arts/C-2-B	4.5	Sept-08	1,142	$37
6-1912 8th	Arts/C-2-B	4.5	Contract	1,887	$45
7-1407 S	Arts/C-3-A	4.99	Jun-08	20,418	$65
8-2908 Ga	C-2-A	2.5	Contr 8/09	6,477	$39

Comparable #2, at 2143 9th Street, is an 11,942 sq. ft. site located southeast of subject on 9th Street. The site is zoned CR. It sold in September 2007 for $46 per FAR to Howard University based on an FAR of 6.0. The site is level and has frontage on both 8th Street and the rear alley. Howard University is assembling sites in the area and also owns land adjacent to this site. This site, while small, is almost three times the size of subject. This sale would be adjusted downward for market conditions and up for corner.

Comparable #3, at 1932 9th Street, is a 5,436 sq. ft. interior site located one block southwest of subject. The site has 36 feet of street frontage on 9th Street and depth of 158 feet to a rear alley. This Arts/C-2-B zoned site sold in January 2008 for $70 per FAR based on a proposed 3.68 FAR mixed-use development. The price per FAR based on the maximum FAR allowed would be $57. The purchaser reportedly plans to build a 20,000 sq. ft. mixed use building, which equates to a 3.68 FAR. The site is located in a similar location, one-half block south of Florida Avenue. This sale would be adjusted downward for market conditions and up for corner

Comparable #4, at 2004-2008 and 2014 8th Street, is a 3,537 sq. ft. non-contiguous assembly of four lots located one block north of subject. The four lots sold for a total price of $800,000 or $50 per FAR. They are currently improved with four row houses in poor condition. According to the purchaser two of the row houses will be renovated. He is looking to assemble the remaining sites with adjacent land for a larger contiguous assembly. This sale would be adjusted downward for market conditions and upward for non-contiguous assembly and corner.

Comparable #5, at 2006 10th Street, is a 1,142 sq. ft. narrow lot located one-half block north of U Street. The site has only 13 feet of frontage on 10th street with a depth of 89 feet to a rear alley. This Arts/C-2-B zoned site sold in

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005820

September 2008 for $43 per FAR. The purchaser plans a residential development on the site. The property is currently back on the market at an asking price of $350,000 or $68 per FAR but the sales broker reports no interest in the site based on this asking price. This sale would be adjusted downward for market conditions and upward for narrow lot width and corner.

Comparable #6, at 1912 8th Street, is a 1,887 sq. ft. lot located south of subject. The site has 20 feet of frontage 8th Street with a depth of 94 feet to a rear alley. This Arts/C-2-B zoned site is currently listed on the market for $385,000 or $45 per FAR. The site is located adjacent to a similarly sized site that was developed in 2009 with a 5-unit condominium. This location is similar to subject but the site is smaller and lacks a corner.

Comparable #7, at 14th and S Streets, NW, is a 20,418 sq. ft. site, and is part of a 24,000 sq. ft. development site proposed for a 119,825 sq. ft. residential building with first floor retail. Zoning approval for the development was received in February 2009 and the purchaser has an option to purchase the adjacent property to finish the assembly. The site has ample frontage on both S and 14th Streets and will extend to Swann Street when the assembly is complete. This portion of the assembly represents 80+% of the total site. The Arts/C-3-A zone permits mixed uses similar to subject and the proposed development will be similar to the likely use at subject (residential over retail). This location is superior to subject, the site enjoys corners, is larger than the individual parcels at subject, but smaller than the combined development at subject.

Comparable #8, at 2908-14 Georgia Avenue is a 6,475 sq. ft. lot located at the southwest corner of Hobart Place and Georgia Avenue, north of subject. The site is L-shaped with frontages of 75 feet on Georgia Avenue and 125± feet on Hobart. The site is zoned C-2-A and is planned for a residential over retail structure. The asking price was $1,170,000 but the contract price was reported to be around $630,000. The site is in an inferior location compared to subject and has an inferior shape.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005821

Summary of Comparables

Sale-Addr	Date	Adj Mkt	Loc	Corner	Site Area	Fr X Dpth
2-2143 9th	9/07	$34	Comp	No	Comp/Lrg	118 X 101
3-1932 9th	1/08	$54	Comp	No	Sm/Comp	36 X 158
4-2004+ 8th	8/08	$43	Comp	No	Sml/Comp	Non-Contig
5-2006 10th	9/08	$37	Comp	No	Sml/Narrow	13 X 88
6-1912 8th	List	$45	Comp	No	Sml/Marrow	20 X 94
7-1407 S	6/08	$65	Sup	Yes	Comp	20 X 94
8-2908-14 Ga	Contr	$39	Inf	Yes	CompS/Sml	75 X 125

After adjustments for market conditions the comparable sales indicate an adjusted price range for subject from $34 to $65 per FAR with an average of $46 per FAR. The highest sale indication came from sale #7, similar in size and corners, but in a superior location, at $65 per FAR. Sale #8 is the reported contract for the inferior site at Georgia and Hobart and would set a lower limit for subject. The three largest sales, in terms of development density, #4, #7 and #8, ranged from $39 to $65 per FAR, with the lowest, #8, being the most inferior in terms of location and site characteristics (before WMATA adjustment).

Sale #4, at $43 per FAR, consists of four small non-contiguous lots on an inferior street north of subject. The purchaser is looking to assemble adjacent land into a larger contiguous assembly. Sale #3 is the closest comparable sale and indicated a price of $55 per FAR after adjusting for market conditions, but lacks a corner. The purchaser reportedly plans to build a mixed-used 3.68 FAR building, although nothing has been built since the purchase and the site is currently used as a pay parking lot. If this site were developed to a maximum 4.5 FAR the adjusted sale price would be $45 per FAR. Finally, the two sites located immediately south of Lot 44 in Square 393 are under contract to the potential purchaser/lessee of the subject parcels. These 2008 contracts were at prices around $90 per FAR. The purchaser indicated that he expected to renegotiate these prices down substantially given current market conditions. Based on the recent sales indications, this course of action regarding these two sites would be reasonable.

Considering the factors discussed above, subject's location along Florida Avenue (superior to sales with frontage only on 8th Street or 9th Street north of Florida Avenue) and the upper limit set by sale #7, it is our opinion that the value of subject's sites would be based on a base value of $50 per FAR.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005822

Based on the comparables and analysis above, the indicated value for the subject sites as a unified development parcel, as of August 31, 2009, would be:

Site Area - Combined	28,376 sf Land
FAR Sq. Ft. Individual Site Development	100,711 sf GFA
Value per FAR	$50.00/FAR
Unencumbered Value	$5,035,550

Adjustment to Value: Inclusionary Zoning Effective FAR Loss

The effective area lost due to Inclusionary Zoning has been estimated at 6,414 sq. ft. of Gross Floor Area. The total loss due to the Inclusionary Zoning, 80% AMI, affordable housing component has been estimated at $80 per FAR. This is equivalent to a lost land value of:

6,414 sq. ft. GFA x $80.00/FAR = $513,120

Adjustment to Value: Extraordinary Costs – WMATA Easements and Tunnels

As stated above, utilizing the cost estimates provided by WMATA, the adjustment for extraordinary hard costs associated with building over the WMATA tunnel and easements is $1,770,000. Allowing for necessary soft costs, this results in a total deduction from the unencumbered value of $2,300,000.

Final Value of Property Subject to Inclusionary Zoning and WMATA Tunnels and Easements

Value Unencumbered	$5,035,550
Adjustment for IZ FAR Loss	-$513,120
Adjustment for Extraordinary Costs	-$2,300,000
Encumbered Value 8/31/2009	$2,222,430
Rounded, as of 8/31/2009, to	$2,200,000

Exposure Time

There have been very few land sales, except for smaller sized sites and foreclosures. Given the complexities of developing the subject site, the necessity of obtaining approvals and processing reviews and agreements relating to the WMATA easements and tunnels, and the difficulty in obtaining development financing in the current economic climate, the exposure time associated with the values set forth herein is estimated at 12 to 18 months or more.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005823

CERTIFICATION

The Undersigned do hereby certify that, to the best of our knowledge and belief:

The statements of facts contained in this report are true and correct;

The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analysis, opinions and conclusions;

We have no present or prospective interest in the property that is the subject of this report, and have no personal interest with respect to the parties involved;

We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment;

Our engagement in this assignment was not contingent upon developing or reporting predetermined results;

Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal;

The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which includes the Uniform Standards of Professional Appraisal Practice;

We inspected the subject property;

The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Richard R. Harps has completed the continuing education program of the Appraisal Institute.

Disclosure of the contents of this appraisal report is governed by the by-laws and Regulations of the Appraisal Institute.

Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers or the firm with which they are connected or the MAI or SRA designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communications without the prior written consent and approval of the undersigned.

Richard R. Harps
DC Certified General License #10003

Stephen C. Brennan
DC Certified General License #10011

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005824

QUALIFICATIONS OF RICHARD R. HARPS, MAI, CRE

Academic: Bachelor of Arts, Economics, The American University, Washington, D.C. 1972.

American Institute of Real Estate Appraisers courses and/or examinations: IA - Basic Principles, Methods and Techniques - 1972; IB - Capitalization Theory and Techniques - 1972; II - Urban Properties - 1973; IV - Condemnation - 1973; VI - Investment Analysis - 1980; IBA - Capitalization Theory & Techniques - 1987; 2-1 Case Studies - 1991, Highest and Best Use and Market Analysis – 1993, Advance Sales Comparison and Cost Approach - 2000

Seminars presented by AIREA, AI, GWCAR, WBR, WDCAR and other organizations.

General: 1971-1983 - John R. Pinkett, Inc., Vice President of Appraisals.
1984 to Present - HARPS & HARPS, INC., President
1996 to 2004 – HARPS & SCALLAN, LLC/INC.

Qualified as Expert in: District of Columbia Zoning Commission; District of Columbia Board of Zoning Adjustment; District of Columbia Office of Tax and Revenue Board of Real Property Assessments and Appeals; District of Columbia Alcohol Beverage Control Board; Superior Court of the District of Columbia; United States District Court for the District of Columbia; United States Bankruptcy Court for the District of Columbia; Mayor's Agent for Historic Preservation-Chief Administrative Law Judge of the District of Columbia; United States Bankruptcy Court, District of Maryland; United States District Court, District of Maryland.

District of Columbia Certified General Real Property Appraiser Certificate #10003.
Maryland Certified General Real Property Appraiser Certificate #10177
Virginia Certified General Real Estate Appraiser Certificate #003181

Appraisal/Consulting Experience: Assignments since 1971 include: houses, stores, shopping centers, office buildings, apartment buildings, hotels, unimproved land, air rights, special purpose properties; full and partial takings from office buildings, power plants, stores, houses, railroad rights-of-way, and apartment buildings; condominium conversion, relocation assistance studies, planned unit development analyses, lease analyses, fair rental studies, urban renewal re-use parcels and assessment consulting, valuation and equalization studies.

Partial Client List: , United State National Park Service, Washington Metropolitan Area Transit Authority, U.S. General Services Administration, U.S. Dept. of Justice, District of Columbia Department of Housing and Community Development, District of Columbia National Capital Revitalization Corporation, Potomac Electric Power Company, Washington Gas Light Company, Verizon, Howard University, International Monetary Fund, International Bank for Reconstruction and Development (World Bank) attorneys, financial institutions, developers and individuals.

Organizations

Appraisal Institute, successor to American Institute of Real Estate Appraisers, MAI designation - Voluntary re-certification through December 31, 2007
Minority Relations Subcommittee, 1980-1981, Vice Chairman 1981; National Education Committee, 1983-1984; Division of Courses, 1985; Division of Curriculum, 1981-1982; Board of Examiners - Examinations 1987-1989; and General Comprehensive Examination Subcommittee/General Comprehensive Examination Panel 1983-2007, Chairman 1987-1989

Washington Metropolitan Area Chapter Appraisal Institute (formed January 1991 by merger of Wash Metro Chapter # 18 AIREA and Wash Metro Chapter of SREA): President-1994

Counselors of Real Estate - CRE designation

District of Columbia Building Industry Association

Washington D.C. Association of REALTORS®: New Development/Zoning Committee 1975-90, Chrm 1981-82; Board of Directors, 1981 to 1986, 1990-1994, 1998; President, 1985

Real Estate Education Foundation (WDCAR) - President 1989

Lambda Alpha International – International Land Economics Fraternity

Real Estate Counseling Group of America – President 2005-2007

National Association of REALTORS®: Board of Directors 1985-1987, 1992; Executive Committee 1986-1987; REALTORS® Legislative Committee: 1989 Chairman Housing Subcommittee, 1990 Chairman Federal Tax Subcommittee, 1991 Vice Chairman RLC, 1992 Chairman RLC; Real Estate Finance Committee 1989-92; State and Municipal Legislative Committee 1990; Building Advisory Committee/Real Property Operations Committee 1988, 1990-1993, 2004, 2007; RPAC Trustee 1989, 1992; Real Estate Lending Working Group Chairman 1991; Public Policy Oversight Group 1993

Greater Washington Board of Trade - Board of Directors, 1985

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005825

QUALIFICATIONS OF STEPHEN C. BRENNAN

Education

1986 Graduate of Colby College, Waterville, Maine. Bachelor of Arts in Administrative Science with a minor in Economics. Graduate Real Estate courses: Principles and Practices of Real Estate, Real Estate Finance, and Appraisal 1. American Institute of Real Estate Appraisers courses and/or exams successfully completed: 1-A1 Real Estate Appraisal Principles, 1-A2 Basic Valuation Procedures, 1-B1 Capitalization Theory and Techniques Part A, and Capitalization Theory and Techniques Part B, 2-1 Case Studies in Real Estate Valuation, Report Writing and Valuation Analysis, Narrative Appraisal Report Writing, Apartment Appraisal, Appraisal Institute #I330, Standards of Professional Practice, Part B, February 2002, Evaluating Commercial Construction Seminar September 2003, National USPAP Update February 2004, and Appraisal Institute's Online Analyzing Operating Expenses, February 2004.

General Experience

Commercial Property Appraiser 1988-Present
Harps & Harps, Inc.
Washington, D.C.

Residential Property Appraiser 1987-1988
F. Jerome Silverstein Realty
New London, Ct.

Professional Associations and Licenses

District of Columbia, Certified General Real Property Appraiser License #10011

Maryland, Certified General Real Property Appraiser License #10178

Candidate for membership in the Appraisal Institute (MAI Designation)

Realtor Associate Member of the Washington D. C. Association of Realtors

Work Experience

Recent assignments include: appraisals of single and multifamily dwellings, condominiums, residential and commercial land, new construction, warehouses, office buildings, stores, shopping centers and apartment buildings.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005826

SCOPE OF WORK

SHAW-HOWARD UNIVERSITY METRORAIL STATION AREA

OWNER:	WMATA
LOCATION:	South Side of Florida Avenue between 7th & 9th Streets, NW Washington, DC
LEGAL DESCRIPTION:	Square 393, Lots 44 and 45; Square 416, Lots 18 and 31
ZONING:	C-2-B in Arts Overlay Zone
ESTIMATED AREA:	Lot 44 - 3,800 SF Lot 45 - 8,600 SF Lot 18 - 516 SF Lot 31 - 15,956 SF
COMMENTS:	The northern portions of the parcels contains an existing Metrorail tunnel that has an upper limit that is19 feet below the surface. WMATA can provide to the appraiser cost estimates for extraordinary costs that may be involved in building over the WMATA tunnel. The Inclusionary Zoning Implementation Act, as amended, and the Duke Plan incorporate affordable housing provisions that should be considered in an analysis of the subject property.
DUE DATE:	A preliminary draft shall be due 30 days after notice to proceed. A complete summary report shall be due 7 business days after the receipt of comments on the preliminary draft.
TYPE OF REPORT:	Summary Appraisal Report
REQUIREMENTS:	The appraiser shall provide each of the following for the subject property: 1. Fair market value of the site reserving to WMATA a permanent underground easement on the northern portion of the property for the below-grade track and tunnel; 2. Fair market value per sq. ft. of FAR for any retail or commercial component, market rate residential units, and affordable housing units

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005827

Eric Colbert & Associates Memorandum

Located on the following three pages

The Colbert memorandum utilized a total site area of 16,472 sq. ft. for Lots 31/18 in Square 416 per the original instructions from WMATA regarding site area. Further review by WMATA indicated that the inclusion of the area within former Lot 18, although still shown on Assessment Office record, was in error and the total area of Lot 31 in Square 416 should have been 15,956 sq. ft. The Colbert areas for this lot have been adjusted, as shown below, to reflect this area change.

	Site Area
Original Site Ø	16,472 sf
Revised Site Ø	15,956 sf
Adjustment Factor	516 sf

Adjusting each of Colbert's areas on Lot 31 by -516 sq. ft., and eliminating the 6th floor, per the Client instruction, results in revised areas as follows:

Sq/Lot	393/44	393/45	416/31
Site Area	3,799 sf	8,621 sf	15,956 sf
Garage (B-1)	3,799 sf	8,621 sf	15,956 sf
1st	3,600 sf	7,621 sf	14,456 sf
AG 2nd	3,039 sf	6,100 sf	12,661 sf
AG 3rd	3,039 sf	6,100 sf	12,661 sf
AG 4th	3,039 sf	6,100 sf	12,661 sf
AG 5th		3,560 sf	6,074 sf
GFA AG – 1st TO 5th	12,717 sf	29,481 sf	58,513 sf
Lot Area	3,799 sf	8,621 sf	15,956 sf
Developable FAR Max	3.35 FAR	3.42 FAR	3.67 FAR

	Combined Totals
Land Area	28,376 sf
Gross Floor Area (FAR)	100,711 sf
Combined FAR	3.55 FAR

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005828

ERIC COLBERT & ASSOCIATES PC 717 5TH STREET NORTHWEST WASHINGTON DC 20001 TELEPHONE (202) 289-6800

July 31, 2009

Mr. Richard Harps
1111 14th Street, N.W., Suite 600
Washington, D.C. 20005

Re: Square 393, Lots 44 and 45; Square 416, Lots 18 and 31

Dear Richard,

Following is the analysis you requested. First is a list of zoning restrictions:

Underlying C-2-B Zoning Requirements

- Height Limit = 65'
- FAR = 3.5, 1.5 non-residential maximum
- Maximum Lot Occupancy = 80% at all residential floors
- Rear Yard = 15'
- Required Parking = 1 per 3 dwelling units

Arts Overlay

- Up to 4.5 maximum bonus density permitted.

Inclusionary Zoning (IZ)

- 20% additional density
- 5' extra building height

The problem with the proximity of the Metro tunnel with these sites is that it exists on one side (the north) of the properties. If the Metro tunnel ran through the middle of our site, we could "bridge" the tunnel, making it easier to build higher above the tunnel. Because the tunnel is on one side, we can only build a structure that can be supported by the tunnel itself. My office is working on a project now where we have had numerous meetings with Metro regarding building over a tunnel. The maximum that Metro will allow us to (economically) build is a four-story wood structure. My best assumption is that we could possibly build a structure that has one level of underground parking and four floors above ground (above the tunnel).

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005829

For Lot 44 (Square 393), the proximity of Metro to the site suggests that the entire site be limited to the restrictions I stated. This will allow a structure which has a parking garage of 3,799 square feet. Due to the small size of the lot and its awkward shape, we can probably only accommodate 8 or 9 spaces in this garage. The first floor can be entirely commercial for a gross square footage of 3,600. The actual leasable space will be much lower, however, due to the need to have a lobby for the upstairs uses plus an elevator and two fire stairs. The actual retail on this level will likely be about 2,900 square feet. Assuming that floors 2, 3, and 4 are residential use, they could occupy 80% of the lot and have 3,039 gross square feet each. An apartment building of this size will only be about 75% efficient, leaving 2,279 sellable or leasable square feet each on floors 2, 3, and 4. This gives a total rentable or sellable area of 9,737 square feet for this site.

Lot 45 in Square 393 will be more efficient to build on. Approximately half of the site could go up to 70' height, while the other half would be limited as stated for Lot 44. This will yield the following areas, assuming a building that has one full level of parking underground and one full retail level at grade. On half of the site, three more floors will be permitted, while on the other half, five more floors will be possible. Based on nearby developments, the most reasonable use for the floors above the first floor seems to be residential use.

Lot 45 Potential Building

Floor	Gross S.F.	Net Sellable/Leasable S.F.
Garage (-1)	8,621	22 Parking Spaces
1	7,621	7,000
2	6,100	5,100
3	6,100	5,100
4	6,100	5,100
5	3,560	2,850
6	3,560	2,850
Total	33,041	28,000

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005830

The same analysis used for Lot 45 in Square 393 will apply to Lot 31 in Square 416. Again, about one-half of the lot has the underground tunnel beneath it.

Lot 31 Potential Building

Floor	Gross S.F.	Net Sellable/Leasable S.F.
Garage (-1)	16,472	45 Parking Spaces
1	14,972	14,300
2	13,177	11,200
3	13,177	11,200
4	13,177	11,200
5	6,590	5,600
6	6,590	5,600
Total	84,155	59,100

Building next to and above the Metro structures as will be required for these lots will increase construction costs by at least 20% to 25%. Being in a historic district means that there is no guarantee that a 70-foot high building will be permitted.

Sincerely,

Eric Colbert, AIA

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005831

THE DEPUTY MAYOR FOR PLANNINGAND ECONOMIC DEVELOPMENT
THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

INCLUSIONARY ZONING AFFORDABLE HOUSING PROGRAM MAXIMUM RENT AND PURCHASE PRICE SCHEDULE

This Maximum Rent and Purchase Price Schedule is established pursuant to the Inclusionary Zoning Implementation Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*) ("the Act") and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 26 Title 11 of the DCMR. The Schedule is effective August 14, 2009.

Multi-Family Inclusionary Developments

					50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
Studio	1	1	$108	$250	$899	$107,500	$1,438	$190,700
1	2	1 - 2	$150	$313	$1,027	$117,700	$1,643	$212,800
2	3	2 - 4	$192	$425	$1,155	$120,100	$1,849	$227,100
3	5	4 - 6	$233	$525	$1,412	$144,300	$2,259	$275,100

Single-Family Inclusionary Developments

					50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
2	3	2 - 4	NC	$110	$1,155	$160,300	$1,849	$267,300
3	5	4 - 6	NC	$130	$1,412	$196,800	$2,259	$327,600
4	7	6 - 8	NC	$150	$1,669	$233,400	$2,670	$388,000

The Maximum Purchase Price or Rent is based on the Washington Metropolitan Statistical Area 2009 Area Median Income of $102,700 for a family of four (4) as published by the United States Department of Housing and Urban Development. It takes into account an ability to pay thirty percent (30%) of the benchmark income towards the housing cost.

Maximum Allowable Rent is equal to the rent published minus any utility expenses paid by the tenant for heat, air conditioning, cooking, electricity, or hot water. Utilities are estimated above. Actual costs to be deducted for each utility are as described in the District of Columbia Housing Authority's Utility Schedule.

An Inclusionary Development Owner may lower the rents or prices to achieve a larger marketing band of incomes for marketing purposes to assure occupancy.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005832

Maximum Allowable Purchase Prices use the following assumptions:

1. A conventional thirty (30) year, fixed-rate, fully amortizing mortgage at the national average mortgage rate as published by the Federal Housing Finance Agency at www.fhfa.gov (5.12% as of July 28, 2009) plus a one percent (1%) cushion to protect for future interest rate increases and a five (5%) down payment.

2. Real estate property taxes are assessed at the control price at current real estate tax rates and homestead deductions.

3. Condominium fees are estimated at fifty cents ($0.50) per square foot per month applied to the assumed unit square footages. Single-family homeowner association fees are estimated at ten cents ($0.10) per square foot per month applied to the assumed unit square footages. Estimated unit sizes are:

Multi-Family Inclusionary Development

Studio	1-Bedroom	2-Bedroom	3-Bedroom
500	625	850	1,050

Single-Family Inclusionary Development

2-Bedroom	3-Bedroom	4-Bedroom
1,100	1,300	1,500

4. Monthly hazard insurance on single-family units is estimated at one half of one percent (0.5%) of replacement value.

NOTE 1. If the actual homeowner/condominium fee for a specific Inclusionary Unit is more than ten percent (10%) higher than the fee assumed in the Maximum Price or Rent Schedule and/or hazard insurance is not included in the condominium fees, then the actual fees and insurance costs shall be used to determine the maximum sales price of the Inclusionary Unit.

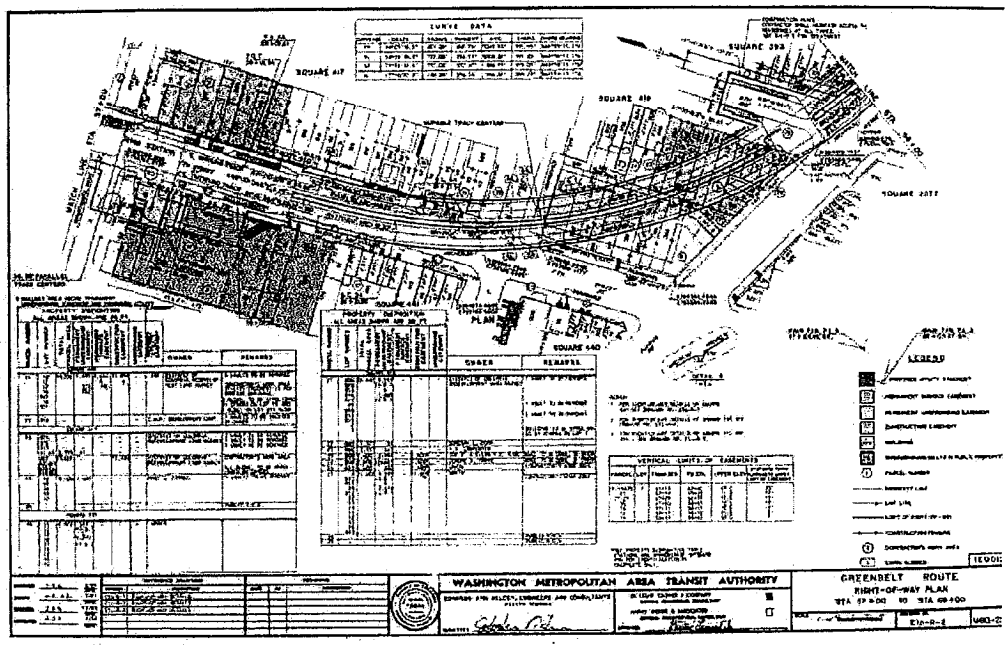
NOTE 2. For unit types larger than listed above contact the Agency.

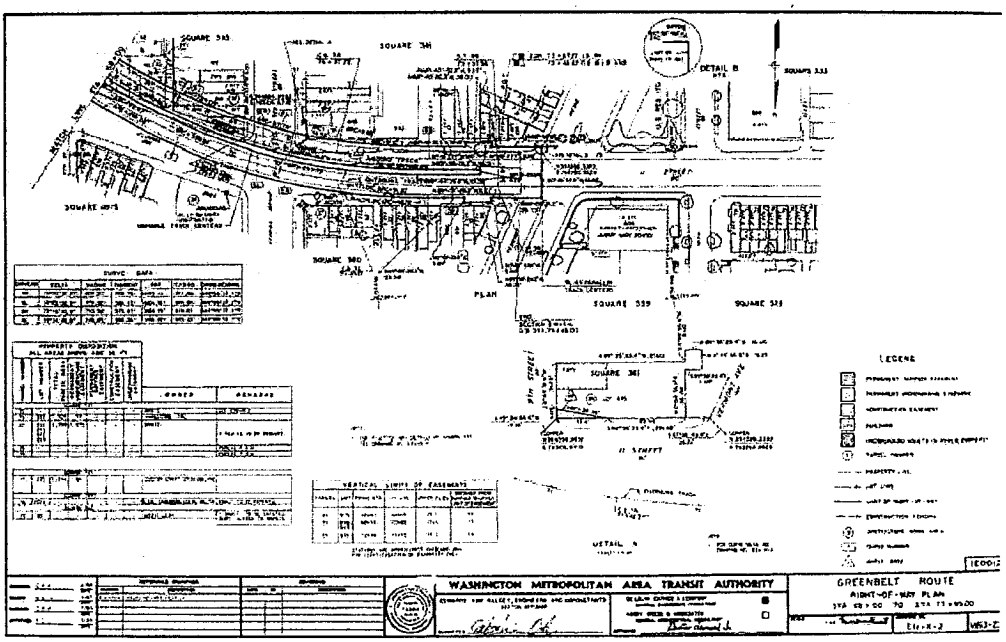
NOTE 3. NC — Not calculated. Contact the Agency.

NOTE 4. More information on Inclusionary Zoning is available at www.dhcd.dc.gov.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005833

Reduced Copies of WMATA Section and Right-of-Way drawings





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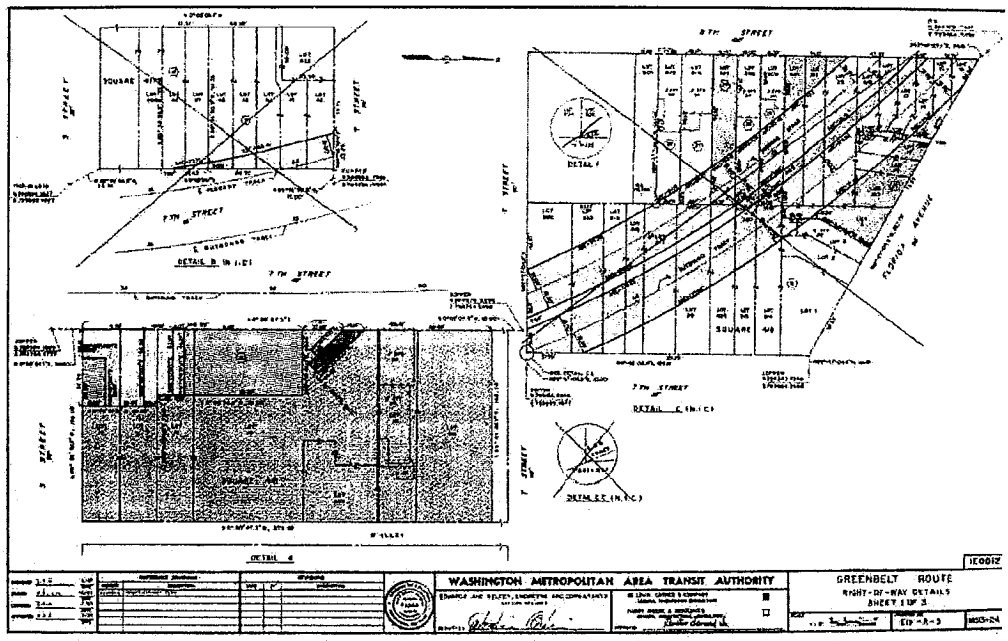

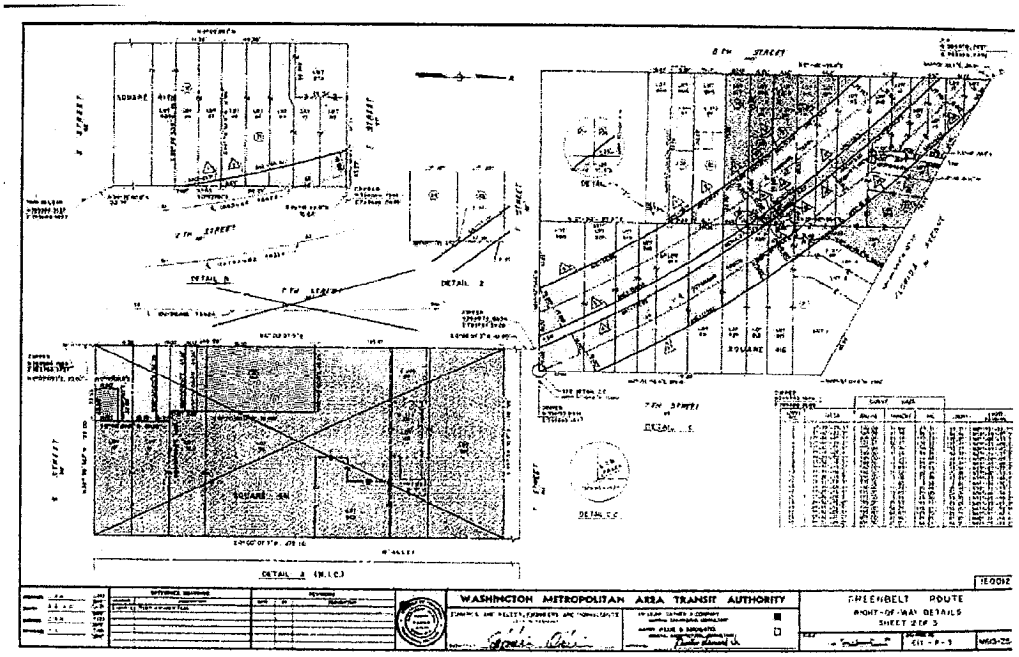

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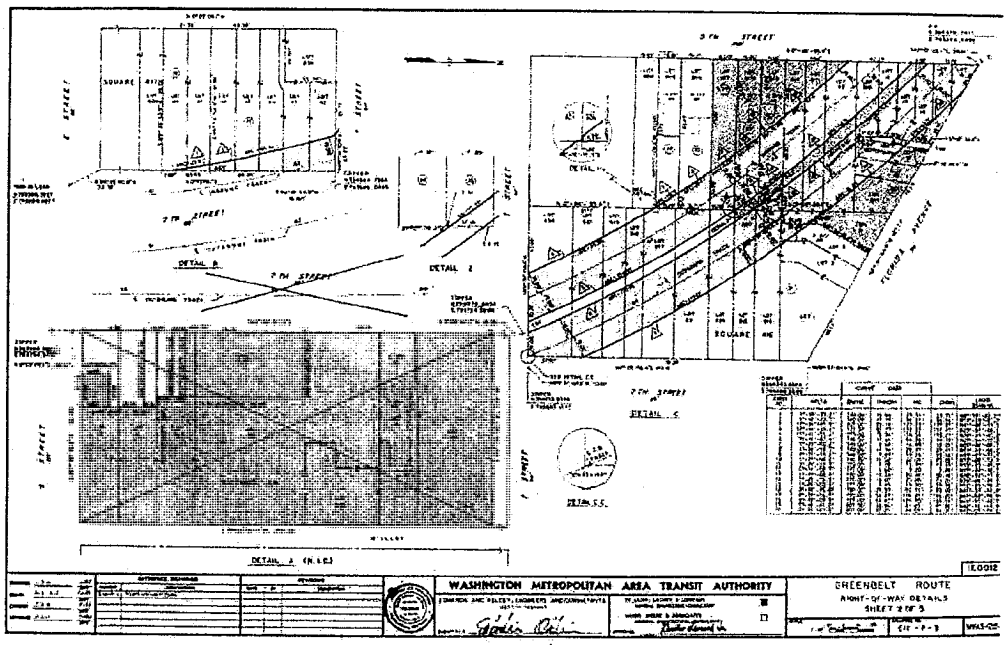
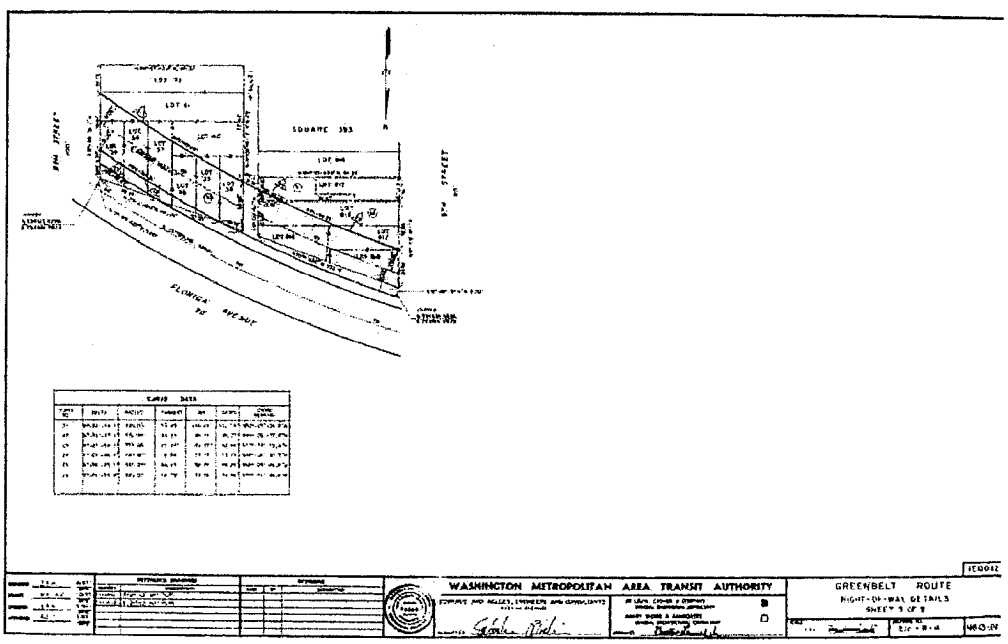


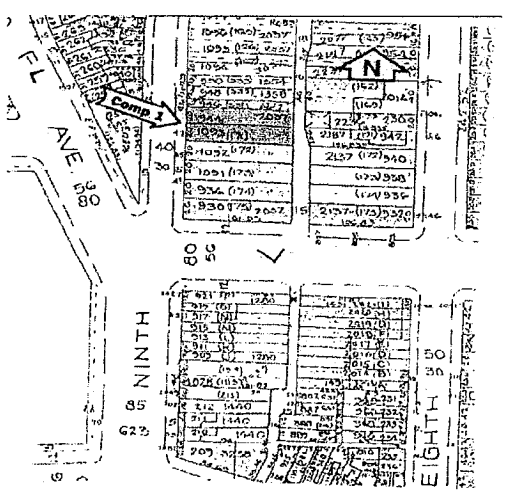


FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005836

Sale No.	1
Address	2047 9th Street, NW
Square/Lot	2875/1106
Area of Site	4,073 sq. ft.
GBA	1,940 sq. ft.
Zone	CR
FAR	6.0
Deed Dated	11/02/2006
Grantor	Ketel, LLC (Edward Needle, Manager)
Grantee	It's Mine Now, LLC (Clinton Stack)
Price	$2,500,000
Trust(s)	None recorded at time of sale
Date Recorded/Instr #	11/02/2006-#2006149549
Transfer Tax	$36,249.99
Price/sf Land	$613.80
Price/FAR	$102.30

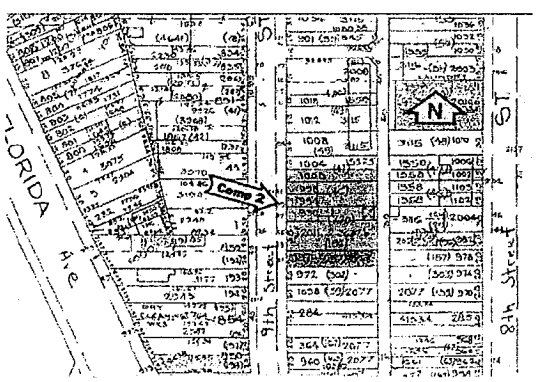
Remarks: The property was previously part of a PUD for Broadway Development. The site was dropped from the PUD and sold to the adjacent property owner. It was bought for a possible future expansion of the adjacent property, the 9:30 Club. As of September 2007, the property is being used for parking and storage. The sale was verified with the purchaser's representative, Norm Veenster, of N12 Development on September 11, 2007 and with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection.



FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005837

Sale No.	2
Address	2143 9th Street, NW
Square/Lot	2875/976, 1108, 2011
Area of Site	11,942 sq. ft.
GBA	Miscellaneous Industrial
Zone	CR
FAR	6.0
Deed Dated	August 31, 2007
Grantor	Warfield and Sanford, Inc.
Grantee	Howard University
Price	$3,300,000
Trust(s)	N/A
Date Recorded/Instr #	September 6, 2007
Transfer Tax	$47,849.89
Price/sf Land	$276.34
Price/FAR	$46.06

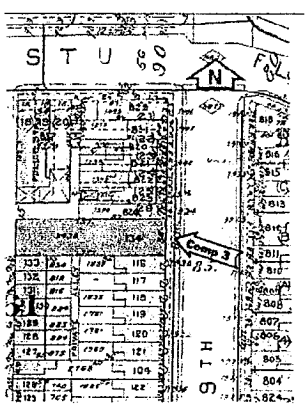
Remarks: This is an interior site purchased by Howard University as part of an ongoing assembly of land in the neighborhood. It appears that Howard owns land on both sides of this site. The property was under contract for $4,400,000 to a residential developer in the summer of 2006. The developer reportedly backed out of the deal due to the downturn in the residential market. The sale price in September 2007 indicates a drop in price of 25% from the summer 2006 contract price. Information verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection and with broker Ed Wolynec of the W. C. Smith Companies.



FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005838

Sale No.	3
Address	1932 9th Street, NW
Square/Lot	361/134
Area of Site	5,436 sq. ft.
GBA	Vacant land
Zone	C-2-B/Arts
FAR	4.5 Maximum with bonus
	3.68 proposed
Deed Dated	January 31, 2008
Grantor	JC Property Development, LLC (John E. Carter, Managing Member)
Grantee	PT2SO Investments, LLC
Price	$1,400,000
Trust(s)	N/A
Date Recorded/Instr #	February 7, 2008 #2008014342
Transfer Tax	$20,299.99
Price/sf Land	$257.54
Price/FAR	$57.23 (4.5 FAR Max with bonus)
	$69.98 (3.68 FAR proposed)

Remarks: This is a small interior site located south of Florida Avenue. The purchaser reportedly had planned to build a 20,000 sq. ft. five story mixed-use building on the site. As of August 2009 the site is still unimproved. This interior site is currently used as a pay parking lot. It has 36 feet of frontage on 9th Street and a depth of 158 feet to rear alley. The sale was verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection.



FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005839

Sale No.	4
Address	2004-2008 and 2014 8th Street, NW
Square/Lot	2875/231,234,235, and 236
Area of Site	3,537 sq. ft.
GBA	Miscellaneous
Zone	C-2-B/Arts
FAR	4.5
Deed Dated	August 22, 2008
Grantor	CB 8th Street, LLC
Grantee	It's My Real Estate, LLC
Price	$800,000
Trust(s)	N/A
Date Recorded/Instr #	August 28, 2008 #2008091875+
Transfer Tax	$11,600.00
Price/sf Land	$226.18
Price/FAR	$50.26

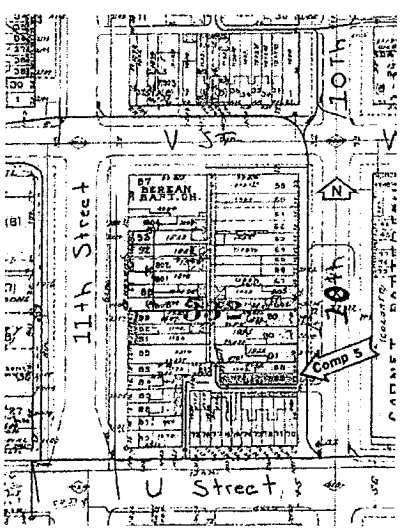
Remarks: This is the sale of four old row houses in poor condition. The properties were purchased in four separate transactions for redevelopment into multifamily uses. The sites are not contiguous and are separated by an alley and two other row houses. Plans call for renovating two of the row houses and assembling the remaining sites with more sites to make a larger assembly. Each lot has approximately 15 feet of frontage on 8th Street and lot sizes vary from 804 to 960 sq. ft. The sale was verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection, purchaser Norm Veenstra and with Christian of Marcus and Millichap.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005840

Sale No.	5
Address	2006 10th Street, NW
Square/Lot	332/69
Area of Site	1,142 sq. ft.
GBA	N/A
Zone	C-2-B/Arts
FAR Matter of Right	3.5 Max matter of right
FAR with Bonus	4.5 Max with bonus
Deed Dated	September 19, 2008
Grantor	Joseph Junior Gilliam
Grantee	Loris Williams
Price	$220,000
Price/sf Land	$192.64
$/FAR	$55.04 (Matter of right)
$/FAR w/Bonus:	$42.81 (w/bonus to 4.5 FAR)

Remarks: This is a long narrow lot located on 10th Street and a side alley one-half block north of U Street Northwest. The U Street Metro Station is located one block south at Vermont and U Streets, NW. The new owner plans to construct a residential building on the lot. The property is currently on the market for $350,000. The broker reported no interest in the property at that price.

Information verified with MRIS, Online DC Assessment data, court records, exterior inspection and with sales broker Warren Kluth of Long and Foster.

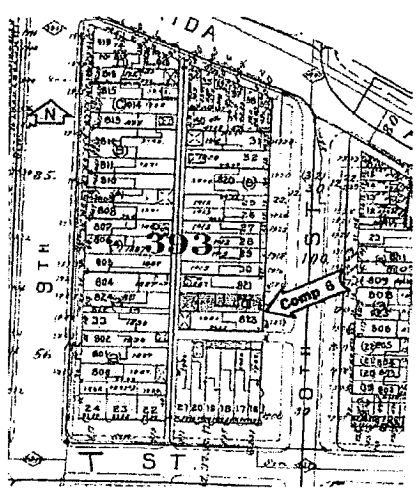


FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005841

Sale No.	6
Address	1912 8th Street, NW
Square/Lot	393/822
Area of Site	1,887 sq. ft.
GBA	N/A
Zone	C-2-B/Arts
FAR Matter of Right	3.5 Max matter of right
FAR with Bonus	4.5 Max with bonus
Deed Dated	Under Contract August 2009
Grantor	Luxor Properties
Grantee	N/A
Price	$385,000 (Asking)
Asking Price/sf Land	$204.03
$/FAR	$58.29 (Matter of right)
$/FAR w/Bonus:	$45.34 (w/bonus to 4.5 FAR)

Remarks: This is an interior site located a half block south of Florida Avenue, NW. The site is 20 feet wide by 94 feet deep to a rear alley. The site is the same size as the adjacent site to the south on which a 5-unit condominium was recently built. The property has been on the market for over 6 months. It reportedly is due to close around August 21st, 2009.

