FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds	Construction Loan
Type	Debt

Heading	1-81 Oct 2022
Timed Contribution: Project	0
Auto. Project Contribution	0
Total Contribution	**0**
Total Loan Fees	0
Interest and Fees	0
Timed Repayment: Project	0
Auto. Repayment	0
Total Repayment	**0**
Closing Balance	**0**
Timed Profit Participation	0
Total Profit Participation	**0**
Net Cash Flow (IRR)	**0**
Cumulative Net Cash Flow	**0**

ASSUMPTIONS	
Contribution Order	4
Contribution %	80.0%
Capped at	$0
Contribution	($47,057,312)
Repayment Order	3
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$0
Auto Repayment	$53,363,576
Total Repayment	$53,363,576
Peak Financing Amount	$46,764,732
Project IRR	0.0%

WMATA-INV 008040

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Construction Loan
Type: Debt

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Timed Contribution Project	0	0	0	0	0	0	0	0
Auto Project Contribution	0	0	(3,524,976)	(237,909)	(198,257)	0	0	0
Total Contribution	**0**	**0**	**(3,524,976)**	**(237,909)**	**(198,257)**	**0**	**0**	**0**
Total Loan Fees	0	0	0	0	0	0	0	0
Interest and Fees	0	0	0	(203,703)	(60,730)	0	0	0
Timed Repayment Project	0	0	0	0	0	0	0	0
Auto Repayment	0	0	159,632	2,080,030	1,985,913	0	0	0
Total Repayment	**0**	**0**	**159,632**	**2,080,030**	**1,985,913**	**0**	**0**	**0**
Closing Balance	**0**	**0**	**(3,365,344)**	**(1,726,926)**	**0**	**0**	**0**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**0**	**(3,365,344)**	**1,638,418**	**1,726,926**	**0**	**0**	**0**
Cumulative Net Cash Flow	**0**	**0**	**(3,365,344)**	**(1,726,926)**	**0**	**0**	**0**	**0**

ASSUMPTIONS	
Contribution Order	4
Contribution %	80.0%
Capped at	$0
Contribution	($47,057,312)
Repayment Order	3
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$0
Auto Repayment	$53,363,576
Total Repayment	$53,363,576
Peak Financing Amount	$46,764,732
Project IRR	0.0%

WMATA-INV 008041

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Construction Loan
Type: Debt

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Timed Contribution Project	0	0	0	0	0	0	0	0
Auto. Project Contribution	(47,057,312)	0	0	0	(546,213)	(32,332,833)	(10,107,395)	(109,728)
Total Contribution	**(47,057,312)**	**0**	**0**	**0**	**(546,213)**	**(32,332,833)**	**(10,107,395)**	**(109,728)**
Total Loan Fees	(100,000)	0	0	0	(100,000)	0	0	0
Interest and Fees	(6,306,264)	0	0	0	(100,000)	(1,322,137)	(3,395,827)	(1,223,866)
Timed Repayment Project	0	0	0	0	0	0	0	0
Auto. Repayment	53,363,576	0	0	0	0	0	1,548,419	47,589,582
Total Repayment	**53,363,576**	**0**	**0**	**0**	**0**	**0**	**1,548,419**	**47,589,582**
Closing Balance	**0**	**0**	**0**	**0**	**(646,213)**	**(34,301,183)**	**(46,255,987)**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**0**	**0**	**0**	**(646,213)**	**(33,654,971)**	**(11,954,804)**	**46,255,987**
Cumulative Net Cash Flow		**0**	**0**	**0**	**(646,213)**	**(34,301,183)**	**(46,255,987)**	**0**

ASSUMPTIONS	
Contribution Order	4
Contribution %	80.0%
Capped at	$0
Contribution	($47,057,312)
Repayment Order	3
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$0
Auto Repayment	$53,363,576
Total Repayment	$53,363,576
Peak Financing Amount	$46,764,732
Project IRR	0.0%

WMATA-INV 008042

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

(Merged Phases)

Source of Funds	Investor Equity
Type	Equity
Heading	181 Oct-2022
Timed Contribution: Project	0
Auto Project Contribution	0
Total Contribution	**0**
Interest	0
Timed Repayment: Project	0
Auto Repayment	0
Total Repayment	**0**
Closing Balance	**0**
Timed Profit Participation	0
Total Profit Participation	**20,382,545**
Net Cash Flow (IRR)	**20,382,545**
Cumulative Net Cash Flow	**33,107,983**

ASSUMPTIONS	
Contribution Order	3
Contribution %	18.0%
Capped at	$0
Contribution	$0
Repayment Order	4

ANALYSIS	
Contribution	$12,156,173
Timed Repayment	$0
Auto Repayment	$12,156,173
Total Repayment	$12,156,173
Peak Financing Amount	$12,156,173
Profit	$33,107,983
Project IRR	27.0%
Return on Equity	272.4%

WMATA-INV 008043

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Investor Equity
Type: Equity

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Timed Contribution Project	0	0	0	0	0	0	0	0
Auto Project Contribution	0	0	0	0	0	0	0	0
Total Contribution	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment Project	0	0	0	0	0	0	0	0
Auto Repayment	0	0	0	0	0	0	0	0
Total Repayment	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Closing Balance	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**489,281**	**604,779**	**647,588**	**0**	**142,057**	**1,153,994**	**1,275,750**	**1,399,952**
Net Cash Flow (IRR)	**489,281**	**604,779**	**647,588**	**0**	**142,057**	**1,153,994**	**1,275,750**	**1,399,952**
Cumulative Net Cash Flow	7,501,319	8,106,097	8,753,686	8,753,686	8,895,742	10,049,736	11,325,486	12,725,438

ASSUMPTIONS	
Contribution Order	3
Contribution %	18.0%
Capped at	$0
Contribution	$0
Repayment Order	4

ANALYSIS	
Contribution	$12,156,173
Timed Repayment	$0
Auto Repayment	$12,156,173
Total Repayment	$12,156,173
Peak Financing Amount	$12,156,173
Profit	$33,107,983
Project IRR	27.0%
Return on Equity	272.4%

CASH ON CASH	Jan 2022
Annual Return	* 211.8%

WMATA-INV 008044

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Investor Equity
Type: Equity

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Timed Contribution: Project	0	0	0	0	0	0	0	0
Auto: Project Contribution	(12,156,173)	0	0	(1,877,669)	(10,278,504)	0	0	0
Total Contribution	**(12,156,173)**	**0**	**0**	**(1,877,669)**	**(10,278,504)**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment: Project	0	0	0	0	0	0	0	0
Auto: Repayment	12,156,173	0	0	0	0	0	0	12,156,173
Total Repayment	**12,156,173**	**0**	**0**	**0**	**0**	**0**	**0**	**12,156,173**
Closing Balance	**0**	**0**	**0**	**(1,877,669)**	**(12,156,173)**	**(12,156,173)**	**(12,156,173)**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**33,107,983**	**0**	**0**	**0**	**0**	**0**	**0**	**7,012,037**
Net Cash Flow (IRR)	**33,107,983**	**0**	**0**	**(1,877,669)**	**(10,278,504)**	**0**	**0**	**19,168,210**
Cumulative Net Cash Flow		**0**	**0**	**(1,877,669)**	**(12,156,173)**	**(12,156,173)**	**(12,156,173)**	**7,012,037**

ASSUMPTIONS	
Contribution Order	3
Contribution %	18.0%
Capped at	$0
Contribution	$0
Repayment Order	4

ANALYSIS	
Contribution	$12,156,173
Timed Repayment	$0
Auto Repayment	$12,156,173
Total Repayment	$12,156,173
Peak Financing Amount	$12,156,173
Profit	$33,107,983
Project IRR	27.0%
Return on Equity	272.4%

CASH ON CASH	As at Jan 2014	Jan 2015	Jan 2016	Jan 2017	Jan 2018	Jan 2019	Jan 2020	Jan 2021
Annual Return	158.4%	4.4%	5.2%	4.0%	0.0%	3.4%	9.7%	10.7%

WMATA-INV 008045

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds	Developer Equity
Type	Equity

Heading	Oct-2022
Timed Contribution Project	0
Auto Project Contribution	0
Total Contribution	**0**
Interest	0
Timed Repayment Project	0
Auto Repayment	0
Total Repayment	**0**
Closing Balance	**0**
Timed Profit Participation	0
Total Profit Participation	**20,382,545**
Net Cash Flow (IRR)	**20,382,545**
Cumulative Net Cash Flow	**30,070,728**

ASSUMPTIONS	
Contribution Order	2
Contribution %	2.0%
Capped at	$0
Contribution	$0
Repayment Order	5

ANALYSIS	
Contribution	$1,350,686
Timed Repayment	$0
Auto Repayment	$1,350,686
Total Repayment	$1,350,686
Peak Financing Amount	$1,350,686
Profit	$30,070,728
Project IRR	45.1%
Return on Equity	2,226.3%