Information verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, exterior inspection and with sales broker Gerard DiRuggiero of the Urban land Company, LLC.

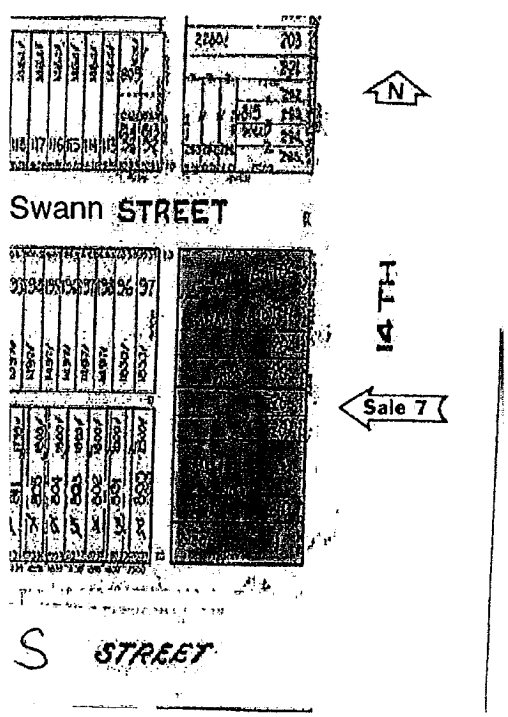


FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005842

Sale No.	7
Address	1407 S Street, NW (14th and S Streets, NW)
Square/Lot	206/1,210,230,819, and 820
Area of Site	20,418 sq. ft.
Zone	C-3-A/Arts
FAR Matter of Right	3.5 Max matter of right
FAR with Bonus	4.99 (BZA Case No. 17850)
Deed Dated	June 10, 2008
Grantor	Whitman-Walker Clinic, Inc.
Grantee	JBG/14th and S, LLC
Price	$8,000,000
Price/sf Land	$391.81
$/FAR:	$78.52 (4.99)

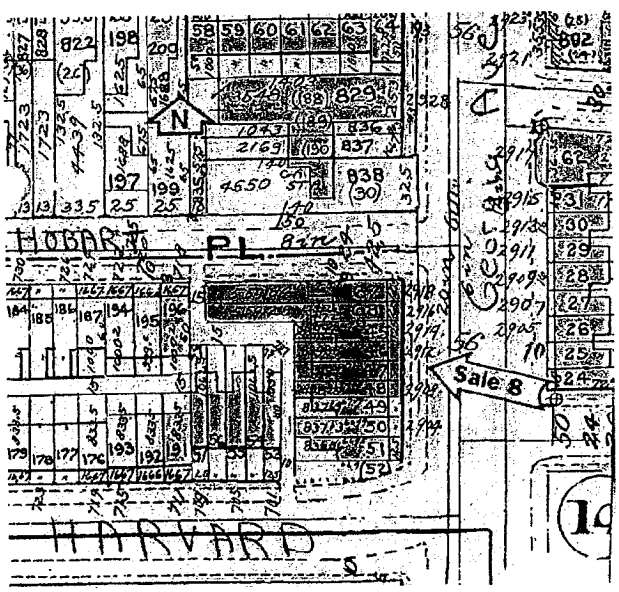
Remarks: The JBG companies purchased the Whitman Walker Building for redevelopment with a 7 story, 119,825 sq. ft. residential building. The historic building at the corner of 14th and S will be retained and incorporated into the overall development that will include 120-130 units. The 4.99 FAR development is based on a total development site of 24,000 sq. ft. including Lot 821 at 1818 14th Street. JBG has an option to purchase this lot from the current owner. Whitman-Walker clinic has an option to continue to use the property while plans for the new development are finalized. JBG applied for the proposed development with the D.C. Board of Zoning and Adjustment in July 2008 and it was approved in February 2009.



FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005843

Sale No.	8
Address	2908-2914 Georgia Avenue, NW
Square/Lot	2888/45-48, 67 and 68
Area of Site	6,475 sq. ft.
Zone	C-2-A
FAR	2.5
Deed Dated	Under contract September 2009
Grantor	Howard University
Grantee	
Price	$630,000
Price/sf Land	$391.81
$/FAR:	$38.92

Remarks: Corner site located north of the Howard University campus that was previously on the market for $1,170,000 in May 2009. According to the listing broker Troudy Vaughan the site is under contract for a price lower than the current asking price.



FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005844

10/8/09

WMATA 9th

APPRAISAL OF LOTS 44 AND 45 IN SQUARE 393 AND LOT 31 IN SQUARE 416 NORTHWEST, WASHINGTON, DC AS OF AUGUST 31, 2009 FOR WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005845

Harps & Harps, Inc.
1111 14th Street, NW, Suite 600
Washington, DC 20005-5603
Tel. 202-682-2194 Fax 202-682-1579

October 8, 2009

Mr. Mark K. Meister
Office of Station Area Planning
And Asset Management
Washington Metrorail Area
Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Re: Lots 44 and 45 in Square 393 and Lot 31 in Square in 416, vacant lots on Florida Avenue between 7th and 9th Streets, Northwest, Washington, District of Columbia.

Dear Mr. Meister:

Pursuant to your request, we have arrived at an opinion of the fair market value of the parcels set forth above subject to the WMATA easements and an opinion of the annual rent for a long-term ground lease. The intended user of the report is the client, the Washington Metrorail Area Transit Authority (WMATA). The intended use of the report is to assist the client in determining a course of action regarding the possible sale or lease of the property. The effective date of this analysis is August 31, 2009.

The properties, located on the south side of Florida Avenue between 7th and 9th Streets, NW, are vacant lots situated above a WMATA tunnel. Given the prior uses to which the subject sites and the adjacent sites have been put to over the years, including gas stations, restaurants, industrial and parking, there may be environmental contaminants impacting the properties. This appraisal assumes that the subject sites are clean of environmental contamination. This limitation, which could have an impact on the value conclusion set forth herein, should be considered by the client in evaluating the conclusions set forth.

As a result of the analysis, we are of the opinion that the market value of the property, as of August 31, 2009, is as set forth on the Summary of Conclusions located on pages 5 and 6 of the attached summary report, of which this letter is an integral part. The extraordinary assumption and client instructions regarding extraordinary cost of constructing over the WMATA tunnel and the client instruction regarding development density (Gross Floor Area or FAR sq. ft.), development height and

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005846

combined development are critical components of the analysis and have a direct impact on the valuation. The analysis and reasoning leading to the conclusions, along with the assumptions and conditions on the conclusions, which may be material, are set forth within the attached summary report, containing 66 pages.

We trust this information is of assistance to you. If you have any questions or comments, please contact us. Thank you for this opportunity to be of service.

Very truly yours,

Richard R. Harps
DC Certified General License #10003

Stephen C. Brennan
DC Certified General License #10011

Attachment

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005847

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005848

SUMMARY OF CONCLUSIONS

Subject Properties	Three unimproved lots located on the south side of Florida Avenue between 7th and 9th Streets, NW, Washington, DC
Legal Description	Lots 44 and 45 in Square 393, and Lot 31 in Square 416, District of Columbia
Client	Washington Metropolitan Area Transit Authority
Date of Valuation	August 31, 2009
Date of Inspection	July 30, 2009
Date of Report	October 8, 2009
Property Rights	Fee Simple Interest subject to easements and restrictions to be retained by WMATA
Site Areas	Square 393 Lot 44 - 3,799 Sq. Ft. Square 393 Lot 45 — 8,621 Sq. Ft. Square 416 Lot 31 — 15,956 Sq. Ft.
Zoning	Arts/C-2-B
Improvements:	None, Vacant lots
Highest and Best Use	Assemble with adjacent land and develop a mixed-used complex.
Extraordinary Assumption	Extraordinary hard costs associated with building over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA.
Client Instructions	One - Development density (Gross Floor Area or FAR sq. ft.) to be valued was to be the total GFA estimated by Eric Colbert EXCLUDING the 6th floor on Lot 45 in Square 393 and EXCLUDING the 6th floor on Lot 31 in Square 416. Two — Analysis of Inclusionary Zoning is to assume the three sites are considered as a unit and not sold separately.

As a result of our analysis, we have reached the following opinions, all as of August 31, 2009, the effective date of this appraisal, an all subject to the WMATA tunnel and easements and considering the impact of the Inclusionary Zoning.

Market Value of Land Subject to WMATA Easements and Tunnel and Inclusionary Zoning - $2,200,000.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005849

Long Term Land Lease Option 1: Market lease terms – 60 year fixed term, no purchase option, 7% coupon rate applied to initial land value, 2% annual escalation in rate, land revaluation every 10 years with reset of base rent to 7% of revalued land – Initial Rent $154,000, with reduced rent during development approval phase of project.

NO

Long Term Land Lease Option 2: Initial Lump sum payment, no fixed annual payments, no annual escalations or revaluations, 1% participation in gross revenue, 2% participation in net proceeds from sale and refinancing – Initial Lump sum payment $1,523,735.

State all included in capitalized lump sum

Long Term Land Lease Option 3: Flat annual payment in advance for full 60 year term, no annual escalations or revaluations, 1% participation in gross revenue, 2% participation in net proceeds from sale and refinancing – Flat Annual Rental In Advance $145,152. – Why shouldn't it be higher to start

These opinions are subject to all general and specific assumptions and conditions contained within the report, including an environmental assumption. Please note that the conclusions reached were based on the information as set forth herein, and are specifically and generally limited by the assumptions and conditions set forth within the report and subject to the certification attached hereto. Additional analyses, in the event that additional or new information is made available, are outside the scope of this assignment, and supplementary arrangements would be necessary before additional analyses could be undertaken. The assumptions and conditions set forth throughout the report are an integral part of this analysis and have a bearing on the conclusions reached herein.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005850

ASSUMPTIONS AND LIMITING CONDITIONS

This analysis, the function of which is to assist the client in determining a course of action regarding the possible sale or lease of the property, has been made with the following general and specific assumptions:

One extraordinary assumptions was utilized in this analysis - The extraordinary hard costs associated with building over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA.

Two Client Instruction were utilized in this analysis. One – the Gross Floor Area (FAR sq. ft.) to be valued was to be the total GFA estimated by Eric Colbert EXCLUDING the 6th floor on Lot 45 in Square 393 and EXCLUDING the 6th floor on Lot 31 in Square 416. Two – the impact of the Inclusionary Zoning is to be reviewed as if all three sites are sold and developed as a unit and not sold and developed separately.

This analysis is not to be used in connection with a Real Estate Syndicate(s) or Securities related activity. Real Estate Syndicate means a general or limited partnership, joint venture, unincorporated association or similar organization formed for the purpose of, and engaged in, investment or gain from an interest in real property, including but not limited to a sale, exchange, trade or development of such real property on behalf of others and which is required to be registered with the United States Securities and Exchange Commission or any state regulatory agency which regulates investments made as a public offering. Securities related activity means but is not limited to transactions involving Real Estate Investment Trusts, Limited Partnerships, Mortgage Backed Securities and any other transaction which is subject to the Securities Exchange Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Advisors act of 1940, or state Blue Sky or securities laws or any amendments thereto.

1. This analysis assumes that there are no unusual soil or property characteristics, including any environmental implications, not set forth herein, which would adversely impact the ability of an owner to utilize the site or property for any legally permitted use.

2. Except as set forth herein, the analysts have not been informed of, nor has any knowledge of, the existence of any environmental or health impediment, which if known, could have a negative impact on the market value of the property or could subject the property or its past, present or future owners or agents or other parties to the requirements of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), and the subsequent Superfund Amendments Reauthorization Act (SARA). It is assumed that there has been no contamination of the soil from any existing or former oil tank or any other tank or equipment utilized in the operation of the buildings or any use of the building. This appraisal assumes that the property has met, or will be able to meet, all requirements of laws pertaining to environmental considerations, as they may pertain to the subject. It is also assumed that the property will comply with all

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005851

provisions of Maryland and Federal laws and regulations regarding underground and above grade storage tanks as they pertain to subject

It is recommended that, prior to any transfer of title or other interest in the property, all appropriate studies, including but not limited to environmental studies, be performed, that all problems and/or conditions that are subsequently uncovered be corrected, mitigated, or otherwise reduced in liability, prior to any transfer, and that the parties seek appropriate professional and legal counsel regarding environmental and other issues.

3. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable.

No opinion is intended to be expressed for matters that require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.

4. The property is analyzed free and clear of any and all liens or encumbrances unless otherwise stated. Responsible ownership and competent property management are assumed.

5. This analysis assumes that all real estate taxes, personal property taxes, or other taxes owed to any governmental or other body are current. This analysis has not looked at, nor reviewed, any transfers of any partnership interests in the property and this report assumes no adverse effect on values due to the nature of property ownership.

6. The analysis assumes that current insurance policies are adequate to protect all parties with an interest in the property.

7. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy. It is assumed that all information known to the client and relative to the valuation has been accurately furnished and that there is no undisclosed information or documents affecting the use of the property or the valuation herein.

8. All engineering information is assumed to be correct. Maps, plats and exhibits included in the report are for illustration only as an aid in visualizing matters discussed within the report. Area of sites herein were taken from City records. Maps, right-of-way drawings and other information supplied by the client was relied upon in the analysis. Exhibits should not be considered as surveys, or relied upon for any other purpose, nor should they be removed from, reproduced, or used apart from this report.

9. According to the November 15, 1985 National Flood Insurance Maps, subject lies within Zone C, which is an area of minimal flooding. This map is for flood insurance purposes only; it does not necessarily show all areas subject to flooding in the community or all planimetric features outside the special flood hazard areas.

10. It is assumed that all required licenses, certificates of occupancy, certificates of need, consents, or other legislative or

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005852

administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based, including all necessary zoning approvals for any building.

11. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings, if any, must not be used in conjunction with any other analysis and are invalid if so used.

12. The liability of Harps & Harps, Inc. is limited to the client only, not subsequent parties or users, and to the amount of the fee actually received by the appraisers. Further, there is no accountability, obligation or liability to any other party. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of the report and the assignment. The appraisers are in no way to be responsible for any costs incurred to discover or correct any deficiencies of any type present in the property, physically, financially and/or legally. In the event the report is placed in the hands of a third party, it is required that such party be made cognizant of any and all limiting conditions resulting from the basis of appraiser's employment and discussions related thereto as well as those set forth in the report. Acceptance of and/or use of this analysis report by the client or any third party constitutes acceptance of the above conditions.

13. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the analysts, and in any event only with proper written qualification and only in its entirety.

14. The analysts herein by reason of this analysis are not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.

15. Neither all nor any part of the contents of this report (especially any conclusion as to value, the identity of the analyst, or the firm with which the analyst is connected) shall be disseminated to the public through advertising, public relations, news, sales or other media without the prior written consent and approval of the analysts.

16. The appraisers reserve the right, subject to agreement for time and fee, to make such adjustments to the analyses, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.

17. The value reported in dollars is on the basis of the currency prevailing as of the effective date of the analysis. The values estimated in this analysis are based on economic, physical and tax conditions existing as of the effective date of analysis.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005853

PART I – PURPOSE OF APPRAISAL AND GENERAL DATA

Appraisal of Lots 44 and 45 in Square 363, and Lot 31 in Square 416, vacant lots situated on the south side of Florida Avenue between 7th and 9th Streets, Northwest, Washington, District of Columbia.

Purpose of the Appraisal

The purpose of the appraisal is to estimate the fair market value and the fair annual rent for a long-term ground lease, subject to assumptions and conditions specified. The date of value is August 31, 2009. The function of the appraisal is to assist the client in determining a course of action involving a possible sale or lease of the property. The analysis is being presented in a summary report.

For the purposes of this analysis, market value is defined as "The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) Buyer and seller are typically motivated; (2) Both parties are well informed or well advised and acting in what they consider their own best interest; (3) A reasonable time is allowed for exposure in the open market; (4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."[1] In this case the value opinions are limited by an environmental assumption that the property is not impacted by contaminants that would materially affect the ability to develop the site or materially impact demolition and/or excavation costs.

Date of Appraisal and Report

The effective date of this appraisal is August 31, 2009. The exterior of the property was inspected on July 30, 2009. The analysis was performed between July and October 2009. The date of the report is October 8, 2009.

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[1]General definition used for federally related financial institutions and set forth in the Federal Register, Vol. 55 No., 165 August 1990, section 34.42.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005854

Client, Intended use and Intended Users

The client in this appraisal is WMATA, the owner of the property. The intended user of the report is the client. The intended use of the report is to assist the client in determining a course of action regarding the possible sale or lease of the property.

Property Rights Appraised

The property rights appraised consist of fee simple interest subject to existing WMATA easements and restrictions relating to the Metrorail tunnels and underground easements affecting the sites and an estimate of the market rent for a leasehold estate to be created. Applicable definitions are:

> Fee Simple Estate: "Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat."[2]
>
> Easement: "An interest in real property that conveys use, but not ownership, of a portion of an owner's property."[3]
>
> Leasehold: "The interest held by the lessee (the tenant or renter) through a lease transferring the rights of use and occupancy for a stated term under certain conditions."[4]

The WMATA easements are permanent underground easements for the construction, support and operation of a regional rapid rail transit system, and restrict the mass and density of any structure that may be constructed above the easement and within its zone of influence. The purpose of this analysis is to estimate the market value of the property interests free and clear of all trusts, but subject to these easements. The effect, if any, which any existing trust might have on the potential "price" of the property is not considered pertinent to the estimate of market value of the property, and all existing trusts are being disregarded.

In addition to an estimate of the land value subject to the WMATA tunnel and easements and the effects of the Inclusionary Zoning, WMATA has asked for an opinion of the Land Rent payments under three different scenarios – all with a 60 year fixed term. One – typical market long term land rent; Two – Lump sum initial payment representing the present value of the typical land rent

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[2] Dictionary of Real Estate Appraisal, 4th Edition, The Appraisal Institute, Chicago, Illinois, 2002, pg. 113.

[3] ibid, pg. 90

[4] ibid, pg. 162

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005855

payments with a 1% participation in the gross revenue on the project and a 2% participation in the net proceeds from any sale or refinancing over the term of the lease by the leasehold estate; and Three – flat annual payments over the term of the lease (no annual escalations or revaluations) with a 1% participation in the gross revenue on the project and a 2% participation in the net proceeds from any sale or refinancing over the term of the lease by the leasehold estate.

No title report was furnished the appraisers, and it is assumed that, except for the WMATA easements as set forth herein, there are no adverse easements or encumbrances that affect the property. It is assumed for the purposes of this analysis that, except for the aforementioned WMATA easements, any other easements, rights-of-way, encroachments, projections, occupancies, etc., which exist or may be found to exist in a current or future title search of the property would have no detrimental effect on the ability of an owner to utilize the property for its highest and best use, including but not limited to assembly, development, sale, use and occupancy, or any other use.

Extent of Data Collecting, Confirming, and Reporting

The first step in the analysis was to inspect the subject property. Next, an investigation of pertinent market data was undertaken. Market surveys of comparable data were undertaken. Sales of similar properties were researched using published sources, such as Comps Inc., CoStar, MRIS and First American CoreLogic and court records. Discussions with agents, and other individuals familiar with this market and the subject property were held. The data compiled was analyzed, and the data considered susceptible of comparison was verified, where possible, by the grantees, grantors, or brokers, as well as through recorded information at the D.C. Recorder of Deeds office and other sources as specified in the report. The data was used to arrive at the estimated value of the fee simple interest of the property. Excluded from the scope are issues that are outside the scope of these appraisers' expertise, such as, but not limited to, environmental considerations and other considerations set forth in the report.

Extraordinary Assumptions

This analysis utilizes an extraordinary assumption that has a direct impact on the conclusions set forth herein. The extraordinary hard costs associated with building over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005856

Client Instruction

Per the instruction of the client, the Gross Floor Area (FAR sq. ft.) to be valued was to be the total GFA estimated by Eric Colbert EXCLUDING the 6th floor on Lot 45 in Square 393 and EXCLUDING the 6th floor on Lot 31 in Square 416, and the Inclusionary Zoning impact is to be computed as if all three sites are sold and developed together as a unit and not sold and developed separately.

Personalty, Equipment and Fixtures

The sites are vacant and there are no personalty, equipment or fixtures onsite.

History of the Property

WMATA acquired the sites over 25 years ago. There have reportedly been no recent arms length sales transactions since the purchases and the properties are not on the market as of the date of valuation. In 2007 WMATA received an unsolicited bid for the sites. WMATA did not accept the bid but sent out an RFP for the sites to obtain competitive bids. In 2008 WMATA selected a bid from Banneker Ventures, LLC to develop the sites. Banneker proposed to build 104 apartments and 11,750 square feet of ground-floor retail and arts space under a 60-year ground lease. Banneker is currently in the process of renegotiating the agreement with WMATA.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005857

Real Estate Assessment and Taxes

Real estate taxes in the District of Columbia are paid on a Tax Year basis (October 1 through September 30), and are based on an assessment of 100% of market value as determined by the Assessor. The recent assessment history is as set forth below:

Real Estate Assessment

Square 393 Lot 44	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$1,052,590	$1,052,590	$1,052,590
Improvements	$0	$0	$0
Total	$1,052,590	$1,052,590	$1,052,590

Square 393 Lot 45	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$2,388,620	$2,388,620	$2,388,620
Improvements	$0	$0	$0
Total	$2,388,620	$2,388,620	$2,388,620

Square 416 Lot 31	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$4,420,930	$4,420,930	$4,420,930
Improvements	$0	$0	$0
Total	$4,420,930	$4,420,930	$4,420,930

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005858

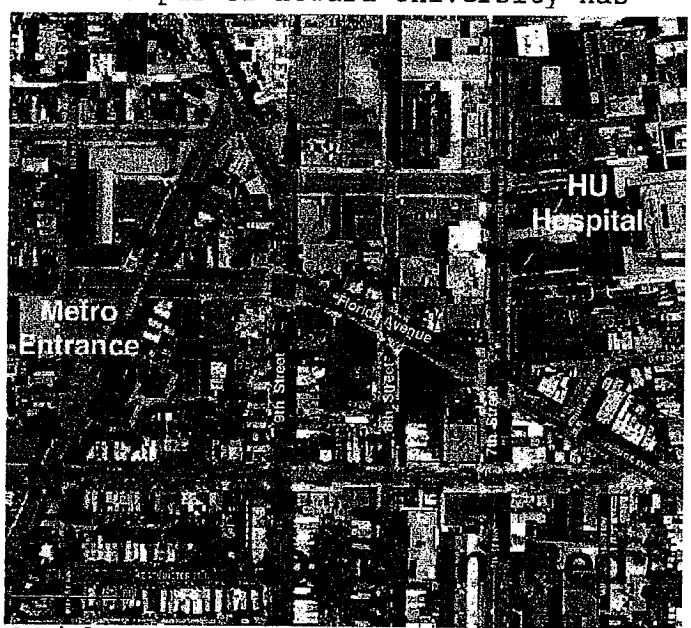
PART II – FACTUAL DATA

Legal Description

The properties are situated on three lots in two squares; Lots 44 and 45 in Square 363 and Lot 31 in Square 416. The sites are located on the south side of Florida Avenue between 7th and 9th Streets, NW.

Neighborhood Description

The subject sites are located in the Howard University and Shaw/U Street submarket of Northwest, DC, with the LeDroit Park neighborhood to the east and 14th Street/U Street corridor to west. The area just to the north of Florida Avenue had historically been a light industrial, storage and warehouse area, located along Georgia Avenue and Sherman Avenue, extending from Florida to the south up to Euclid Street on the north. Northeast of subject the main campus of Howard University has been the predominant landowner for over 140 years. West and north of the area, uses are typically moderate density residential (row houses, flats and apartments) with strip commercial uses along Georgia Avenue, Florida and U Streets. South of subject, the expansion eastward of the Shaw redevelopment trend continues with new and renovated residential units predominating. New and renovated commercial uses are principally located along U Street.



Aerial Map – DC Property Quest with Annotations

Subject's immediate blocks consist of the three story office building of the DC Housing Finance Agency at the northeast corner of 9th and Florida Avenue, a vacant two story boarded up commercial building at the northwest corner of 9th and Florida, small commercial row buildings along the east and west sides of 9th Street south of Florida Avenue. The north side of Florida between 7th and 9th Streets has a mixture of one, two and three story commercial structures occupied by carryout restaurants, offices and retail users. A CVS store is located

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005859

at the southwest corner of 7th and Florida Avenue. Eighth Street, south of Florida Avenue is improved with a Zipcar rental car parking lot, a new six-unit condominium, a small vacant lot for sale and several small residential row buildings. Eighth Street north of Florida Avenue is improved with a carryout restaurant, a nightclub, residential flats and parking lots. The condition of the buildings in subject's neighborhood ranges from boarded-up and vacant, to renovated and good. The commercial building at the northeast corner of 7th and Florida was recently remodeled and is currently for lease with the Douglas Development Company.

Access to the area is good. Georgia Avenue affords direct access to Montgomery County north of subject and to Downtown Washington to the south (via 7th Street). U Street and Florida Avenue offer easy east-west vehicular access. Metrobus routes along Georgia Avenue and U Street are available and the Metrorail has station entrances at 10th and U Streets, and 7th and S Street, both less than three blocks from subject.

During the late 1980s and early 1990s, the area was the focal point of a major re-zoning effort on the part of the City, during which most of the industrial zoned land (C-M-1, C-M-2 and C-M-3) in the area was changed to C-2-A, C-2-B, C-3-A and CR, all within an ARTS overlay south and west of subject, that gave bonuses for residential and preferred uses and significantly limited new industrial uses. Subject's immediate area was rezoned to C-2-B/Arts.

Howard University has occupied its campus east of Georgia Avenue for over 140 years, and continues to expand its campus area. The former Wonder Bread bakery structure, located north of subject on the east side of Georgia Avenue at Bryant Street, was converted to office and retail and subsequently acquired by the University in 1993. The University owns approximately 70% of the total private land between Georgia Avenue, V Street, Sherman Avenue and Barry Place. Two large dormitories have been constructed at Barry Place and much of the remainder is planned for residential and retail uses.

The major trend in this market continues to be the expansion and growth of the residential market, with numerous sites being developed with condominiums and apartments, and significant redevelopment and renovation of the retail commercial uses along U Street south of subject. An eight story 118 unit two-tower condominium was completed in 2008 just north of subject at 919 and 929 Florida Avenue. Broadway Management, Inc. has planned for 750 residential units in the immediate area under a planned unit development. The WMATA site at between 7th and 9th Streets on Florida Avenue is proposed for 104 apartment units and 11,750 sq. ft. of retail and arts.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005860

The trend of residential renovations and redevelopment continues, but the pace has slowed considerably in the past two years. As of the date of valuation Broadway Management, Inc. has not broken ground on their three planned developments in the neighborhood. In July 2009, a foreclosure notice was filed on a planned 29-unit condominium development at 11th and V Streets, NW. A number of developers have pulled out of the condominium market while others have converted planned condominium buildings into apartment buildings. An 11,942 sq. ft. site at 2143 9th Street was under contract to a residential developer in the summer of 2006. The developer backed out due to the sluggish residential market and the site sold a year later for 25% less than the former contract price. Sales in the past year at the 162 unit Rhapsody Condominiums just north of subject at 2120 Vermont Avenue indicate a 15% drop in sale prices since 2006. The Floridian Condominium, at 919 and 929 Florida Avenue, has seen slow sales even with deep discounts to attract purchasers. The owners of the building are currently having problems with lenders that have prevented recent buyers from settling on their purchases. The current recession and tight financial market has made it difficult for developers and purchasers to obtain financing, further slowing down development in the area.

Looking east along the 700 and 800 blocks of Florida Avenue. Subject sites are on the right. 7/30/09

Looking south along the 1900 block of 9th Street, NW Subject on left. 7/30/09

While the condominium and residential markets have seen lower prices and less activity in the past year, subject's location near Howard University, the U Street retail corridor and within walking distance of two Metrorail stations is considered a desirable location for a mixed-use building. New development is planned for sites near subject. A new towncenter development is planned for a large site in the 2200 block of Georgia Avenue to the northeast. These new mixed-use developments will bring additional retail and foot traffic to the neighborhood. Therefore, subject's site is well situated

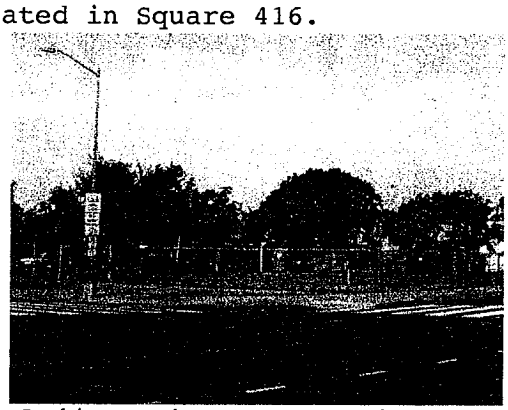
FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005861

and would be a desirable location for a mixed-use property once the economy recovers from the current recession.

Site Description

Subject's sites are located on the south side of Florida Avenue between 7th and 9th Streets. Two lots are located in Square 393 and one large lot is located in Square 416.

Lot 45 in Square 393 contains 8,621 sq. ft. of irregularly shaped land with 75 feet of frontage on 8th Street, 100 feet of frontage on Florida Avenue and 108 feet along a 10-foot wide side alley to the west.

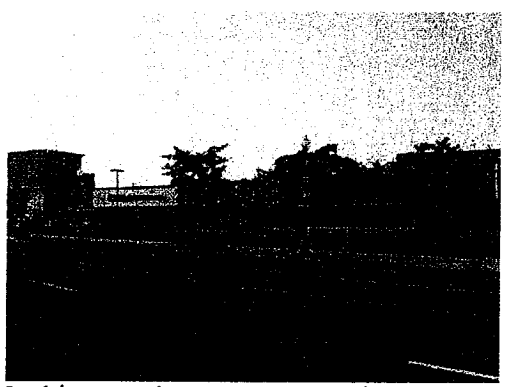


Looking southwest at Lot 45 in Square 393 on the southwest corner of 8th and Florida Avenue, NW. 7/30/09

Looking southeast at Lot 44 in Square 393. 7/30/09

Lot 44 in Square 393 contains 3,799 sq. ft. of irregularly shaped land with 100 feet of frontage on Florida Avenue, 57 feet on 9th Street and 23 feet on a 10-foot wide side alley.

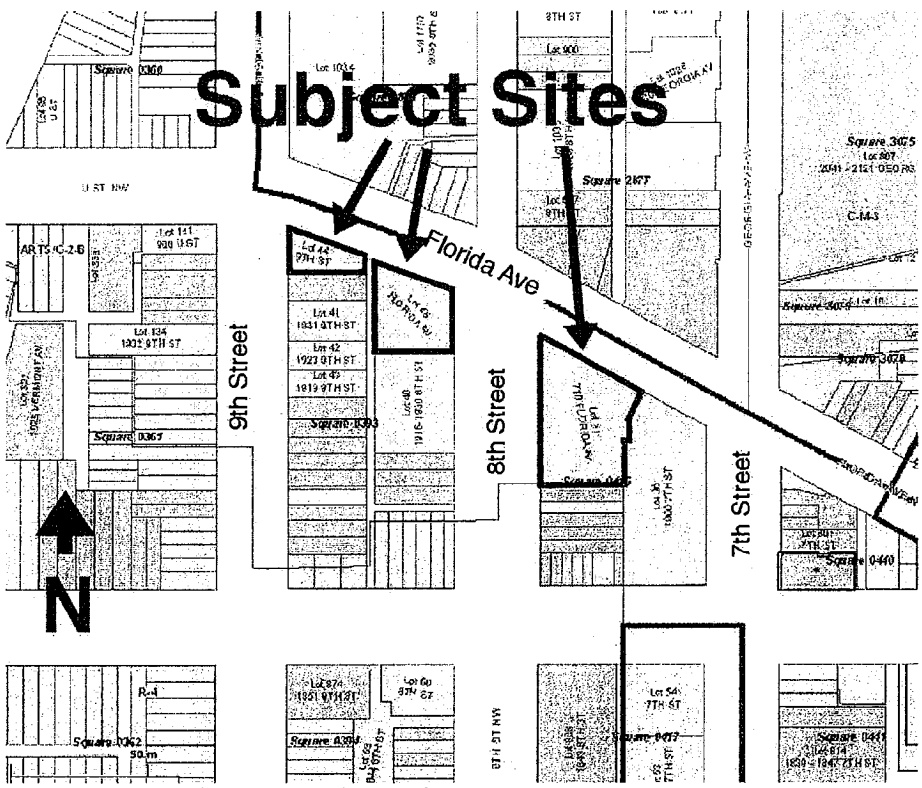
Lot 31 in Square 416 contains 15,956 sq. ft. of irregularly shaped land with 114 feet of frontage on Florida Avenue and 177 feet of frontage on 8th Street.



Looking southeast at Lot 31 in Square 416, on the southeast corner of 8th and Florida Avenue, NW. CVS in background. 7/30/09

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005862

The sites are level and on grade with street frontages. According to the most recent flood insurance rate map effective November 15, 1985, the subject sites lie within Zone C, an area of minimal flooding. The appraisers were not furnished with any report of soil conditions, and this appraisal assumes that there are no adverse soil or sub-soil conditions that would cause unusual construction problems.



Location of subject sites From DC Property Quest

No environmental information on the site was made available and the appraisers are not experts in environmental matters. The sites have been used as parking lots and used car lots. Whether the construction of the Metrorail tunnel resulted in the removal of any environmental contamination is not known. If the site were to be redeveloped by any prudent developer, the potential for environmental contamination of the soil should be considered. The conclusions set forth herein are predicated upon an environmentally clean property. If information regarding environmental factors is made available, the conclusions set forth herein are subject to change.

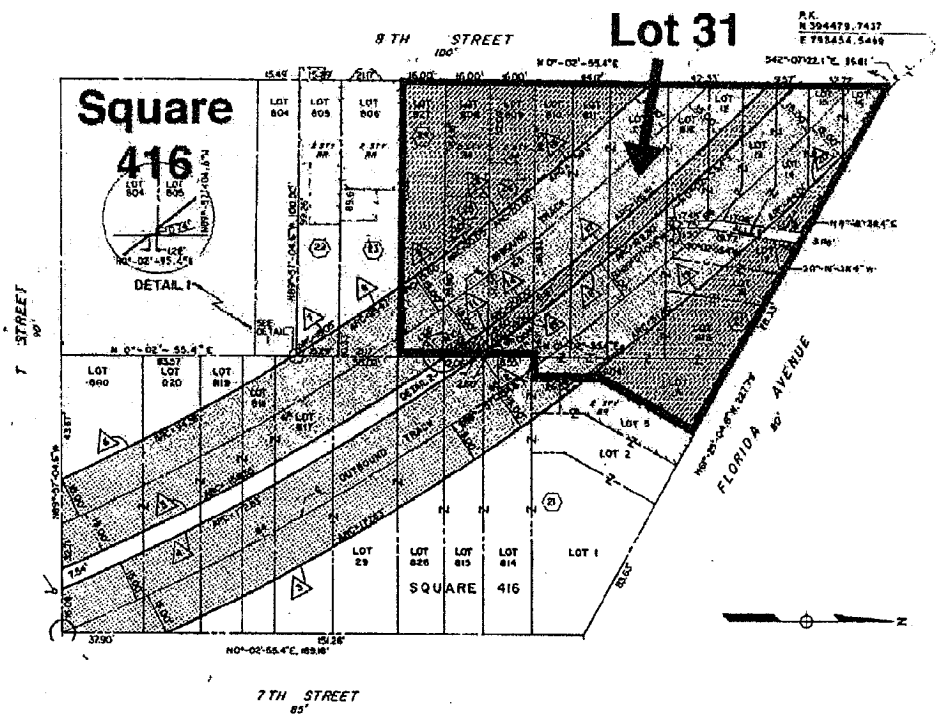
The sites appear to be served with all underground utilities. No title report was furnished to the appraiser, and

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005863

it is assumed that there are no detrimental easements or encumbrances that adversely affect the property.

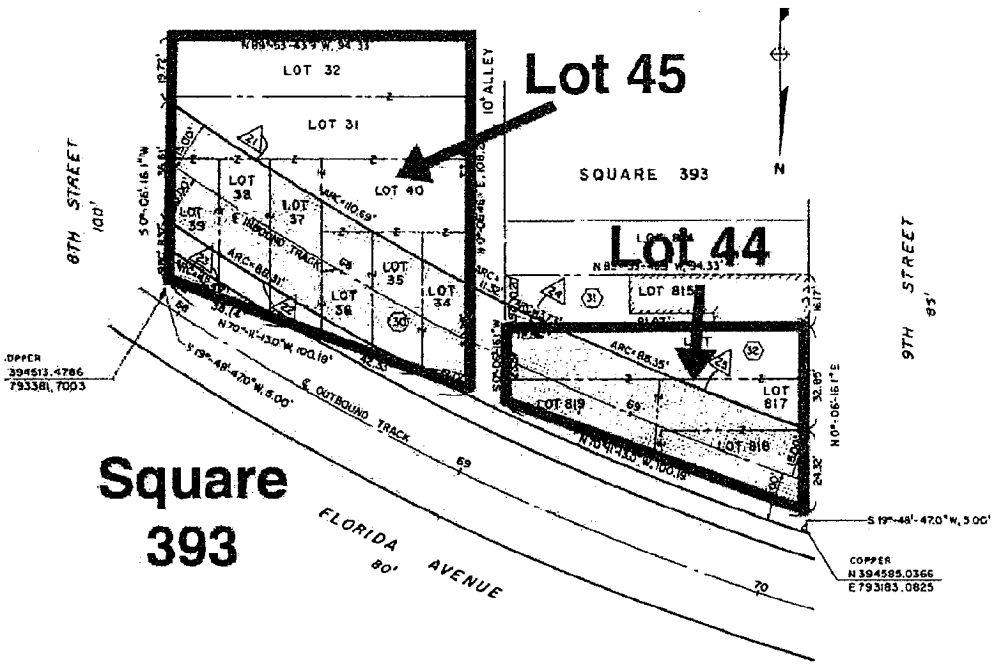
The sites are currently fenced-in along the perimeters. Seventh, Eighth and Ninth Streets and Florida Avenue are fully improved streets with sidewalks, curbs and gutters. All Streets are two-way streets. Street rights-of-way, according to Baist's Atlas for the sites, are 100 feet on 8th Street, 85 feet of 9th Street, 85 feet on 7th and 80 feet on Florida Avenue. There is a 10-foot alley separating Lots 44 and 45 in Square 393.

The principal factor affecting the subject sites is the Metrorail tunnel and easement running along the Florida Avenue frontage (northern portion) of the sites. Copies of sections of the right-of-way drawings, set forth below, show the relation of the underground easements and the sites.



On Lot 31 in Square 416, the two underground tunnel easements split the site from north to site.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005864



On Lot 44 in Square 393, the underground tunnel easement occupied the majority of the site and the entire frontage along Florida Avenue on the north. On Lot 45 in Square 393, the underground tunnel easement occupies the majority of the northern portion of the site, with a small area between the outbound track easement and the inbound track easement available for footings or supports, subject to WMATA restrictions and on tunnel and easement impact.

The distance from the surface to the upper level of the easements on all the properties appears to range from 18 to 20 feet, allowing, according to information from WMATA, for one level of below grade structure to be placed above the underground easements, again, subject to WMATA restrictions and on tunnel and easement impact.

According to the analysis from Mr. Colbert, the proximity of the tunnel and the likely reviews and restrictions on development above the tunnel will impact the maximum density that can be put above the tunnel and will cause an increase in the overall construction cost of the project. Mr. Colbert estimated that the tunnel will reduce the maximum likely density on each of the sites, taken as separate development sites, to from 3.35 FAR to 4.24 FAR, as will be shown in a later section of the report. The impact on the overall costs of the development was estimated by Mr. Colbert at from 20% to 25%, i.e., the total costs of developing the three sites, due to likely special foundation requirements above the tunnel,

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005865

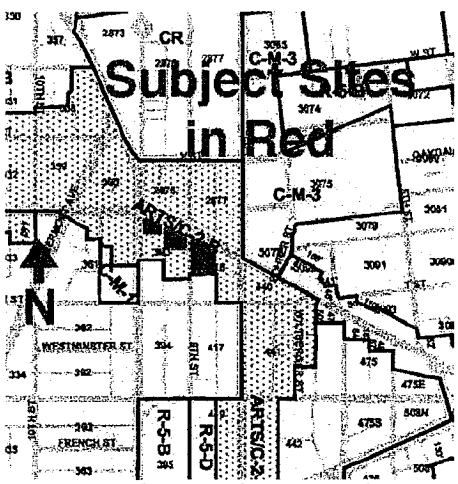
additional reviews, and other differences between normal mid-rise construction and construction over the tunnels.

WMATA's engineers have determined that the additional costs would be approximately $1,770,000 for the project as proposed. This level of additional cost is significantly less than that envisioned by Mr. Colbert, but, is reportedly based on the proposed development of the unified sites, rather than three separate developments. Per the instruction of the client, this analysis will utilize the cost figure derived by WMATA engineers, of $1,770,000, for the additional costs of constructing over and complying with, the various WMATA tunnels, easements and requirements. It would not be unreasonable for WMATA to adjust this number to reflect actual additional costs as the project proceeds, or, in the alternative, to negotiate a fixed 'additional costs' with the developer, after further consultation with appropriate cost estimators. As stated, for the purpose of this analysis, WMATA's estimate of $1,770,000 is adopted. This estimate of additional hard costs is adjusted upward by 30% to account for all of the soft costs associated with developing these complicated properties, resulting in a total deduction of

$1,770,000 x 1.3	=	$2,301,000
Rounded to		$2,300,000

Zoning and Land Use Controls

Subject's sites are zoned Arts/C-2-B, a commercial district designed to serve commercial and residential functions similar to the C-2-A District, but with high density residential and mixed uses. The district shall be compact and located on arterial streets, in uptown centers, and at rapid transit stops. The building use may be entirely residential or a mixture of commercial and residential.



DC Online Zoning Map with annotations

The sites are also included in the Uptown Arts Overlay District. The purpose of the Arts Overlay District is to encourage a scale of development, a mixture of building uses and other attributes such as safe and efficient conditions for pedestrians and vehicular movement. Specific requirements of

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005866

the district, set forth in Chapters 7 and 19 of the Zoning Regulations, are summarized as follows:

Summary of Arts/C-2-B Zoning Requirements

Height	65 feet maximum
Floor Area Ratio (FAR)	3.5 - Apartment house or other Residential
	1.5 - other permitted uses.
FAR with Bonus for Preferred Uses	4.5
Percentage of Lot Occupancy	80% maximum for residential uses.
Rear Yard	15 ft. minimum, below 20 foot height may be measured from center line of rear alley, above 20 foot height must be measured from rear lot line.
Side Yards	None required for other than one-family detached and one-family semi-detached dwellings, but if provided 2 inches per foot of height with a 6 foot minimum.
Parking:	
Apartment	1 for each 3 dwelling units
General Office	In excess of 2,000 sf, 1 for each additional 1,800 sf GFA and cellar floor area.
Medical/Dental	Twice the number of spaces required for general office use.
Retail/Service	In excess of 3,000 sf, 1 for each 750 sf GFA and cellar floor area.
Loading-Requirements	
Office	20,000 to 50,000 sq. ft.: 1 berth-30 ft., 1 platform-100 sq. ft., 1 service space at 20 ft.
	>50,000 to 200,000 sq. ft: 2 berth-30 ft., and 2 platform-100 sq. ft., 1 service space at 20 ft.
Residential	50 or more dwelling units: 1 berth-55 ft., and 1 platform-200 sq. ft., 1 service space at 20 ft.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005867

Inclusionary Zoning

Subject's sites are also included in the Inclusionary Zoning regulations of Chapter 26 of the Zoning Regulations. Under Inclusionary Zoning there is a mandatory housing requirement for any new development consisting of 10 or more units. The developer of these sites is required to set aside a certain percentage of units for low and moderate-income households. The developer is given bonus density of 20% more than is allowed under matter of right developments to compensate for building low and moderate-income housings. As of the date of valuation the Inclusionary Zoning requirements have not been enacted. The Inclusionary Zoning requirements shall become effective on the date of publication of the notice of final rulemaking (5/15/2009) in the D.C. Register, but pursuant to and with the exception of 225, shall not become applicable until ninety days after such publication or the date on which the final Maximum Rent and Price Schedule is published in the D.C. Register, whichever is later. The Maximum Rent and Price Schedule was published August 14, 2009. As of the date of the report, the Maximum Rent and Price Schedule had been published and 90 days had passed since the publication of the Final Rulemaking. As of the date of value, the impending implementation of the Inclusionary Zoning provisions was expected by the market and would have been considered by any prudent purchaser.

WMATA's second instruction was to assume that the total site would be used as the basis for the Inclusionary Zoning computation and that a sale of the individual parcels would not be entertained. Therefore, while it would be possible to develop Lot 44 in such a way as to not result in an IZ requirement, this analysis utilizes the total area of all three lots for the IZ requirement. The first test for required IZ density is 8% of the residential density in the project. The second test is 50% of the bonus density attributable to IZ. As the sites, per the WMATA instruction to use only a five story building, considering the impact of the WMATA tunnel can achieve only a maximum envelop of a 3.54 FAR, there is no effective place to put any potential bonus density on these three sites. Therefore, the controlling test would be 8% of the residential density.

Using Colbert's adjusted areas, the total residential density on the sites would be 80,169 sq. ft. of GFA, as shown below.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005868

Residential Density Computation (Allow 20% of 1st Floor)

Sq/Lot		393/44	393/45	416/31
Site Area		3,799 sf	8,621 sf	15,956 sf
1st	20%	720 sf	1,524 sf	2,891 sf
AG 2nd	100%	3,039 sf	6,100 sf	12,661 sf
AG 3rd	100%	3,039 sf	6,100 sf	12,661 sf
AG 4th	100%	3,039 sf	6,100 sf	12,661 sf
AG 5th	100%	0 sf	3,560 sf	6,074 sf
AG 6th	Out	0 sf	0 sf	0 sf
		9,837 sf	23,384 sf	46,948 sf
Total All Three Sites				80,169 sf

The requirement for affordable housing units at an 8% of residential GFA yields a total IZ requirement of 6,414 sq. ft. of GFA.