WMATA-INV 008046

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Developer Equity
Type: Equity

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Timed Contribution: Project	0	0	0	0	0	0	0	0
Auto: Project Contribution	0	0	0	0	0	0	0	0
Total Contribution	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment: Project	0	0	0	0	0	0	0	0
Auto: Repayment	0	0	0	0	0	0	0	0
Total Repayment	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Closing Balance	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**489,281**	**604,779**	**647,588**	**0**	**142,057**	**1,153,994**	**1,275,750**	**1,399,952**
Net Cash Flow (IRR)	**489,281**	**604,779**	**647,588**	**0**	**142,057**	**1,153,994**	**1,275,750**	**1,399,952**
Cumulative Net Cash Flow	**4,464,064**	**5,068,842**	**5,716,431**	**5,716,431**	**5,858,487**	**7,012,481**	**8,288,231**	**9,688,183**

ASSUMPTIONS	
Contribution Order	2
Contribution %	2.0%
Capped at	$0
Contribution	$0
Repayment Order	5

ANALYSIS	
Contribution	$1,350,686
Timed Repayment	$0
Auto Repayment	$1,350,686
Total Repayment	$1,350,686
Peak Financing Amount	$1,350,686
Profit	$30,070,728
Project IRR	45.1%
Return on Equity	2,226.3%

CASH ON CASH	Jan 2022
Annual Return	* 1,906.2%

WMATA-INV 008047

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Developer Equity
Type: Equity

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Timed Contribution Project	0	0	0	0	0	0	0	0
Auto Project Contribution	(1,350,686)	0	(1,129,044)	(221,642)	0	0	0	0
Total Contribution	**(1,350,686)**	**0**	**(1,129,044)**	**(221,642)**	**0**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment Project	0	0	0	0	0	0	0	0
Auto Repayment	1,350,686	0	0	0	0	0	0	1,350,686
Total Repayment	**1,350,686**	**0**	**0**	**0**	**0**	**0**	**0**	**1,350,686**
Closing Balance	**0**	**0**	**(1,129,044)**	**(1,350,686)**	**(1,350,686)**	**(1,350,686)**	**(1,350,686)**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**30,070,728**	**0**	**0**	**0**	**0**	**0**	**0**	**3,974,782**
Net Cash Flow (IRR)	**30,070,728**	**0**	**(1,129,044)**	**(221,642)**	**0**	**0**	**0**	**5,325,468**
Cumulative Net Cash Flow		**0**	**(1,129,044)**	**(1,350,686)**	**(1,350,686)**	**(1,350,686)**	**(1,350,686)**	**3,974,782**

ASSUMPTIONS	
Contribution Order	2
Contribution %	2.0%
Capped at	$0
Contribution	$0
Repayment Order	5

ANALYSIS	
Contribution	$1,350,686
Timed Repayment	$0
Auto Repayment	$1,350,686
Total Repayment	$1,350,686
Peak Financing Amount	$1,350,686
Profit	$30,070,728
Project IRR	45.1%
Return on Equity	2,226.3%

CASH ON CASH	As at Jan 2014	Jan 2015	Jan 2016	Jan 2017	Jan 2018	Jan 2019	Jan 2020	Jan 2021
Annual Return	400.6%	39.9%	46.4%	36.3%	0.0%	30.3%	87.6%	96.7%

WMATA-INV 008048

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds	Development Loan
Type	Debt

Heading	181 Oct-2022
Timed Contribution: Project	0
Auto. Project Contribution	0
Total Contribution	**0**
Total Loan Fees	0
Interest and Fees	0
Timed Repayment: Project	0
Auto. Repayment	0
Total Repayment	**0**
Closing Balance	**0**
Timed Profit Participation	0
Total Profit Participation	**0**
Net Cash Flow (IRR)	**0**
Cumulative Net Cash Flow	**$ -0**

ASSUMPTIONS	
Contribution Order	1
Contribution	$2,000,000
Contribution	($1,590,702)
Repayment Order	2
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$2,050,000
Auto Repayment	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,036,755
Project IRR	0.0%

WMATA-INV 008049

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

(Merged Phases)

Source of Funds	Development Loan
Type	Debt

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Timed Contribution: Project	0	0	0	0	0	0	0	0
Auto: Project Contribution	0	0	0	0	0	0	0	0
Total Contribution	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Total Loan Fees	0	0	0	0	0	0	0	0
Interest and Fees	0	0	0	0	0	0	0	0
Timed Repayment: Project	0	0	0	0	0	0	0	0
Auto: Repayment	0	0	0	0	0	0	0	0
Total Repayment	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Closing Balance	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Cumulative Net Cash Flow	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

ASSUMPTIONS	
Contribution Order	1
Contribution	$2,000,000
Contribution	($1,590,702)
Repayment Order	2
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$2,050,000
Auto Repayment	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,036,755
Project IRR	0.0%

WMATA-INV 008050

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

(Merged Phases)

Source of Funds: Development Loan
Type: Debt

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Timed Contribution Project	0	0	0	0	0	0	0	0
Auto Project Contribution	(1,590,702)	(615,201)	(975,502)	0	0	0	0	0
Total Contribution	**(1,590,702)**	**(615,201)**	**(975,502)**	**0**	**0**	**0**	**0**	**0**
Total Loan Fees	(50,000)	(50,000)	0	0	0	0	0	0
Interest and Fees	(459,298)	(83,337)	(103,965)	(143,424)	(128,572)	0	0	0
Timed Repayment Project	2,050,000	0	0	0	2,050,000	0	0	0
Auto Repayment	0	0	0	0	0	0	0	0
Total Repayment	**2,050,000**	**0**	**0**	**0**	**2,050,000**	**0**	**0**	**0**
Closing Balance	**0**	**(698,538)**	**(1,778,004)**	**(1,921,428)**	**0**	**0**	**0**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**(698,538)**	**(1,079,467)**	**(143,424)**	**1,921,428**	**0**	**0**	**0**
Cumulative Net Cash Flow		**(698,538)**	**(1,778,004)**	**(1,921,428)**	**0**	**0**	**0**	**0**

ASSUMPTIONS	
Contribution Order	1
Contribution	$2,000,000
Contribution	($1,590,702)
Repayment Order	2
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$2,050,000
Auto Repayment	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,036,755
Project IRR	0.0%

WMATA-INV 008051

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	180:Sep 2022	181:Oct 2022
Period Total Before Finance	**8,366,869**	**102,710,942**
Finance Costs (All Loans)	0	0
Period Total After Finance	**4,009,456**	**102,351,687**
Cumulative Total C/f Annual	(39,172,976)	63,178,711

WMATA-INV 008052

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	180:Sep 2022	181:Oct 2022
3 Parcel 3 Parking	0	0
3 Parcel 3 Retail	0	0
1 **Ph01 Development Manage**		
1 Dev. Management Fee	0	0
1 **Ph02 Development Manage**		
2 Dev. Management Fee	0	0
1 **Ph03 Development Manage**		
3 Dev. Management Fee	0	0

WMATA-INV 008053

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	180:Sep 2022	181:Oct 2022
2 Permits	0	0
1 **Ph02 TI Costs**		
2 Parcel 1 Retail	0	0
1 **Ph02 Professional Fees**		
2 Architect + Engineer	0	0
2 Legal	0	0
2 Soft Cost Contingency	0	0
1 **Ph03 Construction Costs**		
3 Metro Site Work	0	0
3 Parcel 3 Parking	0	0
3 Parcel 3 Retail	0	0
3 FF&E	0	0
3 Hotel Hard Cost	0	0
3 Franchise Charge	0	0
3 Insurance	0	0
3 Real Estate Tax During Cons	0	0
3 Contingency	0	0
3 Permits	0	0
3 Permits	0	0
1 **Ph03 TI Costs**		
3 Parcel 3 Retail	0	0
1 **Ph03 Professional Fees**		
3 Architect + Engineer	0	0
3 Legal	0	0
3 Soft Cost Contingency	0	0
1 **Ph01 Marketing/Leasing**		
1 Marketing	0	0
1 Leasing Legal Fees	0	0
1 Parcel 2 Office	0	0
1 Parcel 2 Parking	0	0
1 Parcel 2 Retail	0	0
1 **Ph02 Marketing/Leasing**		
2 Marketing	0	0
2 Leasing Legal Fees	0	0
2 Parcel 1 Retail	0	0
1 **Ph03 Marketing/Leasing**		
3 Marketing	0	0