80,169 sq. ft. GFA x 8% = 6,414 sq. ft. GFA

The adjustment for the affordable housing (IZ) requirement is estimated at a base loss of $80 per FAR. This represents the loss in unit value due to the requirement for renting units at a level affordable to a household making 80% of the Area Median Income, the effective requirement under the IZ for the Arts/C-2-B district. To the extent that the developer is able to obtain subsidies, assistance, or other help from local or federal sources that provided for affordable housing, or obtain subsidies, assistance, or other help from local or federal sources that provide for assistance to developments that incorporate affordable housing, part of this loss may be offset at some future date and WMATA should monitor the development approval process and financing process to ensure that any offsets due to the 80% AMI affordable unit requirement are adjusted for.

Duke Draft Development Framework for a Cultural Destination District within Washington, DC's Greater Shaw/U Street[5]

The District submitted the Duke Draft Development Framework to the DC Council for approval in February 2005. The Council adopted the document as a "small area plan" in June 2005. The plan provides guidance in public policy decision-making to District agencies and commissions on affordable housing needs, local business development, existing and new cultural facilities and programming, quality public realm investments, transportation and traffic, zoning and local resident participation. The plan calls for subject's sites to be developed with mixed-use developments with active, ground floor

[5] DC Office Of Planning September 2004

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005869

retail and residential or office uses above. In the event that the approval process 'forces' the developer to meet an affordable housing requirement different than that discussed above, the impact on the value of the land could be significant.

Land Use Element of the Comprehensive Plan

Subject's sites are located within the moderate density residential and moderate density commercial mixed use zoning category. The current zoning is not inconsistent with the Plan.

Historic Status

Subject's sites are located in the Greater U Street Historic District. The Greater U Street Historic District is a Victorian-era neighborhood, developed largely between 1862 and 1900.[6] The Greater U Street Historic District, listed in the National Register of Historic Places in 1998, extends roughly from 16th Street on the west to 7th Street on the east and from S Street on the south to Florida Avenue on the north, and includes over 1,500 historic buildings.

[6] The District of Columbia Inventory of Historic Sites, February 23, 2004 update.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005870

PART III - DATA ANALYSIS AND VALUE CONCLUSION

Highest and Best Use

Highest and best use is defined in the text "The Appraisal of Real Estate", 13th ed., published by The Appraisal Institute, 2008, as "The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible and that results in the highest value." In this case, the value sought is of the fee simple value of the land, as if vacant and unimproved, and available for development to its highest and best use.

Subject's three sites are currently vacant and unimproved, zoned Arts/C-2-B, and impacted by underground easements benefiting WMATA for tunnels carrying the regional rapid rail transit system. As individual development sites, these three parcels contain 3,799 sq. ft. (Lot 44 in Square 393), 8,621 sq. ft. (Lot 45 in Square 393) and 15,956 sq. ft. (Lot 31 in Square 416).

Under the Arts/C-2-B zoning, the maximum density developable on the site is a 3.5 FAR as a matter-of-right, with the potential for up to 4.5 FAR with additional preferred, mainly residential, uses. However, with the presence of the WMATA underground easements and tunnels, and the resulting inability to place more than one level below grade, along with development restrictions on the weight and density that may be placed above the tunnel structure, the likely reasonable density that could be placed on the sites would be less than the maximum density permitted. Consultations with Mr. Eric Colbert, AIA, a well known local architect familiar with development over a Metrorail tunnel[7], yielded estimated maximum densities achievable on each of the sites as follows:

[7] Mr. Colbert is currently consulting with a developer on another site impacted by a WMATA easement in Northeast Washington, DC. Qualifications are set forth in the addenda.

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Colbert Estimate of Gross Floor Area (FAR) Subject to WMATA Tunnel and Underground Easement And Excluding The Sixth Floor

Sq/Lot	393/44	393/45	416/31
Site Area	3,799 sf	8,621 sf	15,956 sf
1st	3,600 sf	7,621 sf	14,456 sf
AG 2nd	3,039 sf	6,100 sf	12,661 sf
AG 3rd	3,039 sf	6,100 sf	12,661 sf
AG 4th	3,039 sf	6,100 sf	12,661 sf
AG 5th		3,560 sf	6,074 sf
GFA AG – 1st to 5th	12,717 sf	29,481 sf	58,513 sf
Site Area	3,799 sf	8,621 sf	15,956 sf
Developable FAR Max	3.35 FAR	3.42 FAR	3.67 FAR

These densities are less than the maximum 'potential' density with bonus density permitted under the Arts/C-2-B district, but reflect the physical limitations of development. The estimates are, however, of each site as a standalone site. The current proposal for the development of these sites, according to information from the client, incorporates the three subject sites into a larger development including additional land owned or controlled by the prospective purchaser. Under the proposed development of the combined project, a total of 157,000 sq. ft. of Gross Floor Area (FAR SF) will be constructed. Of this amount, 124,000 sq. ft., or roughly 79%, is reportedly attributable to the inclusion of the three WMATA sites. While this represents a premium of 23.1% more FAR than the three sites could generate as standalone sites, instructions are to use the adjusted area derived from the Colbert summary with WMATA and the developer agreeing to 'make the other whole' once approvals are in place and development is ready to proceed.

Additionally, the purpose of this analysis is to arrive at an opinion of the value of the site and an opinion of the appropriate land lease rate for the sites, as combined and as part of the larger development of which these sites will be a part. It would typically be appropriate to view the entirety of the development density that is generated by the subject sites as part of the larger development and not as standalone sites. The 'future make whole' agreement referenced above is reportedly intended to accomplish this.

The valuation of the three sites, therefore, will focus on the sum of the development density generated by the WMATA sites as determined by Colbert with the exclusion of the 6th floor.

The proposed development on the sites incorporates residential uses on the upper floors and retail uses on the first floor. This development scheme is consistent with the other newer developments along Florida Avenue and U Street. It

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005872

is the development scheme envisioned by Mr. Colbert. It is the development scheme that is expected by the market and conforms with the market. While a full highest and best use analysis could be undertaken regarding development timing, the purpose of this analysis is ultimately to set the price (rent) that the developer will pay to WMATA for the inclusion of the sites into the larger development. Therefore, the highest and best use of the sites is the proposed use, as a part of the larger assembly by the developer.[8]

Finally, the issue of the Inclusionary Zoning will have an impact on the value, and rent, that the subject sites can generate. The requirement for including affordable housing units into the development create two issues that must be addressed. As set forth earlier, approximately 6,414 sq. ft. of the potential FAR will be set aside for affordable housing. The value of the FAR attributable to the IZ affordable FAR is approximately $80 per FAR LESS than the value attributable to a market rate unit. In other words, not only does the land underlying these units have a $-0- land value, but there is an additional loss that must be subtracted from the total land value, as the potential for sufficient revenue to offset both the cost of construction AND return additional monies as a residual to the land is virtually non-existent.

Approaches to Value and Valuation

The property, consisting of the three sites as a development project and including the total allocated to the WMATA properties, has been valued utilizing a direct sales comparison approach to value, which is consistent with current market practices involving values of vacant, unimproved and underimproved land. Recent sales of similarly zoned unimproved sites in the general area were utilized to estimate the value of the land as if vacant and unimproved, on a per square foot basis. Analysis of these sales will result in a price per FAR for residential uses, and subject's highest and best use, assuming that the land was vacant, unimproved and available for development. This will result in an indicated land value before any adjustments for Inclusionary Zoning or WMATA tunnel and easement impact. Next, the financial impact of the Inclusionary Zoning and WMATA tunnels and easements will be applied to the unadjusted value to arrive at the value of the properties, as a unit, subject to both Inclusionary Zoning and WMATA tunnels and easements.

[8] Note that the larger developer is able to generate additional density by virtue of the assembly. At the same time, the assembly is able to achieve Florida Avenue frontages by virtue of the inclusion of the WMATA sites.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005873

Sales of sites zoned for mixed-use, primarily residential, development, in subject's larger neighborhood have been researched, verified and analyzed as to price per FAR, the most applicable unit of measurement for medium and high density residential and mixed-use residential-retail land sales. The analysis leading to the land value opinion is set forth on the following pages.

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Land Sales Analysis

Subject is generally level and on grade with Florida Avenue, 8th Street and 9th Street. One of the sites, Lot 44 in Square 393, is generally triangular, two, Lot 45 in Square 393 and Lot 31 in Square 416 are irregular but generally rectangular. The zoning on these sites is Arts/C-2-B. As stated earlier, the enactment of Inclusionary Zoning on August 21, 2009 will require any new development of more than 10 units to include a percentage of affordable housing units. Additional FAR beyond the matter of right allowed on the site will be allowed to compensate for the cost of the affordable units. Adjustments to the comparable sales for the Inclusionary Zoning requirement is difficult to estimate since the exact cost of providing the affordable units on each of the sites is unknown. Most brokers or developers contacted report that the Inclusionary Zoning will probably have a negative affect. As the adjustments for Inclusionary Zoning will be made to the sites after the 'base' land value is determined, no adjustment to most of the sales is required.

Other adjustments considered include financing, location, size, site topography and site configuration. All of the comparable sales were purchased with cash or conventional financing so no adjustment will be made for financing. The six comparable sales are all level, interior sites, located in similar locations within a few blocks of subject. Comparable #4 is a sale of four non-contiguous lots and comparable #5 is a sale of very narrow site. These comparable sales would be adjusted up for inferior site configuration and lack of corner. Most of the comparables are smaller, one is larger than two of the individual subject sites but smaller than Lot 31, the largest.

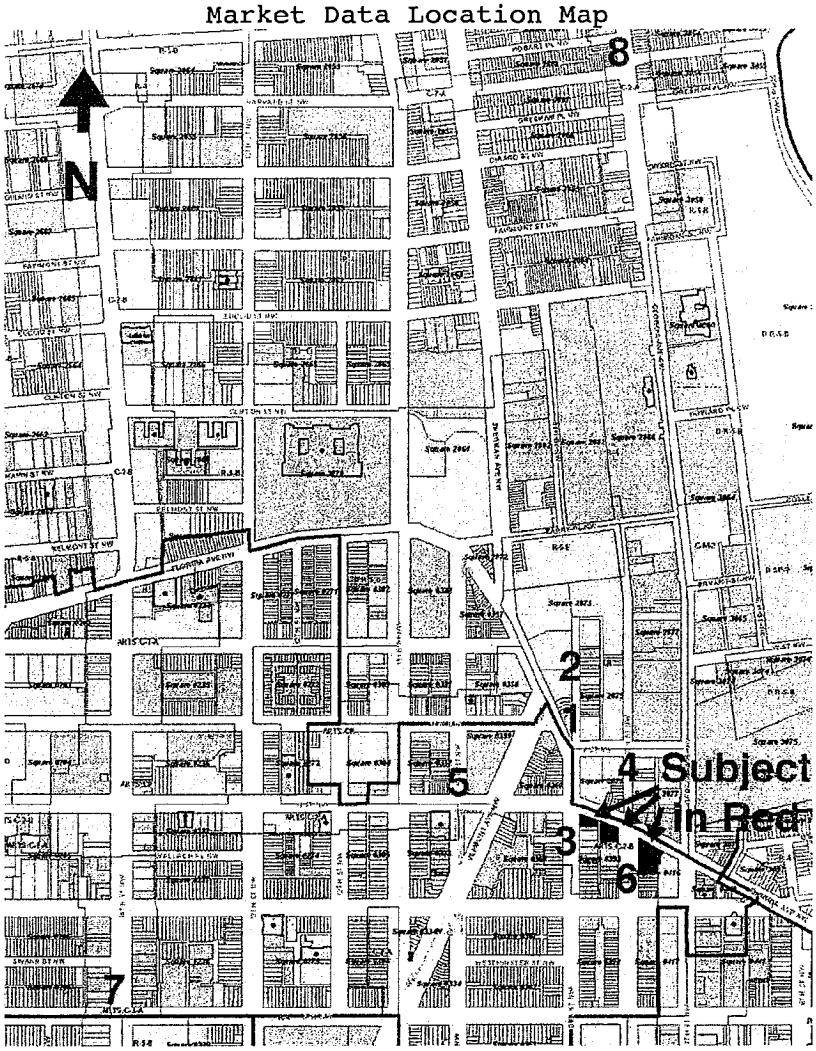
Summary of Comparable Sales

Sale-Location	Zone	FAR	Sale Date	Land Area	$/FAR
1-2047 9th	CR	6.0	Nov-06	4,073	$102
2-2143 9th	CR	6.0	Sep-07	11,942	$46
3-1932 9th	Arts/C-2-B	3.68	Jan-08	5,436	$70
4-2004+ 8th	Arts/C-2-B	4.5	Aug-08	3,537	$50
5-2006 10th	Arts/C-2-B	4.5	Sep-08	1,142	$43
6-1912 8th	Arts/C-2-B	4.5	Contract	1,887	$45
7-1407 S	Arts/C-3-A	4.99	Jun-08	20,418	$79
8-2908 Ga	C-2-A	2.5	Contr 8/09	6,477	$39

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005875

The sales above indicate prices in the range of $39 to $102 per FAR. The highest indication came from sale #1 at 2047 9th Street, NW. This site was purchased almost three years ago, during the height of the residential market activity, by the adjacent property owner for future expansion of his nightclub. It is currently improved with a small warehouse used for storage and a parking lot. Eliminating this sale results in a range, before adjustments, of from $39 per FAR to $79 per FAR, with an average of $46 per FAR. Set forth below is a location map, showing the location of the sales in relation to subject.

Market Data Location Map



As stated in the neighborhood section values have declined in the past two years. All of the sales are adjusted downward 15% per year for the change in market conditions. Set forth

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005876

below is a summary of these sales adjusted for market conditions to the date of value.

Sales Adjusted for Market Conditions

Sale-Location	Zone	FAR	Sale Date	Land Area	$/FAR
2-2143 9th	CR	6.0	Sep-07	11,942	$34
3-1932 9th	Arts/C-2-B	3.68	Jan-08	5,436	$55
4-2004+ 8th	Arts/C-2-B	4.5	Aug-08	3,537	$43
5-2006 10th	Arts/C-2-B	4.5	Sept-08	1,142	$37
6-1912 8th	Arts/C-2-B	4.5	Contract	1,887	$45
7-1407 S	Arts/C-3-A	4.99	Jun-08	20,418	$65
8-2908 Ga	C-2-A	2.5	Contr 8/09	6,477	$39

Comparable #2, at 2143 9th Street, is an 11,942 sq. ft. site located southeast of subject on 9th Street. The site is zoned CR. It sold in September 2007 for $46 per FAR to Howard University based on an FAR of 6.0. The site is level and has frontage on both 8th Street and the rear alley. Howard University is assembling sites in the area and also owns land adjacent to this site. This site, while small, is almost three times the size of subject. This sale would be adjusted downward for market conditions and up for corner.

Comparable #3, at 1932 9th Street, is a 5,436 sq. ft. interior site located one block southwest of subject. The site has 36 feet of street frontage on 9th Street and depth of 158 feet to a rear alley. This Arts/C-2-B zoned site sold in January 2008 for $70 per FAR based on a proposed 3.68 FAR mixed-use development. The price per FAR based on the maximum FAR allowed would be $57. The purchaser reportedly plans to build a 20,000 sq. ft. mixed use building, which equates to a 3.68 FAR. The site is located in a similar location, one-half block south of Florida Avenue. This sale would be adjusted downward for market conditions and up for corner

Comparable #4, at 2004-2008 and 2014 8th Street, is a 3,537 sq. ft. non-contiguous assembly of four lots located one block north of subject. The four lots sold for a total price of $800,000 or $50 per FAR. They are currently improved with four row houses in poor condition. According to the purchaser two of the row houses will be renovated. He is looking to assemble the remaining sites with adjacent land for a larger contiguous assembly. This sale would be adjusted downward for market conditions and upward for non-contiguous assembly and corner.

Comparable #5, at 2006 10th Street, is a 1,142 sq. ft. narrow lot located one-half block north of U Street. The site has only 13 feet of frontage on 10th street with a depth of 89 feet to a rear alley. This Arts/C-2-B zoned site sold in

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005877

September 2008 for $43 per FAR. The purchaser plans a residential development on the site. The property is currently back on the market at an asking price of $350,000 or $68 per FAR but the sales broker reports no interest in the site based on this asking price. This sale would be adjusted downward for market conditions and upward for narrow lot width and corner.

Comparable #6, at 1912 8th Street, is a 1,887 sq. ft. lot located south of subject. The site has 20 feet of frontage 8th Street with a depth of 94 feet to a rear alley. This Arts/C-2-B zoned site is currently listed on the market for $385,000 or $45 per FAR. The site is located adjacent to a similarly sized site that was developed in 2009 with a 5-unit condominium. This location is similar to subject but the site is smaller and lacks a corner.

Comparable #7, at 14th and S Streets, NW, is a 20,418 sq. ft. site, and is part of a 24,000 sq. ft. development site proposed for a 119,825 sq. ft. residential building with first floor retail. Zoning approval for the development was received in February 2009 and the purchaser has an option to purchase the adjacent property to finish the assembly. The site has ample frontage on both S and 14th Streets and will extend to Swann Street when the assembly is complete. This portion of the assembly represents 80+% of the total site. The Arts/C-3-A zone permits mixed uses similar to subject and the proposed development will be similar to the likely use at subject (residential over retail). This location is superior to subject, the site enjoys corners, is larger than the individual parcels at subject, but smaller than the combined development at subject.

Comparable #8, at 2908-14 Georgia Avenue is a 6,475 sq. ft. lot located at the southwest corner of Hobart Place and Georgia Avenue, north of subject. The site is L-shaped with frontages of 75 feet on Georgia Avenue and 125± feet on Hobart. The site is zoned C-2-A and is planned for a residential over retail structure. The asking price was $1,170,000 but the contract price was reported to be around $630,000. The site is in an inferior location compared to subject and has an inferior shape.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005878

Summary of Comparables

Sale-Addr	Date	Adj Mkt	Loc	Corner	Site Area	Fr X Dpth
2-2143 9th	9/07	$34	Comp	No	Comp/Lrg	118 X 101
3-1932 9th	1/08	$54	Comp	No	Sm/Comp	36 X 158
4-2004+ 8th	8/08	$43	Comp	No	Sml/Comp	Non-Contig
5-2006 10th	9/08	$37	Comp	No	Sml/Narrow	13 X 88
6-1912 8th	List	$45	Comp	No	Sml/Marrow	20 X 94
7-1407 S	6/08	$65	Sup	Yes	Comp	20 X 94
8-2908-14 Ga	Contr	$39	Inf	Yes	CompS/Sml	75 X 125

After adjustments for market conditions the comparable sales indicate an adjusted price range for subject from $34 to $65 per FAR with an average of $46 per FAR. The highest sale indication came from sale #7, similar in size and corners, but in a superior location, at $65 per FAR. Sale #8 is the reported contract for the inferior site at Georgia and Hobart and would set a lower limit for subject. The three largest sales, in terms of development density, #4, #7 and #8, ranged from $39 to $65 per FAR, with the lowest, #8, being the most inferior in terms of location and site characteristics (before WMATA adjustment).

Sale #4, at $43 per FAR, consists of four small non-contiguous lots on an inferior street north of subject. The purchaser is looking to assemble adjacent land into a larger contiguous assembly. Sale #3 is the closest comparable sale and indicated a price of $55 per FAR after adjusting for market conditions, but lacks a corner. The purchaser reportedly plans to build a mixed-used 3.68 FAR building, although nothing has been built since the purchase and the site is currently used as a pay parking lot. If this site were developed to a maximum 4.5 FAR the adjusted sale price would be $45 per FAR. Finally, the two sites located immediately south of Lot 44 in Square 393 are ~~under contract to the potential purchaser/lessee of~~ the subject parcels. ~~These 2008 contracts~~ were at prices around $90 per FAR. The purchaser indicated ~~that he~~ expected to renegotiate these prices down substantially given current market ~~conditions.~~ Based on the recent sales indications, this course of action ~~regarding these two~~ sites would be reasonable.

Considering the factors discussed above, subject's location along Florida Avenue (superior to sales with frontage only on 8th Street or 9th Street north of Florida Avenue) and the upper limit set by sale #7, it is our opinion that the value of subject's sites would be based on a base value of $50 per FAR.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005879

Based on the comparables and analysis above, the indicated value for the subject sites as a unified development parcel, as of August 31, 2009, would be:

Site Area - Combined	28,376 sf Land
FAR Sq. Ft. Individual Site Development	100,711 sf GFA
Value per FAR	$50.00/FAR
Unencumbered Value	$5,035,550

Adjustment to Value: Inclusionary Zoning Effective FAR Loss

The effective area lost due to Inclusionary Zoning has been estimated at 6,414 sq. ft. of Gross Floor Area. The total loss due to the Inclusionary Zoning, 80% AMI, affordable housing component has been estimated at $80 per FAR. This is equivalent to a lost land value of:

6,414 sq. ft. GFA x $80.00/FAR = $513,120

Adjustment to Value: Extraordinary Costs – WMATA Easements and Tunnels

As stated above, utilizing the cost estimates provided by WMATA, the adjustment for extraordinary hard costs associated with building over the WMATA tunnel and easements is $1,770,000. Allowing for necessary soft costs, this results in a total deduction from the unencumbered value of $2,300,000.

Final Value of Property Subject to Inclusionary Zoning and WMATA Tunnels and Easements

Value Unencumbered	$5,035,550
Adjustment for IZ FAR Loss	-$513,120
Adjustment for Extraordinary Costs	-$2,300,000
Encumbered Value 8/31/2009	$2,222,430
Rounded, as of 8/31/2009, to	$2,200,000

Exposure Time

There have been very few land sales, except for smaller sized sites and foreclosures. Given the complexities of developing the subject site, the necessity of obtaining approvals and processing reviews and agreements relating to the WMATA easements and tunnels, and the difficulty in obtaining

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005880

development financing in the current economic climate, the exposure time associated with the values set forth herein is estimated at 12 to 18 months or more.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005881

Fair Annual Land Rent

The second component of this analysis is to estimate the appropriate land rent for a long term land lease under typical market terms and the appropriate land rent under specified terms provided by the client.

First, the land rent under typical market terms is estimated at a base rate of 7% of the current land value. Annual escalations in the rent are estimated at 2% per year, with a revaluation of the underlying land and a reset to 7% of the revalued land value every ten years. It would be expected that some reduction in the land rent during an initial term, not to exceed 12 to 18 months, would be made as an accommodation to facilitate development approvals. These terms are utilized to compute a possible yield to the land owner under the lease, which will be the basis for estimating the land rent payments under the proposed lease term.

Land Value	$2,200,000	$2,200,000
Option 1 – Base Land Rent	7%	To Be Determined
Option 2 – Lump Sum		Lump Sum Payment no annual payment
Option 3 – Flat Annual		Flat Annual Payment, no escalations or revaluation
Annual Adjustment	2%	None
Periodic Revaluation	Every 10 Year Reset to 7%	None
Term	60 Years	60 Years
Reversion	60 Years	60 Years
Annual Increase in Land Value	Allow 4% per year on average over term	
Participation in Gross Revenue		1% of Gross Revenue
Participation in Refinancing Proceeds		2% of Net Proceeds from any refinancing
Participation in Sale Proceeds		2% of Net Proceeds from any sale of the property

Based on a market lease rate of 7% for a long term land lease with annual escalations and periodic revaluations and resets, the initial rent payment would be $154,000 per year (7%

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005882

x $2,200,000).[9] The rent would have annual escalations, estimated at 2% of the prior year rent, and there would be periodic revaluations of the land value every 10 years, at which time the base land rent would be reset to 7% of the then current land value. The lease would have typical clauses – rent never lower than prior year, no purchase options, requirements for upkeep of improvements, reversion of land and any remaining improvements at lease expiration to the leased fee owner, leasehold owner (tenant) responsible for all expenses, taxes, municipal charges, fees, etc., as well as all other requirements and features of a typical 'triple net land lease'.

In order to estimate the appropriate rental payments under the two WMATA requested Lease Options (Lump Sum Payment with Participation and Flat Rent with Participation), it is necessary to determine the effective yield to the leased fee owner under typical market terms, as this forms the basis for determining the equivalent rent under the two lease options requested.

The following assumptions are used to set the base yield to the leasehold under a typical market lease:

Land Value Escalation	4% annual average escalation in land value over the 60 year term of the lease
Annual Rent Escalations	2% per year

Set forth on the following page is a summary of the yield analysis indicating that these terms would yield a 10.5% (rounded) overall yield to the leased fee owner.

[9] Note that it would be reasonable to reduce the rent during the development approval phase of the project, with the full rent becoming effective at the receipt of development approvals from the City.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005883

Estimate of Yield on Typical Land Rent Terms
Option 1 Land Lease

Yr		Land Value Annual Change 4.00%	Annual Rent Escalation 2.00%	Yr		Land Value Annual Change 4.00%	Annual Rent Escalation 2.00%
1		$2,200,000	154,000	31	Reval	$7,135,473	$499,483
2		$2,288,000	$157,080	32		$7,420,892	$509,473
3		$2,379,520	$160,222	33		$7,717,728	$519,662
4		$2,474,701	$163,426	34		$8,026,437	$530,055
5		$2,573,689	$166,695	35		$8,347,494	$540,656
6		$2,676,637	$170,029	36		$8,681,394	$551,469
7		$2,783,702	$173,430	37		$9,028,650	$562,498
8		$2,895,050	$176,899	38		$9,389,796	$573,748
9		$3,010,852	$180,437	39		$9,765,388	$585,223
10		$3,131,286	$184,046	40		$10,156,004	$596,927
11	Reval	$3,256,537	$227,958	41	Reval	$10,562,244	$739,357
12		$3,386,798	$232,517	42		$10,984,734	$754,144
13		$3,522,270	$237,167	43		$11,424,123	$769,227
14		$3,663,161	$241,910	44		$11,881,088	$784,612
15		$3,809,687	$246,748	45		$12,356,332	$800,304
16		$3,962,074	$251,683	46		$12,850,585	$816,310
17		$4,120,557	$256,717	47		$13,364,608	$832,636
18		$4,285,379	$261,851	48		$13,899,192	$849,289
19		$4,456,794	$267,088	49		$14,455,160	$866,275
20		$4,635,066	$272,430	50		$15,033,366	$883,601
21	Reval	$4,820,469	$337,433	51	Reval	$15,634,701	$1,094,429
22		$5,013,288	$344,181	52		$16,260,089	$1,116,318
23		$5,213,820	$351,065	53		$16,910,493	$1,138,644
24		$5,422,373	$358,086	54		$17,586,913	$1,161,417
25		$5,639,268	$365,248	55		$18,290,390	$1,184,645
26		$5,864,839	$372,553	56		$19,022,006	$1,208,338
27		$6,099,433	$380,004	57		$19,782,886	$1,232,505
28		$6,343,410	$387,604	58		$20,574,201	$1,257,155
29		$6,597,146	$395,356	59		$21,397,169	$1,282,298
30		$6,861,032	$403,263	60	Reval + Revn	$22,253,056	$23,561,000

With a starting value of $2,200,000, the indicated internal rate of return on the these payments would be 10.4794%, which would be rounded to 10.5%.

In order to compute the appropriate Lump Sum Payment with the proposed participations and the Flat Annual Rent with the proposed participations, additional assumptions are required, as summarized on the following page. These tests are designed to arrive at the requested Option Rents yielding the same return to the leased fee as the typical market lease shown above.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005884

Summary of Assumptions for Lease Option Analyses

Initial Land Value	$2,200,000
Leased Fee IRR	10.5% at market terms
Land Value Escalation	4% annual average escalation in land value over the 60 year term of the lease
Gross Rent	Based on 100,711 sf gross area, 85% net to gross ratio, $2.50 monthly rent, escalating 3% per year for the term
Net Proceeds	Estimate at an initial leasehold value of $400 per sq. ft. with a 75% loan to value ratio, 7% interest rate loan with 30 year term, monthly amortization, property value increase of 3% per year for the first 40 years then declines 1% per year through the end of the term, 5% expenses on sale with a sale every ten years and improvements value at $-0- at end of term

The Annual Participation in the Gross Revenue would therefore be, in year one of stabilization, $31,620 as shown below.

Gross Area	100,711 sf
Net/Gross	85.00%
Rentable	85,604 sf
Rent/SF/Mo	$2.50
Monthly Gr	$214,011
Annualize	12
Annual Gross	$2,568,131
Participation Rte	1.00%
Annual Participation in Gross Revenue	$25,681
Annual Increase in Rent (and participation)	3%
Discount Rate for Present Value	10.5%

The present value of the annual participation, as shown on the following page, is $337,364.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005885

Present Value of Annual Participation
Options 2 and 3

Year	Annual Participation Escalation 3.00%	Year	Annual Participation Escalation 3.00%
1	$25,681	31	$62,330
2	$26,452	32	$64,200
3	$27,246	33	$66,126
4	$28,063	34	$68,110
5	$28,905	35	$70,153
6	$29,772	36	$72,258
7	$30,665	37	$74,426
8	$31,585	38	$76,659
9	$32,533	39	$78,959
10	$33,509	40	$81,328
11	$34,514	41	$83,768
12	$35,549	42	$86,281
13	$36,615	43	$88,869
14	$37,713	44	$91,535
15	$38,844	45	$94,281
16	$40,009	46	$97,109
17	$41,209	47	$100,022
18	$42,445	48	$103,023
19	$43,718	49	$106,114
20	$45,030	50	$109,297
21	$46,381	51	$112,576
22	$47,772	52	$115,953
23	$49,205	53	$119,432
24	$50,681	54	$123,015
25	$52,201	55	$126,705
26	$53,767	56	$130,506
27	$55,380	57	$134,421
28	$57,041	58	$138,454
29	$58,752	59	$142,608
30	$60,515	60	$146,886
Present Value of Annual Participation at 10.5%			$337,364

Next, the periodic participation in the net sale or refinancing proceeds is estimated based on the assumptions set forth. For this component of the analysis, it has been assumed that the property would be sold every ten years.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005886

Participation in Net Proceeds (Sale Every Ten Years)
Options 2 and 3

Yr	Leasehold Value 3% > -1%	Mortgage Balance	Sales Exp 5.00%	Net Proceeds	Participation In Net Proceeds 2.00%
1	$34,241,740	$25,681,305	$1,712,087	$6,848,348	0
2	$35,268,992	$25,140,700	$1,763,450	$8,364,842	0
3	$36,327,062	$24,840,746	$1,816,353	$9,669,963	0
4	$37,416,874	$24,519,109	$1,870,844	$11,026,921	0
5	$38,539,380	$24,174,221	$1,926,969	$12,438,190	0
6	$39,695,561	$23,804,400	$1,984,778	$13,906,383	0
7	$40,886,428	$23,407,845	$2,044,321	$15,434,262	0
8	$42,113,021	$22,982,624	$2,105,651	$17,024,746	0
9	$43,376,412	$22,526,662	$2,168,821	$18,680,929	0
10	$44,677,704	$22,037,740	$2,233,885	$20,406,079	$408,122
11	$46,018,035	$34,513,526	$2,300,902	$9,203,607	0
12	$47,398,576	$33,786,998	$2,369,929	$11,241,649	0
13	$48,820,533	$33,383,886	$2,441,027	$12,995,620	0
14	$50,285,149	$32,951,632	$2,514,257	$14,819,260	0
15	$51,793,703	$32,488,131	$2,589,685	$16,715,887	0
16	$53,347,514	$31,991,123	$2,667,376	$18,689,015	0
17	$54,947,939	$31,458,187	$2,747,397	$20,742,355	0
18	$56,596,377	$30,886,724	$2,829,819	$22,879,834	0
19	$58,294,268	$30,273,951	$2,914,713	$25,105,604	0
20	$60,043,096	$29,616,879	$3,002,155	$27,424,062	$548,481
21	$61,844,389	$46,383,292	$3,092,219	$12,368,878	0
22	$63,699,721	$45,406,899	$3,184,986	$15,107,836	0
23	$65,610,713	$44,865,150	$3,280,536	$17,465,027	0
24	$67,579,034	$44,284,237	$3,378,952	$19,915,845	0
25	$69,606,405	$43,661,330	$3,480,320	$22,464,755	0
26	$71,694,597	$42,993,393	$3,584,730	$25,116,474	0
27	$73,845,435	$42,277,171	$3,692,272	$27,875,992	0
28	$76,060,798	$41,509,173	$3,803,040	$30,748,585	0
29	$78,342,622	$40,685,657	$3,917,131	$33,739,834	0
30	$80,692,901	$39,802,608	$4,034,645	$36,855,648	$737,113
31	$83,113,688	$62,335,266	$4,155,684	$16,622,738	0
32	$85,607,099	$61,023,076	$4,280,355	$20,303,668	0
33	$88,175,312	$60,295,010	$4,408,766	$23,471,536	0
34	$90,820,571	$59,514,312	$4,541,029	$26,765,230	0
35	$93,545,188	$58,677,177	$4,677,259	$30,190,752	0
36	$96,351,544	$57,779,526	$4,817,577	$33,754,441	0
37	$99,242,090	$56,816,983	$4,962,105	$37,463,002	0
38	$102,219,353	$55,784,858	$5,110,968	$41,323,527	0
39	$105,285,934	$54,678,121	$5,264,297	$45,343,516	0
40	$108,444,512	$53,491,377	$5,422,226	$49,530,909	$990,618
41	$107,360,067	$80,520,050	$5,368,003	$21,472,014	0
42	$106,286,466	$78,825,061	$5,314,323	$22,147,082	0

(Continued on following page)

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005887

Participation in Net Proceeds (Sale Every Ten Years)
(Continued from prior page)

Yr	Leasehold Value 3% > -1%	Mortgage Balance	Sales Exp 5.00%	Net Proceeds	Participation In Net Proceeds 2.00%
43	$105,223,601	$77,884,599	$5,261,180	$22,077,822	0
44	$104,171,365	$76,876,152	$5,208,568	$22,086,645	0
45	$103,129,651	$75,794,803	$5,156,483	$22,178,365	0
46	$102,098,354	$74,635,284	$5,104,918	$22,358,152	0
47	$101,077,370	$73,391,944	$5,053,869	$22,631,557	0
48	$100,066,596	$72,058,722	$5,003,330	$23,004,544	0
49	$99,065,930	$70,629,121	$4,953,297	$23,483,512	0
50	$98,075,271	$69,096,174	$4,903,764	$24,075,333	$481,507
51	$97,094,518	$72,820,889	$4,854,726	$19,418,904	0
52	$96,123,573	$71,287,970	$4,806,179	$20,029,424	0
53	$95,162,337	$70,437,434	$4,758,117	$19,966,786	0
54	$94,210,714	$69,525,412	$4,710,536	$19,974,766	0
55	$93,268,607	$68,547,460	$4,663,430	$20,057,717	0
56	$92,335,921	$67,498,812	$4,616,796	$20,220,313	0
57	$91,412,562	$66,374,357	$4,570,628	$20,467,577	0
58	$90,498,436	$65,168,615	$4,524,922	$20,804,899	0
59	$89,593,452	$63,875,709	$4,479,673	$21,238,070	0
60	$88,697,517	$62,489,340	$4,434,876	$21,773,301	$22,253,056
Present Value of Participation in Net Proceeds at 10.5%					$338,900

The present value of the annual participation has been estimated at $337,364. The present value of the periodic participation in net proceeds of sale (or refinancing) has been estimated at $338,900. The value of the land and the present value of the market terms lease payments is $2,200,000. Deducting the present value of the annual participation and the present value of the net proceeds from sale (or refinancing) will leave an amount of money that represents the required present value of the Option One Lump Sum Payment, or the required present value of the Option Two Flat Annual Rental. In other words, the present value of the Option One Payment or the present value of the Option Two Flat Payments must equal the residual present value after deducting the participation amounts.

Land Value	$2,200,000
PV of Annual Participation	-$337,364
Present Value of Net Proceeds Participation	-$338,900
Balance to Capture in Rent	$1,523,735

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005888

Option Two – Lump Sum Payment

The amount of the required Lump Sum Payment that, when added to the annual and periodic participations in gross rent and net proceeds will yield the same return to the leased fee owner as the market rent terms, is equal to the Balance to Capture in Rent or $1,523,735.

Option Three – Flat Annual Rent

The amount of the required Flat Annual Rental Payable In Advance that, when added to the annual and periodic participations in gross rent and net proceeds, will yield the same return to the leased fee owner as the market rent terms, is equal to the amount to amortize, at the leased fee yield rate, the Balance to Capture in Rent ($1,523,735) at a 10.5% discount rate for a 60 year term with payments in advance or $145,152 per year payable annually. If Monthly Payments in Advance are used, the rent would be $13,242 per month in advance.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005889

CERTIFICATION

The Undersigned do hereby certify that, to the best of our knowledge and belief:

The statements of facts contained in this report are true and correct;

The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analysis, opinions and conclusions;

We have no present or prospective interest in the property that is the subject of this report, and have no personal interest with respect to the parties involved;

We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment;

Our engagement in this assignment was not contingent upon developing or reporting predetermined results;

Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal;

The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which includes the Uniform Standards of Professional Appraisal Practice;

We inspected the subject property;

The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Richard R. Harps has completed the continuing education program of the Appraisal Institute.

Disclosure of the contents of this appraisal report is governed by the by-laws and Regulations of the Appraisal Institute.

Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers or the firm with which they are connected or the MAI or SRA designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communications without the prior written consent and approval of the undersigned.

Richard R. Harps
DC Certified General License #10003

Stephen C. Brennan
DC Certified General License #10011

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005890

QUALIFICATIONS OF RICHARD R. HARPS, MAI, CRE

Academic: Bachelor of Arts, Economics, The American University, Washington, D.C. 1972.

American Institute of Real Estate Appraisers courses and/or examinations: IA - Basic Principles, Methods and Techniques - 1972; IB - Capitalization Theory and Techniques - 1972; II - Urban Properties - 1973; IV - Condemnation - 1973; VI - Investment Analysis - 1980; IBA - Capitalization Theory & Techniques - 1987; 2-1 Case Studies - 1991, Highest and Best Use and Market Analysis – 1993, Advance Sales Comparison and Cost Approach - 2000

Seminars presented by AIREA, AI, GWCAR, WBR, WDCAR and other organizations.

General: 1971-1983 - John R. Pinkett, Inc., Vice President of Appraisals.
1984 to Present - HARPS & HARPS, INC., President
1996 to 2004 – HARPS & SCALLAN, LLC/INC.

Qualified as Expert in: District of Columbia Zoning Commission; District of Columbia Board of Zoning Adjustment; District of Columbia Office of Tax and Revenue Board of Real Property Assessments and Appeals; District of Columbia Alcohol Beverage Control Board; Superior Court of the District of Columbia; United States District Court for the District of Columbia; United States Bankruptcy Court for the District of Columbia; Mayor's Agent for Historic Preservation-Chief Administrative Law Judge of the District of Columbia; United States Bankruptcy Court, District of Maryland; United States District Court, District of Maryland.

District of Columbia Certified General Real Property Appraiser Certificate #10003.
Maryland Certified General Real Property Appraiser Certificate #10177
Virginia Certified General Real Estate Appraiser Certificate #003181

Appraisal/Consulting Experience: Assignments since 1971 include: houses, stores, shopping centers, office buildings, apartment buildings, hotels, unimproved land, air rights, special purpose properties; full and partial takings from office buildings, power plants, stores, houses, railroad rights-of-way, and apartment buildings; condominium conversion, relocation assistance studies, planned unit development analyses, lease analyses, fair rental studies, urban renewal re-use parcels and assessment consulting, valuation and equalization studies.

Partial Client List: , United State National Park Service, Washington Metropolitan Area Transit Authority, U.S. General Services Administration, U.S. Dept. of Justice, District of Columbia Department of Housing and Community Development, District of Columbia National Capital Revitalization Corporation, Potomac Electric Power Company, Washington Gas Light Company, Verizon, Howard University, International Monetary Fund, International Bank for Reconstruction and Development (World Bank) attorneys, financial institutions, developers and individuals.

Organizations

Appraisal Institute, successor to American Institute of Real Estate Appraisers, MAI designation - Voluntary re-certification through December 31, 2007
Minority Relations Subcommittee, 1980-1981, Vice Chairman 1981; National Education Committee, 1983-1984; Division of Courses, 1985; Division of Curriculum, 1981-1982; Board of Examiners - Examinations 1987-1989; and General Comprehensive Examination Subcommittee/General Comprehensive Examination Panel 1983-2007, Chairman 1987-1989

Washington Metropolitan Area Chapter Appraisal Institute (formed January 1991 by merger of Wash Metro Chapter # 18 AIREA and Wash Metro Chapter of SREA): President-1994

Counselors of Real Estate - CRE designation

District of Columbia Building Industry Association

Washington D.C. Association of REALTORS®: New Development/Zoning Committee 1975-90, Chrm 1981-82; Board of Directors, 1981 to 1986, 1990-1994, 1998; President, 1985

Real Estate Education Foundation (WDCAR) - President 1989

Lambda Alpha International – International Land Economics Fraternity

Real Estate Counseling Group of America – President 2005-2007

National Association of REALTORS®: Board of Directors 1985-1987, 1992; Executive Committee 1986-1987; REALTORS® Legislative Committee: 1989 Chairman Housing Subcommittee, 1990 Chairman Federal Tax Subcommittee, 1991 Vice Chairman RLC, 1992 Chairman RLC; Real Estate Finance Committee 1989-92; State and Municipal Legislative Committee 1990; Building Advisory Committee/Real Property Operations Committee 1988, 1990-1993, 2004, 2007; RPAC Trustee 1989, 1992; Real Estate Lending Working Group Chairman 1991; Public Policy Oversight Group 1993

Greater Washington Board of Trade - Board of Directors, 1985

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005891

QUALIFICATIONS OF STEPHEN C. BRENNAN

Education

1986 Graduate of Colby College, Waterville, Maine. Bachelor of Arts in Administrative Science with a minor in Economics. Graduate Real Estate courses: Principles and Practices of Real Estate, Real Estate Finance, and Appraisal 1. American Institute of Real Estate Appraisers courses and/or exams successfully completed: 1-A1 Real Estate Appraisal Principles, 1-A2 Basic Valuation Procedures, 1-B1 Capitalization Theory and Techniques Part A, and Capitalization Theory and Techniques Part B, 2-1 Case Studies in Real Estate Valuation, Report Writing and Valuation Analysis, Narrative Appraisal Report Writing, Apartment Appraisal, Appraisal Institute #I330, Standards of Professional Practice, Part B, February 2002, Evaluating Commercial Construction Seminar September 2003, National USPAP Update February 2004, and Appraisal Institute's Online Analyzing Operating Expenses, February 2004.

General Experience

Commercial Property Appraiser — 1988-Present
Harps & Harps, Inc.
Washington, D.C.

Residential Property Appraiser — 1987-1988
F. Jerome Silverstein Realty
New London, Ct.

Professional Associations and Licenses

District of Columbia, Certified General Real Property Appraiser License #10011

Maryland, Certified General Real Property Appraiser License #10178

Candidate for membership in the Appraisal Institute (MAI Designation)

Realtor Associate Member of the Washington D. C. Association of Realtors

Work Experience

Recent assignments include: appraisals of single and multifamily dwellings, condominiums, residential and commercial land, new construction, warehouses, office buildings, stores, shopping centers and apartment buildings.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005892

SCOPE OF WORK

SHAW-HOWARD UNIVERSITY METRORAIL STATION AREA

OWNER:	WMATA
LOCATION:	South Side of Florida Avenue between 7th & 9th Streets, NW Washington, DC
LEGAL DESCRIPTION:	Square 393, Lots 44 and 45; Square 416, Lots 18 and 31
ZONING:	C-2-B in Arts Overlay Zone
ESTIMATED AREA:	Lot 44 - 3,800 SF Lot 45 - 8,600 SF Lot 18 - 516 SF Lot 31 - 15,956 SF
COMMENTS:	The northern portions of the parcels contains an existing Metrorail tunnel that has an upper limit that is 19 feet below the surface. WMATA can provide to the appraiser cost estimates for extraordinary costs that may be involved in building over the WMATA tunnel. The Inclusionary Zoning Implementation Act, as amended, and the Duke Plan incorporate affordable housing provisions that should be considered in an analysis of the subject property.
DUE DATE:	A preliminary draft shall be due 30 days after notice to proceed. A complete summary report shall be due 7 business days after the receipt of comments on the preliminary draft.
TYPE OF REPORT:	Summary Appraisal Report
REQUIREMENTS:	The appraiser shall provide each of the following for the subject property: 1. Fair market value of the site reserving to WMATA a permanent underground easement on the northern portion of the property for the below-grade track and tunnel; 2. Fair market value per sq. ft. of FAR for any retail or commercial component, market rate residential units, and affordable housing units 3. The annual rent for a longterm ground lease

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005893

Eric Colbert & Associates Memorandum

Located on the following three pages

The Colbert memorandum utilized a total site area of 16,472 sq. ft. for Lots 31/18 in Square 416 per the original instructions from WMATA regarding site area. Further review by WMATA indicated that the inclusion of the area within former Lot 18, although still shown on Assessment Office record, was in error and the total area of Lot 31 in Square 416 should have been 15,956 sq. ft. The Colbert areas for this lot have been adjusted, as shown below, to reflect this area change.

	Site Area
Original Site Ø	16,472 sf
Revised Site Ø	15,956 sf
Adjustment Factor	516 sf

Adjusting each of Colbert's areas on Lot 31 by -516 sq. ft., and eliminating the 6th floor, per the Client instruction, results in revised areas as follows:

Sq/Lot	393/44	393/45	416/31
Site Area	3,799 sf	8,621 sf	15,956 sf
Garage (B-1)	3,799 sf	8,621 sf	15,956 sf
1st	3,600 sf	7,621 sf	14,456 sf
AG 2nd	3,039 sf	6,100 sf	12,661 sf
AG 3rd	3,039 sf	6,100 sf	12,661 sf
AG 4th	3,039 sf	6,100 sf	12,661 sf
AG 5th		3,560 sf	6,074 sf
GFA AG – 1st TO 5th	12,717 sf	29,481 sf	58,513 sf
Lot Area	3,799 sf	8,621 sf	15,956 sf
Developable FAR Max	3.35 FAR	3.42 FAR	3.67 FAR

	Combined Totals
Land Area	28,376 sf
Gross Floor Area (FAR)	100,711 sf
Combined FAR	3.55 FAR

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005894

ERIC COLBERT & ASSOCIATES PC 717 5TH STREET NORTHWEST WASHINGTON DC 20001 TELEPHONE (202) 289-6800

July 31, 2009

Mr. Richard Harps
1111 14th Street, N.W., Suite 600
Washington, D.C. 20005

Re: Square 393, Lots 44 and 45; Square 416, Lots 18 and 31

Dear Richard,

Following is the analysis you requested. First is a list of zoning restrictions:

Underlying C-2-B Zoning Requirements

- Height Limit = 65'
- FAR = 3.5, 1.5 non-residential maximum
- Maximum Lot Occupancy = 80% at all residential floors
- Rear Yard = 15'
- Required Parking = 1 per 3 dwelling units

Arts Overlay

- Up to 4.5 maximum bonus density permitted.

Inclusionary Zoning (IZ)

- 20% additional density
- 5' extra building height

The problem with the proximity of the Metro tunnel with these sites is that it exists on one side (the north) of the properties. If the Metro tunnel ran through the middle of our site, we could "bridge" the tunnel, making it easier to build higher above the tunnel. Because the tunnel is on one side, we can only build a structure that can be supported by the tunnel itself. My office is working on a project now where we have had numerous meetings with Metro regarding building over a tunnel. The maximum that Metro will allow us to (economically) build is a four-story wood structure. My best assumption is that we could possibly build a structure that has one level of underground parking and four floors above ground (above the tunnel).

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005895

For Lot 44 (Square 393), the proximity of Metro to the site suggests that the entire site be limited to the restrictions I stated. This will allow a structure which has a parking garage of 3,799 square feet. Due to the small size of the lot and its awkward shape, we can probably only accommodate 8 or 9 spaces in this garage. The first floor can be entirely commercial for a gross square footage of 3,600. The actual leasable space will be much lower, however, due to the need to have a lobby for the upstairs uses plus an elevator and two fire stairs. The actual retail on this level will likely be about 2,900 square feet. Assuming that floors 2, 3, and 4 are residential use, they could occupy 80% of the lot and have 3,039 gross square feet each. An apartment building of this size will only be about 75% efficient, leaving 2,279 sellable or leasable square feet each on floors 2, 3, and 4. This gives a total rentable or sellable area of 9,737 square feet for this site.

Lot 45 in Square 393 will be more efficient to build on. Approximately half of the site could go up to 70' height, while the other half would be limited as stated for Lot 44. This will yield the following areas, assuming a building that has one full level of parking underground and one full retail level at grade. On half of the site, three more floors will be permitted, while on the other half, five more floors will be possible. Based on nearby developments, the most reasonable use for the floors above the first floor seems to be residential use.

Lot 45 Potential Building

Floor	Gross S.F.	Net Sellable/Leasable S.F.
Garage (-1)	8,621	22 Parking Spaces
1	7,621	7,000
2	6,100	5,100
3	6,100	5,100
4	6,100	5,100
5	3,560	2,850
6	3,560	2,850
Total	33,041	28,000

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005896

The same analysis used for Lot 45 in Square 393 will apply to Lot 31 in Square 416. Again, about one-half of the lot has the underground tunnel beneath it.

Lot 31 Potential Building

Floor	Gross S.F.	Net Sellable/Leasable S.F.
Garage (-1)	16,472	45 Parking Spaces
1	14,972	14,300
2	13,177	11,200
3	13,177	11,200
4	13,177	11,200
5	6,590	5,600
6	6,590	5,600
Total	84,155	59,100

Building next to and above the Metro structures as will be required for these lots will increase construction costs by at least 20% to 25%. Being in a historic district means that there is no guarantee that a 70-foot high building will be permitted.

Sincerely,

Eric Colbert, AIA

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005897

THE DEPUTY MAYOR FOR PLANNINGAND ECONOMIC DEVELOPMENT
THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

INCLUSIONARY ZONING AFFORDABLE HOUSING PROGRAM
MAXIMUM RENT AND PURCHASE PRICE SCHEDULE

This Maximum Rent and Purchase Price Schedule is established pursuant to the Inclusionary Zoning Implementation Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*) ("the Act") and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 26 Title 11 of the DCMR. The Schedule is effective August 14, 2009.

Multi-Family Inclusionary Developments

					50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
Studio	1	1	$108	$250	$899	$107,500	$1,438	$190,700
1	2	1 - 2	$150	$313	$1,027	$117,700	$1,643	$212,800
2	3	2 - 4	$192	$425	$1,155	$120,100	$1,849	$227,100
3	5	4 - 6	$233	$525	$1,412	$144,300	$2,259	$275,100

Single-Family Inclusionary Developments

					50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
2	3	2 - 4	NC	$110	$1,155	$160,300	$1,849	$267,300
3	5	4 - 6	NC	$130	$1,412	$196,800	$2,259	$327,600
4	7	6 - 8	NC	$150	$1,669	$233,400	$2,670	$388,000

The Maximum Purchase Price or Rent is based on the Washington Metropolitan Statistical Area 2009 Area Median Income of $102,700 for a family of four (4) as published by the United States Department of Housing and Urban Development. It takes into account an ability to pay thirty percent (30%) of the benchmark income towards the housing cost.

Maximum Allowable Rent is equal to the rent published minus any utility expenses paid by the tenant for heat, air conditioning, cooking, electricity, or hot water. Utilities are estimated above. Actual costs to be deducted for each utility are as described in the District of Columbia Housing Authority's Utility Schedule.

An Inclusionary Development Owner may lower the rents or prices to achieve a larger marketing band of incomes for marketing purposes to assure occupancy.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005898

Maximum Allowable Purchase Prices use the following assumptions:

1. A conventional thirty (30) year, fixed-rate, fully amortizing mortgage at the national average mortgage rate as published by the Federal Housing Finance Agency at www.fhfa.gov (5.12% as of July 28, 2009) plus a one percent (1%) cushion to protect for future interest rate increases and a five (5%) down payment.

2. Real estate property taxes are assessed at the control price at current real estate tax rates and homestead deductions.

3. Condominium fees are estimated at fifty cents ($0.50) per square foot per month applied to the assumed unit square footages. Single-family homeowner association fees are estimated at ten cents ($0.10) per square foot per month applied to the assumed unit square footages. Estimated unit sizes are:

Multi-Family Inclusionary Development

Studio	1-Bedroom	2-Bedroom	3-Bedroom
500	625	850	1,050

Single-Family Inclusionary Development

2-Bedroom	3-Bedroom	4-Bedroom
1,100	1,300	1,500

4. Monthly hazard insurance on single-family units is estimated at one half of one percent (0.5%) of replacement value.

NOTE 1. If the actual homeowner/condominium fee for a specific Inclusionary Unit is more than ten percent (10%) higher than the fee assumed in the Maximum Price or Rent Schedule and/or hazard insurance is not included in the condominium fees, then the actual fees and insurance costs shall be used to determine the maximum sales price of the Inclusionary Unit.

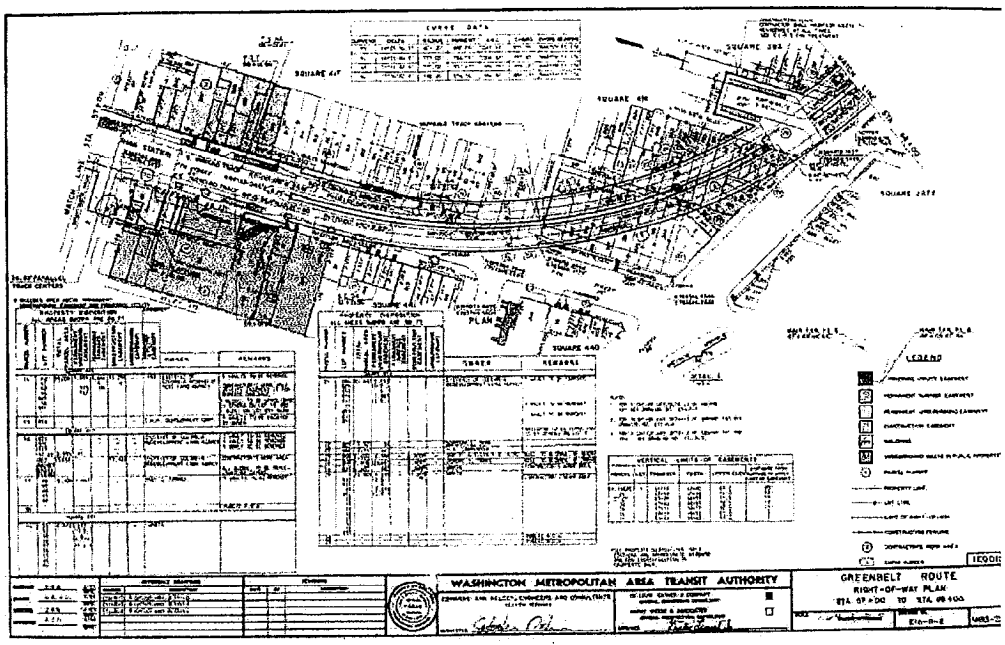
NOTE 2. For unit types larger than listed above contact the Agency.

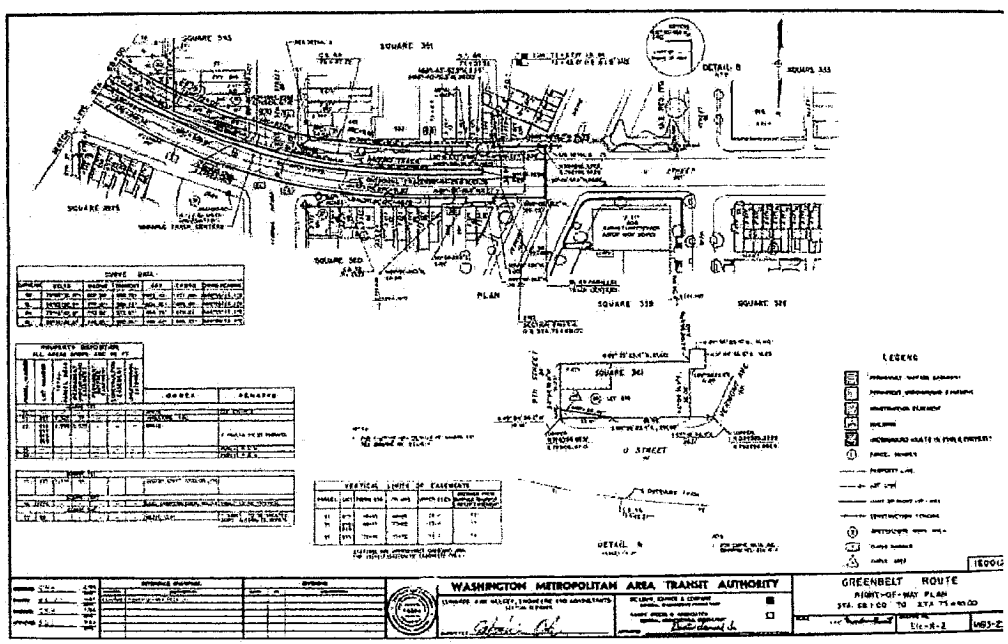
NOTE 3. NC — Not calculated. Contact the Agency.

NOTE 4. More information on Inclusionary Zoning is available at www.dhcd.dc.gov.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005899

Reduced Copies of WMATA Section and Right-of-Way drawings





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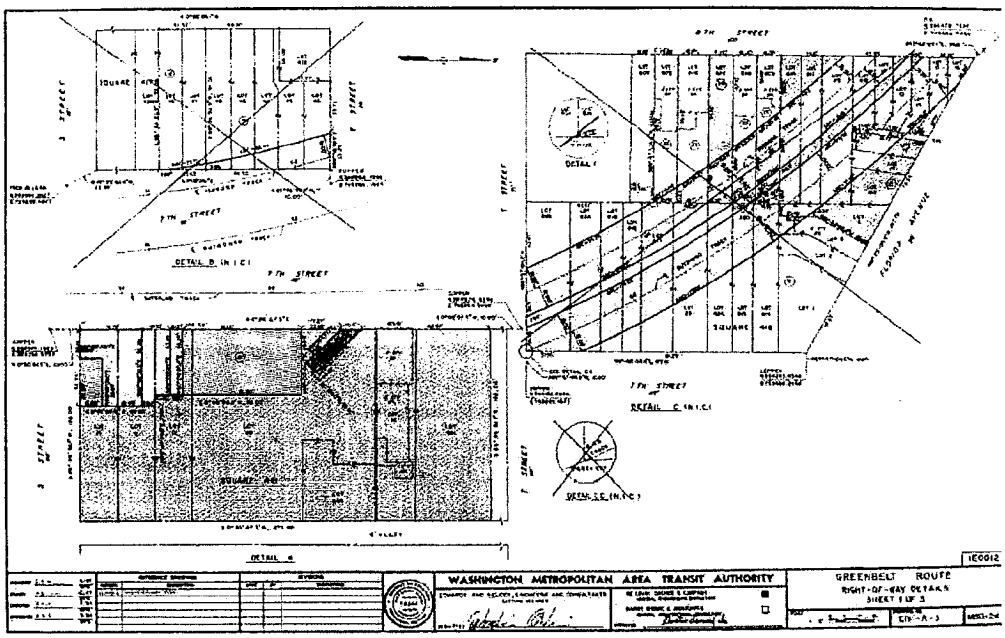

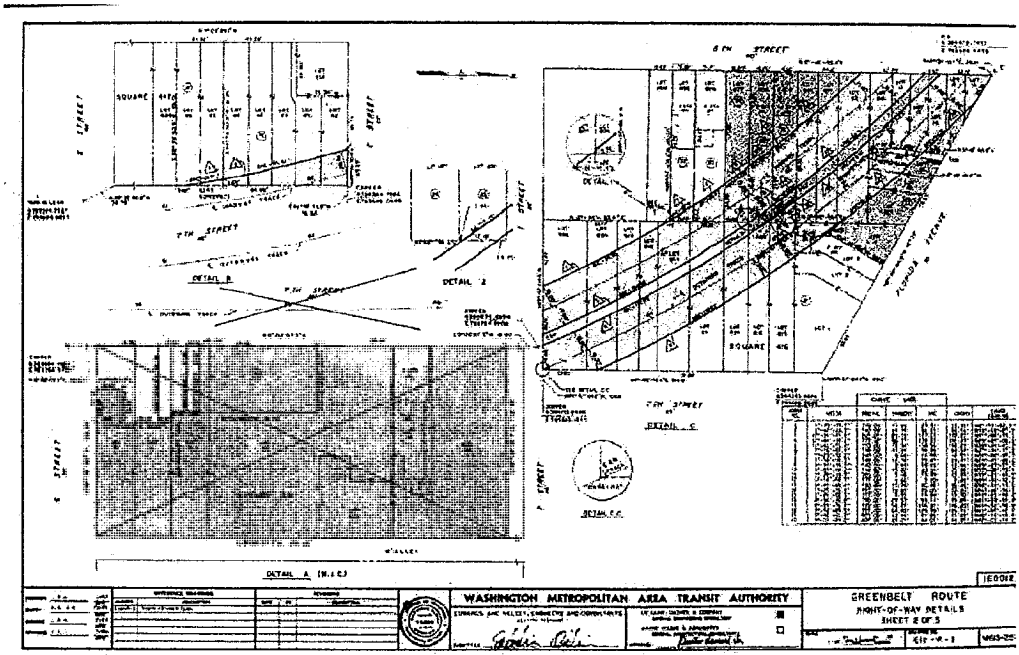

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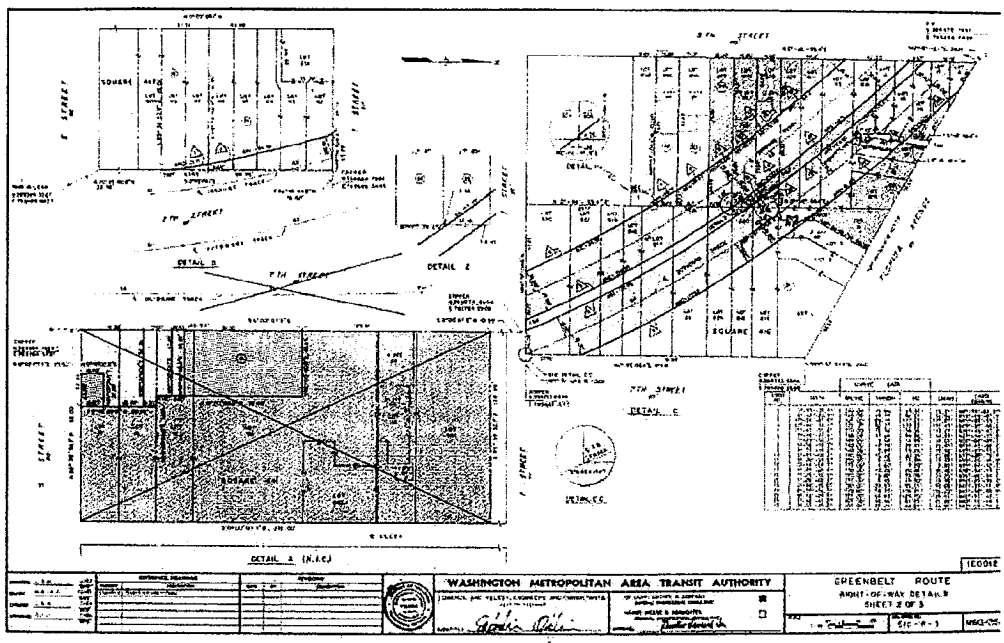
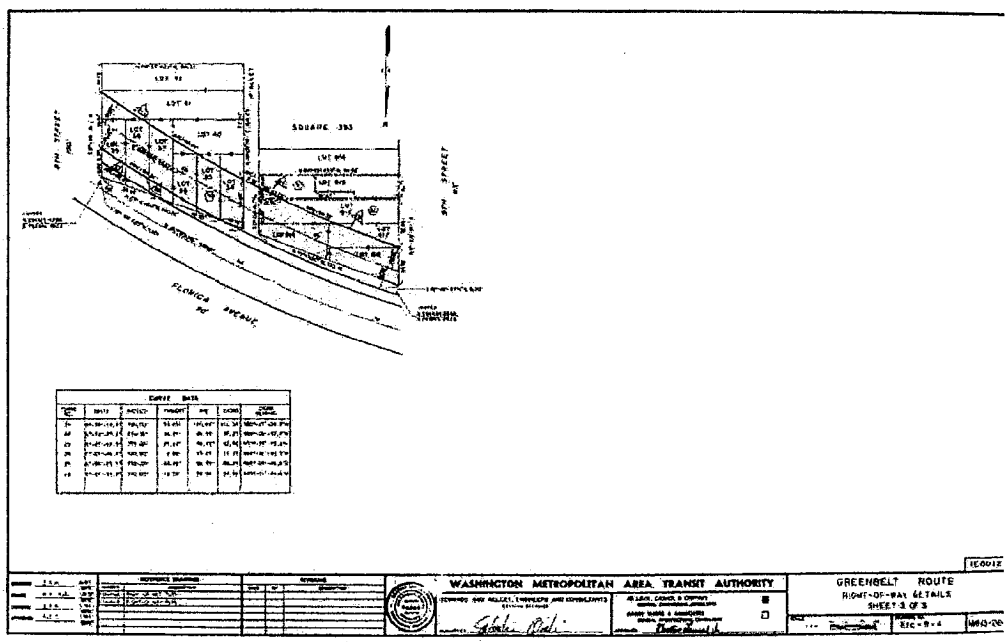
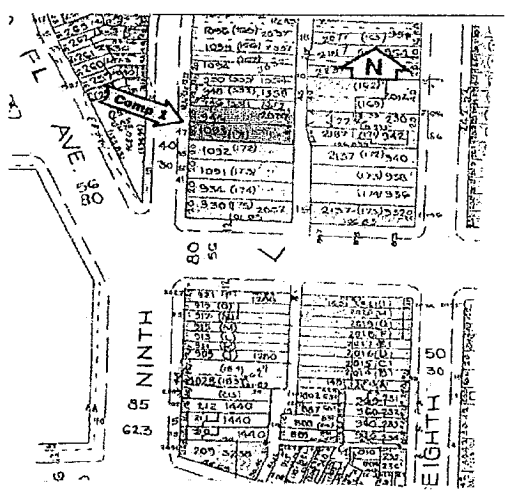




FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005902

Sale No.	1
Address	2047 9th Street, NW
Square/Lot	2875/1106
Area of Site	4,073 sq. ft.
GBA	1,940 sq. ft.
Zone	CR
FAR	6.0
Deed Dated	11/02/2006
Grantor	Ketel, LLC (Edward Needle, Manager)
Grantee	It's Mine Now, LLC (Clinton Stack)
Price	$2,500,000
Trust(s)	None recorded at time of sale
Date Recorded/Instr #	11/02/2006-#2006149549
Transfer Tax	$36,249.99
Price/sf Land	$613.80
Price/FAR	$102.30

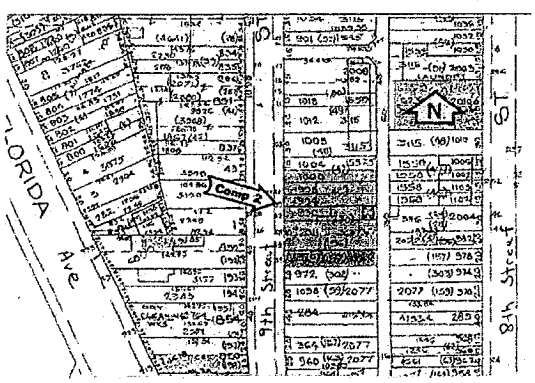
Remarks: The property was previously part of a PUD for Broadway Development. The site was dropped from the PUD and sold to the adjacent property owner. It was bought for a possible future expansion of the adjacent property, the 9:30 Club. As of September 2007, the property is being used for parking and storage. The sale was verified with the purchaser's representative, Norm Veenster, of N12 Development on September 11, 2007 and with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection.



FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005903

Sale No.	2
Address	2143 9th Street, NW
Square/Lot	2875/976, 1108, 2011
Area of Site	11,942 sq. ft.
GBA	Miscellaneous Industrial
Zone	CR
FAR	6.0
Deed Dated	August 31, 2007
Grantor	Warfield and Sanford, Inc.
Grantee	Howard University
Price	$3,300,000
Trust(s)	N/A
Date Recorded/Instr #	September 6, 2007
Transfer Tax	$47,849.89
Price/sf Land	$276.34
Price/FAR	$46.06

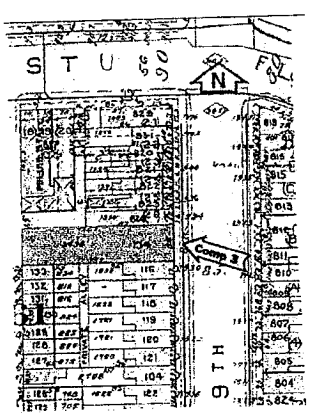
Remarks: This is an interior site purchased by Howard University as part of an ongoing assembly of land in the neighborhood. It appears that Howard owns land on both sides of this site. The property was under contract for $4,400,000 to a residential developer in the summer of 2006. The developer reportedly backed out of the deal due to the downturn in the residential market. The sale price in September 2007 indicates a drop in price of 25% from the summer 2006 contract price. Information verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection and with broker Ed Wolynec of the W. C. Smith Companies.



FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005904

Sale No.	3
Address	1932 9th Street, NW
Square/Lot	361/134
Area of Site	5,436 sq. ft.
GBA	Vacant land
Zone	C-2-B/Arts
FAR	4.5 Maximum with bonus
	3.68 proposed
Deed Dated	January 31, 2008
Grantor	JC Property Development, LLC (John E. Carter, Managing Member)
Grantee	PT2SO Investments, LLC
Price	$1,400,000
Trust(s)	N/A
Date Recorded/Instr #	February 7, 2008 #2008014342
Transfer Tax	$20,299.99
Price/sf Land	$257.54
Price/FAR	$57.23 (4.5 FAR Max with bonus)
	$69.98 (3.68 FAR proposed)

Remarks: This is a small interior site located south of Florida Avenue. The purchaser reportedly had planned to build a 20,000 sq. ft. five story mixed-use building on the site. As of August 2009 the site is still unimproved. This interior site is currently used as a pay parking lot. It has 36 feet of frontage on 9th Street and a depth of 158 feet to rear alley. The sale was verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection.

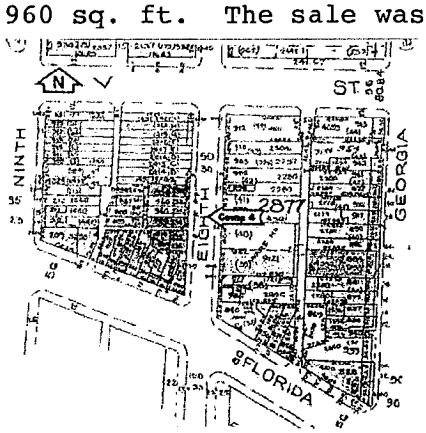


sq393/44,45+sq416/31

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005905

Sale No.	4
Address	2004-2008 and 2014 8th Street, NW
Square/Lot	2875/231,234,235, and 236
Area of Site	3,537 sq. ft.
GBA	Miscellaneous
Zone	C-2-B/Arts
FAR	4.5
Deed Dated	August 22, 2008
Grantor	CB 8th Street, LLC
Grantee	It's My Real Estate, LLC
Price	$800,000
Trust(s)	N/A
Date Recorded/Instr #	August 28, 2008 #2008091875+
Transfer Tax	$11,600.00
Price/sf Land	$226.18
Price/FAR	$50.26

Remarks: This is the sale of four old row houses in poor condition. The properties were purchased in four separate transactions for redevelopment into multifamily uses. The sites are not contiguous and are separated by an alley and two other row houses. Plans call for renovating two of the row houses and assembling the remaining sites with more sites to make a larger assembly. Each lot has approximately 15 feet of frontage on 8th Street and lot sizes vary from 804 to 960 sq. ft. The sale was verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection, purchaser Norm Veenstra and with Christian of Marcus and Millichap.

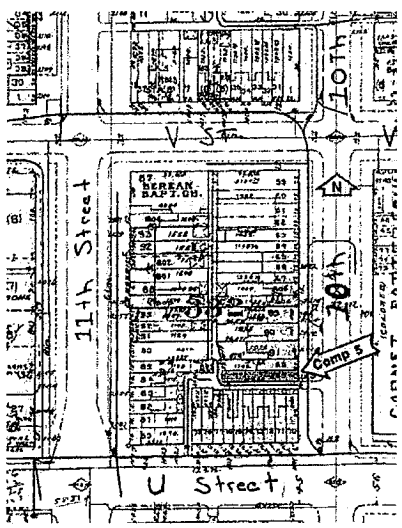


FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005906

Sale No.	5
Address	2006 10th Street, NW
Square/Lot	332/69
Area of Site	1,142 sq. ft.
GBA	N/A
Zone	C-2-B/Arts
FAR Matter of Right	3.5 Max matter of right
FAR with Bonus	4.5 Max with bonus
Deed Dated	September 19, 2008
Grantor	Joseph Junior Gilliam
Grantee	Loris Williams
Price	$220,000
Price/sf Land	$192.64
$/FAR	$55.04 (Matter of right)
$/FAR w/Bonus:	$42.81 (w/bonus to 4.5 FAR)

Remarks: This is a long narrow lot located on 10th Street and a side alley one-half block north of U Street Northwest. The U Street Metro Station is located one block south at Vermont and U Streets, NW. The new owner plans to construct a residential building on the lot. The property is currently on the market for $350,000. The broker reported no interest in the property at that price.

Information verified with MRIS, Online DC Assessment data, court records, exterior inspection and with sales broker Warren Kluth of Long and Foster.

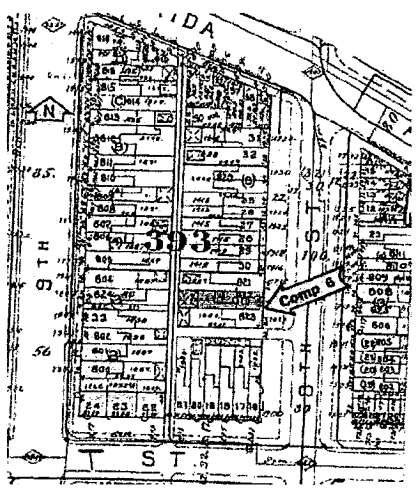


FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005907

Sale No.	6
Address	1912 8th Street, NW
Square/Lot	393/822
Area of Site	1,887 sq. ft.
GBA	N/A
Zone	C-2-B/Arts
FAR Matter of Right	3.5 Max matter of right
FAR with Bonus	4.5 Max with bonus
Deed Dated	Under Contract August 2009
Grantor	Luxor Properties
Grantee	N/A
Price	$385,000 (Asking)
Asking Price/sf Land	$204.03
$/FAR	$58.29 (Matter of right)
$/FAR w/Bonus:	$45.34 (w/bonus to 4.5 FAR)

Remarks: This is an interior site located a half block south of Florida Avenue, NW. The site is 20 feet wide by 94 feet deep to a rear alley. The site is the same size as the adjacent site to the south on which a 5-unit condominium was recently built. The property has been on the market for over 6 months. It reportedly is due to close around August 21st, 2009.

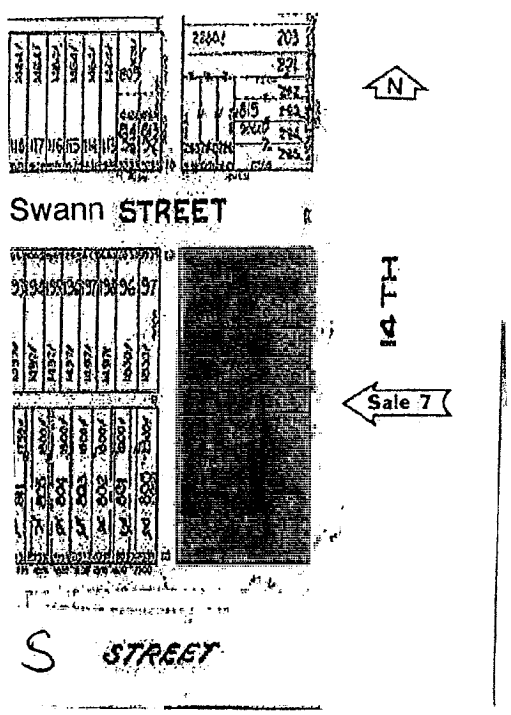
Information verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, exterior inspection and with sales broker Gerard DiRuggiero of the Urban land Company, LLC.



FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005908

Sale No.	7
Address	1407 S Street, NW (14th and S Streets, NW)
Square/Lot	206/1,210,230,819, and 820
Area of Site	20,418 sq. ft.
Zone	C-3-A/Arts
FAR Matter of Right	3.5 Max matter of right
FAR with Bonus	4.99 (BZA Case No. 17850)
Deed Dated	June 10, 2008
Grantor	Whitman-Walker Clinic, Inc.
Grantee	JBG/14th and S, LLC
Price	$8,000,000
Price/sf Land	$391.81
$/FAR:	$78.52 (4.99)

Remarks: The JBG companies purchased the Whitman Walker Building for redevelopment with a 7 story, 119,825 sq. ft. residential building. The historic building at the corner of 14th and S will be retained and incorporated into the overall development that will include 120-130 units. The 4.99 FAR development is based on a total development site of 24,000 sq. ft. including Lot 821 at 1818 14th Street. JBG has an option to purchase this lot from the current owner. Whitman-Walker clinic has an option to continue to use the property while plans for the new development are finalized. JBG applied for the proposed development with the D.C. Board of Zoning and Adjustment in July 2008 and it was approved in February 2009.

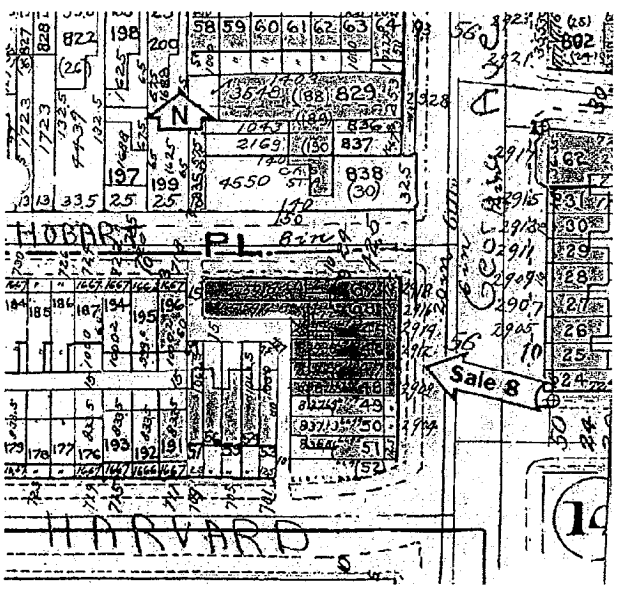


FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005909

Sale No.	8
Address	2908-2914 Georgia Avenue, NW
Square/Lot	2888/45-48, 67 and 68
Area of Site	6,475 sq. ft.
Zone	C-2-A
FAR	2.5
Deed Dated	Under contract September 2009
Grantor	Howard University
Grantee	
Price	$630,000
Price/sf Land	$391.81
$/FAR:	$38.92

Remarks: Corner site located north of the Howard University campus that was previously on the market for $1,170,000 in May 2009. According to the listing broker Troudy Vaughan the site is under contract for a price lower than the current asking price.



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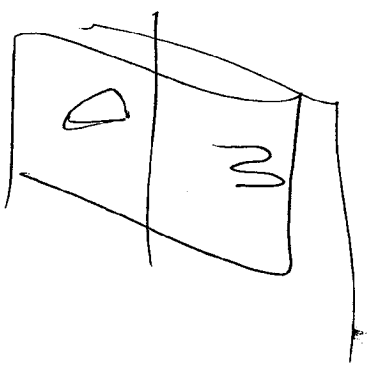
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9/14/09

WMATA

APPRAISAL OF LOTS 44
AND 45 IN SQUARE 393 AND
LOT 31/~~18~~ IN SQUARE 416
NORTHWEST, WASHINGTON, DC
AS OF AUGUST 31, 2009
FOR WASHINGTON METRORAIL AREA
TRANSIT AUTHORITY

remove
lot 18
throughout

$\frac{70}{100} = \frac{X}{20}$

$\frac{14}{20}$

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005912

Harps & Harps, Inc.
1111 14th Street, NW, Suite 600
Washington, DC 20005-5603
Tel. 202-682-2194 Fax 202-682-1579

September 17, 2009

Mr. Mark K. Meister
Office of Station Area Planning
And Asset Management
Washington Metrorail Area
Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Re: Lots 44 and 45 in Square 393 and Lot 31/18 in Square in 416, vacant lots on Florida Avenue between 7th and 9th Streets, Northwest, Washington, District of Columbia.

Dear Mr. Meister:

Pursuant to your request, we have arrived at an opinion of the fair market value of the parcels set forth above subject to the WMATA easements and an opinion of the annual rent for a long-term ground lease. The intended user of the report is the client, the Washington Metrorail Area Transit Authority (WMATA). The intended use of the report is to assist the client in determining a course of action regarding the possible sale or lease of the property. The effective date of this analysis is August 31, 2009.

The properties, located on the south side of Florida Avenue between 7th and 9th Streets, NW, are vacant lots situated above a WMATA tunnel. Given the prior uses to which subject and the adjacent sites have been put to over the years, including gas stations, restaurants, industrial and parking, there may be environmental contaminants impacting the property. This appraisal assumes that the site and improvements are clean of environmental contamination. This limitation, which could have an impact on the value conclusion set forth herein, should be considered by the client in evaluating the conclusions set forth.

As a result of the analysis, we are of the opinion that the market value of the property, as of August 31, 2009, is as set forth on the Summary of Conclusions located on pages 5 and 6 of the attached summary report, of which this letter is an integral part. The analysis and reasoning leading to the conclusions, along with the assumptions and conditions on the conclusions, which may be material, are set forth within the attached summary report, containing 58 pages.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005913

We trust this information is of assistance to you. If you have any questions or comments, please contact us. Thank you for this opportunity to be of service.

Very truly yours,

Richard R. Harps
DC Certified General License #10003

Stephen C. Brennan
DC Certified General License #10011

Attachment

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005914

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005915

SUMMARY OF CONCLUSIONS

Subject Properties	Three unimproved lots located on the south side of Florida Avenue between 7th and 9th Streets, NW, Washington, DC
Legal Description	Lots 44 and 45 in Square 393, and Lot 31/18 in Square 416, District of Columbia
Client	Washington Metropolitan Area Transit Authority
Date of Valuation	August 31, 2009
Date of Inspection	July 30, 2009
Date of Report	September 17, 2009
Property Rights	Fee Simple Interest subject to easements and restrictions to be retained by WMATA
Site Areas	Square 393 Lot 44 - 3,799 Sq. Ft. Square 393 Lot 45 – 8,621 Sq. Ft. Square 416 Lot 31/18 – 16,472 Sq. Ft.
Zoning	Arts/C-2-B
Improvement Description:	None, Vacant lots
Highest and Best Use	Assemble with adjacent land and develop a mixed-used complex.
Extraordinary Assumptions	One - Losses in value from the Inclusionary Zoning greater than the lost land value will be offset by city or federal subsidies. Two – Extraordinary hard costs associated with building over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA

As a result of our analysis, we have reached the following opinions, all as of August 31, 2009, the effective date of this appraisal, an all subject to the WMATA tunnel and easements and considering the impact of the Inclusionary Zoning.

Market Value of Land Subject to WMATA Easements and Tunnel and Inclusionary Zoning - $4,000,000.

Long Term Land Lease Option 1: Market lease terms – 60 year fixed term, no purchase option, 7% coupon rate applied to initial land value, 2% annual escalation in rate, land

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005916

revaluation every 10 years with reset of base rent to 7% of revalued land – Initial Rent $280,000, with reduced rent during development approval phase of project.

Long Term Land Lease Option 2: Initial Lump sum payment, no fixed annual payments, no annual escalations or revaluations, 1% participation in gross revenue, 2% participation in net proceeds from sale and refinancing – Initial Lump sum payment $3,134,654.

Long Term Land Lease Option 3: Flat annual payment for full 60 year term, no annual escalations or revaluations, 1% participation in gross revenue, 2% participation in net proceeds from sale and refinancing – Flat Annual Rental $329,964

These opinions are is subject to all general and specific assumptions and conditions contained within the report, including an environmental assumption. Please note that the conclusions reached were based on the information as set forth herein, and are specifically and generally limited by the assumptions and conditions set forth within the report and subject to the certification attached hereto. Additional analyses, in the event that additional or new information is made available, are outside the scope of this assignment, and supplementary arrangements would be necessary before additional analyses could be undertaken. The assumptions and conditions set forth throughout the report are an integral part of this analysis and have a bearing on the conclusions reached herein.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005917

ASSUMPTIONS AND LIMITING CONDITIONS

This analysis, the function of which is to assist the client in determining a course of action regarding the possible sale or lease of the property, has been made with the following general and specific assumptions:

Two extraordinary assumptions were utilized in this analysis. One - any loss in value from the Inclusionary Zoning greater than the lost land value will be offset by city or federal subsidies. Two – the extraordinary hard costs associated with building over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA

This analysis is not to be used in connection with a Real Estate Syndicate(s) or Securities related activity. Real Estate Syndicate means a general or limited partnership, joint venture, unincorporated association or similar organization formed for the purpose of, and engaged in, investment or gain from an interest in real property, including but not limited to a sale, exchange, trade or development of such real property on behalf of others and which is required to be registered with the United States Securities and Exchange Commission or any state regulatory agency which regulates investments made as a public offering. Securities related activity means but is not limited to transactions involving Real Estate Investment Trusts, Limited Partnerships, Mortgage Backed Securities and any other transaction which is subject to the Securities Exchange Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Advisors act of 1940, or state Blue Sky or securities laws or any amendments thereto.

1. This analysis assumes that there are no unusual soil or property characteristics, including any environmental implications, not set forth herein, which would adversely impact the ability of an owner to utilize the site or property for any legally permitted use.

2. Except as set forth herein, the analysts have not been informed of, nor has any knowledge of, the existence of any environmental or health impediment, which if known, could have a negative impact on the market value of the property or could subject the property or its past, present or future owners or agents or other parties to the requirements of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), and the subsequent Superfund Amendments Reauthorization Act (SARA). It is assumed that there has been no contamination of the soil from any existing or former oil tank or any other tank or equipment utilized in the operation of the buildings or any use of the building. This appraisal assumes that the property has met, or will be able to meet, all requirements of laws pertaining to environmental considerations, as they may pertain to the subject. It is also assumed that the property will comply with all provisions of Maryland and Federal laws and regulations regarding underground and above grade storage tanks as they pertain to subject

It is recommended that, prior to any transfer of title or other interest in the property, all appropriate studies, including but not limited to environmental studies, be performed, that all problems and/or conditions that are subsequently uncovered be corrected,

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005918

mitigated, or otherwise reduced in liability, prior to any transfer, and that the parties seek appropriate professional and legal counsel regarding environmental and other issues.

3. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable.

No opinion is intended to be expressed for matters that require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.

4. The property is analyzed free and clear of any and all liens or encumbrances unless otherwise stated. Responsible ownership and competent property management are assumed.

5. This analysis assumes that all real estate taxes, personal property taxes, or other taxes owed to any governmental or other body are current. This analysis has not looked at, nor reviewed, any transfers of any partnership interests in the property and this report assumes no adverse effect on values due to the nature of property ownership.

6. The analysis assumes that current insurance policies are adequate to protect all parties with an interest in the property.

7. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy. It is assumed that all information known to the client and relative to the valuation has been accurately furnished and that there is no undisclosed information or documents affecting the use of the property or the valuation herein.

8. All engineering information is assumed to be correct. Maps, plats and exhibits included in the report are for illustration only as an aid in visualizing matters discussed within the report. Area of sites herein were taken from City records. Maps, right-of-way drawings and other information supplied by the client was relied upon in the analysis. Exhibits should not be considered as surveys, or relied upon for any other purpose, nor should they be removed from, reproduced, or used apart from this report.

9. According to the November 15, 1985 National Flood Insurance Maps, subject lies within Zone C, which is an area of minimal flooding. This map is for flood insurance purposes only; it does not necessarily show all areas subject to flooding in the community or all planimetric features outside the special flood hazard areas.

10. It is assumed that all required licenses, certificates of occupancy, certificates of need, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based, including all necessary zoning approvals for any building.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005919

11. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings, if any, must not be used in conjunction with any other analysis and are invalid if so used.

12. The liability of Harps & Harps, Inc. is limited to the client only, not subsequent parties or users, and to the amount of the fee actually received by the appraisers. Further, there is no accountability, obligation or liability to any other party. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of the report and the assignment. The appraisers are in no way to be responsible for any costs incurred to discover or correct any deficiencies of any type present in the property, physically, financially and/or legally. In the event the report is placed in the hands of a third party, it is required that such party be made cognizant of any and all limiting conditions resulting from the basis of appraiser's employment and discussions related thereto as well as those set forth in the report. Acceptance of and/or use of this analysis report by the client or any third party constitutes acceptance of the above conditions.

13. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the analysts, and in any event only with proper written qualification and only in its entirety.

14. The analysts herein by reason of this analysis are not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.

15. Neither all nor any part of the contents of this report (especially any conclusion as to value, the identity of the analyst, or the firm with which the analyst is connected) shall be disseminated to the public through advertising, public relations, news, sales or other media without the prior written consent and approval of the analysts.

16. The appraisers reserve the right, subject to agreement for time and fee, to make such adjustments to the analyses, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.

17. The value reported in dollars is on the basis of the currency prevailing as of the effective date of the analysis. The values estimated in this analysis are based on economic, physical and tax conditions existing as of the effective date of analysis.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005920

PART I – PURPOSE OF APPRAISAL AND GENERAL DATA

Appraisal of Lots 44 and 45 in Square 363, and Lot 31/18 in Square 416, vacant lots situated on the south side of Florida Avenue between 7th and 9th Streets, Northwest, Washington, District of Columbia.

Purpose of the Appraisal

The purpose of the appraisal is to estimate the fair market value and the fair annual rent for a long-term ground lease, subject to assumptions and conditions specified. The date of value is August 31, 2009. The function of the appraisal is to assist the client in determining a course of action involving a possible sale or lease of the property. The analysis is being presented in a summary report.

For the purposes of this analysis, market value is defined as "The most probable price as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently and knowledgeably, and assuming that neither is under duress. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) Buyer and seller are typically motivated; (2) Both parties are well informed or well advised and acting in what they consider their own best interests; (3) A reasonable time is allowed for exposure in the open market; (4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."[1] In this case the value opinion is limited by an environmental assumption that the property is not impacted by contaminants that would materially affect the ability to develop the site or materially impact demolition and/or excavation costs.

Date of Appraisal and Report

The effective date of this appraisal is August 31, 2009. The exterior of the property was inspected on July 30, 2009. The analysis was performed between July and September 2009. The date of the report is September 17, 2009.

[1] Dictionary of Real Estate Appraisal, 4th Edition, The Appraisal Institute, Chicago, Illinois, 2002, pg. xxx.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005921

Client, Intended use and Intended users

The client in this appraisal is WMATA, the owner of the property. The intended user of the report is the client. The intended use of the report is to assist the client in determining a course of action regarding the possible sale or lease of the property.