WMATA-INV 008054

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	180:Sep 2022	181:Oct 2022
1 **Ph02 Acquisition Costs**		
2 WMATA PARCEL 1 Ground	(30,016)	0
2 DC Purchase Recordation Ta	(450)	0
2 WMATA Acquisition Legal	0	0
2 Third Party Reports	0	0
2 Title Insurance	(150)	0
1 **Ph03 Acquisition Costs**		
3 WMATA PARCEL 3 Ground	(128,784)	0
3 Arts Credits (assume no bonu	0	0
3 DC Purchase Recordation Ta	(1,932)	0
3 WMATA Acquisition Legal	0	0
3 Third Party Reports	0	0
3 Title Insurance	(644)	0
1 **Ph01 Construction Costs**		
1 Metro Site Work	0	0
1 Parcel 2 Office	0	0
1 Parcel 2 Parking	0	0
1 Parcel 2 Retail	0	0
1 Insurance	0	0
1 Real Estate Tax During Cons	0	0
1 Contingency	0	0
1 Permits	0	0
1 Permits	0	0
1 **Ph01 TI Costs**		
1 Parcel 2 Office	0	0
1 Parcel 2 Retail	0	0
1 **Ph01 Professional Fees**		
1 Architect + Engineer	0	0
1 Legal	0	0
1 Soft Cost Contingency	0	0
1 **Ph02 Construction Costs**		
2 Metro Site Work	0	0
2 Parcel 1 Retail	0	0
2 Insurance	0	0
2 Real Estate Tax During Cons	0	0
2 Contingency	0	0
2 Permits	0	0

WMATA-INV 008055

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

Detailed Cash Flow (Merged Phases)

	180:Sep 2022 (43,182,433)	181:Oct 2022 (39,172,976)
1 **Ph01 Revenue**		
1 Parcel 2 Office	3,012,221	0
1 Parcel 2 Parking	159,726	0
1 Parcel 2 Retail	783,585	0
1 Parcel 2 Office	0	43,347,369
1 Parcel 2 Parking	0	2,298,542
1 Parcel 2 Retail	0	11,276,184
1 **Ph01 Disposal Costs**		
1 Sales Agent Fee	0	(2,561,494)
1 **Ph02 Revenue**		
2 Parcel 1 Retail	280,730	0
2 Parcel 1 Retail	0	4,099,984
1 **Ph02 Disposal Costs**		
2 Sales Agent Fee	0	(184,499)
1 **Ph03 Revenue**		
3 Parcel 3 Hotel Rooms	3,790,138	0
3 Parcel 3 Parking	123,573	0
3 Parcel 3 Retail	456,718	0
3 Parcel 3 Hotel Rooms	0	38,177,964
3 Parcel 3 Parking	0	1,778,276
3 Parcel 3 Retail	0	6,572,405
1 **Ph03 Disposal Costs**		
3 Sales Agent Fee	0	(2,093,789)
1 **Ph01 Acquisition Costs**		
1 WMATA PARCEL 2 Ground	(76,320)	0
1 8th Street Land Option (Year	0	0
1 8th St 1st Year Ground Lease	0	0
1 8th St Ground Lease Renewal	0	0
1 8th St Ground Lease Renewal	0	0
1 Arts Credits (assume no bonu	0	0
1 8th St Combination Fee	0	0
1 8th Street Resubordination F	0	0
1 8th Street RE Tax pre-constr	0	0
1 DC Purchase Recordation Ta	(1,145)	0
1 WMATA Acquisition Legal	0	0
1 Third Party Reports	0	0
1 Title Insurance	(382)	0

WMATA-INV 008056

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

Detailed Cash Flow (Merged Phases)

	084:Sep 2014	096:Sep 2015	108:Sep 2016	120:Sep 2017	132:Sep 2018	144:Sep 2019	156:Sep 2020	168:Sep 2021
Period Total Before Finance	**5,955,088**	**6,545,528**	**6,776,523**	**3,496,798**	**7,409,087**	**7,638,734**	**7,874,953**	**8,118,465**
Finance Costs (All Loans)	(1,223,866)	0	0	0	(203,703)	(60,730)	0	0
Period Total After Finance	**1,486,612**	**1,720,622**	**2,005,261**	**(1,216,943)**	**2,553,322**	**2,992,082**	**3,359,950**	**3,679,508**
Cumulative Total C/f Annual	(58,276,235)	(56,555,612)	(54,550,352)	(55,767,295)	(53,213,972)	(50,221,891)	(46,861,940)	(43,182,433)

WMATA-INV 008057

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	084:Sep 2014	096:Sep 2015	108:Sep 2016	120:Sep 2017	132:Sep 2018	144:Sep 2019	156:Sep 2020	168:Sep 2021
3 Parcel 3 Parking	0	0	0	0	0	0	0	0
3 Parcel 3 Retail	0	0	0	0	0	0	0	0
1 **Ph01 Development Manage**								
1 Dev. Management Fee	0	0	0	0	0	0	0	0
1 **Ph02 Development Manage**								
2 Dev. Management Fee	0	0	0	0	0	0	0	0
1 **Ph03 Development Manage**								
3 Dev. Management Fee	0	0	0	0	0	0	0	0

WMATA-INV 008058

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	084:Sep 2014	096:Sep 2015	108:Sep 2016	120:Sep 2017	132:Sep 2018	144:Sep 2019	156:Sep 2020	168:Sep 2021
2 Permits	0	0	0	0	0	0	0	0
1 **Ph02 TI Costs**								
2 Parcel 1 Retail	0	0	0	0	0	0	0	0
1 **Ph02 Professional Fees**								
2 Architect + Engineer	0	0	0	0	0	0	0	0
2 Legal	0	0	0	0	0	0	0	0
2 Soft Cost Contingency	0	0	0	0	0	0	0	0
1 **Ph03 Construction Costs**								
3 Metro Site Work	0	0	0	0	0	0	0	0
3 Parcel 3 Parking	0	0	0	0	0	0	0	0
3 Parcel 3 Retail	0	0	0	0	0	0	0	0
3 FF&E	0	0	0	0	0	0	0	0
3 Hotel Hard Cost	0	0	0	0	0	0	0	0
3 Franchise Charge	0	0	0	0	0	0	0	0
3 Insurance	0	0	0	0	0	0	0	0
3 Real Estate Tax During Cons	0	0	0	0	0	0	0	0
3 Contingency	0	0	0	0	0	0	0	0
3 Permits	0	0	0	0	0	0	0	0
3 Permits	0	0	0	0	0	0	0	0
1 **Ph03 TI Costs**								
3 Parcel 3 Retail	0	0	0	0	0	0	0	0
1 **Ph03 Professional Fees**								
3 Architect + Engineer	0	0	0	0	0	0	0	0
3 Legal	0	0	0	0	0	0	0	0
3 Soft Cost Contingency	0	0	0	0	0	0	0	0
1 **Ph01 Marketing/Leasing**								
1 Marketing	0	0	0	0	0	0	0	0
1 Leasing Legal Fees	0	0	0	0	0	0	0	0
1 Parcel 2 Office	0	0	0	0	0	0	0	0
1 Parcel 2 Parking	0	0	0	0	0	0	0	0
1 Parcel 2 Retail	0	0	0	0	0	0	0	0
1 **Ph02 Marketing/Leasing**								
2 Marketing	0	0	0	0	0	0	0	0
2 Leasing Legal Fees	0	0	0	0	0	0	0	0
2 Parcel 1 Retail	0	0	0	0	0	0	0	0
1 **Ph03 Marketing/Leasing**								
3 Marketing	0	0	0	0	0	0	0	0

WMATA-INV 008059

FOIA CONFIDENTIAL TREATMENT REQUESTED

DETAILED CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

Detailed Cash Flow (Merged Phases)