Property Rights Appraised

The property rights appraised consist of fee simple interest subject to existing WMATA easements and restrictions relating to the Metrorail tunnels and underground easements affecting the sites and an estimate of the market rent for a leasehold estate to be created. Applicable definitions are:

> Fee Simple Estate: "Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat."[2]
>
> Easement: "An interest in real property that conveys use, but not ownership, of a portion of an owner's property."[3]
>
> Leasehold: "The interest held by the lessee (the tenant or renter) through a lease transferring the rights of use and occupancy for a stated term under certain conditions."[4]

The WMATA easements are permanent underground easements for the construction, support and operation of a regional rapid rail transit system, and restrict the mass and density of any structure that may be constructed above the easement and within its zone of influence. The purpose of this analysis is to estimate the market value of the property interests free and clear of all trusts, but subject to these easements. The effect, if any, which any existing trust might have on the potential "price" of the property is not considered pertinent to the estimate of market value of the property, and all existing trusts are being disregarded.

In addition to an estimate of the land value subject to the WMATA tunnel and easements and the effects of the Inclusionary Zoning, WMATA has asked for an opinion of the Land Rent payments under three different scenarios – all with a 60 year fixed term. One – typical market long term land rent; Two – Lump sum initial payment representing the present value of the typical land rent

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[2] Dictionary of Real Estate Appraisal, 4th Edition, The Appraisal Institute, Chicago, Illinois, 2002, pg. 113.

[3] ibid, pg. 90

[4] ibid, pg. 162

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005922

payments with a 1% participation in the gross revenue on the project and a 2% participation in the net proceeds from any sale or refinancing over the term of the lease by the leasehold estate; and Three – flat annual payments over the term of the lease (no annual escalations or revaluations) with a 1% participation in the gross revenue on the project and a 2% participation in the net proceeds from any sale or refinancing over the term of the lease by the leasehold estate.

No title report was furnished the appraisers, and it is assumed that, except for the WMATA easements as set forth herein, there are no adverse easements or encumbrances that affect the property. It is assumed for the purposes of this analysis that, except for the aforementioned WMATA easements, any other easements, rights-of-way, encroachments, projections, occupancies, etc., which exist or may be found to exist in a current or future title search of the property would have no detrimental effect on the ability of an owner to utilize the property for its highest and best use, including but not limited to assembly, development, sale, use and occupancy, or any other use.

Extent of Data Collecting, Confirming, and Reporting

The first step in the analysis was to inspect the subject property. Next, an investigation of pertinent market data was undertaken. Market surveys of comparable data were undertaken. Sales of similar properties were researched using published sources, such as Comps Inc., CoStar, MRIS and First American CoreLogic and court records. Discussions with agents, and other individuals familiar with this market and the subject property were held. The data compiled was analyzed, and the data considered susceptible of comparison was verified, where possible, by the grantees, grantors, or brokers, as well as through recorded information at the D.C. Recorder of Deeds office and other sources as specified in the report. The data was used to arrive at the estimated value of the fee simple interest of the property. Excluded from the scope are issues that are outside the scope of these appraisers' expertise, such as, but not limited to, environmental considerations and other considerations set forth in the report.

Extraordinary Assumption

This analysis utilizes two extraordinary assumptions that have a direct impact on the conclusions set forth herein. One – that any loss in value from the Inclusionary Zoning greater than the lost land value will be offset by city or federal subsidies. Two – that the extraordinary hard costs associated with building

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005923

over the WMATA tunnel and easement will be $1,770,000 as provided by WMATA.

Personalty, Equipment and Fixtures

The sites are vacant and there are no personalty, equipment or fixtures onsite.

History of the Property

WMATA acquired the sites over 25 years ago. There have reportedly been no recent arms length sales transactions since the purchases and the properties are not on the market as of the date of valuation. In 2007 WMATA received an unsolicited bid for the sites. WMATA did not accept the bid but sent out an RFP for the sites to obtain competitive bids. In 2008 WMATA selected a bid from Banneker Ventures, LLC to develop the sites. Banneker proposed to build 104 apartments and 11,750 square feet of ground-floor retail and arts space under a 60-year ground lease. Banneker is currently in the process of renegotiating the agreement with WMATA.

Real Estate Assessment and Taxes

Real estate taxes in the District of Columbia are paid on a Tax Year basis (October 1 through September 30), and are based on an assessment of 100% of market value as determined by the Assessor. The recent assessment history is as set forth below:

Real Estate Assessment

Square 393 Lot 44	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$1,052,590	$1,052,590	$1,052,590
Improvements	$0	$0	$0
Total	$1,052,590	$1,052,590	$1,052,590

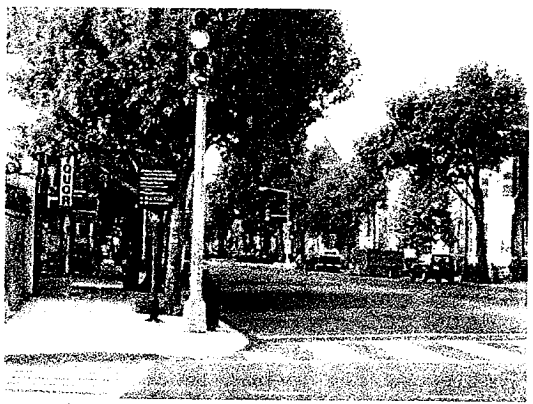
Square 393 Lot 45	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$2,388,620	$2,388,620	$2,388,620
Improvements	$0	$0	$0
Total	$2,388,620	$2,388,620	$2,388,620

Square 416 Lot 31/18[5]	TY 2008	TY 2009	Prop.TY 2010
Source	FARES TY 2008 Book	DC OTR Website	DC OTR Website
Land	$4,563,900	$4,563,900	$4,563,900
Improvements	$0	$0	$0
Total	$4,563,900	$4,563,900	$4,563,900

[5] Lot 31 is an assemblage of sixteen lots owned by WMATA including Lot 18, which contained 516 sq. ft. The DC Assessment still lists Lot 18 as an existing lot. Per instructions from WMATA, the total area of this parcel is set at 16,472 sq. ft. The assessment set forth above is the sum of the assessment for ~~Lots 18~~ and 31 as shown on the published information. 15,956

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005924

Looking east along the 700 and 800 blocks of Florida Avenue. Subject sites are on the right. 7/30/09



Looking south along the 1900 block of 9th Street, NW Subject on Left. 7/30/09

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005925

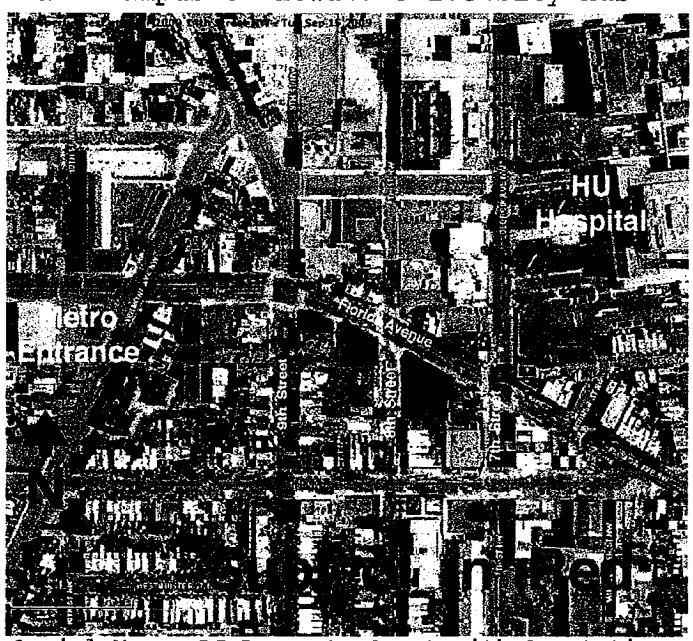
PART II — FACTUAL DATA

Legal Description

The properties are situated on three lots in two squares; Lots 44 and 45 in Square 363 and Lot 31/18 in Square 416. The sites are located on the south side of Florida Avenue between 7th and 9th Streets, NW.

Neighborhood Description

The subject sites are located in the Howard University and Shaw/U Street submarket of Northwest, DC, with the LeDroit Park neighborhood to the east and 14th Street/U Street corridor to west. The area just to the north of Florida Avenue had historically been a light industrial, storage and warehouse area, located along Georgia Avenue and Sherman Avenue, extending from Florida to the south up to Euclid Street on the north. Northeast of subject the main campus of Howard University has been the predominant landowner for over 140 years. West and north of the area, uses are typically moderate density residential (row houses, flats and apartments) with strip commercial uses along Georgia Avenue, Florida and U Streets. South of subject, the expansion eastward of the Shaw redevelopment trend continues with new and renovated residential units predominating. New and renovated commercial uses are principally located along U Street.



Aerial Map — DC Property Quest with Annotations

Subject's immediate blocks consist of the three story office building of the DC Housing Finance Agency at the northeast corner of 9th and Florida Avenue, a vacant two story boarded up commercial building at the northwest corner of 9th and Florida, small commercial row buildings along the east and west sides of 9th Street south of Florida Avenue. The north side of Florida between 7th and 9th Streets has a mixture of one, two and three story commercial structures occupied by carryout restaurants, offices and retail users. A CVS store is located

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005926

at the southwest corner of 7th and Florida Avenue. Eighth Street, south of Florida Avenue is improved with a Zipcar rental car parking lot, a new six-unit condominium, a small vacant lot for sale and several small residential row buildings. Eighth Street north of Florida Avenue is improved with a carryout restaurant, a nightclub, residential flats and parking lots. The condition of the buildings in subject's neighborhood ranges from boarded-up and vacant, to renovated and good. The commercial building at the northeast corner of 7th and Florida was recently remodeled and is currently for lease with the Douglas Development Company.

Access to the area is good. Georgia Avenue affords direct access to Montgomery County north of subject and to Downtown Washington to the south (via 7th Street). U Street and Florida Avenue offer easy east-west vehicular access. Metrobus routes along Georgia Avenue and U Street are available and the Metrorail has station entrances at 10th and U Streets, and 7th and S Street, both less than three blocks from subject.

During the late 1980s and early 1990s, the area was the focal point of a major re-zoning effort on the part of the City, during which most of the industrial zoned land (C-M-1, C-M-2 and C-M-3) in the area was changed to C-2-A, C-2-B, C-3-A and CR, all within an ARTS overlay south and west of subject, that gave bonuses for residential and preferred uses and significantly limited new industrial uses. Subject's immediate area was rezoned to C-2-B/Arts.

Howard University has occupied its campus east of Georgia Avenue for over 140 years, and continues to expand its campus area. The former Wonder Bread bakery structure, located north of subject on the east side of Georgia Avenue at Bryant Street, was converted to office and retail and subsequently acquired by the University in 1993. The University owns approximately 70% of the total private land between Georgia Avenue, V Street, Sherman Avenue and Barry Place. Two large dormitories have been constructed at Barry Place and much of the remainder is planned for residential and retail uses.

The major trend in this market continues to be the expansion and growth of the residential market, with numerous sites being developed with condominiums and apartments, and significant redevelopment and renovation of the retail commercial uses along U Street south of subject. An eight story 118 unit two-tower condominium was completed in 2008 just north of subject at 919 and 929 Florida Avenue. Broadway Management, Inc. has planned for 750 residential units in the immediate area under a planned unit development. The WMATA site at between 7th and 9th Streets on Florida Avenue ~~is~~ was proposed for 104 apartment units and 11,750 sq. ft. of retail and arts.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005927

The trend of residential renovations and redevelopment continues, but the pace has slowed considerably in the past two years. As of the date of valuation Broadway Management, Inc. has not broken ground on their three planned developments in the neighborhood. In July 2009, a foreclosure notice was filed on a planned 29-unit condominium development at 11th and V Streets, NW. A number of developers have pulled out of the condominium market while others have converted planned condominium buildings into apartment buildings. An 11,942 sq. ft. site at 2143 9th Street was under contract to a residential developer in the summer of 2006. The developer backed out due to the sluggish residential market and the site sold a year later for 25% less than the former contract price. Sales in the past year at the 162 unit Rhapsody Condominiums just north of subject at 2120 Vermont Avenue indicate a 15% drop in sale prices since 2006. The Floridian Condominium, at 919 and 929 Florida Avenue, has seen slow sales even with deep discounts to attract purchasers. The owners of the building are currently having problems with lenders that have prevented recent buyers from settling on their purchases. The current recession and tight financial market has made it difficult for developers and purchasers to obtain financing, further slowing down development in the area.

Looking east along the 700 and 800 blocks of Florida Avenue. Subject sites are on the right. 7/30/09

Looking south along the 1900 block of 9th Street, NW Subject on Left. 7/30/09

While the condominium and residential markets have seen lower prices and less activity in the past year, subject's location near Howard University, the U Street retail corridor and within walking distance of two Metrorail stations is considered a desirable location for a mixed-use building. New development is planned for sites near subject. A new towncenter development is planned for a large site in the 2200 block of Georgia Avenue to the northeast. These new mixed-use developments will bring additional retail and foot traffic to the neighborhood. Therefore, subject's site is well situated

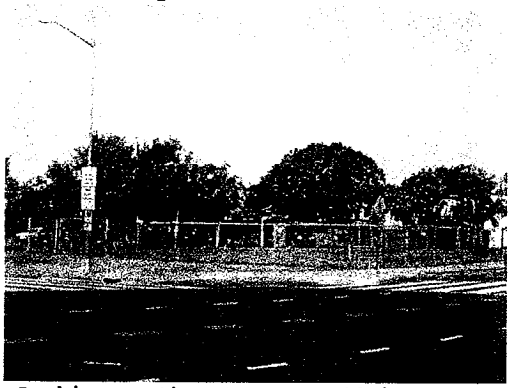
FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005928

and would be a desirable location for a mixed-use property once the economy recovers from the current recession.

Site Description

Subject's sites are located on the south side of Florida Avenue between 7th and 9th Streets. Two lots are located in Square 393 and one large lot is located in Square 416.

Lot 45 in Square 393 contains 8,621 sq. ft. of irregularly shaped land with 75 feet of frontage on 8th Street, 100 feet of frontage on Florida Avenue and 108 feet along a 10-foot wide side alley to the west.



Looking southwest at Lot 45 in Square 393 on the southwest corner of 8th and Florida Avenue, NW. 7/30/09

Looking southeast at Lot 44 in Square 393. 7/30/09

Lot 44 in Square 393 contains 3,799 sq. ft. of irregularly shaped land with 100 feet of frontage on Florida Avenue, 57 feet on 9th Street and 23 feet on a 10-foot wide side alley.

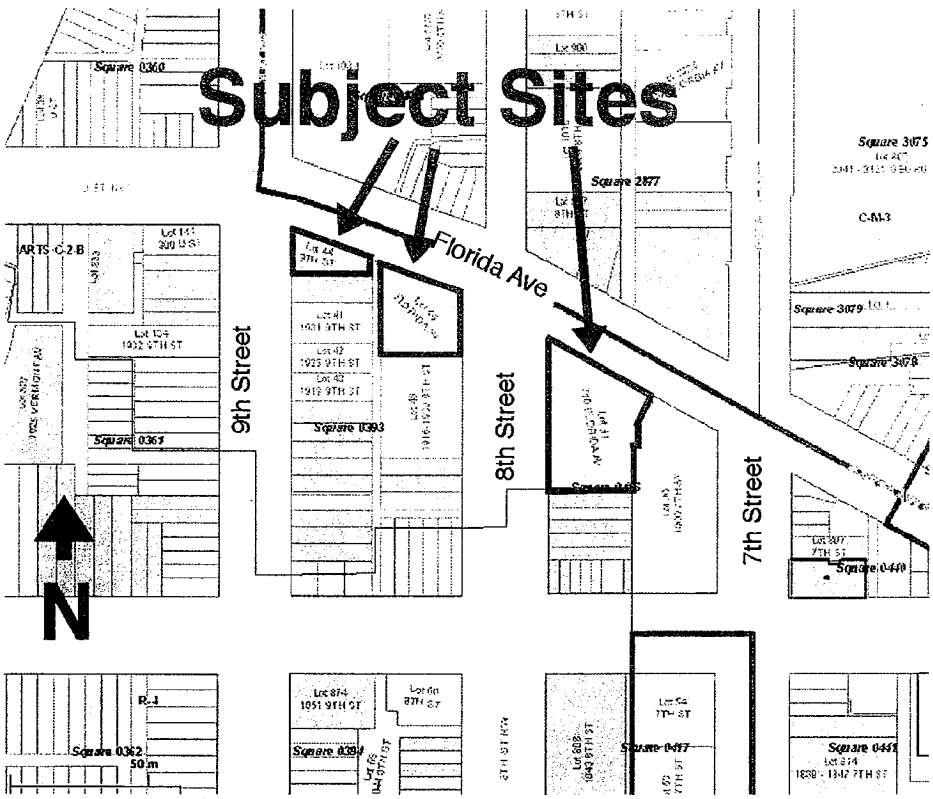
15,956

Lot 31/18 in Square 416 contains 16,472 sq. ft. of irregularly shaped land with 114 feet of frontage on Florida Avenue and 177 feet of frontage on 8th Street.

Looking southeast at Lot 31/18 in Square 416, on the southeast corner of 8th and Florida Avenue, NW. CVS in background. 7/30/09

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005929

The sites are level and on grade with street frontages. According to the most recent flood insurance rate map effective November 15, 1985, the subject sites lie within Zone C, an area of minimal flooding. The appraisers were not furnished with any report of soil conditions, and this appraisal assumes that there are no adverse soil or sub-soil conditions that would cause unusual construction problems.



Location of subject sites From DC Property Quest

No environmental information on the site was made available and the appraisers are not experts in environmental matters. The sites have been used as parking lots and used car lots. Whether the construction of the Metrorail tunnel resulted in the removal of any environmental contamination is not known. If the site were to be redeveloped by any prudent developer, the potential for environmental contamination of the soil should be considered. The conclusions set forth herein are predicated upon an environmentally clean property. If information regarding environmental factors is made available, the conclusions set forth herein are subject to change.

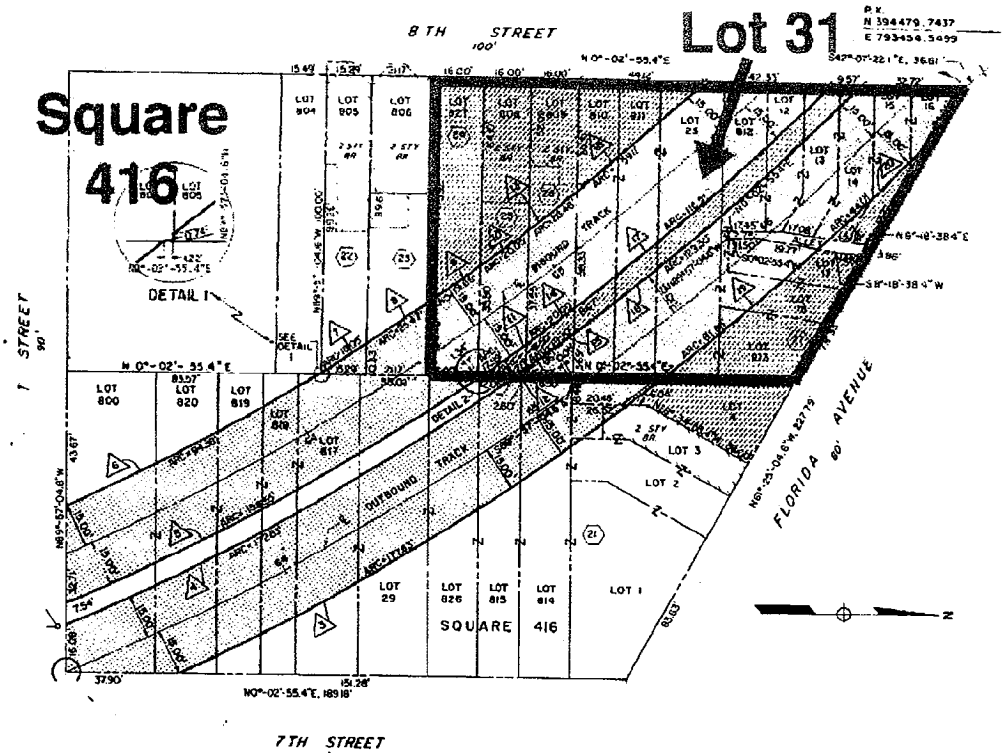
The sites appear to be served with all underground utilities. No title report was furnished to the appraiser, and

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005930

it is assumed that there are no detrimental easements or encumbrances that adversely affect the property.

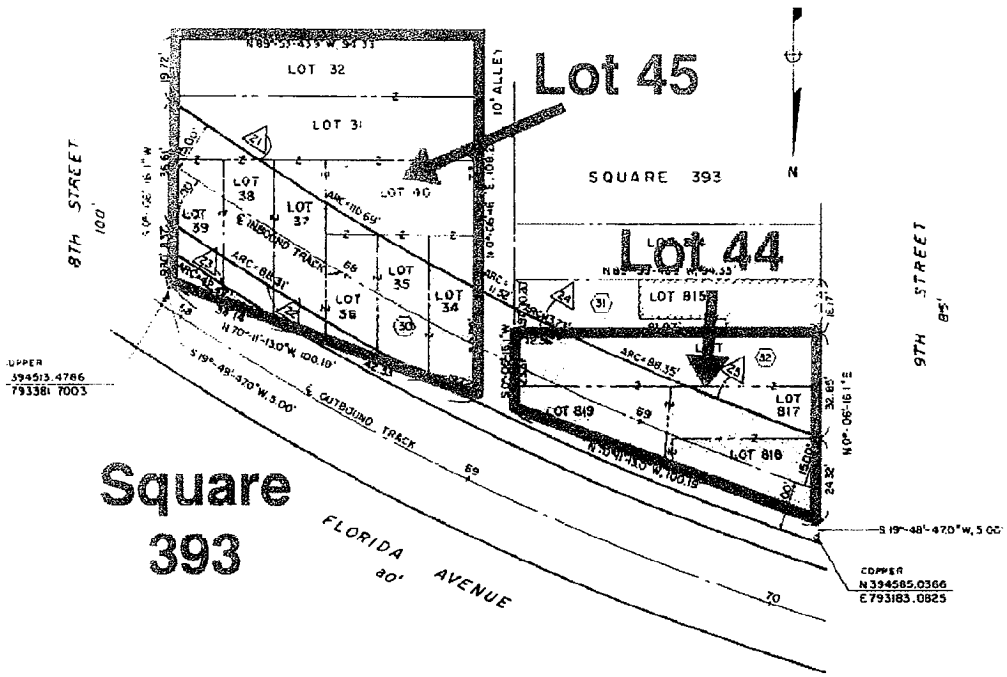
The sites are currently fenced-in along the perimeters. Seventh, Eighth and Ninth Streets and Florida Avenue are fully improved streets with sidewalks, curbs and gutters. All Streets are two-way streets. Street rights-of-way, according to Baist's Atlas for the sites, are 100 feet on 8th Street, 85 feet of 9th Street, 85 feet on 7th and 80 feet on Florida Avenue. There is a 10-foot alley separating Lots 44 and 45 in Square 393.

The principal factor affecting the subject sites is the Metrorail tunnel and easement running along the Florida Avenue frontage (northern portion) of the sites. Copies of sections of the right-of-way drawings, set forth below, show the relation of the underground easements and the sites.



On Lot 31/18 in Square 416, the two underground tunnel easements split the site from north to site.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005931



On Lot 44 in Square 393, the underground tunnel easement occupied the majority of the site and the entire frontage along Florida Avenue on the north. On lot 45 in Square 393, the underground tunnel easement occupies the majority of the northern portion of the site, with a small area between the outbound track easement and the inbound track easement available for footings or supports, subject to WMATA restrictions and on tunnel and easement impact.

The distance from the surface to the upper level of the easements on all the properties appears to range from 18 to 20 feet, allowing, according to information from WMATA, for one level of below grade structure to be placed above the underground easements, again, subject to WMATA restrictions and on tunnel and easement impact.

According to analysis of Mr. Colbert, the proximity of the tunnel and the likely reviews and restrictions on development above the tunnel will impact the maximum density that can be put above the tunnel and will cause an increase in the overall construction cost of the project. Mr. Colbert estimated that the tunnel will reduce the maximum likely density on each of the sites, taken as separate development sites, to from 3.35 FAR to 4.11 FAR, as will be shown in a later section of the report. The impact on the overall costs of the development was estimate at from 20% to 25%, i.e., the total costs of developming the three sites, due to likely special foundation requirements above

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005932

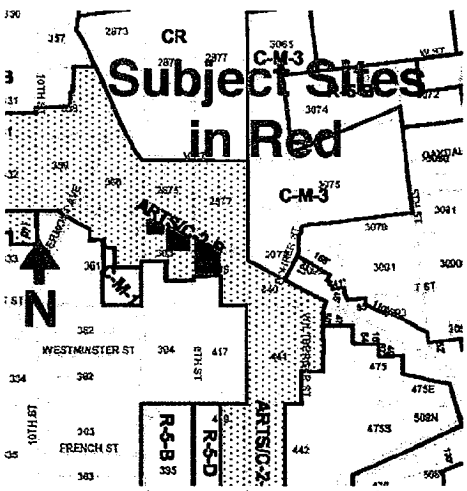
the tunnel, additional reviews, and other differences between normal mid-rise construction and construction over the tunnels.

WMATA's engineers have determined that the additional costs would be in the range of $1,770,000, in total for the project as proposed. This level of additional cost is significantly less than that envisioned by Mr. Colbert, but, is based on the proposed development of the unified sites, rather than three separate developments. Per the instruction of the client, this analysis will utilize the cost figure derived by WMATA engineers, of $1,770,000, for the additional costs of constructing over and complying with, the various WMATA tunnels, easements and requirements. It would not be unreasonable for WMATA to adjust this number to reflect actual additional costs as the project proceeds, or, in the alternative, to negotiate a fixed 'additional costs' with the developer, after further consultation with appropriate cost estimators. As stated, for the purpose of this analysis, WMATA's estimate of $1,770,000 is adopted. This estimate of additional hard costs is adjusted upward by 30% to account for all of the soft costs associated with developing these complicated properties, resulting in a total deduction of

$1,770,000 x 1.3	=	$2,301,000
Rounded to		$2,300,000

Zoning and Land Use Controls

Subject's sites are zoned Arts/C-2-B, a commercial district designed to serve commercial and residential functions similar to the C-2-A District, but with high density residential and mixed uses. The district shall be compact and located on arterial streets, in uptown centers, and at rapid transit stops. The building use may be entirely residential or a mixture of commercial and residential.



DC Online Zoning Map with annotations

The sites are also included in the Uptown Arts Overlay District. The purpose of the Arts Overlay District is to encourage a scale of development, a mixture of building uses and other attributes such as safe and efficient conditions for pedestrians and vehicular movement. Specific requirements of

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005933

the district, set forth in Chapters 7 and 19 of the Zoning Regulations, are summarized as follows:

Summary of Arts/C-2-B Zoning Requirements

Height	65 feet maximum
Floor Area Ratio (FAR)	3.5 - Apartment house or other Residential
	1.5 - other permitted uses.
FAR with Bonus for Preferred Uses	4.5
Percentage of Lot Occupancy	80% maximum for residential uses.
Rear Yard	15 ft. minimum, below 20 foot height may be measured from center line of rear alley, above 20 foot height must be measured from rear lot line.
Side Yards	None required for other than one-family detached and one-family semi-detached dwellings, but if provided 2 inches per foot of height with a 6 foot minimum.
Parking:	
Apartment	1 for each 3 dwelling units
General Office	In excess of 2,000 sf, 1 for each additional 1,800 sf GFA and cellar floor area.
Medical/Dental	Twice the number of spaces required for general office use.
Retail/Service	In excess of 3,000 sf, 1 for each 750 sf GFA and cellar floor area.
Loading-Requirements	
Office	20,000 to 50,000 sq. ft.: 1 berth-30 ft., 1 platform-100 sq. ft., 1 service space at 20 ft.
	>50,000 to 200,000 sq. ft: 2 berth-30 ft., and 2 platform-100 sq. ft., 1 service space at 20 ft.
Residential	50 or more dwelling units: 1 berth-55 ft., and 1 platform-200 sq. ft., 1 service space at 20 ft.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005934

Inclusionary Zoning

Subject's sites are also included in the Inclusionary Zoning regulations of Chapter 26 of the Zoning Regulations. Under Inclusionary Zoning there is a mandatory housing requirement for any new development consisting of 10 or more units. The developer of these sites is required to set aside a certain percentage of units for low and moderate-income households. The developer is given bonus density of 20% more than is allowed under matter of right developments to compensate for building low and moderate-income housings. ~~As of the date of valuation the Inclusionary Zoning requirements have not been enacted.~~ Is this correct? The Inclusionary Zoning requirements shall become effective on the date of publication of the notice of final rulemaking (5/15/2009) in the D.C. Register, but pursuant to and with the exception of 225, shall not become applicable until ninety days after such publication or the date on which the final Maximum Rent and Price Schedule is published in the D.C. Register, whichever is later. The earliest date would be August 13, 2009[6]. As of the date of the report, the Maximum Rent and Price Schedule had been published and 90 days had passed. As of the date of value, the impending implementation of the Inclusionary Zoning provisions was expected by the market would have been considered by any prudent purchaser.

Using the formula set forth in the Inclusionary Zoning regulations, the amount of the gross floor 'lost' to affordable housing is estimated as follows:

Inclusionary Zoning Requirement Analysis

needs slight adjustment for 500 sf. less of site area

Site (Sq/Lot)		393/44	393/45	416/31
Site Area		3,799 sf	8,621 sf	16,472 sf
Zone		Arts/C2B	Arts/C2B	Arts/C2B
1st Test — 8% of Matter-of-Right Density				
M/R Max Density		13,297 sf	30,174 sf	57,652 sf
8% of M/R	8.00%	1,064 sf	2,414 sf	4,612 sf
2nd Test — 50% of Inclusionary Zoning Bonus Density				
IZ Bonus Potential	0.7	70% of 1 level of FAR 2,659 sf	6,035 sf	~~11,530 sf~~ 11,169
50% Bonus	50.00%	1,330 sf	3,017 sf	~~5,765~~ sf 5,585

less MOR

less Bonus really 169

180 sf difference because of smaller site size

Limiting Factor — Not required for less than 10 units

Site (Sq/Lot)	393/44	393/45	416/31
Likely Residential	Less than 10 Units	More than 10 Units	More than 10 Units

[6] The "MAXIMUM RENT AND PURCHASE PRICE SCHEDULE", a copy of which is set forth in the addenda, was published August 14, 2009.

1,330
180
1,150 sf not accounted for in Rick's appraisal
of all those

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005935

IZ Density – Greater of 8% of M/R or 50% of Bonus

Site (Sq/Lot)	393/44	393/45	416/31
IZ Requirement	-0- sf	3,017 sf	5,765 sf

Total IZ Requirement:

Site Sq 393 Lot 44	-0- sf
Site Sq 393 Lot 45	3,017 sf
Site Sq 416 Lot 31	5,765 sf
Total IZ Requirement	8,782 sf

Duke Draft Development Framework for a Cultural Destination District within Washington, DC's Greater Shaw/U Street[7]

The District submitted the Duke Draft Development Framework to the DC Council for approval in February 2005. The Council adopted the document as a "small area plan" in June 2005. The plan provides guidance in public policy decision-making to District agencies and commissions on affordable housing needs, local business development, existing and new cultural facilities and programming, quality public realm investments, transportation and traffic, zoning and local resident participation. The plan calls for subject's sites to be developed with mixed-use developments with active, ground floor retail and residential or office uses above.

Land Use Element of the Comprehensive Plan

Subject's sites are located within the moderate density residential and moderate density commercial mixed use zoning category. The current zoning is not inconsistent with the Plan.

Historic Status

Subject's sites are located in the Greater U Street Historic District. The Greater U Street Historic District is a Victorian-era neighborhood, developed largely between 1862 and 1900.[8] The Greater U Street Historic District, listed in the National Register of Historic Places in 1998, extends roughly from 16th Street on the west to 7th Street on the east and from S Street on the south to Florida Avenue on the north, and includes over 1,500 historic buildings.

[7] DC Office Of Planning September 2004

[8] The District of Columbia Inventory of Historic Sites, February 23, 2004 update.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005936

PART III - DATA ANALYSIS AND VALUE CONCLUSION

Highest and Best Use

Highest and best use is defined in the text "The Appraisal of Real Estate", 13th ed., published by The Appraisal Institute, 2008, as "The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible and that results in the highest value." In this case, the value sought is of the fee simple value of the land, as if vacant and unimproved, and available for development to its highest and best use.

Subject's three sites are currently vacant and unimproved, zoned Arts/C-2-B, and impacted by underground easements benefiting WMATA for tunnels carrying the regional rapid rail transit system. As individual development sites, these three parcels contain 3,799 sq. ft. (Lot 44 in Square 393), 8,621 sq. ft. (Lot 45 in Square 393) and 16,472 sq. ft. (Lot 31/18 in Square 416). + 15,956

Under the Arts/C-2-B zoning, the maximum density developable on the site is a 3.5 FAR as a matter-of-right, with the potential for up to 4.5 FAR with additional preferred, mainly residential, uses. However, with the presence of the WMATA underground easements and tunnels, and the resulting inability to place more than one level below grade, along with development restrictions on the weight and density that may be placed above the tunnel structure, the likely reasonable density that could be placed on the sites would be less than the maximum density permitted. Consultations with Mr. Eric Colbert, AIA, a well known local architect familiar with development over a Metrorail tunnel[9], yielded estimated maximum densities achievable on each of the sites as follows:

[9] Mr. Colbert is currently consulting with a developer on another site impacted by a WMATA easement in Northeast Washington, DC. Qualifications are set forth in the addenda.

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Colbert Estimate of Gross Floor Area (FAR) Subject to WMATA Tunnel and Underground Easement

1st	3,600 sf	7,621 sf	14,972 sf
AG 2nd	3,039 sf	6,100 sf	13,177 sf
AG 3rd	3,039 sf	6,100 sf	13,177 sf
AG 4th	3,039 sf	6,100 sf	13,177 sf
AG 5th		3,560 sf	6,590 sf
AG 6th		3,560 sf	6,590 sf
Max Envelop AG	12,717 sf	33,041 sf	67,683 sf
Site Area	3,799 sf	8,621 sf	16,472 sf
Maximum FAR	3.35	3.83	4.11

use smaller 15,956 SF.

These densities are less than the maximum 'potential' density with bonus density permitted under the Arts/C-2-B district, but reflect the physical limitations of development. The estimates are, however, of each site as a standalone site. The current proposal for the development of these sites, according to information from the client, incorporates the thre subject sites into a larger development including additional land owned or controlled by the prospective purchaser. Under the proposed development of the combined project, a total of 157,000 sq. ft. of Gross Floor Area (FAR SF) will be constructed. Of this amount, 124,000 sq. ft., or roughly 79%, is reportedly attributable to the inclusion of the three WMATA sites. While this represents a premium of 9.3% more FAR than the three sites could generate as stand alone sites, the increase is not unreasonable considering assemblage and the ability to place gross floor area within non-impacted areas of the larger assembled site.

Why is this a premium because Eni estimated 113,000 SF buildable? yes

Additionally, the purpose of this analysis is to arrive at an opinion of the value of the site and an opinion of the appropriate land lease rate for the sites, as combined and as part of the larger development of which these sites will be a part. It is therefore appropriate to view the entirety of the development density that is generated by the subject sites as part of the larger development and not as stand alone sites.

The valuation of the three sites, therefore, will focus on the total development density generated by the WMATA sites as a part of the larger development.

See footnote 10 for advantages to the assembly property

The proposed development on the sites incorporates residential uses on the upper floors and retail uses along the Florida Avenue frontage of the first floor. This development scheme is consistent with the other newer developments along Florida Avenue and U Street. It is the development scheme envisioned by Mr. Colbert. It is the development scheme that is expected by the market and conforms with the market. While a full highest and best use analysis could be undertaken regarding

Inconsistent: Values 3 lots separately standalone for IZ purposes values with assemblage for FAR SF.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005938

development timing, the purpose of this analysis is ultimately to set the price (rent) that the developer will pay to WMATA for the inclusion of the sites into the larger development. Therefore, the highest and best use of the sites is the proposed use, as a part of the larger assembly by the developer.[10]

Finally, the issue of the Inclusionary Zoning will have an impact on the value, and rent, that the subject sites can generate. The requirement for including affordable housing units into the development create two issues that must be addressed. As set forth earlier, approximately 8,782 sq. ft. of the potential FAR will be set aside for affordable housing. This floor area has, as stated, an effective value of $-0-, as the potential for sufficient revenue to offset both the cost of construction AND return additional monies as a residual to the land is virtually non-existent. Additionally, it is highly unlikely that the return from the affordable units will actually cover the total costs associated with construction – hard, soft, financing, and entrepreneurial profit. It is my opinion, however, that the developer will be able to obtain sufficient subsidies from city or federal entities to offset any loss on the construction costs of these units, and no additional deduction, over that associated with the loss in land value, is applied in this analysis.[11]

Approaches to Value and Valuation

The property, consisting of the three sites as a development project and including the total allocated to the WMATA properties, has been valued utilizing a direct sales comparison approach to value, which is consistent with current market practices involving values of vacant, unimproved and underimproved land. Recent sales of similarly zoned unimproved sites in the general area were utilized to estimate the value of the land as if vacant and unimproved, on a per square foot basis. Analysis of these sales will result in a price per FAR for residential uses, and subject's highest and best use, assuming that the land was vacant, unimproved and available for development. This will result in an indicated land value before any adjustments for Inclusionary Zoning or WMATA tunnel and

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[10] Note that the larger developer is able to generate additional density by virtue of the assembly. At the same time, the assembly is able to achieve Florida Avenue frontages by virtue of the inclusion of the WMATA sites.

[11] Please note that in the event that such subsidies are not available, the appropriate adjustment, based on the rentals and sales set forth in the Inclusionary Zoning Maximum Rent and Purchase Price Schedule and the rentals charged for the newer buildings in the general U Street and Logan Circle neighborhoods, would be between -$20 and -$30 per sq. ft. of FAR allocated to affordable units. This is in addition to the effective loss of the land value associated with those units.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005939

easement impact. Next, the financial impact of the Inclusionary Zoning and WMATA tunnels and easements will be applied to the unadjusted value to arrive at the value of the properties, as a unit, subject to both Inclusionary Zoning and WMATA tunnels and easements.

Sales of sites zoned Arts/C-2-B and CR, in subject's neighborhood have been researched, verified and analyzed as to price per FAR, the most applicable unit of measurement for medium and high density residential land sales. The analysis leading to the land value opinion is set forth on the following pages.

Since the site cannot be developed to full FAR, use cannot be made of bonus density. Would a developer be able to argue that there is a penalty here and get something more like .5 bonus density?

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WMATA-INV 005940

Market Data Map

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Land Sales Analysis

Subject is generally level and on grade with Florida Avenue, 8th Street and 9th Street. One of the sites, Lot 44 in Square 393, is generally triangular, two, Lot 45 in Square 393 and Lot 31~~18~~ in Square 416 are irregular but generally rectangular. The zoning on these sites is Arts/C-2-B. As stated earlier, the enactment of Inclusionary Zoning on August 21, 2009 will require any new developments of more than 10 units to include a percentage of affordable housing units. Additional FAR beyond the matter of right allowed on the site will be allowed to compensate for the cost of the affordable units. Adjustments to the comparable sales for the Inclusionary zoning requirement is difficult to estimate since the exact cost of providing the affordable units on each of the sites is unknown. Most brokers or developers contacted report that the Inclusionary Zoning will probably have a negative affect. As the adjustments for Inclusionary zoning will be made to the sites as after the 'base' land value is determined, no adjustments to most of the sales is required.

Other adjustments considered include adjustments for financing, location, size, site topography and site configuration. All of the comparable sales were purchased with cash or conventional financing so no adjustment will be made for financing. The six comparable sales are all level, interior sites, located in similar locations within a few blocks of subject. Comparable #4 is a sale of four noncontiguous lots and comparable #5 is a sale of very narrow site. These comparable sales would be adjusted up for inferior site configuration and lack of corner. Most of the comparables are smaller, one is larger than two of the individual subject sites but smaller than Lot 31~~18~~, the largest.

Summary of Comparable Sales

Sale-Location	Zone	FAR	Sale Date	Land Area	$/FAR
1-2047 9th	CR	6.0	Nov-06	4,073	$102
2-2143 9th	CR	6.0	Sep-07	11,942	$46
3-1932 9th	Arts/C-2-B	3.68	Jan-08	5,436	$70
4-2004+ 8th	Arts/C-2-B	4.5	Aug-08	3,537	$50
5-2006 10th	Arts/C-2-B	4.5	Sep-08	1,142	$43
6-1912 8th	Arts/C-2-B	4.5	Contract	1,887	$45
Subject	Arts/C-2-B	4.5		4,561	

The sales above indicate prices in the range of $43 to $102 per FAR with an average of $71 FAR. The highest indication came from sale #1 at 2047 9th Street, NW. This site was purchased

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005942

almost three years ago, during the height of the residential market activity, by the adjacent property owner for future expansion of his nightclub. It is currently improved with a small warehouse used for storage and a parking lot.

As stated in the neighborhood section values have declined in the past two years. The comparable sales will therefore be adjusted down 15% per year for market conditions. Set forth on the following page is a summary of these sales adjusted for market conditions to the date of value.

Sales Adjusted for Market Conditions

Sale-Location	Zone	FAR	Sale Date	Land Area	$/FAR
1-2047 9th	CR	6.0	Nov-06	4,073	$65
2-2143 9th	CR	6.0	Sep-07	11,942	$34
3-1932 9th	Arts/C-2-B	3.68	Jan-08	5,436	$55
4-2004+ 8th	Arts/C-2-B	4.5	Aug-08	3,537	$43
5-2006 10th	Arts/C-2-B	4.5	Sept-08	1,142	$37
6-1912 8th	Arts/C-2-B	4.5	Contract	1,887	$45
Subject	Arts/C-2-B	4.5		4,561	

Comparable #1, at 2047 9th Street, is the sale of a 4,073 sq. ft. interior site on the west side of 9th Street, one block northwest of subject. This CR zoned site is similar in size and dimension to subject. It sold in November 2006 for $102 per FAR. The property was purchased by the owner of the adjacent property, the 9:30 Club, for possible expansion of the nightclub in the future. It is improved with a small warehouse and parking lot and is currently used for storage and parking. This sale would be adjusted downward for market conditions and for an owner user purchaser and up for corner.

Comparable #2, at 2143 9th Street, is an 11,942 sq. ft. site located southeast of subject on 9th Street. The site is zoned CR. It sold in September 2007 for $46 per FAR to Howard University based on an FAR of 6.0. The site is level and has frontage on both 8th Street and the rear alley. Howard University is assembling sites in the area and also owns land adjacent to this site. This site, while small, is almost three times the size of subject. This sale would be adjusted downward for market conditions and up for corner

Comparable #3, at 1932 9th Street, is a 5,436 sq. ft. interior site located one block southwest of subject. The site has 36 feet of street frontage on 9th Street and depth of 158 feet to a rear alley. This Arts/C-2-B zoned site sold in January 2008 for $70 per FAR based on a proposed 3.68 FAR mixed-use development. The price per FAR based on the maximum FAR

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005943

allowed would be $57. The purchaser reportedly plans to build a 20,000 sq. ft. mixed use building, which equates to a 3.68 FAR. The site is located in a similar location, one-half block south of Florida Avenue. This sale would be adjusted downward for market conditions and up for corner

Comparable #4, at 2004-2008 and 2014 8th Street, is a 3,537 sq. ft. non-contiguous assembly of four lots located one block north of subject. The four lots sold for a total price of $800,000 or $50 per FAR. They are currently improved with four row houses in poor condition. According to the purchaser two of the row houses will be renovated. He is looking to assemble the remaining sites with adjacent land for a larger contiguous assembly. This sale would be adjusted downward for market conditions and upward for noncontiguous assembly and corner.

Comparable #5, at 2006 10th Street, is a 1,142 sq. ft. narrow lot located one-half block north of U Street. The site has only 13 feet of frontage on 10th street with a depth of 89 feet to a rear alley. This Arts/C-2-B zoned site sold in September 2008 for $43 per FAR. The purchaser plans a residential development on the site. The property is currently back on the market at an asking price of $350,000 or $68 per FAR but the sales broker reports no interest in the site based on this asking price. This sale would be adjusted downward for market conditions and upward for narrow lot width and corner.

Comparable #6, at 1912 8th Street, is a 1,887 sq. ft. lot located south of subject. The site has 20 feet of frontage 8th Street with a depth of 94 feet to a rear alley. This Arts/C-2-B zoned site is currently listed on the market for $385,000 or $45 per FAR. The site is located adjacent to a similarly sized site that was developed in 2009 with a 5-unit condominium. This location is similar to subject but the site is smaller and lacks a corner.

Summary of Comparables

Sale-Addr	Date	Adj Mkt	Loc	Corner	Site Area	Fr X Dpth
1-2047 9th	11/06	$65	Comp	No	Sml/Comp	40 X 101
2-2143 9th	9/07	$34	Comp	No	Comp/Lrg	118 X 101
3-1932 9th	1/08	$54	Comp	No	Sm/Comp	36 X 158
4-2004+ 8th	8/08	$43	Comp	No	Sml/Comp	Non-Contig
5-2006 10th	9/08	$37	Comp	No	Sml/Narrow	13 X 88
6-1912 8th	List	$45	Comp	No	Sml/Marrow	20 X 94

After adjustments for market conditions the comparable sales indicate an adjusted price range for subject from $34 to $65 per FAR with an average of $47 per FAR. The highest sale

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005944

indication came from sale #1, at $65 per FAR. It is the oldest sale and was purchased by the adjacent property owner for future expansion of his nightclub. Without this sale the average of the remaining sales is $43 per FAR. Sale #5, at $37 per FAR, is the most recent sale, but it is much smaller and all of the components of subject. Sale #4, at $43 per FAR, consists of four small noncontiguous lots on an inferior street north of subject. The purchaser is looking to assemble adjacent land into a larger contiguous assembly. Sale #3 is the closest comparable sale and indicated a price of $55 per FAR after adjusting for market conditions, but lacks a corner. The purchaser reportedly plans to build a mixed-used 3.68 FAR building, although nothing has been built since the purchase and the site is currently used as a pay parking lot. If this site were developed to a maximum 4.5 FAR the adjusted sale price would be $45 per FAR. The final comparable is the listing of a small 1,887 sq. ft., C2B zoned site located south of subject on 8th Street. This site is currently on the market for $385,000 or $45 per FAR. This listing is much smaller than all of the individual sites within subject.

The average of all the sales, excluding sale #1, is $42 per FAR. The most closest sale, sale #3, indicated a price of $55 per FAR, based on a proposed development, but is much smaller than all of subject's individual sites. However, with subject's location along Florida Avenue, and the potential for retail uses along with the corner influence on all of the individual sites, it is our opinion that the unencumbered value of the sites, as a unit, would be weighted upward from sales north of Florida Avenue, resulting in an indicated value of $55 per FAR.

Based on the comparables and analysis above, the indicated value for the subject sites, as a part of the proposed development of which these properties are a part, as of August 31, 2009, would be:

Site Area	28,892 sf Land
FAR Sq. Ft. Individual Site Development	113,441 sf GFA
FAR Sq. Ft. Allocated to Subject Sites	124,000 sf GFA
Value per FAR	$55.00/FAR
Unencumbered Value	$6,820,000
Rounded to	$6,800,000

10,559 × 55 = $586,245 difference

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005945

Adjustment to Value: Inclusionary Zoning Effective FAR Loss

The effective area lost due to Inclusionary Zoning has been estimated at 8,782 sq. ft. of Gross Floor Area. This is equivalent to a lost land value of:

8,782 sq. ft. GFA x $55.00/FAR	= $483,010
Rounded to	$500,000

Adjustment to Value: Inclusionary Zoning Cost Deficiency

As stated above, while it appears that there may be a loss in value due to the inability to cover not only land value but part of the construction costs as well, it has been assumed for the purposes of this analysis that the developer will be able to obtain sufficient subsidies to offset this loss.

Adjustment to Value: Extraordinary Costs – WMATA Easements and Tunnels

As stated above, utilizing the costs estimates provided by WMATA, a deduction for extraordinary hard associated with building over the WMATA tunnel and easements is $1,770,000. Allowing for necessary soft costs, this results in a total deduction from the unencumbered value of $2,300,000. + 30% of Hard Cost

Final Value of Property Subject to Inclusionary Zoning and WMATA Tunnels and Easements

Value Unencumbered	$6,800,000
Adjustment for IZ FAR Loss	-$500,000
Adjustment for Extraordinary Costs	-$2,300,000
Encumbered Value 7/31/2009	$4,000,000

Exposure Time

There have been very few land sales, except for smaller sized sites and foreclosures. Given the complexities of developing the subject site, the necessity of obtaining approvals and processing reviews and agreements relating to the WMATA easements and tunnels, and the difficulty in obtaining development financing in the current economic climate, the exposure time associated with the values set forth herein is estimated at 12 to 18 months or more. Bannaker will note

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005946

Fair Annual Land Rent

The second component of this analysis is to estimate the appropriate land rent for a long tern land lease under typical market terms and the appropriate land rent under specified terms provided by the client.

First, the land rent under typical market terms is estimated at a base rate of 7% of the current land value. Annual escalations in the rent are estimated at 2% per year, with a revaluation of the underlying land and a reset to 7% of the revalued land value every ten years. It would be expected that some reduction in the land rent for an initial term, not to exceed 12 to 18 months, would be made as an accommodation to facilitate development approvals. These terms are utilized to compute a possible yield to the land owner under the lease, which will be the basis for estimating the land rent payments under the proposed lease term.

Land Value	$4,000,000	$4,000,000
Option 1 — Base Land Rent	7%	To Be Determined
Option 2 — Lump Sum		Lump Sum Payment no annual payment
Option 3 — Flat Annual		Flat Annual Payment, no escalations or revaluation
Annual Adjustment	2%	None
Periodic Revaluation	Every 10 Year Reset to 7%	None
Term	60 Years	60 Years
Reversion	60 Years	60 Years
Annual Increase in Land Value	Allow 4% per year on average over term	
Participation in Gross Revenue		1% of Gross Revenue
Participation in Refinancing Proceeds		2% of Net Proceeds from any refinancing
Participation in Sale Proceeds		2% of Net Proceeds from any sale of the property

Based on a market lease rate of 7% for a long term land lease with annual escalations and periodic revaluations and

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005947

resets, the initial rent payment would be $280,000 per year (7% x $4,000,000).[12] The rent would have annual escalations, estimated at 2% of the prior year rent, and there would be periodic revaluations of the land value every 10 years, at which time the base land rent would be reset to 7% of the then current land value. The lease would have typical clauses – rent never lower than prior year, no purchase options, requirements for upkeep of improvements, reversion of land and any remaining improvements at lease expiration to the leased fee owner, leasehold owner (tenant) responsible for all expenses, taxes, municipal charges, fees, etc., as well as all other requirements and features of a typical 'triple net land lease'.

In order to estimate the appropriate rental payments under the two WMATA requested Lease Options (Lump Sum Payment with Participation and Flat Rent with Participation), it is necessary to determine the effective yield to the leased fee owner under typical market terms, as this forms the basis for determining the equivalent rent under the two lease options requested.

The following assumptions are used to set the base yield to the leasehold under a typical market lease:

Land Value Escalation	4% annual average escalation in land value over the 60 year term of the lease
Annual Rent Escalations	2% per year

Set forth on the following page is a summary of the yield analysis indicating that these term would yield a 10.5% (rounded) overall yield to the leased fee owner.

[12] Note that it would be reasonable to reduce the rent during the development approval phase of the project, with the full rent becoming effective at the receipt of development approvals from the City.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005948

Estimate of Yield on Typical Land Rent Terms
Option 1 Land Lease

Yr		Land Value Annual Change 4.00%	Annual Rent Escalation 2.00%	Yr		Land Value Annual Change 4.00%	Annual Rent Escalation 2.00%
1		$4,000,000	280,000	31	Reval	$12,973,590	**$908,151**
2		$4,160,000	$285,600	32		$13,492,534	$926,314
3		$4,326,400	$291,312	33		$14,032,235	$944,840
4		$4,499,456	$297,138	34		$14,593,524	$963,737
5		$4,679,434	$303,081	35		$15,177,265	$983,012
6		$4,866,611	$309,143	36		$15,784,356	$1,002,672
7		$5,061,275	$315,326	37		$16,415,730	$1,022,725
8		$5,263,726	$321,633	38		$17,072,359	$1,043,180
9		$5,474,275	$328,066	39		$17,755,253	$1,064,044
10		$5,693,246	$334,627	40		$18,465,463	$1,085,325
11	Reval	$5,920,976	**$414,468**	41	Reval	$19,204,082	**$1,344,286**
12		$6,157,815	$422,758	42		$19,972,245	$1,371,171
13		$6,404,128	$431,213	43		$20,771,135	$1,398,594
14		$6,660,293	$439,837	44		$21,601,980	$1,426,566
15		$6,926,705	$448,634	45		$22,466,059	$1,455,097
16		$7,203,773	$457,607	46		$23,364,701	$1,484,199
17		$7,491,924	$466,759	47		$24,299,289	$1,513,883
18		$7,791,601	$476,094	48		$25,271,261	$1,544,161
19		$8,103,265	$485,616	49		$26,282,111	$1,575,044
20		$8,427,396	$495,328	50		$27,333,395	$1,606,545
21	Reval	$8,764,492	**$613,514**	51	Reval	$28,426,731	**$1,989,871**
22		$9,115,072	$625,785	52		$29,563,800	$2,029,669
23		$9,479,675	$638,301	53		$30,746,352	$2,070,262
24		$9,858,862	$651,067	54		$31,976,206	$2,111,667
25		$10,253,216	$664,088	55		$33,255,254	$2,153,900
26		$10,663,345	$677,370	56		$34,585,464	$2,196,978
27		$11,089,879	$690,917	57		$35,968,883	$2,240,918
28		$11,533,474	$704,735	58		$37,407,638	$2,285,736
29		$11,994,813	$718,830	59		$38,903,944	$2,331,451
30		$12,474,606	$733,207	60	+Revn	$40,460,102	$42,838,182

With a starting value of $4,000,000, the indicted internal rate of return on the these payments would be 10.4794%, which would be rounded to 10.5%.

In order to compute the appropriate Lump Sum Payment with the proposed participations and the Flat Annual Rent with the proposed participations, additional assumptions are required, as summarized on the following page. These tests are designed to arrive at the requested Option Rents yielding the same return to the leased fee as the typical market lease shown above.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005949

Summary of Assumptions for Lease Option Analyses

Initial Land Value	$4,000,000
Leased Fee IRR	10.5% at market terms
Land Value Escalation	4% annual average escalation in land value over the 60 year term of the lease
Gross Rent	Based on 124,000 sf gross area, 85% net to gross ratio, $2.50 monthly rent, escalating 3% per year for the term
Net Proceeds	Estimate at an initial leasehold value of $400 per sq. ft. with a 75% loan to value ratio, 7% interest rate loan with 30 year term, monthly amortization, property value increase of 3% per year for the first 40 years then declines 1% per year through the end of the term, 5% expenses on sale with a sale every ten years and improvements value at $-0- at end of term

The Annual Participation in the Gross Revenue would therefore be, in year one of stabilization, $31,620 as shown below.

Gross Area	124,000 sf
Net/Gross	85.00%
Rentable	105,400 sf
Rent/SF/Mo	$2.50
Monthly Gr	$263,500
Annualize	12
Annual Gross	$3,162,000
Participation Rte	1.00%
Annual Participation in Gross Revenue	$31,620
Annual Increase in Rent (and participation)	3%
Discount Rate for Present Value	10.5%

The present value of the annual participation, as shown on the following page, is $415,400.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005950

Present Value of Annual Participation
Options 2 and 3

Year	Annual Participation Escalation 3.00%	Year	Annual Participation Escalation 3.00%
1	$31,620	31	$76,753
2	$32,569	32	$79,056
3	$33,546	33	$81,428
4	$34,552	34	$83,871
5	$35,589	35	$86,387
6	$36,657	36	$88,979
7	$37,757	37	$91,648
8	$38,890	38	$94,397
9	$40,057	39	$97,229
10	$41,259	40	$100,146
11	$42,497	41	$103,150
12	$43,772	42	$106,245
13	$45,085	43	$109,432
14	$46,438	44	$112,715
15	$47,831	45	$116,096
16	$49,266	46	$119,579
17	$50,744	47	$123,166
18	$52,266	48	$126,861
19	$53,834	49	$130,667
20	$55,449	50	$134,587
21	$57,112	51	$138,625
22	$58,825	52	$142,784
23	$60,590	53	$147,068
24	$62,408	54	$151,480
25	$64,280	55	$156,024
26	$66,208	56	$160,705
27	$68,194	57	$165,526
28	$70,240	58	$170,492
29	$72,347	59	$175,607
30	$74,517	60	$180,875
Present Value of Annual Participation at 10.5%			$415,400

Next, the periodic participation in the net sale or refinancing proceeds is estimated based on the assumptions set forth. For this component of the analysis, it has been assumed that the property would be sold every ten years.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005951

Participation in Net Proceeds (Sale Every Ten Years)
Options 2 and 3

Yr	Leasehold Value 3% > -1%	Mortgage Balance	Sales Exp 5.00%	Net Proceeds	Participation In Net Proceeds 2.00%
1	$42,160,000	$31,620,000	$2,108,000	$8,432,000	0
2	$43,424,800	$30,954,382	$2,171,240	$10,299,178	0
3	$44,727,544	$30,585,066	$2,236,377	$11,906,101	0
4	$46,069,370	$30,189,051	$2,303,469	$13,576,850	0
5	$47,451,451	$29,764,409	$2,372,573	$15,314,469	0
6	$48,874,995	$29,309,069	$2,443,750	$17,122,176	0
7	$50,341,245	$28,820,812	$2,517,062	$19,003,371	0
8	$51,851,482	$28,297,260	$2,592,574	$20,961,648	0
9	$53,407,026	$27,735,860	$2,670,351	$23,000,815	0
10	$55,009,237	$27,133,876	$2,750,462	$25,124,899	$502,498
11	$56,659,514	$42,494,636	$2,832,976	$11,331,903	0
12	$58,359,299	$41,600,101	$2,917,965	$13,841,233	0
13	$60,110,078	$41,103,770	$3,005,504	$16,000,804	0
14	$61,913,380	$40,571,560	$3,095,669	$18,246,151	0
15	$63,770,781	$40,000,876	$3,188,539	$20,581,366	0
16	$65,683,904	$39,388,937	$3,284,195	$23,010,772	0
17	$67,654,421	$38,732,761	$3,382,721	$25,538,939	0
18	$69,684,054	$38,029,151	$3,484,203	$28,170,700	0
19	$71,774,576	$37,274,676	$3,588,729	$30,911,171	0
20	$73,927,813	$36,465,660	$3,696,391	$33,765,762	$675,315
21	$76,145,647	$57,109,235	$3,807,282	$15,229,130	0
22	$78,430,016	$55,907,056	$3,921,501	$18,601,459	0
23	$80,782,916	$55,240,029	$4,039,146	$21,503,741	0
24	$83,206,403	$54,524,783	$4,160,320	$24,521,300	0
25	$85,702,595	$53,757,831	$4,285,130	$27,659,634	0
26	$88,273,673	$52,935,437	$4,413,684	$30,924,552	0
27	$90,921,883	$52,053,591	$4,546,094	$34,322,198	0
28	$93,649,539	$51,107,997	$4,682,477	$37,859,065	0
29	$96,459,025	$50,094,046	$4,822,951	$41,542,028	0
30	$99,352,796	$49,006,796	$4,967,640	$45,378,360	$907,567
31	$102,333,380	$76,750,035	$5,116,669	$20,466,676	0
32	$105,403,381	$75,134,406	$5,270,169	$24,998,806	0
33	$108,565,482	$74,237,978	$5,428,274	$28,899,230	0
34	$111,822,446	$73,276,747	$5,591,122	$32,954,577	0
35	$115,177,119	$72,246,028	$5,758,856	$37,172,235	0
36	$118,632,433	$71,140,799	$5,931,622	$41,560,012	0
37	$122,191,406	$69,955,672	$6,109,570	$46,126,164	0
38	$125,857,148	$68,684,873	$6,292,857	$50,879,418	0
39	$129,632,862	$67,322,207	$6,481,643	$55,829,012	0
40	$133,521,848	$65,861,034	$6,676,092	$60,984,722	$1,219,694
41	$132,186,630	$99,139,973	$6,609,332	$26,437,326	0
42	$130,864,764	$97,053,024	$6,543,238	$27,268,502	0

(Continued on following page)

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005952

Participation in Net Proceeds (Sale Every Ten Years)
(Continued from prior page)

Yr	Leasehold Value 3% > -1%	Mortgage Balance	Sales Exp 5.00%	Net Proceeds	Participation In Net Proceeds 2.00%
43	$129,556,116	$95,895,085	$6,477,806	$27,183,225	0
44	$128,260,555	$94,653,438	$6,413,028	$27,194,089	0
45	$126,977,949	$93,322,032	$6,348,897	$27,307,020	0
46	$125,708,170	$91,894,379	$6,285,409	$27,528,382	0
47	$124,451,088	$90,363,521	$6,222,554	$27,865,013	0
48	$123,206,577	$88,721,997	$6,160,329	$28,324,251	0
49	$121,974,511	$86,961,807	$6,098,726	$28,913,978	0
50	$120,754,766	$85,074,373	$6,037,738	$29,642,655	$592,853
51	$119,547,218	$89,660,414	$5,977,361	$23,909,444	0
52	$118,351,746	$87,773,015	$5,917,587	$24,661,144	0
53	$117,168,229	$86,725,795	$5,858,411	$24,584,023	0
54	$115,996,547	$85,602,872	$5,799,827	$24,593,848	0
55	$114,836,582	$84,398,773	$5,741,829	$24,695,980	0
56	$113,688,216	$83,107,629	$5,684,411	$24,896,176	0
57	$112,551,334	$81,723,148	$5,627,567	$25,200,619	0
58	$111,425,821	$80,238,584	$5,571,291	$25,615,946	0
59	$110,311,563	$78,646,699	$5,515,578	$26,149,286	0
60	$109,208,447	$76,939,738	$5,460,422	$26,808,287	$40,460,102
Present Value of Participation in Net Proceeds at 10.5%					$449,947

The present value of the annual participation has been estimated at $415,400. The present value of the periodic participation in net proceeds of sale (or refinancing) has been estimated at $449,947. The value of the land and the present value of the market terms lease payments is $4,000,000. Deducting the present value of the annual participation and the present value of the net proceeds from sale (or refinancing) will leave an amount of money that represents the required present value of the Option One Lump Sum Payment, or the required present value of the Option Two Flat Annual Rental. In other words, the present value of the Option One Payment or the present value of the Option Two Flat Payments must equal the residual present value after deducting the participation amounts.

Land Value	$4,000,000
PV of Annual Participation	-$415,400
Present Value of Net Proceeds Participation	-$449,947
Balance to Capture in Rent	$3,134,654

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005953

Option Two – Lump Sum Payment

The amount of the required Lump Sum Payment that, when added to the annual and periodic participations in gross rent and net proceeds will yield the same return to the leased fee owner as the market rent terms, is equal to the Balance to Capture in Rent or $3,134,654.

Option Three – Flat Annual Rent

The amount of the required Flat Annual Rental that, when added to the annual and periodic participations in gross rent and net proceeds will yield the same return to the leased fee owner as the market rent terms, is equal to the amount to amortize, at the leased fee yield rate, the Balance to Capture in Rent ($3,134,654) at a 10.5% discount rate for a 60 year term, or $329,964 per year.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005954

CERTIFICATION

The Undersigned do hereby certify that, to the best of our knowledge and belief:

The statements of facts contained in this report are true and correct;

The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analysis, opinions and conclusions;

We have no present or prospective interest in the property that is the subject of this report, and have no personal interest with respect to the parties involved;

We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment;

Our engagement in this assignment was not contingent upon developing or reporting predetermined results;

Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal;

The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which includes the Uniform Standards of Professional Appraisal Practice;

We inspected the subject property;

The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Richard R. Harps has completed the continuing education program of the Appraisal Institute.

Disclosure of the contents of this appraisal report is governed by the by-laws and Regulations of the Appraisal Institute.

Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers or the firm with which they are connected or the MAI or SRA designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communications without the prior written consent and approval of the undersigned.

Richard R. Harps
DC Certified General License #10003

Stephen C. Brennan
DC Certified General License #10011

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005955

QUALIFICATIONS OF RICHARD R. HARPS, MAI, CRE

Academic: Bachelor of Arts, Economics, The American University, Washington, D.C. 1972.

American Institute of Real Estate Appraisers courses and/or examinations: IA - Basic Principles, Methods and Techniques - 1972; IB - Capitalization Theory and Techniques - 1972; II - Urban Properties - 1973; IV - Condemnation - 1973; VI - Investment Analysis - 1980; IBA - Capitalization Theory & Techniques - 1987; 2-1 Case Studies - 1991, Highest and Best Use and Market Analysis – 1993, Advance Sales Comparison and Cost Approach - 2000

Seminars presented by AIREA, AI, GWCAR, WBR, WDCAR and other organizations.

General: 1971-1983 - John R. Pinkett, Inc., Vice President of Appraisals.
1984 to Present - HARPS & HARPS, INC., President
1996 to 2004 – HARPS & SCALLAN, LLC/INC.

Qualified as Expert in: District of Columbia Zoning Commission; District of Columbia Board of Zoning Adjustment; District of Columbia Office of Tax and Revenue Board of Real Property Assessments and Appeals; District of Columbia Alcohol Beverage Control Board; Superior Court of the District of Columbia; United States District Court for the District of Columbia; United States Bankruptcy Court for the District of Columbia; Mayor's Agent for Historic Preservation-Chief Administrative Law Judge of the District of Columbia; United States Bankruptcy Court, District of Maryland; United States District Court, District of Maryland.

District of Columbia Certified General Real Property Appraiser Certificate #10003.
Maryland Certified General Real Property Appraiser Certificate #10177
Virginia Certified General Real Estate Appraiser Certificate #003181

Appraisal/Consulting Experience: Assignments since 1971 include: houses, stores, shopping centers, office buildings, apartment buildings, hotels, unimproved land, air rights, special purpose properties; full and partial takings from office buildings, power plants, stores, houses, railroad rights-of-way, and apartment buildings; condominium conversion, relocation assistance studies, planned unit development analyses, lease analyses, fair rental studies, urban renewal re-use parcels and assessment consulting, valuation and equalization studies.

Partial Client List: , United State National Park Service, Washington Metropolitan Area Transit Authority, U.S. General Services Administration, U.S. Dept. of Justice, District of Columbia Department of Housing and Community Development, District of Columbia National Capital Revitalization Corporation, Potomac Electric Power Company, Washington Gas Light Company, Verizon, Howard University, International Monetary Fund, International Bank for Reconstruction and Development (World Bank) attorneys, financial institutions, developers and individuals.

Organizations

Appraisal Institute, successor to American Institute of Real Estate Appraisers, MAI designation - Voluntary re-certification through December 31, 2007
Minority Relations Subcommittee, 1980-1981, Vice Chairman 1981; National Education Committee, 1983-1984; Division of Courses, 1985; Division of Curriculum, 1981-1982; Board of Examiners - Examinations 1987-1989; and General Comprehensive Examination Subcommittee/General Comprehensive Examination Panel 1983-2007, Chairman 1987-1989

Washington Metropolitan Area Chapter Appraisal Institute (formed January 1991 by merger of Wash Metro Chapter # 18 AIREA and Wash Metro Chapter of SREA): President-1994

Counselors of Real Estate - CRE designation

District of Columbia Building Industry Association

Washington D.C. Association of REALTORS®: New Development/Zoning Committee 1975-90, Chrm 1981-82; Board of Directors, 1981 to 1986, 1990-1994, 1998; President, 1985

Real Estate Education Foundation (WDCAR) - President 1989

Lambda Alpha International – International Land Economics Fraternity

Real Estate Counseling Group of America – President 2005-2007

National Association of REALTORS®: Board of Directors 1985-1987, 1992; Executive Committee 1986-1987; REALTORS® Legislative Committee: 1989 Chairman Housing Subcommittee, 1990 Chairman Federal Tax Subcommittee, 1991 Vice Chairman RLC, 1992 Chairman RLC; Real Estate Finance Committee 1989-92; State and Municipal Legislative Committee 1990; Building Advisory Committee/Real Property Operations Committee 1988, 1990-1993, 2004, 2007; RPAC Trustee 1989, 1992; Real Estate Lending Working Group Chairman 1991; Public Policy Oversight Group 1993

Greater Washington Board of Trade - Board of Directors, 1985

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005956

QUALIFICATIONS OF STEPHEN C. BRENNAN

Education

1986 Graduate of Colby College, Waterville, Maine. Bachelor of Arts in Administrative Science with a minor in Economics. Graduate Real Estate courses: Principles and Practices of Real Estate, Real Estate Finance, and Appraisal 1. American Institute of Real Estate Appraisers courses and/or exams successfully completed: 1-A1 Real Estate Appraisal Principles, 1-A2 Basic Valuation Procedures, 1-B1 Capitalization Theory and Techniques Part A, and Capitalization Theory and Techniques Part B, 2-1 Case Studies in Real Estate Valuation, Report Writing and Valuation Analysis, Narrative Appraisal Report Writing, Apartment Appraisal, Appraisal Institute #I330, Standards of Professional Practice, Part B, February 2002, Evaluating Commercial Construction Seminar September 2003, National USPAP Update February 2004, and Appraisal Institute's Online Analyzing Operating Expenses, February 2004.

General Experience

Commercial Property Appraiser — 1988-Present
Harps & Harps, Inc.
Washington, D.C.

Residential Property Appraiser — 1987-1988
F. Jerome Silverstein Realty
New London, Ct.

Professional Associations and Licenses

District of Columbia, Certified General Real Property Appraiser License #10011

Maryland, Certified General Real Property Appraiser License #10178

Candidate for membership in the Appraisal Institute (MAI Designation)

Realtor Associate Member of the Washington D. C. Association of Realtors

Work Experience

Recent assignments include: appraisals of single and multifamily dwellings, condominiums, residential and commercial land, new construction, warehouses, office buildings, stores, shopping centers and apartment buildings.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005957

SCOPE OF WORK

SHAW-HOWARD UNIVERSITY METRORAIL STATION AREA

OWNER:	WMATA
LOCATION:	South Side of Florida Avenue between 7th & 9th Streets, NW Washington, DC
LEGAL DESCRIPTION:	Square 393, Lots 44 and 45; Square 416, Lots 18 and 31
ZONING:	C-2-B in Arts Overlay Zone
ESTIMATED AREA:	Lot 44 - 3,800 SF Lot 45 - 8,600 SF Lot 18 - 516 SF Lot 31 - 15,956 SF
COMMENTS:	The northern portions of the parcels contains an existing Metrorail tunnel that has an upper limit that is 19 feet below the surface. WMATA can provide to the appraiser cost estimates for extraordinary costs that may be involved in building over the WMATA tunnel. The Inclusionary Zoning Implementation Act, as amended, and the Duke Plan incorporate affordable housing provisions that should be considered in an analysis of the subject property.
DUE DATE:	A preliminary draft shall be due 30 days after notice to proceed. A complete summary report shall be due 7 business days after the receipt of comments on the preliminary draft.
TYPE OF REPORT:	Summary Appraisal Report
REQUIREMENTS:	The appraiser shall provide each of the following for the subject property: 1. Fair market value of the site reserving to WMATA a permanent underground easement on the northern portion of the property for the below-grade track and tunnel; 2. Fair market value per sq. ft. of FAR for any retail or commercial component, market rate residential units, and affordable housing units 3. The annual rent for a longterm ground lease

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005958

WMATA Scope of Work

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005959

ERIC COLBERT & ASSOCIATES PC 717 5TH STREET NORTHWEST WASHINGTON DC 20001 TELEPHONE (202) 289-6800

July 31, 2009

Mr. Richard Harps
1111 14th Street, N.W., Suite 600
Washington, D.C. 20005

Re: Square 393, Lots 44 and 45; Square 416, Lots 18 and 31

Dear Richard,

Following is the analysis you requested. First is a list of zoning restrictions:

Underlying C-2-B Zoning Requirements

- Height Limit = 65'
- FAR = 3.5, 1.5 non-residential maximum
- Maximum Lot Occupancy = 80% at all residential floors
- Rear Yard = 15'
- Required Parking = 1 per 3 dwelling units

Arts Overlay

- Up to 4.5 maximum bonus density permitted.

Inclusionary Zoning (IZ)

- 20% additional density
- 5' extra building height

The problem with the proximity of the Metro tunnel with these sites is that it exists on one side (the north) of the properties. If the Metro tunnel ran through the middle of our site, we could "bridge" the tunnel, making it easier to build higher above the tunnel. Because the tunnel is on one side, we can only build a structure that can be supported by the tunnel itself. My office is working on a project now where we have had numerous meetings with Metro regarding building over a tunnel. The maximum that Metro will allow us to (economically) build is a four-story wood structure. My best assumption is that we could possibly build a structure that has one level of underground parking and four floors above ground (above the tunnel).

Metro cost estimator did not assume this

FOIA CONFIEDENTIAL TREATMENT REQUESTED

For Lot 44 (Square 393), the proximity of Metro to the site suggests that the entire site be limited to the restrictions I stated. This will allow a structure which has a parking garage of 3,799 square feet. Due to the small size of the lot and its awkward shape, we can probably only accommodate 8 or 9 spaces in this garage. The first floor can be entirely commercial for a gross square footage of 3,600. The actual leasable space will be much lower, however, due to the need to have a lobby for the upstairs uses plus an elevator and two fire stairs. The actual retail on this level will likely be about 2,900 square feet. Assuming that floors 2, 3, and 4 are residential use, they could occupy 80% of the lot and have 3,039 gross square feet each. An apartment building of this size will only be about 75% efficient, leaving 2,279 sellable or leasable square feet each on floors 2, 3, and 4. This gives a total rentable or sellable area of 9,737 square feet for this site.

3600
9117
12,717

Lot 45 in Square 393 will be more efficient to build on. Approximately half of the site could go up to 70' height, while the other half would be limited as stated for Lot 44. This will yield the following areas, assuming a building that has one full level of parking underground and one full retail level at grade. On half of the site, three more floors will be permitted, while on the other half, five more floors will be possible. Based on nearby developments, the most reasonable use for the floors above the first floor seems to be residential use.

Lot 44

Lot 45 Potential Building

Floor	Gross S.F.	Net Sellable/Leasable S.F.
Garage (-1)	8,621	22 Parking Spaces
1	7,621	7,000
2	6,100	5,100
3	6,100	5,100
4	6,100	5,100
5	3,560	2,850
6	3,560	2,850
Total	33,041	28,000

85%

29,481

9,737

~~35,581~~

~~106,711~~

The same analysis used for Lot 45 in Square 393 will apply to Lot 31 in Square 416. Again, about one-half of the lot has the underground tunnel beneath it.

Lot 31 Potential Building

Floor	Gross S.F.	Net Sellable/Leasable S.F.
Garage (-1)	16,472	45 Parking Spaces
1	14,972	14,300
2	13,177	11,200
3	13,177	11,200
4	13,177	11,200
5	6,590	5,600
6	6,590	5,600
Total	84,155	59,100

30%

(1) 61,093 = 85% × 71,802

Building next to and above the Metro structures as will be required for these lots will increase construction costs by at least 20% to 25%. Being in a historic district means that there is no guarantee that a 70-foot high building will be permitted.

6 Stories = 67,683
71,802

Sincerely,

15,956 x
4.5 = 71,802

Eric Colbert, AIA

use record plat

100,311
(3) - 1,974
98,337

adjust
5,
28,376

5,517,000
2 300 000
3,217,000
700,000
2,517,000

(2) 516 sf
4.5 × 85%
= 1,974 sf.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

THE DEPUTY MAYOR FOR PLANNINGAND ECONOMIC DEVELOPMENT
THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

INCLUSIONARY ZONING AFFORDABLE HOUSING PROGRAM MAXIMUM RENT AND PURCHASE PRICE SCHEDULE

This Maximum Rent and Purchase Price Schedule is established pursuant to the Inclusionary Zoning Implementation Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*) ("the Act") and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 26 Title 11 of the DCMR. The Schedule is effective August 14, 2009.

Utilities have already been deducted

Multi-Family Inclusionary Developments

					50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
Studio	1	1	$108	$250	$899	$107,500	$1,438	$190,700
1	2	1 - 2	$150	$313	$1,027	$117,700	$1,643	$212,800
2	3	2 - 4	$192	$425	$1,155	$120,100	$1,849	$227,100
3	5	4 - 6	$233	$525	$1,412	$144,300	$2,259	$275,100

$2,10

Single-Family Inclusionary Developments

					50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
2	3	2 - 4	NC	$110	$1,155	$160,300	$1,849	$267,300
3	5	4 - 6	NC	$130	$1,412	$196,800	$2,259	$327,600
4	7	6 - 8	NC	$150	$1,669	$233,400	$2,670	$388,000

The Maximum Purchase Price or Rent is based on the Washington Metropolitan Statistical Area 2009 Area Median Income of $102,700 for a family of four (4) as published by the United States Department of Housing and Urban Development. It takes into account an ability to pay thirty percent (30%) of the benchmark income towards the housing cost.

Maximum Allowable Rent is equal to the rent published minus any utility expenses paid by the tenant for heat, air conditioning, cooking, electricity, or hot water. Utilities are estimated above. Actual costs to be deducted for each utility are as described in the District of Columbia Housing Authority's Utility Schedule.

An Inclusionary Development Owner may lower the rents or prices to achieve a larger marketing band of incomes for marketing purposes to assure occupancy.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005963

Maximum Allowable Purchase Prices use the following assumptions:

1. A conventional thirty (30) year, fixed-rate, fully amortizing mortgage at the national average mortgage rate as published by the Federal Housing Finance Agency at www.fhfa.gov (5.12% as of July 28, 2009) plus a one percent (1%) cushion to protect for future interest rate increases and a five (5%) down payment.

2. Real estate property taxes are assessed at the control price at current real estate tax rates and homestead deductions.

3. Condominium fees are estimated at fifty cents ($0.50) per square foot per month applied to the assumed unit square footages. Single-family homeowner association fees are estimated at ten cents ($0.10) per square foot per month applied to the assumed unit square footages. Estimated unit sizes are:

Multi-Family Inclusionary Development

Studio	1-Bedroom	2-Bedroom	3-Bedroom
500	625	850	1,050

Single-Family Inclusionary Development

2-Bedroom	3-Bedroom	4-Bedroom
1,100	1,300	1,500

4. Monthly hazard insurance on single-family units is estimated at one half of one percent (0.5%) of replacement value.

NOTE 1. If the actual homeowner/condominium fee for a specific Inclusionary Unit is more than ten percent (10%) higher than the fee assumed in the Maximum Price or Rent Schedule and/or hazard insurance is not included in the condominium fees, then the actual fees and insurance costs shall be used to determine the maximum sales price of the Inclusionary Unit.

NOTE 2. For unit types larger than listed above contact the Agency.

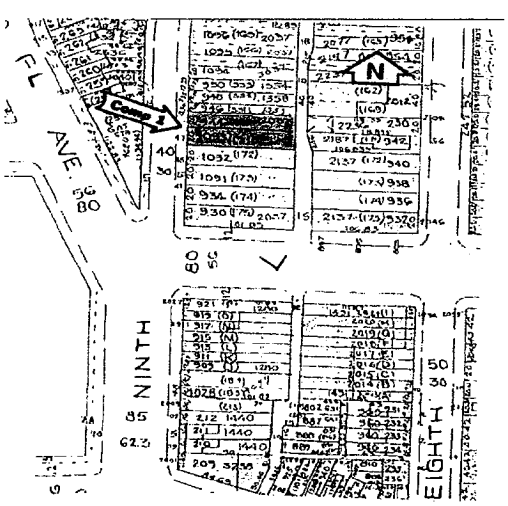
NOTE 3. NC — Not calculated. Contact the Agency.

NOTE 4. More information on Inclusionary Zoning is available at www.dhcd.dc.gov.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005964

Sale No.	1
Address	2047 9th Street, NW
Square/Lot	2875/1106
Area of Site	4,073 sq. ft.
GBA	1,940 sq. ft.
Zone	CR
FAR	6.0
Deed Dated	11/02/2006
Grantor	Ketel, LLC (Edward Needle, Manager)
Grantee	It's Mine Now, LLC (Clinton Stack)
Price	$2,500,000
Trust(s)	None recorded at time of sale
Date Recorded/Instr #	11/02/2006-#2006149549
Transfer Tax	$36,249.99
Price/sf Land	$613.80
Price/FAR	$102.30

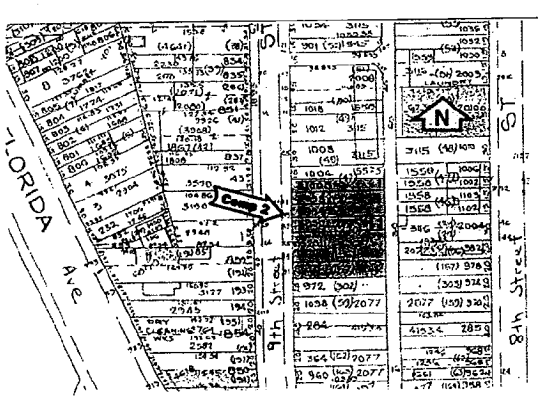
Remarks: The property was previously part of a PUD for Broadway Development. The site was dropped from the PUD and sold to the adjacent property owner. It was bought for a possible future expansion of the adjacent property, the 9:30 Club. As of September 2007, the property is being used for parking and storage. The sale was verified with the purchaser's representative, Norm Veenster, of N12 Development on September 11, 2007 and with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection.



FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005965

Sale No.	2
Address	2143 9th Street, NW
Square/Lot	2875/976, 1108, 2011
Area of Site	11,942 sq. ft.
GBA	Miscellaneous Industrial
Zone	CR
FAR	6.0
Deed Dated	August 31, 2007
Grantor	Warfield and Sanford, Inc.
Grantee	Howard University
Price	$3,300,000
Trust(s)	N/A
Date Recorded/Instr #	September 6, 2007
Transfer Tax	$47,849.89
Price/sf Land	$276.34
Price/FAR	$46.06

Remarks: This is an interior site purchased by Howard University as part of an ongoing assembly of land in the neighborhood. It appears that Howard owns land on both sides of this site. The property was under contract for $4,400,000 to a residential developer in the summer of 2006. The developer reportedly backed out of the deal due to the downturn in the residential market. The sale price in September 2007 indicates a drop in price of 25% from the summer 2006 contract price. Information verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection and with broker Ed Wolynec of the W. C. Smith Companies.

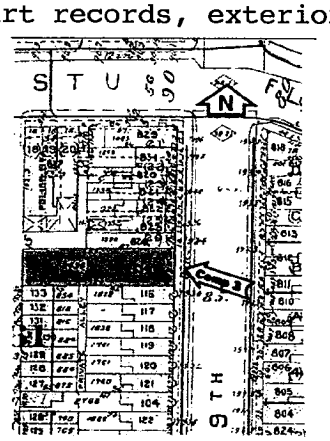


FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005966

Sale No.	3
Address	1932 9th Street, NW
Square/Lot	361/134
Area of Site	5,436 sq. ft.
GBA	Vacant land
Zone	C-2-B/Arts
FAR	4.5 Maximum with bonus
	3.68 proposed
Deed Dated	January 31, 2008
Grantor	JC Property Development, LLC (John E. Carter, Managing Member)
Grantee	PT2SO Investments, LLC
Price	$1,400,000
Trust(s)	N/A
Date Recorded/Instr #	February 7, 2008 #2008014342
Transfer Tax	$20,299.99
Price/sf Land	$257.54
Price/FAR	$57.23 (4.5 FAR Max with bonus)
	$69.98 (3.68 FAR proposed)

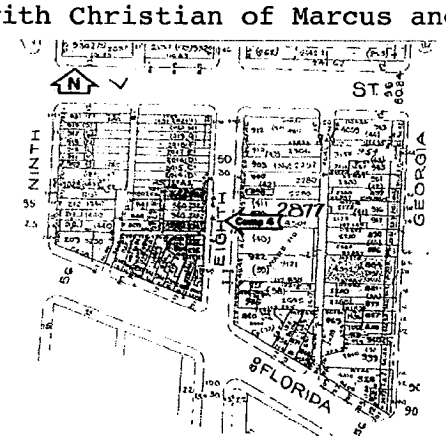
Remarks: This is a small interior site located south of Florida Avenue. The purchaser reportedly had planned to build a 20,000 sq. ft. five story mixed-use building on the site. As of August 2009 the site is still unimproved. This interior site is currently used as a pay parking lot. It has 36 feet of frontage on 9th Street and a depth of 158 feet to rear alley. The sale was verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection.



FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005967

Sale No.	4
Address	2004-2008 and 2014 8th Street, NW
Square/Lot	2875/231,234,235, and 236
Area of Site	3,537 sq. ft.
GBA	miscellaneous
Zone	C-2-B/Arts
FAR	4.5
Deed Dated	August 22, 2008
Grantor	CB 8th Street, LLC
Grantee	It's My Real Estate, LLC
Price	$800,000
Trust(s)	N/A
Date Recorded/Instr #	August 28, 2008 #2008091875+
Transfer Tax	$11,600.00
Price/sf Land	$226.18
Price/FAR	$50.26

Remarks: This is the sale of four old row houses in poor condition. The properties were purchased in four separate transactions for redevelopment into multifamily uses. The sites are not contiguous and are separated by an alley and two other row houses. Plans call for renovating two of the row houses and assembling the remaining sites with more sites to make a larger assembly. Each lot has approximately 15 feet of frontage on 8th Street and lot sizes vary from 804 to 960 sq. ft. The sale was verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, court records, exterior inspection, purchaser Norm Veenstra and with Christian of Marcus and Millichap.

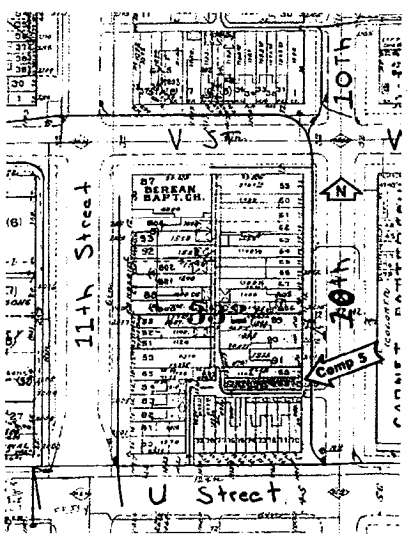


FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005968

Sale No.	5
Address	2006 10th Street, NW
Square/Lot	332/69
Area of Site	1,142 sq. ft.
GBA	N/A
Zone	C-2-B/Arts
FAR Matter of Right	3.5 Max matter of right
FAR with Bonus	4.5 Max with bonus
Deed Dated	September 19, 2008
Grantor	Joseph Junior Gilliam
Grantee	Loris Williams
Price	$220,000
Price/sf Land	$192.64
$/FAR	$55.04 (Matter of right)
$/FAR w/Bonus:	$42.81 (w/bonus to 4.5 FAR)

Remarks: This is a long narrow lot located on 10th Street and a side alley one-half block north of U Street Northwest. The U Street Metro Station is located one block south at Vermont and U Streets, NW. The new owner plans to construct a residential building on the lot. The property is currently on the market for $350,000. The broker reported no interest in the property at that price.

Information verified with MRIS, Online DC Assessment data, court records, exterior inspection and with sales broker Warren Kluth of Long and Foster.

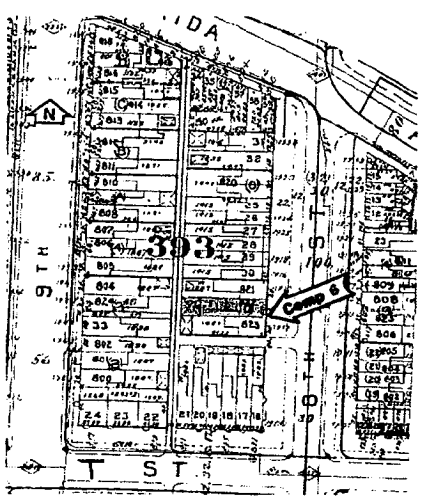


FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005969

Sale No.	6
Address	1912 8th Street, NW
Square/Lot	393/822
Area of Site	1,887 sq. ft.
GBA	N/A
Zone	C-2-B/Arts
FAR Matter of Right	3.5 Max matter of right
FAR with Bonus	4.5 Max with bonus
Deed Dated	Under Contract August 2009
Grantor	Luxor Properties
Grantee	N/A
Price	$385,000 (Asking)
Asking Price/sf Land	$204.03
$/FAR	$58.29 (Matter of right)
$/FAR w/Bonus:	$45.34 (w/bonus to 4.5 FAR)

Remarks: This is an interior site located a half block south of Florida Avenue, NW. The site is 20 feet wide by 94 feet deep to a rear alley. The site is the same size as the adjacent site to the south on which a 5-unit condominium was recently built. The property has been on the market for over 6 months. It reportedly is due to close around August 21st, 2009.

Information verified with Costar/COMPS, First American CoreLogic, Online DC Assessment data, exterior inspection and with sales broker Gerard DiRuggiero of the Urban land Company, LLC.



FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005970

ERIC COLBERT & ASSOCIATES PC 717 5TH STREET NORTHWEST WASHINGTON DC 20001 TELEPHONE (202) 289-6800

July 31, 2009

Mr. Richard Harps
1111 14th Street, N.W., Suite 600
Washington, D.C. 20005

Re: Square 393, Lots 44 and 45; Square 416, Lots 18 and 31

Dear Richard,

Following is the analysis you requested. First is a list of zoning restrictions:

Underlying C-2-B Zoning Requirements

- Height Limit = 65'
- FAR = 3.5, 1.5 non-residential maximum
- Maximum Lot Occupancy = 80% at all residential floors
- Rear Yard = 15'
- Required Parking = 1 per 3 dwelling units

Arts Overlay

- Up to 4.5 maximum bonus density permitted.

Inclusionary Zoning (IZ)

- 20% additional density
- 5' extra building height

The problem with the proximity of the Metro tunnel with these sites is that it exists on one side (the north) of the properties. If the Metro tunnel ran through the middle of our site, we could "bridge" the tunnel, making it easier to build higher above the tunnel. Because the tunnel is on one side, we can only build a structure that can be supported by the tunnel itself. My office is working on a project now where we have had numerous meetings with Metro regarding building over a tunnel. The maximum that Metro will allow us to (economically) build is a four-story wood structure. My best assumption is that we could possibly build a structure that has one level of underground parking and four floors above ground (above the tunnel).

FOIA CONFIEDENTIAL TREATMENT REQUESTED

For Lot 44 (Square 393), the proximity of Metro to the site suggests that the entire site be limited to the restrictions I stated. This will allow a structure which has a parking garage of 3,799 square feet. Due to the small size of the lot and its awkward shape, we can probably only accommodate 8 or 9 spaces in this garage. The first floor can be entirely commercial for a gross square footage of 3,600. The actual leasable space will be much lower, however, due to the need to have a lobby for the upstairs uses plus an elevator and two fire stairs. The actual retail on this level will likely be about 2,900 square feet. Assuming that floors 2, 3, and 4 are residential use, they could occupy 80% of the lot and have 3,039 gross square feet each. An apartment building of this size will only be about 75% efficient, leaving 2,279 sellable or leasable square feet each on floors 2, 3, and 4. This gives a total rentable or sellable area of 9,737 square feet for this site.

Lot 45 in Square 393 will be more efficient to build on. Approximately half of the site could go up to 70' height, while the other half would be limited as stated for Lot 44. This will yield the following areas, assuming a building that has one full level of parking underground and one full retail level at grade. On half of the site, three more floors will be permitted, while on the other half, five more floors will be possible. Based on nearby developments, the most reasonable use for the floors above the first floor seems to be residential use.