	084:Sep 2014	096:Sep 2015	108:Sep 2016	120:Sep 2017	132:Sep 2018	144:Sep 2019	156:Sep 2020	168:Sep 2021
1 **Ph02 Acquisition Costs**								
2 WMATA PARCEL 1 Ground	(28,140)	(28,140)	(28,140)	(28,140)	(28,140)	(28,140)	(28,140)	(28,140)
2 DC Purchase Recordation Ta	(422)	(422)	(422)	(422)	(422)	(422)	(422)	(422)
2 WMATA Acquisition Legal	0	0	0	0	0	0	0	0
2 Third Party Reports	0	0	0	0	0	0	0	0
2 Title Insurance	(141)	(141)	(141)	(141)	(141)	(141)	(141)	(141)
1 **Ph03 Acquisition Costs**								
3 WMATA PARCEL 3 Ground	(128,784)	(128,784)	(128,784)	(128,784)	(128,784)	(128,784)	(128,784)	(128,784)
3 Arts Credits (assume no bonu	0	0	0	0	0	0	0	0
3 DC Purchase Recordation Ta	(1,932)	(1,932)	(1,932)	(1,932)	(1,932)	(1,932)	(1,932)	(1,932)
3 WMATA Acquisition Legal	0	0	0	0	0	0	0	0
3 Third Party Reports	0	0	0	0	0	0	0	0
3 Title Insurance	(644)	(644)	(644)	(644)	(644)	(644)	(644)	(644)
1 **Ph01 Construction Costs**								
1 Metro Site Work	0	0	0	0	0	0	0	0
1 Parcel 2 Office	0	0	0	0	0	0	0	0
1 Parcel 2 Parking	0	0	0	0	0	0	0	0
1 Parcel 2 Retail	0	0	0	0	0	0	0	0
1 Insurance	0	0	0	0	0	0	0	0
1 Real Estate Tax During Cons	0	0	0	0	0	0	0	0
1 Contingency	0	0	0	0	0	0	0	0
1 Permits	0	0	0	0	0	0	0	0
1 Permits	0	0	0	0	0	0	0	0
1 **Ph01 TI Costs**								
1 Parcel 2 Office	0	0	0	0	0	0	0	0
1 Parcel 2 Retail	0	0	0	0	0	0	0	0
1 **Ph01 Professional Fees**								
1 Architect + Engineer	0	0	0	0	0	0	0	0
1 Legal	0	0	0	0	0	0	0	0
1 Soft Cost Contingency	0	0	0	0	0	0	0	0
1 **Ph02 Construction Costs**								
2 Metro Site Work	0	0	0	0	0	0	0	0
2 Parcel 1 Retail	0	0	0	0	0	0	0	0
2 Insurance	0	0	0	0	0	0	0	0
2 Real Estate Tax During Cons	0	0	0	0	0	0	0	0
2 Contingency	0	0	0	0	0	0	0	0
2 Permits	0	0	0	0	0	0	0	0

WMATA-INV 008060

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

Detailed Cash Flow (Merged Phases)

	084:Sep 2014 (59,762,846)	096:Sep 2015 (58,276,235)	108:Sep 2016 (56,555,612)	120:Sep 2017 (54,550,352)	132:Sep 2018 (55,767,295)	144:Sep 2019 (53,213,972)	156:Sep 2020 (50,221,891)	168:Sep 2021 (46,861,940)
1 **Ph01 Revenue**								
1 Parcel 2 Office	2,377,875	2,449,212	2,522,688	2,598,369	2,676,320	2,756,609	2,839,307	2,924,487
1 Parcel 2 Parking	126,089	129,872	133,768	137,781	141,915	146,172	150,557	155,074
1 Parcel 2 Retail	618,570	637,127	656,240	675,928	696,205	717,092	738,604	760,762
1 Parcel 2 Office	0	0	0	0	0	0	0	0
1 Parcel 2 Parking	0	0	0	0	0	0	0	0
1 Parcel 2 Retail	0	0	0	0	0	0	0	0
1 **Ph01 Disposal Costs**								
1 Sales Agent Fee	0	0	0	0	0	0	0	0
1 **Ph02 Revenue**								
2 Parcel 1 Retail	221,610	228,259	235,107	242,160	249,425	256,907	264,614	272,553
2 Parcel 1 Retail	0	0	0	0	0	0	0	0
1 **Ph02 Disposal Costs**								
2 Sales Agent Fee	0	0	0	0	0	0	0	0
1 **Ph03 Revenue**								
3 Parcel 3 Hotel Rooms	2,766,769	3,068,142	3,181,648	3,269,309	3,367,550	3,468,814	3,572,798	3,680,108
3 Parcel 3 Parking	97,550	100,476	103,490	106,595	109,793	113,087	116,479	119,974
3 Parcel 3 Retail	360,538	371,354	382,494	393,969	405,788	417,962	430,501	443,416
3 Parcel 3 Hotel Rooms	0	0	0	0	0	0	0	0
3 Parcel 3 Parking	0	0	0	0	0	0	0	0
3 Parcel 3 Retail	0	0	0	0	0	0	0	0
1 **Ph03 Disposal Costs**								
3 Sales Agent Fee	0	0	0	0	0	0	0	0
1 **Ph01 Acquisition Costs**								
1 WMATA PARCEL 2 Ground	(76,320)	(76,320)	(76,320)	(76,320)	(76,320)	(76,320)	(76,320)	(76,320)
1 8th Street Land Option (Year	0	0	0	(3,420,000)	0	0	0	0
1 8th St 1st Year Ground Lease	0	0	0	0	0	0	0	0
1 8th St Ground Lease Renewal	0	0	0	0	0	0	0	0
1 8th St Ground Lease Renewal	(200,004)	(200,004)	(200,004)	(200,004)	0	0	0	0
1 Arts Credits (assume no bonu	0	0	0	0	0	0	0	0
1 8th St Combination Fee	0	0	0	0	0	0	0	0
1 8th Street Resubordination F	(175,000)	0	0	0	0	0	0	0
1 8th Street RE Tax pre-constr	0	0	0	0	0	0	0	0
1 DC Purchase Recordation Ta	(1,145)	(1,145)	(1,145)	(52,445)	(1,145)	(1,145)	(1,145)	(1,145)
1 WMATA Acquisition Legal	0	0	0	0	0	0	0	0
1 Third Party Reports	0	0	0	0	0	0	0	0
1 Title Insurance	(1,382)	(1,382)	(1,382)	(18,482)	(382)	(382)	(382)	(382)

WMATA-INV 008061

FOIA CONFIDENTIAL TREATMENT REQUESTED

DETAILED CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

Detailed Cash Flow (Merged Phases)

	TOTALS	000:Sep 2007	012:Sep 2008	024:Sep 2009	036:Sep 2010	048:Sep 2011	060:Sep 2012	072:Sep 2013
Period Total Before Finance		**0**	**(615,201)**	**(2,104,546)**	**(2,099,310)**	**(10,824,717)**	**(32,279,445)**	**(6,562,365)**
Finance Costs (All Loans)	(6,765,562)		(83,337)	(103,965)	(143,424)	(228,572)	(1,322,137)	(3,395,827)
Period Total After Finance	**63,178,711**	**0**	**(698,538)**	**(2,208,511)**	**(2,242,734)**	**(11,053,289)**	**(33,601,582)**	**(9,958,193)**
Cumulative Total C/f Annual	63,178,711	0	(698,538)	(2,907,049)	(5,149,783)	(16,203,072)	(49,804,654)	(59,762,846)

WMATA-INV 008062

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

Detailed Cash Flow (Merged Phases)

		TOTALS	000:Sep 2007	012:Sep 2008	024:Sep 2009	036:Sep 2010	048:Sep 2011	060:Sep 2012	072:Sep 2013
3 Parcel 3 Parking	YN	**(54,684)**	0	0	0	0	0	0	(54,684)
3 Parcel 3 Retail	YN	**(202,111)**	0	0	0	0	0	0	(202,111)
1 **Ph01 Development Management Fee**									
1 Dev. Management Fee	YN	**(904,718)**	0	0	(160,839)	(241,258)	(241,258)	(241,258)	(20,105)
1 **Ph02 Development Management Fee**									
2 Dev. Management Fee	YN	**(42,664)**	0	0	(7,585)	(11,377)	(11,377)	(11,377)	(948)
1 **Ph03 Development Management Fee**									
3 Dev. Management Fee	YN	**(1,009,874)**	0	0	(179,533)	(269,300)	(269,300)	(269,300)	(22,442)

WMATA-INV 008063

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

Detailed Cash Flow (Merged Phases)

		TOTALS	000:Sep 2007	012:Sep 2008	024:Sep 2009	036:Sep 2010	048:Sep 2011	060:Sep 2012	072:Sep 2013
2 Permits	YN	(14,969)	0	0	0	0	(14,969)	0	0
1 Ph02 TI Costs									
2 Parcel 1 Retail	YY	(284,739)	0	0	0	0	0	(284,739)	0
1 Ph02 Professional Fees									
2 Architect + Engineer	YN	(93,604)	0	0	(46,802)	(46,802)	0	0	0
2 Legal	YN	(11,227)	0	0	(3,208)	(4,811)	(3,208)	0	0
2 Soft Cost Contingency	YN	(32,354)	0	(1,458)	(11,118)	(10,401)	(8,068)	(1,266)	(44)
1 Ph03 Construction Costs									
3 Metro Site Work	YN	(1,839,000)	0	0	0	0	(1,839,000)	0	0
3 Parcel 3 Parking	YY	(1,354,096)	0	0	0	0	(177,399)	(1,137,295)	(39,403)
3 Parcel 3 Retail	YY	(1,253,506)	0	0	0	0	(164,220)	(1,052,810)	(36,476)
3 FF&E	YN	(2,900,000)	0	0	0	0	(385,994)	(2,431,176)	(82,831)
3 Hotel Hard Cost	YN	(11,454,840)	0	0	0	0	(1,524,653)	(9,603,011)	(327,176)
3 Franchise Charge	YN	(58,000)	0	0	0	0	(58,000)	0	0
3 Insurance	YN	(94,007)	0	0	0	0	(20,456)	(71,121)	(2,429)
3 Real Estate Tax During Cons	YN	(97,000)	0	0	0	0	(22,824)	(68,471)	(5,706)
3 Contingency	YN	(1,880,144)	0	0	0	0	(250,250)	(1,576,194)	(53,701)
3 Permits	YN	(50,000)	0	0	0	0	(50,000)	0	0
3 Permits	YN	(282,022)	0	0	0	0	(282,022)	0	0
1 Ph03 TI Costs									
3 Parcel 3 Retail	YY	(571,790)	0	0	0	0	0	0	(571,790)
1 Ph03 Professional Fees									
3 Architect + Engineer	YN	(1,020,000)	0	0	(510,000)	(510,000)	0	0	0
3 Legal	YN	(376,029)	0	0	(107,437)	(161,155)	(107,437)	0	0
3 Soft Cost Contingency	YN	(197,206)	0	(10,696)	(68,235)	(61,885)	(48,717)	(7,417)	(257)
1 Ph01 Marketing/Leasing									
1 Marketing	YN	(50,000)	0	0	0	0	(11,765)	(35,294)	(2,941)
1 Leasing Legal Fees	YN	(58,610)	0	0	0	0	0	0	(58,610)
1 Parcel 2 Office	YN	(1,274,853)	0	0	0	0	0	0	(1,274,853)
1 Parcel 2 Parking	YN	(70,683)	0	0	0	0	0	0	(70,683)
1 Parcel 2 Retail	YN	(346,758)	0	0	0	0	0	0	(346,758)
1 Ph02 Marketing/Leasing									
2 Marketing	YN	(50,000)	0	0	0	0	(18,182)	(31,818)	0
2 Leasing Legal Fees	YN	(58,610)	0	0	0	0	0	0	(58,610)
2 Parcel 1 Retail	YN	(122,408)	0	0	0	0	0	(122,408)	0
1 Ph03 Marketing/Leasing									
3 Marketing	YN	(50,000)	0	0	0	0	(11,765)	(35,294)	(2,941)

WMATA-INV 008064

FOIA CONFIDENTIAL TREATMENT REQUESTED

DETAILED CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

Detailed Cash Flow (Merged Phases)

		TOTALS	000:Sep 2007	012:Sep 2008	024:Sep 2009	036:Sep 2010	048:Sep 2011	060:Sep 2012	072:Sep 2013
1 **Ph02 Acquisition Costs**									
2 WMATA PARCEL 1 Ground	YN	**(295,001)**	0	0	0	0	0	(11,725)	(28,140)
2 DC Purchase Recordation Ta	YN	**(4,425)**	0	0	0	0	0	(176)	(422)
2 WMATA Acquisition Legal	YN	**(100,000)**	0	(75,000)	(25,000)	0	0	0	0
2 Third Party Reports	YN	**(50,000)**	0	0	(50,000)	0	0	0	0
2 Title Insurance	YN	**(1,475)**	0	0	0	0	0	(59)	(141)
1 **Ph03 Acquisition Costs**									
3 WMATA PARCEL 3 Ground	YN	**(1,277,108)**	0	0	0	0	0	0	(118,052)
3 Arts Credits (assume no bonu	YN	**(239,325)**	0	0	0	0	(239,325)	0	0
3 DC Purchase Recordation Ta	YN	**(22,746)**	0	0	0	0	(3,590)	0	(1,771)
3 WMATA Acquisition Legal	YN	**(100,000)**	0	(75,000)	(25,000)	0	0	0	0
3 Third Party Reports	YN	**(50,000)**	0	0	(50,000)	0	0	0	0
3 Title Insurance	YN	**(7,582)**	0	0	0	0	(1,197)	0	(590)
1 **Ph01 Construction Costs**									
1 Metro Site Work	YN	**(1,500,000)**	0	0	0	0	(1,500,000)	0	0
1 Parcel 2 Office	YY	**(11,595,394)**	0	0	0	0	(1,519,099)	(9,738,882)	(337,413)
1 Parcel 2 Parking	YY	**(1,752,360)**	0	0	0	0	(229,575)	(1,471,794)	(50,992)
1 Parcel 2 Retail	YY	**(2,150,624)**	0	0	0	0	(281,751)	(1,806,292)	(62,581)
1 Insurance	YN	**(84,992)**	0	0	0	0	(17,652)	(65,085)	(2,255)
1 Real Estate Tax During Cons	YN	**(150,000)**	0	0	0	0	(35,294)	(105,882)	(8,824)
1 Contingency	YN	**(1,699,838)**	0	0	0	0	(226,250)	(1,425,036)	(48,551)
1 Permits	YN	**(50,000)**	0	0	0	0	(50,000)	0	0
1 Permits	YN	**(254,976)**	0	0	0	0	(254,976)	0	0
1 **Ph01 TI Costs**									
1 Parcel 2 Office	YY	**(4,958,530)**	0	0	0	0	0	0	(4,958,530)
1 Parcel 2 Retail	YY	**(981,013)**	0	0	0	0	0	0	(981,013)
1 **Ph01 Professional Fees**									
1 Architect + Engineer	YN	**(841,000)**	0	0	(420,500)	(420,500)	0	0	0
1 Legal	YN	**(254,976)**	0	0	(72,850)	(109,275)	(72,850)	0	0
1 Soft Cost Contingency	YN	**(163,594)**	0	(6,827)	(53,534)	(50,921)	(44,659)	(7,392)	(260)
1 **Ph02 Construction Costs**									
2 Metro Site Work	YN	**(50,000)**	0	0	0	0	(50,000)	0	0
2 Parcel 1 Retail	YY	**(698,440)**	0	0	0	0	(193,363)	(505,078)	0
2 Insurance	YN	**(3,742)**	0	0	0	0	(1,217)	(2,525)	0
2 Real Estate Tax During Cons	YN	**(12,500)**	0	0	0	0	(4,545)	(7,955)	0
2 Contingency	YN	**(74,844)**	0	0	0	0	(20,889)	(53,955)	0
2 Permits	YN	**(50,000)**	0	0	0	0	(50,000)	0	0

WMATA-INV 008065

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

Detailed Cash Flow (Merged Phases)

Period ending AnnualB/F	SET Int Inf	TOTALS	000:Sep 2007	012:Sep 2008 0	024:Sep 2009 (698,538)	036:Sep 2010 (2,907,049)	048:Sep 2011 (5,149,783)	060:Sep 2012 (16,203,072)	072:Sep 2013 (49,804,654)
1 **Ph01 Revenue**									
1 Parcel 2 Office	YN	**24,738,475**	0	0	0	0	0	0	581,388
1 Parcel 2 Parking	YN	**1,373,443**	0	0	0	0	0	0	92,486
1 Parcel 2 Retail	YN	**6,737,832**	0	0	0	0	0	0	453,718
1 Parcel 2 Office	YN	**43,347,369**	0	0	0	0	0	0	0
1 Parcel 2 Parking	YN	**2,298,542**	0	0	0	0	0	0	0
1 Parcel 2 Retail	YN	**11,276,184**	0	0	0	0	0	0	0
1 **Ph01 Disposal Costs**									
1 Sales Agent Fee	YN	**(2,561,494)**	0	0	0	0	0	0	0
1 **Ph02 Revenue**									
2 Parcel 1 Retail	YN	**2,519,909**	0	0	0	0	0	53,389	215,156
2 Parcel 1 Retail	YN	**4,099,984**	0	0	0	0	0	0	0
1 **Ph02 Disposal Costs**									
2 Sales Agent Fee	YN	**(184,499)**	0	0	0	0	0	0	0
1 **Ph03 Revenue**									
3 Parcel 3 Hotel Rooms	YN	**32,031,554**	0	0	0	0	0	0	1,866,277
3 Parcel 3 Parking	YN	**1,062,569**	0	0	0	0	0	0	71,552
3 Parcel 3 Retail	YN	**3,927,193**	0	0	0	0	0	0	264,453
3 Parcel 3 Hotel Rooms	YN	**38,177,964**	0	0	0	0	0	0	0
3 Parcel 3 Parking	YN	**1,778,276**	0	0	0	0	0	0	0
3 Parcel 3 Retail	YN	**6,572,405**	0	0	0	0	0	0	0
1 **Ph03 Disposal Costs**									
3 Sales Agent Fee	YN	**(2,093,789)**	0	0	0	0	0	0	0
1 **Ph01 Acquisition Costs**									
1 WMATA PARCEL 2 Ground	YN	**(756,840)**	0	0	0	0	0	0	(69,960)
1 8th Street Land Option (Year	YN	**(3,420,000)**	0	0	0	0	0	0	0
1 8th St 1st Year Ground Lease	YN	**(325,000)**	0	(318,750)	(6,250)	0	0	0	0
1 8th St Ground Lease Renewal	YN	**(600,000)**	0	0	(150,000)	(150,000)	(150,000)	(150,000)	0
1 8th St Ground Lease Renewal	YN	**(1,000,020)**	0	0	0	0	0	0	(200,004)
1 Arts Credits (assume no bonu	YN	**(300,000)**	0	0	0	0	(300,000)	0	0
1 8th St Combination Fee	YN	**(30,000)**	0	0	(30,000)	0	0	0	0
1 8th Street Resubordination F	YN	**(175,000)**	0	0	0	0	0	0	0
1 8th Street RE Tax pre-constr	YN	**(203,500)**	0	(50,875)	(50,875)	(50,875)	(50,875)	0	0
1 DC Purchase Recordation Ta	YN	**(67,153)**	0	0	0	0	(4,500)	0	(1,049)
1 WMATA Acquisition Legal	YN	**(100,000)**	0	(75,000)	(25,000)	0	0	0	0
1 Third Party Reports	YN	**(50,000)**	0	0	(50,000)	0	0	0	0
1 Title Insurance	YN	**(32,009)**	0	(1,594)	(781)	(750)	(2,250)	(750)	(1,350)