Lot 45 Potential Building

Floor	Gross S.F.	Net Sellable/Leasable S.F.
Garage (-1)	8,621	22 Parking Spaces
1	7,621	7,000
2	6,100	5,100
3	6,100	5,100
4	6,100	5,100
5	3,560	2,850
6	3,560	2,850
Total	33,041	28,000

FOIA CONFIEDENTIAL TREATMENT REQUESTED

The same analysis used for Lot 45 in Square 393 will apply to Lot 31 in Square 416. Again, about one-half of the lot has the underground tunnel beneath it.

Lot 31 Potential Building

Floor	Gross S.F.	Net Sellable/Leasable S.F.
Garage (-1)	16,472	45 Parking Spaces
1	14,972	14,300
2	13,177	11,200
3	13,177	11,200
4	13,177	11,200
5	6,590	5,600
6	6,590	5,600
Total	84,155	59,100

Building next to and above the Metro structures as will be required for these lots will increase construction costs by at least 20% to 25%. Being in a historic district means that there is no guarantee that a 70-foot high building will be permitted.

Sincerely,

Eric Colbert, AIA

INTEROFFICE MEMORANDUM

DATE: September 16, 2009

FROM: PRMT - Debra Farrar-Dyke

TO: Individual Listed Below

SUBJECT: Contracting Officer Technical Representative (COTR) Delegation

Delegation numbers are now being issued upon the completion of the Contracting Officer's Technical Representative (COTR) training class. This number will be forwarded to your Contract Administrator and should be identified for any future delegations.

The COTR Delegation of the following is hereby issued effective today:

COTR	Employee ID	Delegation Number
Rosalyn P. Doggett	240944	2009-64

If you have any questions or concerns regarding this correspondence, I can be reached at 202 962-1168.

Thank you.

cc: PRMT – Sylvia Edwards
PRMT – Rachel B. Brown

SCOPE OF WORK [DRAFT]

FLORIDA AVENUE SITE

OWNER:	WMATA
LOCATION:	Florida Avenue, NW
LAND AREA:	28,892 sq. ft.
ZONING:	C-2-B in Arts Overlay Zone
LEGAL DESCRIPTION:	Square 416, Lots 18 and 31 and Square 393, Lots 44 and 45
IMPROVEMENTS:	Existing sf of actual improvements
TYPE OF REPORT:	Summary Appraisal Report
REQUIREMENTS:	The appraiser shall provide the fair market value of the above property and the fair market rental value of the property based on the existing improvements on the property.
COMMENTS:	The appraisal shall provide a fair market value per sf for each type of land use on the site. The appraisal shall further indicate the fair market rental value per sf for each type of existing land use on the site. The appraisal shall take into account any affordable housing existing on the site as required by the District of Columbia.

Execution Copy

WMATA Joint Development Term Sheet
Shaw-Howard/Florida Avenue Sites

This Term Sheet, entitled "Joint Development Term Sheet" ("Term Sheet"), for a joint development project at WMATA's Shaw-Howard/Florida Avenue sites in Washington, DC, and dated as of the date last executed below, is intended to summarize the principal terms of a proposal being considered by the undersigned parties regarding a lease of certain real property on the south side of Florida Avenue, NW between 7th and 9th streets, NW. The undersigned parties wish to negotiate a Definitive Agreement, as defined in Section 2.1 herein.

1. Parties

1.1 Washington Metropolitan Area Transit Authority ("WMATA").

1.2 Banneker Ventures, LLC ("Banneker"), together with District Development Group, LLC ("DDG") and Metropolis Development Company LLC ("Metropolis"), will form a limited liability company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or another name as determined by Banneker, DDG and Metropolis (the "DEVELOPER"). Other parties may not be included in the DEVELOPER, except for any equity partners that the DEVELOPER needs to provide financing for the Project, nor may the DEVELOPER's interest in the Project or DEVELOPER's Improvements (as defined in Section 4.1, herein) be assigned or sold, without the written consent of WMATA, such consent not to be unreasonably withheld, with the terms of such consent to be provided in the Definitive Agreement.

2. Definitive Agreement

The Definitive Agreement, to be prepared initially by WMATA and presented by WMATA to the WMATA Board for approval and signature within five months of Board Term Sheet approval, will be a Joint Development Agreement ("JDA") that will include, as an exhibit, a 60-year ground lease agreement ("Lease"), together with all related documentation upon which WMATA and DEVELOPER mutually agree. The Lease term will begin with the earlier of twenty (20) months after the WMATA Board approves the Definitive Agreement or the start of construction of the Project.

3. Property to Be Leased by Developer

WMATA will lease to DEVELOPER approximately 28, 892 sf of land area outlined in red in **Exhibit A** and attached hereto (the "Leased Premises"). The land is in three separate parcels: 1) approximately 3,799 sf in Square 393, lot 44; 2) approximately 8,621 sf in Square 393, lot 45; and 3) approximately 16,452 sf in Square 416, lots 18 and 31. The Leased Premises shall not include those property interests necessary for protection of WMATA's Transit Facilities.

FOIA CONFIEDENTIAL TREATMENT REQUESTED

4. **Project**
DEVELOPER will construct improvements on the Leased Premises (the "Project" or "Project Improvements") in the configuration shown in **Exhibit B**. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 130,014 FAR gross square feet including not less than 104 dwelling units per District of Columbia ("District") approvals and approximately 11,750 gross square feet of retail/arts use plus associated residential and retail parking, estimated at 47 below-grade spaces, per District approvals. The DEVELOPER Improvements will be built in a single phase on the Leased Premises.

4.2 No improvements will be constructed on the Leased Premises other than the Project Improvements, unless approved in advance in writing by WMATA.

5. **Due Diligence**

5.1 Leased Premises Condition: In the Definitive Agreement, WMATA will provide knowledge-qualified representations customarily made by WMATA in transactions of this type, including with respect to title to the Leased Premises and the environmental history or condition of the property. Subject to the continued accuracy of such representations, and subject further to DEVELOPER'S Study Period rights as provided herein and satisfaction or waiver by DEVELOPER of all conditions precedent herein provided, DEVELOPER will accept its interest in the Leased Premises in an "as is - where is" condition.

5.2 Study Period: Upon approval and execution of the Term Sheet, WMATA will grant DEVELOPER a Right-of-Entry Permit for entry into the Leased Premises, substantially in the form attached hereto as **Exhibit C**. DEVELOPER shall have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Leased Premises (the "Study Period"). If DEVELOPER, in its sole and exclusive discretion, shall be dissatisfied for any reason with the results of its Study Period investigations, DEVELOPER shall be entitled, upon written notice to WMATA delivered not later than ten (10) days following expiration of the Study Period, to terminate this Term Sheet and the Definitive Agreement, whereupon WMATA shall return to DEVELOPER the entire Security Deposit or the Proposal Security (as defined below), as applicable, and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or of the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005977

6. Security Deposit

6.1 Within two (2) business days of the execution of the Definitive Agreement, the DEVELOPER will place with WMATA a cash security deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00), (the "Security Deposit") to secure DEVELOPER's performance. The Security Deposit will replace the $100,000 Proposal Security.

6.2 The Security Deposit will not be applied to any rental payments due to WMATA under the Definitive Agreement.

6.3 The entire Security Deposit shall be forfeited and may be retained by WMATA if DEVELOPER shall be in default under the Definitive Agreement beyond applicable notice, cure and grace periods therein provided. In such event, the Security Deposit may be applied by WMATA in whole or in part to cure such default. No such application of the Security Deposit shall constitute a waiver of any such default by DEVELOPER or an election of remedies. If the Security Deposit is applied in whole or in part as described herein, DEVELOPER shall, within ten (10) days, increase the Security Deposit by an amount equal to the amount applied.

6.4 The Security Deposit, less any amounts previously applied in connection with any breach or default by DEVELOPER and not replenished by DEVELOPER, shall be refunded to DEVELOPER upon the acceptance (not to be unreasonably withheld, delayed or conditioned) by WMATA of those sureties and guarantees identified in Sections 9.6 and 9.8 of this agreement.

6.5 WMATA shall return the Security Deposit plus interest to DEVELOPER within twenty (20) business days of its receipt of a copy of the Certificate of Occupancy for the Project.

7. Consideration

7.1 Option Fee: DEVELOPER will pay WMATA $100,000 (the "Option Fee"), within ten (10) days of WMATA Board approval of the Term Sheet and written notification to the DEVELOPER by WMATA of such approval. The Option Fee shall not be applicable to Pre-stabilization Rent, Initial Base Rent, Base Rent, or Capital Event Participation (as defined in this Section 7) and shall be non-refundable.

7.2 Pre-stabilization Rent: Non-refundable Pre-stabilization Rent payments will begin upon execution of the Definitive Agreement and continue until the earlier of the date of Project Stabilization, to be defined in the Definitive Agreement or forty-five (45) months after WMATA Board approval and execution of the

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005978

Definitive Agreement (the "Pre-stabilization Period"). Pre-stabilization Rent, for the first fifteen (15) months, will be $100,000 per year payable in advance in quarterly instalments of $25,000. Pre-stabilization Rent will increase to $115,000.00 per year for the next twelve (12) months. For the remaining Pre-stabilization Period, rent shall be $130,000.00 per year.

7.3 Base Rent: The first base rent payment shall be paid by DEVELOPER to WMATA within fourteen (14) calendar days of the end of the Pre-stabilization Period ("Initial Base Rent"). Any delay in first payment of Initial Base Rent will require a penalty payment, the amount of which to be determined in the Definitive Agreement. Initial Base Rent will be for the first calendar year after the end of the Pre-stabilization Period and will be pro-rated accordingly, payable in advance in quarterly instalments of one-quarter of the Initial Base Rent. In no event shall the Initial Base Rent (for a full year) be less than Five Hundred and Ninety-Seven Thousand and No/100 Dollars ($597,000.00). After the Initial Base Rent payment, Base Rent will be due annually, in quarterly instalments, beginning on the first business day of the calendar year for the remaining term of the Lease ("Base Rent"), and will be pro-rated accordingly. Base Rent payments will be determined as follows:

7.3.1 For the first Base Rent payment due after the Initial Base Rent payment, DEVELOPER will pay WMATA an amount equal to the product of the Initial Base Rent multiplied by 1.5% for that year (the "Initial Escalation Factor").

7.3.2 For the second through tenth years of Base Rent payments, subsequent Base Rent payments due after the Initial Base Rent payment, except for the first Base Rent payment to be determined pursuant to 7.3.4 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment and the Initial Escalation Factor. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.3 For the eleventh year of Base Rent payments and thereafter, except for Base Rent to be determined pursuant to 7.3.4 and 7.5 below, each Base Rent payment will be the product of the immediately preceding Base Rent payment multiplied by 1.03 (the Escalation Factor). In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.4 At the time of any Capital Event as defined in Section 7.4, Base Rent will be reset at 7% of the Project land value derived through a three-appraiser process that establishes unit values for each type of Project

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005979

land use multiplied by the total gross Project FAR square footage of each land use. In no event will any Base Rent payment be less than the Base Rent payment for the preceding calendar year.

7.3.5 DEVELOPER shall lease the Leased Premises for a period of sixty (60) years (the "Lease Period"). The Definitive Agreement will provide a mechanism by which Developer may request an extension of the Lease Period, subject to completion of a written agreement between the parties and approval, if necessary, by WMATA's Board of Directors.

7.4 Capital Event Participation: Capital Events (defined hereinbelow) shall be permitted in accordance with this Section 7.4. Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital Event" include any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of DEVELOPER's Improvements, (iii) other dispositions, transfers, and conversions that changes the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement shall be a Capital Event. The Parties agree that Non-Capital Events, which will require WMATA approval, but not WMATA monetary participation, also exist and will be defined in the Definitive Agreement. A one-time payment per Capital Event will be paid to WMATA in an amount equal to ten percent (10%) of any Adjusted Gross Capital Event Proceeds. Adjusted Gross Capital Event Proceeds are the gross transaction revenues to DEVELOPER from a Capital Event, and any affiliated entities receiving income from such a Capital Event, less the payoff of remaining original Project debt secured by DEVELOPER Improvements and repayment of the original equity to DEVELOPER not yet repaid. To confirm DEVELOPER's original project debt and equity, within thirty days of the start of Project construction, DEVELOPER will provide WMATA with documentation confirming such amounts from DEVELOPER. Total debt and equity to finance the Project (amounts paid prior to the subject Capital Event) will total no more than one hundred percent (100%) of the original total Project cost, including both hard and soft costs. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Capital Event.

7.5 Periodic Rent Revaluation: Upon a Capital Event or every ten years, whichever is earlier, the Base Rent will be adjusted to 7 % of Project land value established through a three-appraiser process as described in Section 7.3.4 above. WMATA Base Rent will never decrease from the then payable Base Rent as a result of any Periodic Rent Revaluation.

7.6 WMATA Improvements: intentionally omitted

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005980

7.7 Proposal Security: If WMATA and DEVELOPER do not execute a Definitive Agreement within five months following Board Term Sheet Approval (as provided in Section 2 above), WMATA will refund DEVELOPER's full Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00) to DEVELOPER within twenty (20) business days.

7.8 WMATA Delays: The maximum length of 45months for the Pre-stabilization Period will be extended, on a day-for-day basis, for delays caused by WMATA actions or failure to act, including obtaining FTA Approval in accordance with Section 8.5 below and . In no other event will payment of Pre-stabilization Rent, Initial Base Rent, or Base Rent be delayed, even though DEVELOPER's schedule may take longer than anticipated.

7.9 Force Majeure Delays: The maximum length of 45 months for the Pre-stabilization Period may be extended, subject to an increase in the rental payments due in order to maintain the net present value of the Definitive Agreement to WMATA, for any delays caused by acts of God, terrorism, casualty, or other events of "force majeure", as may be further defined and agreed to in the Definitive Agreement.

7.10 Changes to Project: Changes to Project, which increase Project density may be requested by the Developer, subject to the terms and conditions for such changes to the Project as may be required by WMATA in the Definitive Agreement. Such terms and conditions will require increases in rent or other compensation to WMATA.

7.11 Additional Density:

7.11.1 If prior to Lease execution, DEVELOPER receives approval for additional density over that in Section 4.1, DEVELOPER will pay additional Base Rent to be determined by multiplying such density at $60/FAR sf (subject to true-up of 3% per year from the execution of the Definitive Agreement) of additional density and multiplying the product derived (Project land value) by 7%.

7.11.2 During the term of the Lease, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those originally shown in the Approved Site Plan will require DEVELOPER to pay additional Base Rent. The revised Base Rent payments will be determined through the three-appraiser as described in Section 7.3.4 above, with such additional Base Rent including the incremental increase associated with any actually constructed DEVELOPER Improvements.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005981

8. Conditions to Definitive Agreement Consummation

If each of the following conditions is not satisfied within the timeframes provided below therefor, then in such instance, DEVELOPER may terminate this Term Sheet and the Definitive Agreement upon ten (10) days written notice to WMATA, in which event WMATA shall return the entire Security Deposit to DEVELOPER and both DEVELOPER and WMATA shall be relieved of any further obligations hereunder other than such obligations as shall, pursuant to the terms hereof or the Definitive Agreement, expressly survive termination of this Term Sheet or the Definitive Agreement.

8.1 Design Approvals: Within sixty (60) days after the execution of the Definitive Agreement and prior to any submission to the District, DEVELOPER must obtain WMATA's approval of a conceptual Project site plan in substantial conformance with **Exhibit B**, including building elevations and floor plans and related improvements to the Leased Premises such as streetscape, plazas, and sidewalks and landscaping (the "WMATA-Approved Site Plan"). The design of the Project shall be oriented in such a manner as to encourage use of WMATA transit facilities by tenants, residents, customers, and employees (as applicable) travelling to and from the Leased Premises. DEVELOPER must make its initial submission to WMATA no more than ten (10) days after execution of the Definitive Agreement.

8.2 Study Period: DEVELOPER shall be satisfied, in its sole and exclusive judgment, with its Study Period inspections in accordance with Section 5.2 above.

8.3 Public Hearing: DEVELOPER acknowledges that WMATA has concluded that a WMATA Compact Public Hearing is not required for this Project.

8.4 Subsequent Approval: DEVELOPER acknowledges that WMATA will not be bound by the Definitive Agreement unless and until such Definitive Agreement is approved by WMATA's Board of Directors and executed by WMATA.

8.5 FTA Approval: The transaction described herein is subject to Federal Transit Administration approval (the "FTA Approval"). WMATA will apply for said FTA Approval within thirty (30) days after full execution of the Definitive Agreement. The Definitive Agreement will contain appropriate termination provisions to address the possibility that the FTA may not approve the Definitive Agreement.

8.6 Financing Contingency: Developer shall have received a commitment for construction financing from a bank or other lending institution in such amounts, and upon such terms and conditions, as shall be consistent with the approved development budget for the Project and as shall otherwise be reasonably satisfactory to Developer and WMATA.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005982

9. Special Considerations

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the negotiated Definitive Agreement and WMATA's written notification to DEVELOPER of such approval, DEVELOPER shall contact the appropriate community groups in the area as specified by WMATA,to apprise such groups of the Project and provide WMATA with a written report naming each group contacted, its contact person and phone number, and a brief list of issues expressed by each group. DEVELOPER's failure to perform under this provision will constitute an event of default under the Definitive Agreement.

9.2 Rezoning Approvals: DEVELOPER will be responsible for obtaining all entitlements, including, but not limited to, re-zonings, variances, special exceptions, historic district approvals, zoning modifications, TDR's or similar actions relating to the Leased Premises (collectively, "Zoning") required to allow construction of the Project on the Leased Premises. DEVELOPER will use commercially reasonable efforts to obtain such entitlements.

9.2.1 DEVELOPER will fund any and all costs of the Zoning. WMATA will not incur any costs in connection with the Zoning either in the actual Zoning process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.

9.2.2 At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary permits and approvals, including, without limitation, land disturbance permits, building permits, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

9.2.3 WMATA shall cooperate with DEVELOPER in all zoning and other related land use matters.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the applicable District agency or agencies a Zoning request and an application for District approval of the WMATA-approved Site Plan, for development of the Leased Premises.

9.4 WMATA Review and Approval of Site Plan: In the event that DEVELOPER makes any modifications to the Site Plan approved by the District and subsequently by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005983

9.5 WMATA Review and Approval of Construction Drawings: WMATA will have the right to approve or disapprove, and require changes to any of the DEVELOPER Improvements that materially or adversely affect WMATA's operations. The design and construction plans for the Project Improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation "*STANDARDS—2007 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Project Improvements to be constructed by one or more reputable contractors having a record of successfully constructing similar projects. Construction of DEVELOPER Improvements shall be insured by one hundred percent (100%) performance and payment surety bonds with a nationally recognized corporate surety acceptable to WMATA. Such surety bonds shall name WMATA as a co-obligee, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at least ten (10) calendar days prior to commencement of construction of the DEVELOPER Improvements.

9.7 Interim Improvements: intentionally omitted

9.8 Guaranty: DEVELOPER will obtain from one or more third-party Guarantors, guarantees for the completion of a) construction of the Project Improvements, b) infrastructure required by either the District of Columbia or WMATA that is not included in the Site Work, c) any demolition and removal as and when required under the terms of the Definitive Agreement, d) remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities, and e) the timely payment and performance of all other DEVELOPER obligations under the Definitive Agreement. The Definitive Agreement will include minimum financial tests to be met by Guarantors, which will exceed the estimated costs of the aggregate payment and performance obligations under the Definitive Agreement by a reasonable margin. The adequacy of security and need for this Guarantee to be further discussed in Definitive Agreement.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Leased Premises so as to constitute a Transit-Oriented Development, and the DEVELOPER Improvements will be maintained with a Continuing Transit Orientation, as described in FTA Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law, which can be found at 72 FR 5788.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005984

9.10 Transit Operations: Neither the construction nor the operation of DEVELOPER's Improvements will interfere with the safety of operation of WMATA's transit facilities.

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Leased Premises, DEVELOPER shall dispose of any contaminated excavated materials that DEVELOPER has knowledge of, at DEVELOPER's expense, as required by all then-applicable federal and/or State of Maryland laws or regulations. DEVELOPER agrees to indemnify and hold WMATA harmless from any environmental liability or damages, including attorney's fees and costs of remediation for which WMATA may become responsible as a result of the DEVELOPER's breach of this covenant.

10. Indemnification

DEVELOPER will indemnify and save harmless WMATA and its respective directors, officers, employees and agents for all damages and expenses that may arise in connection with any and all actions taken by DEVELOPER, its contractors, consultants or agents, or any employee of DEVELOPER, its contractors, consultants or agents, in connection with its activities under the Definitive Agreement, including all surveys, tests, investigations, construction, operations on the Leased Premises and other activities. WMATA will have the right to disapprove activities that in WMATA's sole judgment could result in injury to WMATA Transit Facilities located under the Leased Premises or breach of any agreement, or expose WMATA to any liability. No consent by WMATA will be interpreted as a waiver by WMATA or assumption of liability or risk by WMATA. As to all Study Period activities, DEVELOPER and its consultants will be obligated, at their sole cost and expense, to restore the Leased Premises to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors, will maintain at all times, at their sole cost and expense, insurance coverages and policies to protect each of them and WMATA from claims that may arise out of activities contemplated by the Definitive Agreement. The scope and limits of such coverages and policies required by WMATA will be addressed in the Definitive Agreement.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005985

12. Non-Binding Intent

This Term Sheet will have no binding effect on the parties except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of five (5) months from the date of this Term Sheet. Any expenditures undertaken by either party hereto are at its own risk. No contract or agreement of any sort, preliminary, final or otherwise, is intended to be created by this Term Sheet, except as described above.

Agreed this 17th day of July, 2008, by

Washington Metropolitan Area Transit Authority

By: Joel R. Washington

Joel R. Washington
Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By: _____

Title: Principal

FOIA CONFIEDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Harry D. Sewell [hsewell@dchfa.org]
Sent: Monday, September 21, 2009 3:31 PM
To: Doggett, Rosalyn
Subject: RE: Jazz 9% Tax Credits

Roz:

For deals lees than 100% affordable, credits are taken against the appropriate percentage of rent restricted units.

H

$\frac{70}{100\%} = \frac{14}{20\%}$ Why only 4.5M?

From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Friday, September 18, 2009 2:56 PM
To: Harry D. Sewell
Subject: RE: Jazz 9% Tax Credits

Thanks, Harry. Just so I am clear, would this be for an 80-20 project? (20% at 50%AMI)
Roz

From: Harry D. Sewell [mailto:hsewell@dchfa.org]
Sent: Friday, September 18, 2009 9:18 AM
To: Doggett, Rosalyn
Subject: Jazz 9% Tax Credits

Roz:

Good to see you the other day. In general, proceeds from 9% Low Income Housing Tax Credits should cover approximately 70% of the development costs, minus costs for land.

Let's catch up over lunch sometime soon.

H

District of Columbia
Housing Finance Agency
Harry D. Sewell | Executive Director |
815 Florida Avenue, NW | Washington, DC 20001 |
Phone: 202-777-1601 | Fax: 202-986-6736 | www.dchfa.org |

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Land Value = $55 (versus $57 in 8/07 appraisal)

land sf	28,892sf		
4.5FAR sf	130,174sf		
$57 FARsf	Integra		$7,500,000
$55FAR sf	Harps	($349,175)	$7,150,825
limited sf	113,441sf	($911,570)	$6,239,255
IZ sf rqt.	8,782sf		$5,756,245
50% bonus density		($483,010)	
IZ rent coverage		($219,550)	not incl.
Extra Constr cost $25/sf		($1,434,425)	$4,321,820
TOTAL w/o line 16		($3,178,180)	$4,321,820
HARPS	total/w16	($3,397,730)	$4,102,270
20% aff. (Nat) .8x$6,239,255			$4,991,425

8/5/2009

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20% aff. (Nat) .8x$6,239,255			$4,991,425

8/5/2009

Doggett, Rosalyn

From: Nemi, Irving K.
Sent: Tuesday, August 18, 2009 2:34 PM
To: Bushnaq, Tariq
Cc: Doggett, Rosalyn
Subject: RE: Cost Estimates for Florida Ave Properties

Sorry for the delay in responding. I was at the Stadium-Armory Station. Since there is no basement there is no need for any special foundations. Hence there will not be any cost impact for building within the parcel 1 foot-print.

From: Bushnaq, Tariq
Sent: Monday, August 17, 2009 3:13 PM
To: Nemi, Irving K.
Cc: Doggett, Rosalyn
Subject: Cost Estimates for Florida Ave Properties

Nemi,

Roz called this afternoon and wanted a confirmation from you by e-mail stating the reasons for not preparing cost estimates for the smallest building (Parcel 1) which has no basement or parking. Also, she requested your opinion on whether any extra construction costs will be required for constructing the parcel 1 building adjacent to Metro tunnel.

Yes

Please advise..Thanks...Tariq

Meister, Mark K.

From: Doggett, Rosalyn
Sent: Wednesday, August 19, 2009 5:10 PM
To: Marshall, Malcolm; Meister, Mark K.
Cc: Bottigheimer, Nat
Subject: FW: DUKE Plan

From: Ellen McCarthy [mailto:mccarthy.ellen@arentfox.com]
Sent: Wednesday, August 19, 2009 4:31 PM
To: Doggett, Rosalyn
Subject: RE: DUKE Plan

Hi Roz,

Yes, I was on vacation, and somehow this got lost in the e-mails that had piled up upon my return. I'm so sorry. If you still need an answer, I'd say that, if the property is not owned by the city, no entity is bound by the "aspirational" number, especially not one who needs the money as much as WMATA. I've been trying in various forums to promote the idea that, if USDOT and HUD really want to integrate on urban policy, they ought to find a way to compensate transit authorities for including high percentages of affordable housing in their joint development projects, or at least, the municipality should subsidize, so that transit can have the benefit of high returns on its investment, but we can still use this vital opportunity to put affordable housing where it makes sense, to both reinforce transit ridership and keep overall housing/transportation costs down for those who need it.

Especially with regard to that property, the District should actively support an increase in zoning density through a PUD, which might expect a higher percentage of the units to be affordable (based on the increased density), but, if the developer goes matter of right, then the only realistic expectation is the MIZ amount.

Best,

Ellen

Ellen M. McCarthy
Director of Planning and Land Use

Arent Fox LLP | Attorneys at Law
1050 Connecticut Avenue, NW
Washington, DC 20036-5339
202.857.6455 DIRECT | 202.857.6395 FAX
mccarthy.ellen@arentfox.com | www.arentfox.com

Not a member of the legal profession.

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FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005991

From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Monday, June 29, 2009 2:23 PM
To: McCarthy, Ellen
Subject: DUKE Plan

The Duke Plan has various exhortations/recommendations for 20-30% affordable housing on publicly owned land. IZ regs call for 8% affordable in a C2B zone where we have property we are disposing of on FL Ave between 7th and 9th. My question is: to what extent is the Duke Plan "proscriptive" (to use your terminology from the Giant testimony) and to what extent is it aspirational?

Put another way, there are two competing public goods: to the extent that WMATA does not have to subsidize affordable housing it puts the additional real estate revenue into subsidizing transit.

Any thoughts (202 962 2208)?

I am assuming that you are on vacation and hoping that you are enjoying it.

Thanks,
R.

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IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

FOIA CONFIEDENTIAL TREATMENT REQUESTED WMATA-INV 005992

Doggett, Rosalyn

From: Doggett, Rosalyn
Sent: Wednesday, August 26, 2009 12:15 PM
To: Meister, Mark K.
Subject: FW: Shaw Howard Appraisal

FYI Based on intelligence from Eric Smart and the fact that Banneker has hired John Hagner, Mid City's lawyer, I sent Malcolm a copy of the RI Ave lease forwarded by Josh. I assume Malcolm is quoting from the RI Ave lease, which I have yet to read.... But I think that Banneker will try to replicated the RI deal. They are supposed to send us a marked up contract on Friday the 28th.

From: Marshall, Malcolm
Sent: Wednesday, August 26, 2009 11:13 AM
To: richard harps
Cc: Doggett, Rosalyn
Subject: Shaw Howard Appraisal

WMATA's estimate of the extra costs associated with building over and next to the tunnel (hard cost only) is an estimated $1,770,000.

The ground lease for the property is likely to be structured based on a 60-year term with the tenant paying a one-time base rent payment on lease commencement, annual participating rent equal to 1% of gross revenues, and a participation equal to 2% of the net proceeds of sale or refinancing.

For the market rental estimate in your appraisal, please include the following:

1. The market rent/terms for a longterm ground lease
2. The annual market rent assuming a 60-year lease at a fixed rental rate with participation outlined above
3. The market rent assuming the payment of one-time base rent with participation outlined above

Doggett, Rosalyn

To: Marshall, Malcolm
Cc: Meister, Mark K.; Bushnaq, Tariq

The number for the extra costs associated with building over and next to the tunnel (hard cost only) is an estimated $1,770,000. This comes from our cost estimator Irving Nemi who did detailed estimates for Parcels 2 and 3 totaling $1,708,000. Based solely on parcel size, I pro rated the $591,000result for Parcel 2 (the mid sized parcel) to apply to Parcel 1, the smalles. I then deducted Irving's 10% contingency, which he stated is subject to "be reduced as more details of design is developed." In part I did this because Banneker's latest concept shows a closed alley with Parcels 1 and 2 conjoined which will provide economies of scale. Unit costs for Parcel 3, the largest parcel, were approximately 50% less than for Parcel 2.

Rosalyn P. Doggett
Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

rdoggett@wmata.com
202-962-2208 phone
202-962-2396 fax

THE JAZZ AT FLORIDA AVE
Joint Development
*****
Concept Estimates

Designed By: Banneker / DDG / Torti Gallas
Estimated By: PCOM

Prepared By: Irving Nemi

Preparation Date: 08/13/09
Effective Date of Pricing: 08/13/09
Est Construction Time: 365 Days

Sales Tax: 5.7%

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FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005995

This estimate is only preliminary and has many assumptions and should only be used for budgetry or feasibility Studies. The range of accuracy is -10.0% and plus 30% at this level of details and information. For the purpose of this estimate, a design contingency of 10% based on the mid-point of the two limits of accuracies has been added to the project cost. This is subject to be reduced as more details of design is developed. The estimate is for "Hard Construction Cost" with a Design-Build contract procurement. The estimate has a baseline date of August 2009 and does not include escalation.

Soft Costs such as Preliminary Engineering, Project Administration and Construction Management Costs are excluded and should be considered and added as required.

Construction:
Construction is of CIP concrete at the basement level made up of 8" thick slab for normal site conditions and 48" thick slab for construction over existing metro-rail undeground guideways. Exterior basement walls are 12" thick with waterproofing. Interior CIP columns support the upper ground level slab.

The Retail and Lobby level is of 10" thick CIP slab with the same CIP column from the basement level. Exterior enclosure at this level is a combination of CMU masonry with brick veneer and Aluminum glass storefront wall system. At the second level slab is 10" thick CIP slab supported by the lower lobby/retail level columns.

The Second level to the 6th levels are of wood framing construction for all exterior walls, floors and roof structures. Exterior enclosure is a combination of brick veneer (50%) and plaster stucco finish (40%) on exterior grade wood/lath substrate with the rest being operable/fixed glass windows/panels. Roofing is built-up.

All interior construction meet regular apartment standards. 2 elevators are provided for each building at 2500LB and 3000LB capacities for the 2nd and 3rd parcels respectively. The estimate assumes 29 and 45 units respectively for the 2nd and 3rd parcel buildings. It is on the basis of 29 and 45 units that interior construction items such as kitchen cabinets, doors, partitions, bathroom fixtures and others were estimated. Kitchen equipment such as refrigerators, stove and washers are not included.

Exterior Sitework, site preparation and demolition are alos excluded.

FOIA CONFIEDENTIAL TREATMENT REQUESTED
WMATA-INV 005996

FOIA CONFIDENTIAL TREATMENT REQUESTED

Tri-Service Automated Cost Engineering System (TRACES)
PROJECT FLJAZZ: THE JAZZ AT FLORIDA AVE - Joint Development
CONCEPTUAL ESTIMATE
** PROJECT OWNER SUMMARY - Scope (Rounded to 10's) **

Conceptual

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
10	PARCEL 2 BUILDING - NO METRO	33041.00	SF	6,019,060	593,780	6,612,850	200.1
~~20~~	~~PARCEL 3 BUILDING - NO METRO~~	84155.00	SF	10,245,710	1,011,970	11,257,680	133.7
30	PARCEL 2 BUILDING - OVER METRO	33041.00	SF	6,556,080	647,490	7,203,560	218.0
40	PARCEL 3 BUILDING - OVER METRO	84155.00	SF	11,260,500	1,113,450	12,373,950	147.0

19,576 x 1.3
÷ 118 =
$214/sf

Parcel 1 3799 / 2621 = 44.87% x
Parcel 2
Parcel 3 16,472
26,892

Difference in cost $000's

7204 - 6613 = Parcel 2 591K } 1,708
12,374 - 11,257 = Parcel 3 1,117
44% x 591 Parcel 1 260
1,968

less
10% contingency x .9
(see prev. page) 1,771

WMATA-INV 005997

	QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
10 PARCEL 2 BUILDING - NO METRO						
10.10 BASEMENT PARKING LEVEL	8621.00	SF	961,320	96,130	1,057,450	122.6
10.20 1st FLR & RETAIL LEVEL	7621.00	SF	944,460	94,450	1,038,910	136.3
10.30 2nd - 6th APARTMENT LEVELS	25420.00	SF	3,582,010	350,080	3,932,090	154.6
10.40 VERTICAL ACCESS SYSTEMS	33041.00	SF	531,270	53,130	584,400	17.6
TOTAL PARCEL 2 BUILDING - NO METRO	33041.00	SF	6,019,060	593,780	6,612,850	200.1
20 PARCEL 3 BUILDING - NO METRO						
20.10 BASEMENT PARKING LEVEL	16472.00	SF	1,563,470	156,350	1,719,820	104.4
20.20 1st FLR & RETAIL LEVEL	14972.00	SF	1,697,620	169,760	1,867,380	124.7
20.30 2nd - 6th APARTMENT LEVELS	52711.00	SF	6,445,960	631,990	7,077,950	134.2
20.40 VERTICAL ACCESS SYSTEMS	84155.00	SF	538,670	53,870	592,530	7.0
TOTAL PARCEL 3 BUILDING - NO METRO	84155.00	SF	10,245,710	1,011,970	11,257,680	133.7
30 PARCEL 2 BUILDING - OVER METRO						
30.10 BASEMENT PARKING LEVEL	8621.00	SF	1,345,540	134,550	1,480,090	171.6
30.20 1st FLR & RETAIL LEVEL	7621.00	SF	944,460	94,450	1,038,910	136.3
30.30 2nd - 6th APARTMENT LEVELS	25420.00	SF	3,582,010	350,080	3,932,090	154.6
30.40 VERTICAL ACCESS SYSTEMS	33041.00	SF	531,270	53,130	584,400	17.6
30.50 METRO RAIL STATION MONITORING	1.00	JOB	152,800	15,280	168,080	16807
TOTAL PARCEL 2 BUILDING - OVER METRO	33041.00	SF	6,556,080	647,490	7,203,560	218.0
40 PARCEL 3 BUILDING - OVER METRO						
40.10 BASEMENT PARKING LEVEL	16472.00	SF	2,286,320	228,630	2,514,950	152.6
40.20 1st FLR & RETAIL LEVEL	14972.00	SF	1,697,620	169,760	1,867,380	124.7
40.30 2nd - 6th APARTMENT LEVELS	52711.00	SF	6,445,960	631,990	7,077,950	134.2
40.40 VERTICAL ACCESS SYSTEMS	84155.00	SF	538,670	53,870	592,530	7.0
40.50 METRO RAIL STATION MONITORING	1.00	JOB	291,950	29,190	321,140	32114
TOTAL PARCEL 3 BUILDING - OVER METRO	84155.00	SF	11,260,500	1,113,450	12,373,950	147.0

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 005998

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
10	PARCEL 2 BUILDING - NO METRO						
10.10	BASEMENT PARKING LEVEL						
10.10.01	Excavation Support & Protection	4380.00	SF	76,210	7,620	83,830	19.1
10.10.02	Earthworks as Required	8621.00	SF	140,780	14,080	154,850	17.9
10.10.03	8" Slabs on Grade @ Basement	8621.00	SF	105,810	10,580	116,390	13.5
10.10.04	Basement Columns	8621.00	SF	32,550	3,250	35,800	4.1
10.10.05	Basement CIP Concrete Walls	4015.00	SF	293,390	29,340	322,730	80.3
10.10.06	Parking Access Control System	1.00	JOB	47,620	4,760	52,380	5238
10.10.07	MEP - Parking Garage	8621.00	SF	264,960	26,500	291,450	33.8
	TOTAL BASEMENT PARKING LEVEL	8621.00	SF	961,320	96,130	1,057,450	122.6
10.20	1st FLR & RETAIL LEVEL						
10.20.01	10" Elevated Concrete Floor Slab	7621.00	SF	172,140	17,210	189,360	24.8
10.20.02	2' x 2' CIP Columns	7621.00	SF	46,330	4,630	50,970	6.6
10.20.03	Exterior Enclosure	4270.00	SF	232,140	23,210	255,350	59.8
10.20.04	Exterior Doors and Window	366.00	SF	39,460	3,950	43,410	118.6
10.20.05	Canopies & Shades	180.00	SF	14,720	1,470	16,200	89.9
10.20.06	Retail Space Construction	2600.00	SF	251,880	25,190	277,070	106.5
10.20.07	Residential Lobby Space Constn	1500.00	SF	99,190	9,920	109,110	72.7
10.20.10	Loading Dock Area	2200.00	SF	88,590	8,860	97,450	44.3
	TOTAL 1st FLR & RETAIL LEVEL	7621.00	SF	944,460	94,450	1,038,910	136.3
10.30	2nd - 6th APARTMENT LEVELS						
10.30.01	10" Elevated Concrete Floor Slab	7621.00	SF	172,140	17,210	189,360	24.8
10.30.02	Wood Deck Floor Framinng	25420.00	SF	487,160	48,720	535,870	21.0
10.30.03	Wood Deck Roof Framinng	6100.00	SF	90,370	9,040	99,410	16.3
10.30.04	Exterior Wall Enclosure	14422.00	SF	520,260	43,900	564,160	39.1
10.30.05	Roofing	7621.00	SF	63,980	6,400	70,380	9.2
10.30.06	Interior Construction	25420.00	SF	944,700	94,470	1,039,170	40.8
10.30.07	MEP	25420.00	SF	1,303,400	130,340	1,433,740	56.4
	TOTAL 2nd - 6th APARTMENT LEVELS	25420.00	SF	3,582,010	350,080	3,932,090	154.6
10.40	VERTICAL ACCESS SYSTEMS						
10.40.01	Vertical Transportation System	2.00	EA	531,270	53,130	584,400	29219
	TOTAL VERTICAL ACCESS SYSTEMS	33041.00	SF	531,270	53,130	584,400	17.6
	TOTAL PARCEL 2 BUILDING - NO METRO	33041.00	SF	6,019,060	593,780	6,612,850	200.1

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 005999

FOIA CONFIEDENTIAL TREATMENT REQUESTED

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
20	PARCEL 3 BUILDING - NO METRO						
20.10	BASEMENT PARKING LEVEL						
20.10.01	Excavation Support & Protection	6120.00	SF	106,490	10,650	117,140	19.1
20.10.02	Earthworks as Required	16472.00	SF	268,980	26,900	295,880	17.9
20.10.03	8" Slabs on Grade @ Basement	16472.00	SF	202,170	20,220	222,380	13.5
20.10.04	Basement Columns	16472.00	SF	50,850	5,090	55,940	3.4
20.10.05	Basement CIP Concrete Walls	5610.00	SF	409,990	41,000	450,990	80.3
20.10.06	Parking Access Control System	1.00	JOB	51,140	5,110	56,250	5625
20.10.07	MEP - Parking Garage	16472.00	SF	473,860	47,390	521,250	31.6
	TOTAL BASEMENT PARKING LEVEL	16472.00	SF	1,563,470	156,350	1,719,820	104.4
20.20	1st FLR & RETAIL LEVEL						
20.20.01	10" Elevated Concrete Floor Slab	14972.00	SF	338,190	33,820	372,010	24.8
20.20.02	2' x 2' CIP Columns	14972.00	SF	72,400	7,240	79,640	5.3
20.20.03	Exterior Enclosure	6771.00	SF	430,750	43,070	473,820	69.9
20.20.04	Exterior Doors and Window	690.00	SF	69,360	6,940	76,290	110.5
20.20.05	Canopies & Shades	300.00	SF	24,540	2,450	26,990	89.9
20.20.06	Retail Space Construction	7000.00	SF	507,130	50,710	557,840	79.6
20.20.07	Residential Lobby Space Constn	1500.00	SF	182,220	18,220	200,440	133.6
20.20.10	Loading Dock Area	1800.00	SF	73,040	7,300	80,340	44.6
	TOTAL 1st FLR & RETAIL LEVEL	14972.00	SF	1,697,620	169,760	1,867,380	124.7
20.30	2nd - 6th APARTMENT LEVELS						
20.30.01	10" Elevated Concrete Floor Slab	14972.00	SF	290,520	29,050	319,570	21.3
20.30.02	Wood Deck Floor Framinng	39534.00	SF	755,500	75,550	831,050	21.0
20.30.03	Wood Deck Roof Framinng	13177.00	SF	188,770	18,880	207,650	15.7
20.30.04	Exterior Wall Enclosure	21120.00	SF	768,980	64,290	833,280	39.4
20.30.05	Roofing	13177.00	SF	105,770	10,580	116,340	8.8
20.30.06	Interior Construction	52711.00	SF	1,723,820	172,380	1,896,200	35.9
20.30.07	MEP	52711.00	SF	2,612,600	261,260	2,873,860	54.5
	TOTAL 2nd - 6th APARTMENT LEVELS	52711.00	SF	6,445,960	631,990	7,077,950	134.2
20.40	VERTICAL ACCESS SYSTEMS						
20.40.01	Vertical Transportation System	2.00	EA	538,670	53,870	592,530	29626
	TOTAL VERTICAL ACCESS SYSTEMS	84155.00	SF	538,670	53,870	592,530	7.0
	TOTAL PARCEL 3 BUILDING - NO METRO	84155.00	SF	10,245,710	1,011,970	11,257,680	133.7

WMATA-INV 006000

FOIA CONFIEDENTIAL TREATMENT REQUESTED

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
30	PARCEL 2 BUILDING - OVER METRO						
30.10	BASEMENT PARKING LEVEL						
30.10.01	Excavation Support & Protection	5657.50	SF	98,440	9,840	108,280	19.1
30.10.02	Earthworks as Required	8621.00	SF	175,850	17,580	193,430	22.4
30.10.03	4' Slabs on Grade @ Basement	8621.00	SF	432,730	43,270	476,000	55.2
30.10.04	Basement Columns	8621.00	SF	32,550	3,250	35,800	4.1
30.10.05	Basement CIP Concrete Walls	4015.00	SF	293,390	29,340	322,730	80.3
30.10.06	Parking Access Control System	1.00	JOB	47,620	4,760	52,380	5238
30.10.07	MEP - Parking Garage	8621.00	SF	264,960	26,500	291,450	33.8
	TOTAL BASEMENT PARKING LEVEL	8621.00	SF	1,345,540	134,550	1,480,090	171.6
30.20	1st FLR & RETAIL LEVEL						
30.20.01	10" Elevated Concrete Floor Slab	7621.00	SF	172,140	17,210	189,360	24.8
30.20.02	2' x 2' CIP Columns	7621.00	SF	46,330	4,630	50,970	6.6
30.20.03	Exterior Enclosure	4270.00	SF	232,140	23,210	255,350	59.8
30.20.04	Exterior Doors and Window	366.00	SF	39,460	3,950	43,410	118.6
30.20.05	Canopies & Shades	180.00	SF	14,720	1,470	16,200	89.9
30.20.06	Retail Space Construction	2600.00	SF	251,880	25,190	277,070	106.5
30.20.07	Residential Lobby Space Constn	1500.00	SF	99,190	9,920	109,110	72.7
30.20.10	Loading Dock Area	2200.00	SF	88,590	8,860	97,450	44.3
	TOTAL 1st FLR & RETAIL LEVEL	7621.00	SF	944,460	94,450	1,038,910	136.3
30.30	2nd - 6th APARTMENT LEVELS						
30.30.01	10" Elevated Concrete Floor Slab	7621.00	SF	172,140	17,210	189,360	24.8
30.30.02	Wood Deck Floor Framinng	25420.00	SF	487,160	48,720	535,870	21.0
30.30.03	Wood Deck Roof Framinng	6100.00	SF	90,370	9,040	99,410	16.3
30.30.04	Exterior Wall Enclosure	14422.00	SF	520,260	43,900	564,160	39.1
30.30.05	Roofing	7621.00	SF	63,980	6,400	70,380	9.2
30.30.06	Interior Construction	25420.00	SF	944,700	94,470	1,039,170	40.8
30.30.07	MEP	25420.00	SF	1,303,400	130,340	1,433,740	56.4
	TOTAL 2nd - 6th APARTMENT LEVELS	25420.00	SF	3,582,010	350,080	3,932,090	154.6
30.40	VERTICAL ACCESS SYSTEMS						
30.40.01	Vertical Transportation System	2.00	EA	531,270	53,130	584,400	29219
	TOTAL VERTICAL ACCESS SYSTEMS	33041.00	SF	531,270	53,130	584,400	17.6
30.50	METRO RAIL STATION MONITORING						