WMATA-INV 008066

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

Inflation on Construction Costs		Uninflated	Inflation	Total
Parcel 2 Office	Construction CPI at 3.00%	10,190,205	1,405,189	11,595,394
Parcel 2 Parking	Construction CPI at 3.00%	1,540,000	212,360	1,752,360
Parcel 2 Retail	Construction CPI at 3.00%	1,890,000	260,624	2,150,624
Parcel 1 Retail	Construction CPI at 3.00%	618,600	79,840	698,440
Parcel 3 Parking	Construction CPI at 3.00%	1,190,000	164,096	1,354,096
Parcel 3 Retail	Construction CPI at 3.00%	1,101,600	151,906	1,253,506

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008067

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

Parcel 2 Parking		70,683	
Parcel 2 Retail		346,758	
Parcel 1 Retail		122,408	
Parcel 3 Parking		54,684	
Parcel 3 Retail		202,111	
			2,338,718
DISPOSAL FEES			
Sales Agent Fee	4.50%	4,839,783	
			4,839,783
Additional Costs			
Dev. Management Fee	5.00%	904,718	
Dev. Management Fee	5.00%	42,664	
Dev. Management Fee	5.00%	1,009,874	
			1,957,255
FINANCE			
Interest paid to Debt Sources:			
Development Loan (8.00%)	409,298		
Construction Loan (8.00%)	6,206,264		
Total Interest paid to debt financing		6,615,562	
Mortgage Interest (7.00%)		40,463,132	
Total Interest Paid		47,078,694	
Debt Financing Fees			
Development Loan - Legal (Single)	50,000		
Construction Loan - Legal Fees (Single)	100,000		
Total Debt Financing Fees		150,000	
Total Finance Cost			47,228,694
TOTAL COSTS			**116,762,988**
PROFIT			
Developer Equity			
Residual Percentage (50.00%)	29,313,423		
Preferred Return (10.00%)	757,305		
		30,070,728	
Investor Equity			
Residual Percentage (50.00%)	29,313,423		
Preferred Return (10.00%)	3,794,560		
		33,107,983	
			63,178,711
Performance Measures			
Profit on Cost%	54.11%		
Profit on GDV%	58.74%		
Development Yield% (on Rent)	7.43%		
Pre-Finance IRR%	13.36%		
Project IRR% (with Interest)	17.96%		
Equity IRR% (with Interest)	32.23%		

‡ Inflation/Escalation applied

Escalation on Capitalized Rent		**Unescalated**	**Escalation**	**Total**
Parcel 2 Office	Office Rent at 3.00%	28,446,726	14,900,643	43,347,369
Parcel 2 Parking	Office Rent at 3.00%	1,508,419	790,123	2,298,542
Parcel 2 Retail	Office Rent at 3.00%	7,400,000	3,876,184	11,276,184
Parcel 1 Retail	Office Rent at 3.00%	2,651,143	1,448,841	4,099,984
Parcel 3 Parking	Office Rent at 3.00%	1,166,994	611,282	1,778,276
Parcel 3 Retail	Office Rent at 3.00%	4,313,143	2,259,262	6,572,405

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008068

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

WMATA Acquisition Legal Fees			300,000	
Third Party Reports			150,000	
Title Insurance		0.50%	39,591	
Title Insurance		0.50%	1,475	9,207,185
CONSTRUCTION COSTS	**ft²**	**Rate ft²**	**Cost**	
Construction				
‡ Parcel 2 Office	75,483	$135.00	11,595,394	
‡ Parcel 2 Parking	19,885	$77.45	1,752,360	
‡ Parcel 2 Retail	14,000	$135.00	2,150,624	
‡ Parcel 1 Retail	4,124	$150.00	698,440	
Parcel 3 Hotel Rooms	145 units	$20,000.00 /un	2,900,000	
FF&E	63,638 ft²	$180.00 pf²	11,454,840	
Hotel Hard Cost	145 units	$400.00 /un	58,000	
Franchise Charge			14,412,840	
‡ Parcel 3 Parking	15,955	$74.58	1,354,096	
‡ Parcel 3 Retail	8,160	$135.00	1,253,506	
Totals	137,607		33,217,260	**33,217,260**
Contingency		10.00%	1,699,838	
Contingency		10.00%	74,844	
Contingency		10.00%	1,880,144	
Metro Site Work			1,500,000	
Metro Site Work			50,000	
Metro Site Work			1,839,000	
Permits		1.50%	50,000	
Permits			254,976	
Permits		2.00%	50,000	
Permits			14,969	
Permits		1.50%	50,000	
Permits			282,022	7,745,792
Other Construction				
Insurance		0.50%	84,992	
Insurance		0.50%	3,742	
Insurance		0.50%	94,007	182,741
Municipal Costs				
Real Estate Tax During Construction			150,000	
Real Estate Tax During Construction			12,500	
Real Estate Tax During Construction			97,000	259,500
TI Costs				
TI Cost Area Rate - Parcel 2 Office		60.00 pf²	4,958,530	
TI Cost Area Rate - Parcel 2 Retail		60.00 pf²	981,013	
TI Cost Area Rate - Parcel 1 Retail		60.00 pf²	284,739	
TI Cost Area Rate - Parcel 3 Retail		60.00 pf²	571,790	6,796,072
PROFESSIONAL FEES				
Architect + Engineer			1,954,604	
Legal		1.50%	266,202	
Legal		2.00%	376,029	
Soft Cost Contingency		10.00%	163,594	
Soft Cost Contingency		10.00%	32,354	
Soft Cost Contingency		10.00%	197,206	2,989,989
MARKETING & LEASING				
Marketing			150,000	
Leasing Legal Fees		2.00%	117,220	
Leasing Commissions				
Parcel 2 Office			1,274,853	

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008069

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Ground Lease and 15-year hold, Office and Hotel

Project Pro Forma for Merged Phases 1 2 3

REVENUE Rental Area Summary	ft²	Rate ft²	Rent at Lease Start	Rent At Sale
‡ Parcel 2 Office	70,763	$42.00	3,470,971	4,528,830
‡ Parcel 2 Parking	19,885	$5.31	123,315	160,898
‡ Parcel 2 Retail	14,000	$37.00	604,958	789,333
‡ Parcel 1 Retail	4,124	$45.00	213,554	286,999
Parcel 3 Hotel Rooms	60,456	$41.16	2,488,369	3,817,796
‡ Parcel 3 Parking	15,955	$5.12	95,403	124,479
‡ Parcel 3 Retail	8,160	$37.00	352,604	460,068
Totals	193,343		7,349,174	10,168,403
Investment Valuation				
Parcel 2 Office				
- 33.000% non recov. cost				
Capitalized Rent	3,034,316	Cap Rate	7.0000%	43,347,369
Parcel 2 Parking				
Capitalized Rent	160,898	Cap Rate	7.0000%	2,298,542
Parcel 2 Retail				
Capitalized Rent	789,333	Cap Rate	7.0000%	11,276,184
Parcel 1 Retail				
Capitalized Rent	286,999	Cap Rate	7.0000%	4,099,984
Parcel 3 Hotel Rooms				
Capitalized Rent	3,817,796	Cap Rate	10.0000%	38,177,964
Parcel 3 Parking				
Capitalized Rent	124,479	Cap Rate	7.0000%	1,778,276
Parcel 3 Retail				
Capitalized Rent	460,068	Cap Rate	7.0000%	6,572,405
				107,550,725
Income from Tenants				
Parcel 2 Office			24,738,475	
Parcel 2 Parking			1,373,443	
Parcel 2 Retail			6,737,832	
Parcel 1 Retail			2,519,909	
Parcel 3 Hotel Rooms			32,031,554	
Parcel 3 Parking			1,062,569	
Parcel 3 Retail			3,927,193	
				72,390,974
TOTAL PROJECT REVENUE				**179,941,699**
DEVELOPMENT COSTS				
ACQUISITION COSTS				
WMATA PARCEL 2 Ground Lease		756,840		
8th Street Land Option (Year 10)		3,420,000		
8th St 1st Year Ground Lease		325,000		
8th St Ground Lease Renewal 1-4		600,000		
8th St Ground Lease Renewal 5-9		1,000,020		
Arts Credits (assume no bonus)		300,000		
8th St Combination Fee		30,000		
8th Street Resubordination Fee		175,000		
8th Street RE Tax pre-construction		203,500		
WMATA PARCEL 1 Ground Lease		295,001		
WMATA PARCEL 3 Ground Lease		1,277,108		
Arts Credits (assume no bonus)		239,325		
Total Acquisition (0.92 Acres $9,371,515.22 pAcre)			8,621,794	
DC Purchase Recordation Tax		1.50%	89,899	
DC Purchase Recordation Tax		1.50%	4,425	

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008070

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds Type	Combined Sources Scenario
Heading	181 Oct 2022
Auto. Project Contribution	0
Timed Contribution Project	0
Total Contribution	**0**
Non-Mortgage Interest and Fees	0
Auto. Repayment	1,738,987
Timed Repayment Project	0
Total Repayment	**1,738,987**
Profit Participation	**53,283,312**
Net Cash Flow (IRR)	**55,022,300**
Net Cash Flow (Equity IRR)	55,022,300
Cumulative Net Cash Flow	56148883.19

ASSUMPTIONS

ANALYSIS

Project IRR	13.6%

WMATA-INV 008071

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds: Combined Sources
Type: Scenario

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Auto: Project Contribution	(201,004)	(201,004)	(3,689,404)	0	0	0	0	0
Timed Contribution: Project	0	0	0	0	0	0	0	0
Total Contribution	**(201,004)**	**(201,004)**	**(3,689,404)**	**0**	**0**	**0**	**0**	**0**
Non-Mortgage Interest and Fees	0	0	0	(210,673)	(81,712)	(138)	0	0
Auto: Repayment	493,489	712,823	1,001,408	1,675,985	1,872,963	408,070	1,910,070	2,335,405
Timed Repayment: Project	0	0	0	0	0	0	0	0
Total Repayment	**493,489**	**712,823**	**1,001,408**	**1,675,985**	**1,872,963**	**408,070**	**1,910,070**	**2,335,405**
Profit Participation	**625,320**	**586,249**	**483,335**	**0**	**0**	**1,667,781**	**374,755**	**164,664**
Net Cash Flow (IRR)	**917,805**	**1,098,068**	**(2,204,661)**	**1,465,312**	**1,791,251**	**2,075,713**	**2,284,825**	**2,500,069**
Net Cash Flow (Equity IRR)	917,805	1,098,068	1,172,562	0	0	1,955,053	2,284,825	2,500,069
Cumulative Net Cash Flow	(2,544,557)	(1,446,489)	(3,651,149)	(2,185,838)	(394,587)	1,681,126	3,965,951	6,466,020

ASSUMPTIONS

ANALYSIS

Project IRR	13.6%

WMATA-INV 008072

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds: Combined Sources
Type: Scenario

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Auto. Project Contribution	(68,743,885)	(612,004)	(1,825,047)	(1,775,904)	(16,913,075)	(28,024,417)	(15,126,023)	(376,004)
Timed Contribution Project	0	0	0	0	0	0	0	0
Total Contribution	**(68,743,885)**	**(612,004)**	**(1,825,047)**	**(1,775,904)**	**(16,913,075)**	**(28,024,417)**	**(15,126,023)**	**(376,004)**
Non-Mortgage Interest and Fees	(7,204,885)	(83,218)	(102,602)	(143,424)	(240,124)	(1,397,635)	(3,577,428)	(1,367,932)
Auto. Repayment	73,898,770	0	0	0	0	53,389	2,175,459	59,520,724
Timed Repayment Project	2,050,000	0	0	0	2,050,000	0	0	0
Total Repayment	**75,948,770**	**0**	**0**	**0**	**2,050,000**	**53,389**	**2,175,459**	**59,520,724**
Profit Participation	**61,488,319**	**0**	**0**	**0**	**0**	**0**	**0**	**4,302,902**
Net Cash Flow (IRR)	**61,488,319**	**(695,222)**	**(1,927,649)**	**(1,919,327)**	**(15,103,199)**	**(29,368,663)**	**(16,527,992)**	**62,079,690**
Net Cash Flow (Equity IRR)	61,488,319	0	(844,866)	(1,775,904)	(11,349,330)	0	0	10,507,738
Cumulative Net Cash Flow		**(695,222)**	**(2,622,871)**	**(4,542,198)**	**(19,645,397)**	**(49,014,061)**	**(65,542,053)**	**(3,462,363)**

ASSUMPTIONS

ANALYSIS

Project IRR	13.6%

WMATA-INV 008073

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds	Balancing Account
Type	Balancing Account

	[illegible]
Funding	
[illegible]	0
[illegible]	0
Total Contribution	0
Interest	0
[illegible]	0
Total Repayment	0
Ending Balance	0
Profit Participation	0
Net Cash Flow/IRR	0
Cumulative Net Cash Flow	0

ASSUMPTIONS	
Contribution Order	5
Contribution	($2,050,000)
Repayment Order	1

ANALYSIS	
Contribution	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,050,000
Project IRR	0.0%

WMATA-INV 008074

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds	Balancing Account
Type	Balancing Account

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Timed Contribution	0	0	0	0	0	0	0	0
Timed Contribution: Profit	0	0	0	0	0	0	0	0
Total Contribution	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment: Profit	0	0	0	0	0	0	0	0
Total Repayment	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Closing Balance	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Cumulative Net Cash Flow	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

ASSUMPTIONS	
Contribution Order	5
Contribution	($2,050,000)
Repayment Order	1

ANALYSIS	
Contribution	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,050,000
Project IRR	0.0%

WMATA-INV 008075

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds	Balancing Account
Type	Balancing Account

Heading	Month	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Timed Contribution	(2,050,000)	0	0	0	(2,050,000)	0	0	0
Timed Contribution Profit	0	0	0	0	0	0	0	0
Total Contribution	**(2,050,000)**	**0**	**0**	**0**	**(2,050,000)**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment Profit	0	0	0	0	0	0	0	0
Total Repayment	**2,050,000**	**0**	**0**	**0**	**0**	**53,389**	**1,996,611**	**0**
Closing Balance	**0**	**0**	**0**	**0**	**(2,050,000)**	**(1,996,611)**	**0**	**0**
Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**0**	**0**	**0**	**(2,050,000)**	**53,389**	**1,996,611**	**0**
Cumulative Net Cash Flow		**0**	**0**	**0**	**(2,050,000)**	**(1,996,611)**	**0**	**0**

ASSUMPTIONS	
Contribution Order	5
Contribution	($2,050,000)
Repayment Order	1

ANALYSIS	
Contribution	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,050,000
Project IRR	0.0%

WMATA-INV 008076

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds	Mortgage
Type	Mortgage

Heading	181
	08/2022
Opening Balance	54,096,983
Interest	315,566
Principal Repaid	54,096,983
Total P+I Payment	54,412,548
Closing Balance	(0)
Net Cash Flow (IRR)	**54,412,548**

ASSUMPTIONS	
Month to Place Mortgage	76
Monthly Stabilized Income	$489,439
Annual Stabilized Income	$5,873,273
Manual Stabilized Income	$0
Mortgage Amount as % of Value	73.00%
Cap Rate to Determine Value	7.00%
Project Cap Rate Value	$83,903,894
Maximum Funding Amount	$61,249,842
Mortgage Issued	$61,249,842

ANALYSIS	
Amortization Period (Months)	360
Annual Interest Rate	7.00%
Compounding Frequency	Monthly
Monthly Interest Factor	0.005833
Monthly Debt Service P+I	$407,497
Annual Debt Service P+I	$4,889,961
Debt Service Ratio	1.20
Project IRR	7.2%

WMATA-INV 008077

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds	Mortgage
Type	Mortgage

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Opening Balance	60,839,898	60,188,081	59,489,144	58,739,681	57,936,040	57,074,303	56,150,271	55,159,440
Interest	4,238,144	4,191,024	4,140,498	4,086,319	4,028,224	3,965,929	3,899,130	3,827,503
Principal Repaid	651,817	698,937	749,463	803,642	861,737	924,032	990,830	1,062,458
Total P+I Payment	4,889,961	4,889,961	4,889,961	4,889,961	4,889,961	4,889,961	4,889,961	4,889,961
Closing Balance	60,188,081	59,489,144	58,739,681	57,936,040	57,074,303	56,150,271	55,159,440	54,096,983
Net Cash Flow (IRR)	4,889,961	4,889,961	4,889,961	4,889,961	4,889,961	4,889,961	4,889,961	4,889,961