WMATA-INV 006001

FOIA CONFIEDENTIAL TREATMENT REQUESTED

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
30.50.01	Metro Stn Monitoring as required	1.00	JOB	152,800	15,280	168,080	16807
	TOTAL METRO RAIL STATION MONITORING	1.00	JOB	152,800	15,280	168,080	16807
	TOTAL PARCEL 2 BUILDING - OVER METRO	33041.00	SF	6,556,080	647,490	7,203,560	218.0
40	PARCEL 3 BUILDING - OVER METRO						
40.10	BASEMENT PARKING LEVEL						
40.10.01	Excavation Support & Protection	7905.00	SF	137,550	13,750	151,300	19.1
40.10.02	Earthworks as Required	16472.00	SF	335,960	33,600	369,560	22.4
40.10.03	4' Slabs on Grade @ Basement	16472.00	SF	826,960	82,700	909,660	55.2
40.10.04	Basement Columns	16472.00	SF	50,850	5,090	55,940	3.4
40.10.05	Basement CIP Concrete Walls	5610.00	SF	409,990	41,000	450,990	80.3
40.10.06	Parking Access Control System	1.00	JOB	51,140	5,110	56,250	5625
40.10.07	MEP - Parking Garage	16472.00	SF	473,860	47,390	521,250	31.6
	TOTAL BASEMENT PARKING LEVEL	16472.00	SF	2,286,320	228,630	2,514,950	152.6
40.20	1st FLR & RETAIL LEVEL						
40.20.01	10" Elevated Concrete Floor Slab	14972.00	SF	338,190	33,820	372,010	24.8
40.20.02	2' x 2' CIP Columns	14972.00	SF	72,400	7,240	79,640	5.3
40.20.03	Exterior Enclosure	6771.00	SF	430,750	43,070	473,820	69.9
40.20.04	Exterior Doors and Window	690.00	SF	69,360	6,940	76,290	110.5
40.20.05	Canopies & Shades	300.00	SF	24,540	2,450	26,990	89.9
40.20.06	Retail Space Construction	7000.00	SF	507,130	50,710	557,840	79.6
40.20.07	Residential Lobby Space Constn	1500.00	SF	182,220	18,220	200,440	133.6
40.20.10	Loading Dock Area	1800.00	SF	73,040	7,300	80,340	44.6
	TOTAL 1st FLR & RETAIL LEVEL	14972.00	SF	1,697,620	169,760	1,867,380	124.7
40.30	2nd - 6th APARTMENT LEVELS						
40.30.01	10" Elevated Concrete Floor Slab	14972.00	SF	290,520	29,050	319,570	21.3
40.30.02	Wood Deck Floor Framinng	39534.00	SF	755,500	75,550	831,050	21.0
40.30.03	Wood Deck Roof Framinng	13177.00	SF	188,770	18,880	207,650	15.7
40.30.04	Exterior Wall Enclosure	21120.00	SF	768,980	64,290	833,280	39.4
40.30.05	Roofing	13177.00	SF	105,770	10,580	116,340	8.8
40.30.06	Interior Construction	52711.00	SF	1,723,820	172,380	1,896,200	35.9
40.30.07	MEP	52711.00	SF	2,612,600	261,260	2,873,860	54.5
	TOTAL 2nd - 6th APARTMENT LEVELS	52711.00	SF	6,445,960	631,990	7,077,950	134.2
40.40	VERTICAL ACCESS SYSTEMS						

WMATA-INV 006002

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
40.40.01	Vertical Transportation System	2.00	EA	538,670	53,870	592,530	29626
	TOTAL VERTICAL ACCESS SYSTEMS	84155.00	SF	538,670	53,870	592,530	7.0
40.50	METRO RAIL STATION MONITORING						
40.50.01	Metro Stn Monitoring as required	1.00	JOB	291,950	29,190	321,140	32114
	TOTAL METRO RAIL STATION MONITORING	1.00	JOB	291,950	29,190	321,140	32114
	TOTAL PARCEL 3 BUILDING - OVER METRO	84155.00	SF	11,260,500	1,113,450	12,373,950	147.0

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 006003

	QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
10 PARCEL 2 BUILDING - NO METRO						
10.10 BASEMENT PARKING LEVEL						
10.10.01 Excavation Support & Protection						
10.10.01.10 Base Earthwork Sheeting/Shoring	4380.00	SF	76,210	7,620	83,830	19.1
TOTAL Excavation Support & Protection	4380.00	SF	76,210	7,620	83,830	19.1
10.10.02 Earthworks as Required						
10.10.02.20 Earthworks	8621.00	SF	140,780	14,080	154,850	17.9
TOTAL Earthworks as Required	8621.00	SF	140,780	14,080	154,850	17.9
10.10.03 8" Slabs on Grade @ Basement						
10.10.03.02 Slab on grade, 8" thick	8621.00	SF	105,810	10,580	116,390	13.5
TOTAL 8" Slabs on Grade @ Basement	8621.00	SF	105,810	10,580	116,390	13.5
10.10.04 Basement Columns						
10.10.04.20 Basement Columns 2' x 2'x 11'-0"	16.00	EA	32,550	3,250	35,800	2237.7
TOTAL Basement Columns	8621.00	SF	32,550	3,250	35,800	4.1
10.10.05 Basement CIP Concrete Walls						
10.10.05.03 1' thk Conc Wall @ Perimeter	4015.00	SF	293,390	29,340	322,730	80.3
TOTAL Basement CIP Concrete Walls	4015.00	SF	293,390	29,340	322,730	80.3
10.10.06 Parking Access Control System						
10.10.06.03 Parking Access/Revenue Control	1.00	JOB	47,620	4,760	52,380	5238
TOTAL Parking Access Control System	1.00	JOB	47,620	4,760	52,380	5238
10.10.07 MEP - Parking Garage						
10.10.07.01 Plumbing and Mechanical	8621.00	SF	134,620	13,460	148,080	17.1

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 006004

	QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
10.10.07.02 Electrical	8621.00	SF	130,330	13,030	143,370	16.6
TOTAL MEP - Parking Garage	8621.00	SF	264,960	26,500	291,450	33.8
TOTAL BASEMENT PARKING LEVEL	8621.00	SF	961,320	96,130	1,057,450	122.6
10.20 1st FLR & RETAIL LEVEL						
10.20.01 10" Elevated Concrete Floor Slab						
10.20.01.02 Platform 10" Elevated Conc Slab	7621.00	SF	172,140	17,210	189,360	24.8
TOTAL 10" Elevated Concrete Floor Slab	7621.00	SF	172,140	17,210	189,360	24.8
10.20.02 2' x 2' CIP Columns						
10.20.02.20 Basement Columns 2' x 2'x 11'-0"	16.00	EA	46,330	4,630	50,970	3185.5
TOTAL 2' x 2' CIP Columns	7621.00	SF	46,330	4,630	50,970	6.6
10.20.03 Exterior Enclosure						
10.20.03.01 Exterior CMU/Brick Wall	3290.00	SF	142,100	14,210	156,310	47.5
10.20.03.02 Alum Storefront Walls	980.00	SF	90,040	9,000	99,050	101.0
TOTAL Exterior Enclosure	4270.00	SF	232,140	23,210	255,350	59.8
10.20.04 Exterior Doors and Window						
10.20.04.01 Aluminum Glass Doors, 6' x 7'	3.00	PR	28,680	2,870	31,550	1051
10.20.04.02 Overhead Doors, 12' H x 20' wide	1.00	EA	10,780	1,080	11,850	1185
TOTAL Exterior Doors and Window	366.00	SF	39,460	3,950	43,410	118.6
10.20.05 Canopies & Shades						
10.20.05.01 Entrance Canopy	180.00	SF	14,720	1,470	16,200	89.9
TOTAL Canopies & Shades	180.00	SF	14,720	1,470	16,200	89.9
10.20.06 Retail Space Construction						
10.20.06.01 Interior CMU Partitions	2781.00	SF	47,470	4,750	52,220	18.7
10.20.06.02 Drywall Furring+Insul @ Ext Wall	3290.00	SF	17,540	1,750	19,300	5.8
10.20.06.03 Drywall Furring @ Int CMU Walls	2781.00	SF	11,820	1,180	13,010	4.6

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 006005

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
10.20.06.04	Interior Drywall Partitions	517.00	SF	2,280	230	2,510	4.8
10.20.06.11	Ceiling Finishes	2600.00	SF	15,120	1,510	16,630	6.4
10.20.06.12	Wall Finishes	4402.00	SF	4,980	500	5,480	1.2
10.20.06.13	Floor Finishes	2600.00	SF	13,780	1,380	15,160	5.8
10.20.06.14	Plumbing & Fire Protection	2600.00	SF	30,090	3,010	33,100	12.7
10.20.06.15	Mechanical	2600.00	SF	48,350	4,830	53,180	20.4
10.20.06.16	Electrical	2600.00	SF	60,440	6,040	66,480	25.5
	TOTAL Retail Space Construction	2600.00	SF	251,880	25,190	277,070	106.5
10.20.07	Residential Lobby Space Constn						
10.20.07.01	Interior CMU Partitions	1434.00	SF	24,480	2,450	26,930	18.7
10.20.07.02	Drywall Furring @ Elev Wall	627.00	SF	2,670	270	2,930	4.6
10.20.07.03	Floor Finishes	900.00	SF	14,830	1,480	16,310	18.1
10.20.07.04	Ceiling Finishes	900.00	SF	6,110	610	6,720	7.4
10.20.07.05	Wall Finishes	627.00	SF	3,030	300	3,330	5.3
10.20.07.06	Plumbing & Fire Protection	900.00	SF	10,420	1,040	11,460	12.7
10.20.07.07	Mechanical	900.00	SF	16,740	1,670	18,410	20.4
10.20.07.08	Electrical	900.00	SF	20,920	2,090	23,010	25.5
	TOTAL Residential Lobby Space Constn	1500.00	SF	99,190	9,920	109,110	72.7
10.20.10	Loading Dock Area						
10.20.10.03	Floor Finishes	2200.00	SF	330	30	360	0.1
10.20.10.04	Ceiling Finishes	2200.00	SF	5,790	580	6,370	2.9
10.20.10.05	Wall Finishes	2585.00	SF	2,930	290	3,220	1.2
10.20.10.06	Plumbing & Fire Protection	2200.00	SF	20,400	2,040	22,440	10.2
10.20.10.07	Mechanical	2200.00	SF	25,570	2,560	28,130	12.7
10.20.10.08	Electrical	2200.00	SF	33,570	3,360	36,930	16.7
	TOTAL Loading Dock Area	2200.00	SF	88,590	8,860	97,450	44.3
	TOTAL 1st FLR & RETAIL LEVEL	7621.00	SF	944,460	94,450	1,038,910	136.3
10.30	2nd - 6th APARTMENT LEVELS						
10.30.01	10" Elevated Concrete Floor Slab						
10.30.01.02	Roofing Framing	7621.00	SF	172,140	17,210	189,360	24.8
	TOTAL 10" Elevated Concrete Floor Slab	7621.00	SF	172,140	17,210	189,360	24.8
10.30.02	Wood Deck Floor Framinng						

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 006006

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
10.30.02.01	Wood Deck Floor Framinng	25420.00	SF	487,160	48,720	535,870	21.0
	TOTAL Wood Deck Floor Framinng	25420.00	SF	487,160	48,720	535,870	21.0
10.30.03	Wood Deck Roof Framinng						
10.30.03.01	Wood Deck Roof Framinng	6100.00	SF	90,370	9,040	99,410	16.3
	TOTAL Wood Deck Roof Framinng	6100.00	SF	90,370	9,040	99,410	16.3
10.30.04	Exterior Wall Enclosure						
10.30.04.01	Wd Stud + Brick Veneer - 50%	7211.00	SF	235,780	23,580	259,360	35.9
10.30.04.02	Wd Stud + Stucco - 40%	5769.00	SF	134,390	13,440	147,830	25.6
10.30.04.03	Alum Windows @ 10%	1442.00	SF	68,860	6,890	75,750	52.5
10.30.04.04	6' x 7' Alum Sliding Door	29.00	EA	81,230	0	81,230	2800.9
	TOTAL Exterior Wall Enclosure	14422.00	SF	520,260	43,900	564,160	39.1
10.30.05	Roofing						
10.30.05.01	Built-up Roofing + 3" Insulation	7621.00	SF	52,240	5,220	57,470	7.5
10.30.05.02	Sheetmetal & Flashings	7621.00	SF	11,730	1,170	12,910	1.6
	TOTAL Roofing	7621.00	SF	63,980	6,400	70,380	9.2
10.30.06	Interior Construction						
10.30.06.01	Interior Drywall Partn [10SF/1L]	24082.00	SF	167,060	16,710	183,770	7.6
10.30.06.02	Entry Doors [1 per apt + 2/ flr]	39.00	EA	58,290	5,830	64,120	1644.0
10.30.06.03	Interior Wd Doors [5 per apt]	145.00	EA	105,510	10,550	116,060	800.4
10.30.06.04	Floor Finishes	25420.00	SF	167,810	16,780	184,600	7.2
10.30.06.05	Ceiling Drywall Finish + Paint	25420.00	SF	159,820	15,980	175,810	6.9
10.30.06.06	Wall Finishes	61144.00	SF	145,270	14,530	159,790	2.6
10.30.06.07	Kitchen Cabinet + Closet + Shelf	25420.00	SF	140,930	14,090	155,030	6.1
	TOTAL Interior Construction	25420.00	SF	944,700	94,470	1,039,170	40.8
10.30.07	MEP						
10.30.07.01	Fire Protection	25420.00	SF	127,400	12,740	140,140	5.5
10.30.07.02	Plumbing	25420.00	SF	173,010	17,300	190,320	7.4
10.30.07.03	Mechanical	25420.00	SF	538,680	53,870	592,550	23.3
10.30.07.04	Electrical	25420.00	SF	464,310	46,430	510,740	20.0

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 006007

FOIA CONFIDENTIAL TREATMENT REQUESTED

	QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
TOTAL MEP	25420.00	SF	1,303,400	130,340	1,433,740	56.4
TOTAL 2nd - 6th APARTMENT LEVELS	25420.00	SF	3,582,010	350,080	3,932,090	154.6
10.40 VERTICAL ACCESS SYSTEMS						
10.40.01 Vertical Transportation System						
10.40.01.01 25001b Electric Elevator, 7 Stop	2.00	EA	531,270	53,130	584,400	29219
TOTAL Vertical Transportation System	2.00	EA	531,270	53,130	584,400	29219
TOTAL VERTICAL ACCESS SYSTEMS	33041.00	SF	531,270	53,130	584,400	17.6
TOTAL PARCEL 2 BUILDING - NO METRO	33041.00	SF	6,019,060	593,780	6,612,850	200.1
20 PARCEL 3 BUILDING - NO METRO						
20.10 BASEMENT PARKING LEVEL						
20.10.01 Excavation Support & Protection						
20.10.01.10 Base Earthwork Sheeting/Shoring	6120.00	SF	106,490	10,650	117,140	19.1
TOTAL Excavation Support & Protection	6120.00	SF	106,490	10,650	117,140	19.1
20.10.02 Earthworks as Required						
20.10.02.20 Earthworks	16472.00	SF	268,980	26,900	295,880	17.9
TOTAL Earthworks as Required	16472.00	SF	268,980	26,900	295,880	17.9
20.10.03 8" Slabs on Grade @ Basement						
20.10.03.02 Slab on grade, 8" thick	16472.00	SF	202,170	20,220	222,380	13.5
TOTAL 8" Slabs on Grade @ Basement	16472.00	SF	202,170	20,220	222,380	13.5
20.10.04 Basement Columns						
20.10.04.20 Basement Columns 2' x 2'x 11'-0"	25.00	EA	50,850	5,090	55,940	2237.6
TOTAL Basement Columns	16472.00	SF	50,850	5,090	55,940	3.4
20.10.05 Basement CIP Concrete Walls						

WMATA-INV 006008

	QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
20.10.05.03 1' thk Conc Wall @ Perimeter	5610.00	SF	409,990	41,000	450,990	80.3
TOTAL Basement CIP Concrete Walls	5610.00	SF	409,990	41,000	450,990	80.3
20.10.06 Parking Access Control System						
20.10.06.03 Parking Access/Revenue Control	1.00	JOB	51,140	5,110	56,250	5625
TOTAL Parking Access Control System	1.00	JOB	51,140	5,110	56,250	5625
20.10.07 MEP - Parking Garage						
20.10.07.01 Plumbing and Mechanical	16472.00	SF	238,570	23,860	262,430	15.9
20.10.07.02 Electrical	16472.00	SF	235,290	23,530	258,820	15.7
TOTAL MEP - Parking Garage	16472.00	SF	473,860	47,390	521,250	31.6
TOTAL BASEMENT PARKING LEVEL	16472.00	SF	1,563,470	156,350	1,719,820	104.4
20.20 1st FLR & RETAIL LEVEL						
20.20.01 10" Elevated Concrete Floor Slab						
20.20.01.02 Platform 10" Elevated Conc Slab	14972.00	SF	338,190	33,820	372,010	24.8
TOTAL 10" Elevated Concrete Floor Slab	14972.00	SF	338,190	33,820	372,010	24.8
20.20.02 2' x 2' CIP Columns						
20.20.02.20 Basement Columns 2' x 2'x 11'-0"	25.00	EA	72,400	7,240	79,640	3185.4
TOTAL 2' x 2' CIP Columns	14972.00	SF	72,400	7,240	79,640	5.3
20.20.03 Exterior Enclosure						
20.20.03.01 Exterior CMU/Brick Wall	3995.00	SF	175,690	17,570	193,250	48.3
20.20.03.02 Alum Storefront Walls	2776.00	SF	255,060	25,510	280,570	101.0
TOTAL Exterior Enclosure	6771.00	SF	430,750	43,070	473,820	69.9
20.20.04 Exterior Doors and Window						
20.20.04.01 Aluminum Glass Doors, 6' x 7'	5.00	PR	47,810	4,780	52,590	1051
20.20.04.02 Overhead Doors, 12' H x 20' wide	2.00	EA	21,550	2,160	23,710	1185

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 006009

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
	TOTAL Exterior Doors and Window	690.00	SF	69,360	6,940	76,290	110.5
20.20.05	Canopies & Shades						
20.20.05.01	Entrance Canopy	300.00	SF	24,540	2,450	26,990	89.9
	TOTAL Canopies & Shades	300.00	SF	24,540	2,450	26,990	89.9
20.20.06	Retail Space Construction						
20.20.06.01	Interior Drywall Partitions	3290.00	SF	14,680	1,470	16,150	4.9
20.20.06.02	Drywall Furring @ Exterior Wall	5152.00	SF	27,470	2,750	30,220	5.8
20.20.06.03	Floor Finishes	7000.00	SF	37,100	3,710	40,810	5.8
20.20.06.04	Ceiling Finishes	7000.00	SF	40,700	4,070	44,770	6.4
20.20.06.05	Wall Finishes	11732.00	SF	13,280	1,330	14,610	1.2
20.20.06.06	Plumbing & Fire Protection	7000.00	SF	81,010	8,100	89,110	12.7
20.20.06.07	Mechanical	7000.00	SF	130,170	13,020	143,190	20.4
20.20.06.08	Electrical	7000.00	SF	162,710	16,270	178,990	25.5
	TOTAL Retail Space Construction	7000.00	SF	507,130	50,710	557,840	79.6
20.20.07	Residential Lobby Space Constn						
20.20.07.01	Interior CMU Partitions	1434.00	SF	47,090	4,710	51,800	36.1
20.20.07.02	Drywall Furring @ Exterior Wall	2775.00	SF	14,800	1,480	16,280	5.8
20.20.07.03	Floor Finishes	1500.00	SF	24,720	2,470	27,190	18.1
20.20.07.04	Ceiling Finishes	1500.00	SF	10,190	1,020	11,200	7.4
20.20.07.05	Wall Finishes	2200.00	SF	5,320	530	5,850	2.6
20.20.07.06	Plumbing & Fire Protection	1500.00	SF	17,360	1,740	19,090	12.7
20.20.07.07	Mechanical	1500.00	SF	27,890	2,790	30,680	20.4
20.20.07.08	Electrical	1500.00	SF	34,870	3,490	38,350	25.5
	TOTAL Residential Lobby Space Constn	1500.00	SF	182,220	18,220	200,440	133.6
20.20.10	Loading Dock Area						
20.20.10.03	Floor Finishes	1800.00	SF	270	30	300	0.1
20.20.10.04	Ceiling Finishes	1800.00	SF	4,740	470	5,210	2.9
20.20.10.05	Wall Finishes	2604.00	SF	2,950	290	3,240	1.2
20.20.10.06	Plumbing & Fire Protection	1800.00	SF	16,690	1,670	18,360	10.2
20.20.10.07	Mechanical	1800.00	SF	20,920	2,090	23,010	12.7
20.20.10.08	Electrical	1800.00	SF	27,470	2,750	30,210	16.7
	TOTAL Loading Dock Area	1800.00	SF	73,040	7,300	80,340	44.6
	TOTAL 1st FLR & RETAIL LEVEL	14972.00	SF	1,697,620	169,760	1,867,380	124.7

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 006010

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
20.30	2nd - 6th APARTMENT LEVELS						
20.30.01	10" Elevated Concrete Floor Slab						
20.30.01.02	Roofing Framing	12862.00	SF	290,520	29,050	319,570	24.8
	TOTAL 10" Elevated Concrete Floor Slab	14972.00	SF	290,520	29,050	319,570	21.3
20.30.02	Wood Deck Floor Framinng						
20.30.02.01	Wood Deck Floor Framinng	39534.00	SF	755,500	75,550	831,050	21.0
	TOTAL Wood Deck Floor Framinng	39534.00	SF	755,500	75,550	831,050	21.0
20.30.03	Wood Deck Roof Framinng						
20.30.03.01	Wood Deck Roof Framinng	13177.00	SF	188,770	18,880	207,650	15.7
	TOTAL Wood Deck Roof Framinng	13177.00	SF	188,770	18,880	207,650	15.7
20.30.04	Exterior Wall Enclosure						
20.30.04.01	Wd Stud + Brick Veneer - 50%	10560.00	SF	345,280	34,530	379,810	35.9
20.30.04.02	Wd Stud + Stucco - 40%	8448.00	SF	196,800	19,680	216,480	25.6
20.30.04.03	Alum Windows @ 10%	2112.00	SF	100,850	10,090	110,940	52.5
20.30.04.04	6' x 7' Alum Sliding Door	45.00	EA	126,040	0	126,040	2800.9
	TOTAL Exterior Wall Enclosure	21120.00	SF	768,980	64,290	833,280	39.4
20.30.05	Roofing						
20.30.05.01	Built-up Roofing + 3" Insulation	13177.00	SF	90,330	9,030	99,370	7.5
20.30.05.02	Sheetmetal & Flashings	13177.00	SF	15,430	1,540	16,980	1.2
	TOTAL Roofing	13177.00	SF	105,770	10,580	116,340	8.8
20.30.06	Interior Construction						
20.30.06.01	Interior Drywall Partn [10SF/1L]	49696.00	SF	344,750	34,480	379,230	7.6
20.30.06.02	Entry Doors [1 per apt + 2/ flr]	55.00	EA	79,690	7,970	87,660	1593.8
20.30.06.03	Interior Wd Doors [6 per apt]	270.00	EA	191,580	19,160	210,740	780.5
20.30.06.04	Floor Finishes	52711.00	SF	322,070	32,210	354,270	6.7
20.30.06.05	Ceiling Drywall Finish + Paint	52711.00	SF	331,410	33,140	364,550	6.9
20.30.06.06	Wall Finishes	99392.00	SF	230,510	23,050	253,570	2.5
20.30.06.07	Kitchen Cabinet + Closet + Shelf	52711.00	SF	223,800	22,380	246,180	4.6

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 006011

FOIA CONFIDENTIAL TREATMENT REQUESTED

	QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
TOTAL Interior Construction	52711.00	SF	1,723,820	172,380	1,896,200	35.9
20.30.07 MEP						
20.30.07.01 Fire Protection	52711.00	SF	252,050	25,210	277,260	5.2
20.30.07.02 Plumbing	52711.00	SF	348,730	34,870	383,600	7.2
20.30.07.03 Mechanical	52711.00	SF	1,083,030	108,300	1,191,330	22.6
20.30.07.04 Electrical	52711.00	SF	928,800	92,880	1,021,680	19.3
TOTAL MEP	52711.00	SF	2,612,600	261,260	2,873,860	54.5
TOTAL 2nd - 6th APARTMENT LEVELS	52711.00	SF	6,445,960	631,990	7,077,950	134.2
20.40 VERTICAL ACCESS SYSTEMS						
20.40.01 Vertical Transportation System						
20.40.01.01 3000lb Electric Elevator, 3 Stop	2.00	EA	538,670	53,870	592,530	29626
TOTAL Vertical Transportation System	2.00	EA	538,670	53,870	592,530	29626
TOTAL VERTICAL ACCESS SYSTEMS	84155.00	SF	538,670	53,870	592,530	7.0
TOTAL PARCEL 3 BUILDING - NO METRO	84155.00	SF	10,245,710	1,011,970	11,257,680	133.7
30 PARCEL 2 BUILDING - OVER METRO						
30.10 BASEMENT PARKING LEVEL						
30.10.01 Excavation Support & Protection						
30.10.01.10 Base Earthwork Sheeting/Shoring	5657.50	SF	98,440	9,840	108,280	19.1
TOTAL Excavation Support & Protection	5657.50	SF	98,440	9,840	108,280	19.1
30.10.02 Earthworks as Required						
30.10.02.20 Earthworks	8621.00	SF	175,850	17,580	193,430	22.4
TOTAL Earthworks as Required	8621.00	SF	175,850	17,580	193,430	22.4
30.10.03 4' Slabs on Grade @ Basement						
30.10.03.02 Slab on grade, 48" thick	8621.00	SF	432,730	43,270	476,000	55.2
TOTAL 4' Slabs on Grade @ Basement	8621.00	SF	432,730	43,270	476,000	55.2

WMATA-INV 006012

Tri-Service Automated Cost Engineering System (TRACES)
PROJECT FLJAZZ: THE JAZZ AT FLORIDA AVE - Joint Development
CONCEPTUAL ESTIMATE
** PROJECT OWNER SUMMARY - SubSystm (Rounded to 10's) **

	QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
30.10.04 Basement Columns						
30.10.04.20 Basement Columns 2' x 2'x 11'-0"	16.00	EA	32,550	3,250	35,800	2237.7
TOTAL Basement Columns	8621.00	SF	32,550	3,250	35,800	4.1
30.10.05 Basement CIP Concrete Walls						
30.10.05.03 1' thk Conc Wall @ Perimeter	4015.00	SF	293,390	29,340	322,730	80.3
TOTAL Basement CIP Concrete Walls	4015.00	SF	293,390	29,340	322,730	80.3
30.10.06 Parking Access Control System						
30.10.06.03 Parking Access/Revenue Control	1.00	JOB	47,620	4,760	52,380	5238
TOTAL Parking Access Control System	1.00	JOB	47,620	4,760	52,380	5238
30.10.07 MEP - Parking Garage						
30.10.07.01 Plumbing and Mechanical	8621.00	SF	134,620	13,460	148,080	17.1
30.10.07.02 Electrical	8621.00	SF	130,330	13,030	143,370	16.6
TOTAL MEP - Parking Garage	8621.00	SF	264,960	26,500	291,450	33.8
TOTAL BASEMENT PARKING LEVEL	8621.00	SF	1,345,540	134,550	1,480,090	171.6
30.20 1st FLR & RETAIL LEVEL						
30.20.01 10" Elevated Concrete Floor Slab						
30.20.01.02 Platform 10" Elevated Conc Slab	7621.00	SF	172,140	17,210	189,360	24.8
TOTAL 10" Elevated Concrete Floor Slab	7621.00	SF	172,140	17,210	189,360	24.8
30.20.02 2' x 2' CIP Columns						
30.20.02.20 Basement Columns 2' x 2'x 11'-0"	16.00	EA	46,330	4,630	50,970	3185.5
TOTAL 2' x 2' CIP Columns	7621.00	SF	46,330	4,630	50,970	6.6
30.20.03 Exterior Enclosure						
30.20.03.01 Exterior CMU/Brick Wall	3290.00	SF	142,100	14,210	156,310	47.5

FOIA CONFIDENTIAL TREATMENT REQUESTED
WMATA-INV 006013

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
30.20.03.02	Alum Storefront Walls	980.00	SF	90,040	9,000	99,050	101.0
	TOTAL Exterior Enclosure	4270.00	SF	232,140	23,210	255,350	59.8
30.20.04	Exterior Doors and Window						
30.20.04.01	Aluminum Glass Doors, 6' x 7'	3.00	PR	28,680	2,870	31,550	1051
30.20.04.02	Overhead Doors, 12' H x 20' wide	1.00	EA	10,780	1,080	11,850	1185
	TOTAL Exterior Doors and Window	366.00	SF	39,460	3,950	43,410	118.6
30.20.05	Canopies & Shades						
30.20.05.01	Entrance Canopy	180.00	SF	14,720	1,470	16,200	89.9
	TOTAL Canopies & Shades	180.00	SF	14,720	1,470	16,200	89.9
30.20.06	Retail Space Construction						
30.20.06.01	Interior CMU Partitions	2781.00	SF	47,470	4,750	52,220	18.7
30.20.06.02	Drywall Furring+Insul @ Ext Wall	3290.00	SF	17,540	1,750	19,300	5.8
30.20.06.03	Drywall Furring @ Int CMU Walls	2781.00	SF	11,820	1,180	13,010	4.6
30.20.06.04	Interior Drywall Partitions	517.00	SF	2,280	230	2,510	4.8
30.20.06.11	Ceiling Finishes	2600.00	SF	15,120	1,510	16,630	6.4
30.20.06.12	Wall Finishes	4402.00	SF	4,980	500	5,480	1.2
30.20.06.13	Floor Finishes	2600.00	SF	13,780	1,380	15,160	5.8
30.20.06.14	Plumbing & Fire Protection	2600.00	SF	30,090	3,010	33,100	12.7
30.20.06.15	Mechanical	2600.00	SF	48,350	4,830	53,180	20.4
30.20.06.16	Electrical	2600.00	SF	60,440	6,040	66,480	25.5
	TOTAL Retail Space Construction	2600.00	SF	251,880	25,190	277,070	106.5
30.20.07	Residential Lobby Space Constn						
30.20.07.01	Interior CMU Partitions	1434.00	SF	24,480	2,450	26,930	18.7
30.20.07.02	Drywall Furring @ Elev Wall	627.00	SF	2,670	270	2,930	4.6
30.20.07.03	Floor Finishes	900.00	SF	14,830	1,480	16,310	18.1
30.20.07.04	Ceiling Finishes	900.00	SF	6,110	610	6,720	7.4
30.20.07.05	Wall Finishes	627.00	SF	3,030	300	3,330	5.3
30.20.07.06	Plumbing & Fire Protection	900.00	SF	10,420	1,040	11,460	12.7
30.20.07.07	Mechanical	900.00	SF	16,740	1,670	18,410	20.4
30.20.07.08	Electrical	900.00	SF	20,920	2,090	23,010	25.5
	TOTAL Residential Lobby Space Constn	1500.00	SF	99,190	9,920	109,110	72.7
30.20.10	Loading Dock Area						

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 006014

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
30.20.10.03	Floor Finishes	2200.00	SF	330	30	360	0.1
30.20.10.04	Ceiling Finishes	2200.00	SF	5,790	580	6,370	2.9
30.20.10.05	Wall Finishes	2585.00	SF	2,930	290	3,220	1.2
30.20.10.06	Plumbing & Fire Protection	2200.00	SF	20,400	2,040	22,440	10.2
30.20.10.07	Mechanical	2200.00	SF	25,570	2,560	28,130	12.7
30.20.10.08	Electrical	2200.00	SF	33,570	3,360	36,930	16.7
	TOTAL Loading Dock Area	2200.00	SF	88,590	8,860	97,450	44.3
	TOTAL 1st FLR & RETAIL LEVEL	7621.00	SF	944,460	94,450	1,038,910	136.3
30.30	2nd - 6th APARTMENT LEVELS						
30.30.01	10" Elevated Concrete Floor Slab						
30.30.01.02	Roofing Framing	7621.00	SF	172,140	17,210	189,360	24.8
	TOTAL 10" Elevated Concrete Floor Slab	7621.00	SF	172,140	17,210	189,360	24.8
30.30.02	Wood Deck Floor Framinng						
30.30.02.01	Wood Deck Floor Framinng	25420.00	SF	487,160	48,720	535,870	21.0
	TOTAL Wood Deck Floor Framinng	25420.00	SF	487,160	48,720	535,870	21.0
30.30.03	Wood Deck Roof Framinng						
30.30.03.01	Wood Deck Roof Framinng	6100.00	SF	90,370	9,040	99,410	16.3
	TOTAL Wood Deck Roof Framinng	6100.00	SF	90,370	9,040	99,410	16.3
30.30.04	Exterior Wall Enclosure						
30.30.04.01	Wd Stud + Brick Veneer - 50%	7211.00	SF	235,780	23,580	259,360	35.9
30.30.04.02	Wd Stud + Stucco - 40%	5769.00	SF	134,390	13,440	147,830	25.6
30.30.04.03	Alum Windows @ 10%	1442.00	SF	68,860	6,890	75,750	52.5
30.30.04.04	6' x 7' Alum Sliding Door	29.00	EA	81,230	0	81,230	2800.9
	TOTAL Exterior Wall Enclosure	14422.00	SF	520,260	43,900	564,160	39.1
30.30.05	Roofing						
30.30.05.01	Built-up Roofing + 3" Insulation	7621.00	SF	52,240	5,220	57,470	7.5
30.30.05.02	Sheetmetal & Flashings	7621.00	SF	11,730	1,170	12,910	1.6
	TOTAL Roofing	7621.00	SF	63,980	6,400	70,380	9.2

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 006015

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
30.30.06	Interior Construction						
30.30.06.01	Interior Drywall Partn [10SF/1L]	24082.00	SF	167,060	16,710	183,770	7.6
30.30.06.02	Entry Doors [1 per apt + 2/ flr]	39.00	EA	58,290	5,830	64,120	1644.0
30.30.06.03	Interior Wd Doors [5 per apt]	145.00	EA	105,510	10,550	116,060	800.4
30.30.06.04	Floor Finishes	25420.00	SF	167,810	16,780	184,600	7.2
30.30.06.05	Ceiling Drywall Finish + Paint	25420.00	SF	159,820	15,980	175,810	6.9
30.30.06.06	Wall Finishes	61144.00	SF	145,270	14,530	159,790	2.6
30.30.06.07	Kitchen Cabinet + Closet + Shelf	25420.00	SF	140,930	14,090	155,030	6.1
	TOTAL Interior Construction	25420.00	SF	944,700	94,470	1,039,170	40.8
30.30.07	MEP						
30.30.07.01	Fire Protection	25420.00	SF	127,400	12,740	140,140	5.5
30.30.07.02	Plumbing	25420.00	SF	173,010	17,300	190,320	7.4
30.30.07.03	Mechanical	25420.00	SF	538,680	53,870	592,550	23.3
30.30.07.04	Electrical	25420.00	SF	464,310	46,430	510,740	20.0
	TOTAL MEP	25420.00	SF	1,303,400	130,340	1,433,740	56.4
	TOTAL 2nd - 6th APARTMENT LEVELS	25420.00	SF	3,582,010	350,080	3,932,090	154.6
30.40	VERTICAL ACCESS SYSTEMS						
30.40.01	Vertical Transportation System						
30.40.01.01	2500lb Electric Elevator, 7 Stop	2.00	EA	531,270	53,130	584,400	29219
	TOTAL Vertical Transportation System	2.00	EA	531,270	53,130	584,400	29219
	TOTAL VERTICAL ACCESS SYSTEMS	33041.00	SF	531,270	53,130	584,400	17.6
30.50	METRO RAIL STATION MONITORING						
30.50.01	Metro Stn Monitoring as required	1.00	JOB	152,800	15,280	168,080	16807
	TOTAL METRO RAIL STATION MONITORING	1.00	JOB	152,800	15,280	168,080	16807
	TOTAL PARCEL 2 BUILDING - OVER METRO	33041.00	SF	6,556,080	647,490	7,203,560	218.0
40	PARCEL 3 BUILDING - OVER METRO						
40.10	BASEMENT PARKING LEVEL						
40.10.01	Excavation Support & Protection						

FOIA CONFIEDENTIAL TREATMENT REQUESTED

WMATA-INV 006016

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
40.10.01.10	Base Earthwork Sheeting/Shoring	7905.00	SF	137,550	13,750	151,300	19.1
	TOTAL Excavation Support & Protection	7905.00	SF	137,550	13,750	151,300	19.1
40.10.02	Earthworks as Required						
40.10.02.20	Earthworks	16472.00	SF	335,960	33,600	369,560	22.4
	TOTAL Earthworks as Required	16472.00	SF	335,960	33,600	369,560	22.4
40.10.03	4' Slabs on Grade @ Basement						
40.10.03.02	Slab on grade, 48" thick	16472.00	SF	826,960	82,700	909,660	55.2
	TOTAL 4' Slabs on Grade @ Basement	16472.00	SF	826,960	82,700	909,660	55.2
40.10.04	Basement Columns						
40.10.04.20	Basement Columns 2' x 2'x 11'-0"	25.00	EA	50,850	5,090	55,940	2237.6
	TOTAL Basement Columns	16472.00	SF	50,850	5,090	55,940	3.4
40.10.05	Basement CIP Concrete Walls						
40.10.05.03	1' thk Conc Wall @ Perimeter	5610.00	SF	409,990	41,000	450,990	80.3
	TOTAL Basement CIP Concrete Walls	5610.00	SF	409,990	41,000	450,990	80.3
40.10.06	Parking Access Control System						
40.10.06.03	Parking Access/Revenue Control	1.00	JOB	51,140	5,110	56,250	5625
	TOTAL Parking Access Control System	1.00	JOB	51,140	5,110	56,250	5625
40.10.07	MEP - Parking Garage						
40.10.07.01	Plumbing and Mechanical	16472.00	SF	238,570	23,860	262,430	15.9
40.10.07.02	Electrical	16472.00	SF	235,290	23,530	258,820	15.7
	TOTAL MEP - Parking Garage	16472.00	SF	473,860	47,390	521,250	31.6
	TOTAL BASEMENT PARKING LEVEL	16472.00	SF	2,286,320	228,630	2,514,950	152.6
40.20	1st FLR & RETAIL LEVEL						

FOIA CONFIDENTIAL TREATMENT REQUESTED

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	QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
40.20.01 10" Elevated Concrete Floor Slab						
40.20.01.02 Platform 10" Elevated Conc Slab	14972.00	SF	338,190	33,820	372,010	24.8
TOTAL 10" Elevated Concrete Floor Slab	14972.00	SF	338,190	33,820	372,010	24.8
40.20.02 2' x 2' CIP Columns						
40.20.02.20 Basement Columns 2' x 2'x 11'-0"	25.00	EA	72,400	7,240	79,640	3185.4
TOTAL 2' x 2' CIP Columns	14972.00	SF	72,400	7,240	79,640	5.3
40.20.03 Exterior Enclosure						
40.20.03.01 Exterior CMU/Brick Wall	3995.00	SF	175,690	17,570	193,250	48.3
40.20.03.02 Alum Storefront Walls	2776.00	SF	255,060	25,510	280,570	101.0
TOTAL Exterior Enclosure	6771.00	SF	430,750	43,070	473,820	69.9
40.20.04 Exterior Doors and Window						
40.20.04.01 Aluminum Glass Doors, 6' x 7'	5.00	PR	47,810	4,780	52,590	1051
40.20.04.02 Overhead Doors, 12' H x 20' wide	2.00	EA	21,550	2,160	23,710	1185
TOTAL Exterior Doors and Window	690.00	SF	69,360	6,940	76,290	110.5
40.20.05 Canopies & Shades						
40.20.05.01 Entrance Canopy	300.00	SF	24,540	2,450	26,990	89.9
TOTAL Canopies & Shades	300.00	SF	24,540	2,450	26,990	89.9
40.20.06 Retail Space Construction						
40.20.06.01 Interior Drywall Partitions	3290.00	SF	14,680	1,470	16,150	4.9
40.20.06.02 Drywall Furring @ Exterior Wall	5152.00	SF	27,470	2,750	30,220	5.8
40.20.06.03 Floor Finishes	7000.00	SF	37,100	3,710	40,810	5.8
40.20.06.04 Ceiling Finishes	7000.00	SF	40,700	4,070	44,770	6.4
40.20.06.05 Wall Finishes	11732.00	SF	13,280	1,330	14,610	1.2
40.20.06.06 Plumbing & Fire Protection	7000.00	SF	81,010	8,100	89,110	12.7
40.20.06.07 Mechanical	7000.00	SF	130,170	13,020	143,190	20.4
40.20.06.08 Electrical	7000.00	SF	162,710	16,270	178,990	25.5
TOTAL Retail Space Construction	7000.00	SF	507,130	50,710	557,840	79.6

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 006018

		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
40.20.07	Residential Lobby Space Constn						
40.20.07.01	Interior CMU Partitions	1434.00	SF	47,090	4,710	51,800	36.1
40.20.07.02	Drywall Furring @ Exterior Wall	2775.00	SF	14,800	1,480	16,280	5.8
40.20.07.03	Floor Finishes	1500.00	SF	24,720	2,470	27,190	18.1
40.20.07.04	Ceiling Finishes	1500.00	SF	10,190	1,020	11,200	7.4
40.20.07.05	Wall Finishes	2200.00	SF	5,320	530	5,850	2.6
40.20.07.06	Plumbing & Fire Protection	1500.00	SF	17,360	1,740	19,090	12.7
40.20.07.07	Mechanical	1500.00	SF	27,890	2,790	30,680	20.4
40.20.07.08	Electrical	1500.00	SF	34,870	3,490	38,350	25.5
	TOTAL Residential Lobby Space Constn	1500.00	SF	182,220	18,220	200,440	133.6
40.20.10	Loading Dock Area						
40.20.10.03	Floor Finishes	1800.00	SF	270	30	300	0.1
40.20.10.04	Ceiling Finishes	1800.00	SF	4,740	470	5,210	2.9
40.20.10.05	Wall Finishes	2604.00	SF	2,950	290	3,240	1.2
40.20.10.06	Plumbing & Fire Protection	1800.00	SF	16,690	1,670	18,360	10.2
40.20.10.07	Mechanical	1800.00	SF	20,920	2,090	23,010	12.7
40.20.10.08	Electrical	1800.00	SF	27,470	2,750	30,210	16.7
	TOTAL Loading Dock Area	1800.00	SF	73,040	7,300	80,340	44.6
	TOTAL 1st FLR & RETAIL LEVEL	14972.00	SF	1,697,620	169,760	1,867,380	124.7
40.30	2nd - 6th APARTMENT LEVELS						
40.30.01	10" Elevated Concrete Floor Slab						
40.30.01.02	Roofing Framing	12862.00	SF	290,520	29,050	319,570	24.8
	TOTAL 10" Elevated Concrete Floor Slab	14972.00	SF	290,520	29,050	319,570	21.3
40.30.02	Wood Deck Floor Framinng						
40.30.02.01	Wood Deck Floor Framinng	39534.00	SF	755,500	75,550	831,050	21.0
	TOTAL Wood Deck Floor Framinng	39534.00	SF	755,500	75,550	831,050	21.0
40.30.03	Wood Deck Roof Framinng						
40.30.03.01	Wood Deck Roof Framinng	13177.00	SF	188,770	18,880	207,650	15.7
	TOTAL Wood Deck Roof Framinng	13177.00	SF	188,770	18,880	207,650	15.7

FOIA CONFIEDENTIAL TREATMENT REQUESTED

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		QUANTITY	UOM	CONTRACT CST	DES CONT	TOTAL COST	UNI
40.30.04	Exterior Wall Enclosure						
40.30.04.01	Wd Stud + Brick Veneer - 50%	10560.00	SF	345,280	34,530	379,810	35.9
40.30.04.02	Wd Stud + Stucco - 40%	8448.00	SF	196,800	19,680	216,480	25.6
40.30.04.03	Alum Windows @ 10%	2112.00	SF	100,850	10,090	110,940	52.5
40.30.04.04	6' x 7' Alum Sliding Door	45.00	EA	126,040	0	126,040	2800.9
	TOTAL Exterior Wall Enclosure	21120.00	SF	768,980	64,290	833,280	39.4
40.30.05	Roofing						
40.30.05.01	Built-up Roofing + 3" Insulation	13177.00	SF	90,330	9,030	99,370	7.5
40.30.05.02	Sheetmetal & Flashings	13177.00	SF	15,430	1,540	16,980	1.2
	TOTAL Roofing	13177.00	SF	105,770	10,580	116,340	8.8
40.30.06	Interior Construction						
40.30.06.01	Interior Drywall Partn [10SF/1L]	49696.00	SF	344,750	34,480	379,230	7.6
40.30.06.02	Entry Doors [1 per apt + 2/ flr]	55.00	EA	79,690	7,970	87,660	1593.8
40.30.06.03	Interior Wd Doors [6 per apt]	270.00	EA	191,580	19,160	210,740	780.5
40.30.06.04	Floor Finishes	52711.00	SF	322,070	32,210	354,270	6.7
40.30.06.05	Ceiling Drywall Finish + Paint	52711.00	SF	331,410	33,140	364,550	6.9
40.30.06.06	Wall Finishes	99392.00	SF	230,510	23,050	253,570	2.5
40.30.06.07	Kitchen Cabinet + Closet + Shelf	52711.00	SF	223,800	22,380	246,180	4.6
	TOTAL Interior Construction	52711.00	SF	1,723,820	172,380	1,896,200	35.9
40.30.07	MEP						
40.30.07.01	Fire Protection	52711.00	SF	252,050	25,210	277,260	5.2
40.30.07.02	Plumbing	52711.00	SF	348,730	34,870	383,600	7.2
40.30.07.03	Mechanical	52711.00	SF	1,083,030	108,300	1,191,330	22.6
40.30.07.04	Electrical	52711.00	SF	928,800	92,880	1,021,680	19.3
	TOTAL MEP	52711.00	SF	2,612,600	261,260	2,873,860	54.5
	TOTAL 2nd - 6th APARTMENT LEVELS	52711.00	SF	6,445,960	631,990	7,077,950	134.2
40.40	VERTICAL ACCESS SYSTEMS						
40.40.01	Vertical Transportation System						
40.40.01.01	30001b Electric Elevator, 3 Stop	2.00	EA	538,670	53,870	592,530	29626
	TOTAL Vertical Transportation System	2.00	EA	538,670	53,870	592,530	29626

FOIA CONFIEDENTIAL TREATMENT REQUESTED

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