ASSUMPTIONS	
Month to Place Mortgage	76
Monthly Stabilized Income	$489,439
Annual Stabilized Income	$5,873,273
Manual Stabilized Income	$0
Mortgage Amount as % of Value	73.00%
Cap Rate to Determine Value	7.00%
Project Cap Rate Value	$83,903,894
Maximum Funding Amount	$61,249,842
Mortgage Issued	$61,249,842

ANALYSIS	
Amortization Period (Months)	360
Annual Interest Rate	7.00%
Compounding Frequency	Monthly
Monthly Interest Factor	0.005833
Monthly Debt Service P+I	$407,497
Annual Debt Service P+I	$4,889,961
Debt Service Ratio	1.20
Project IRR	7.2%

WMATA-INV 008078

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds: Mortgage
Type: Mortgage

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Opening Balance	0	0	0	0	0	0	0	61,249,842
Interest	35,542,366	0	0	0	0	0	0	2,850,029
Principal Repaid	61,249,842	0	0	0	0	0	0	409,945
Total P+I Payment	96,792,208	0	0	0	0	0	0	3,259,974
Closing Balance		0	0	0	0	0	0	60,839,898
Net Cash Flow (IRR)	**35,542,366**	**0**	**0**	**0**	**0**	**0**	**0**	**(57,989,869)**

ASSUMPTIONS	
Month to Place Mortgage	76
Monthly Stabilized Income	$489,439
Annual Stabilized Income	$5,873,273
Manual Stabilized Income	$0
Mortgage Amount as % of Value	73.00%
Cap Rate to Determine Value	7.00%
Project Cap Rate Value	$83,903,894
Maximum Funding Amount	$61,249,842
Mortgage Issued	$61,249,842

ANALYSIS	
Amortization Period (Months)	360
Annual Interest Rate	7.00%
Compounding Frequency	Monthly
Monthly Interest Factor	0.005833
Monthly Debt Service P+I	$407,497
Annual Debt Service P+I	$4,889,961
Debt Service Ratio	1.20
Project IRR	7.2%

WMATA-INV 008079

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds	Construction Loan
Type	Debt
Funding	[illegible]
Fund Contribution	0
Auto. Project Cash Contribution	0
Total Contribution	0
Total Loan Fees	0
Interest and Fees	0
Timed Repayment	0
Auto. Repayment	0
Total Repayment	0
Closing Balance	0
Timed Profit Participation	0
Total Profit Participation	0
Net Cash Flow/IRR	0
Cumulative Net Cash Flow	[illegible]

ASSUMPTIONS	
Contribution Order	4
Contribution %	80.0%
Capped at	$0
Contribution	($51,131,600)
Repayment Order	3
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$0
Auto Repayment	$57,878,670
Total Repayment	$57,878,670
Peak Financing Amount	$51,571,952
Project IRR	0.0%

WMATA-INV 008080

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW — LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds	Construction Loan
Type	Debt

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Timed Contribution: Project	0	0	0	0	0	0	0	0
Auto Project Contribution	(201,004)	(201,004)	(3,689,404)	0	0	0	0	0
Total Contribution	**(201,004)**	**(201,004)**	**(3,689,404)**	**0**	**0**	**0**	**0**	**0**
Total Loan Fees	0	0	0	0	0	0	0	0
Interest and Fees	0	0	0	(210,673)	(81,712)	(138)	0	0
Timed Repayment: Project	0	0	0	0	0	0	0	0
Auto Repayment	201,004	201,004	312,181	1,675,985	1,872,963	120,798	0	0
Total Repayment	**201,004**	**201,004**	**312,181**	**1,675,985**	**1,872,963**	**120,798**	**0**	**0**
Closing Balance	**0**	**0**	**(3,377,223)**	**(1,911,911)**	**(120,660)**	**0**	**0**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**0**	**(3,377,223)**	**1,465,312**	**1,791,251**	**120,660**	**0**	**0**
Cumulative Net Cash Flow	**0**	**0**	**(3,377,223)**	**(1,911,911)**	**(120,660)**	**0**	**0**	**0**

ASSUMPTIONS	
Contribution Order	4
Contribution %	80.0%
Capped at	$0
Contribution	($51,131,600)
Repayment Order	3
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$0
Auto Repayment	$57,878,670
Total Repayment	$57,878,670
Peak Financing Amount	$51,571,952
Project IRR	0.0%

WMATA-INV 008081

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds: Construction Loan
Type: Debt

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Timed Contribution: Project	0	0	0	0	0	0	0	0
Auto: Project Contribution	(51,131,600)	0	0	0	(3,513,745)	(28,024,417)	(15,126,023)	(376,004)
Total Contribution	**(51,131,600)**	**0**	**0**	**0**	**(3,513,745)**	**(28,024,417)**	**(15,126,023)**	**(376,004)**
Total Loan Fees	(100,000)	0	0	0	(100,000)	0	0	0
Interest and Fees	(6,747,070)	0	0	0	(111,552)	(1,397,635)	(3,577,428)	(1,367,932)
Timed Repayment: Project	0	0	0	0	0	0	0	0
Auto: Repayment	57,878,670	0	0	0	0	0	178,847	53,315,888
Total Repayment	**57,878,670**	**0**	**0**	**0**	**0**	**0**	**178,847**	**53,315,888**
Closing Balance	**0**	**0**	**0**	**0**	**(3,625,297)**	**(33,047,349)**	**(51,571,952)**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**0**	**0**	**0**	**(3,625,297)**	**(29,422,052)**	**(18,524,603)**	**51,571,952**
Cumulative Net Cash Flow		**0**	**0**	**0**	**(3,625,297)**	**(33,047,349)**	**(51,571,952)**	**0**

ASSUMPTIONS	
Contribution Order	4
Contribution %	80.0%
Capped at	$0
Contribution	($51,131,600)
Repayment Order	3
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$0
Auto Repayment	$57,878,670
Total Repayment	$57,878,670
Peak Financing Amount	$51,571,952
Project IRR	0.0%

WMATA-INV 008082

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds	Investor Equity
Type	Equity

Heading	1 Oct 2022
Timed Contribution Project	0
Auto Project Contribution	0
Total Contribution	**0**
Interest	0
Timed Repayment Project	0
Auto Repayment	341,977
Total Repayment	**341,977**
Closing Balance	**0**
Timed Profit Participation	0
Total Profit Participation	**24,762,896**
Net Cash Flow (IRR)	**25,104,873**
Cumulative Net Cash Flow	**32,967,903**

ASSUMPTIONS	
Contribution Order	3
Contribution %	18.0%
Capped at	$0
Contribution	$0
Repayment Order	4

ANALYSIS	
Contribution	$12,573,090
Timed Repayment	$0
Auto Repayment	$12,573,090
Total Repayment	$12,573,090
Peak Financing Amount	$12,573,090
Profit	$32,967,903
Project IRR	18.9%
Return on Equity	262.2%

WMATA-INV 008083

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds: Investor Equity
Type: Equity

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Timed Contribution - Project	0	0	0	0	0	0	0	0
Auto Project Contribution	0	0	0	0	0	0	0	0
Total Contribution	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment - Project	0	0	0	0	0	0	0	0
Auto Repayment	292,485	511,819	689,227	0	0	287,272	1,910,070	2,335,405
Total Repayment	**292,485**	**511,819**	**689,227**	**0**	**0**	**287,272**	**1,910,070**	**2,335,405**
Closing Balance	**(6,075,769)**	**(5,563,950)**	**(4,874,723)**	**(4,874,723)**	**(4,874,723)**	**(4,587,452)**	**(2,677,382)**	**(341,977)**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**625,320**	**586,249**	**483,335**	**0**	**0**	**1,667,781**	**374,755**	**164,664**
Net Cash Flow (IRR)	**917,805**	**1,098,068**	**1,172,562**	**0**	**0**	**1,955,053**	**2,284,825**	**2,500,069**
Cumulative Net Cash Flow	(1,147,547)	(49,479)	1,123,083	1,123,083	1,123,083	3,078,136	5,362,961	7,863,030

ASSUMPTIONS	
Contribution Order	3
Contribution %	18.0%
Capped at	$0
Contribution	$0
Repayment Order	4

ANALYSIS	
Contribution	$12,573,090
Timed Repayment	$0
Auto Repayment	$12,573,090
Total Repayment	$12,573,090
Peak Financing Amount	$12,573,090
Profit	$32,967,903
Project IRR	18.9%
Return on Equity	262.2%

CASH ON CASH	Jan 2022
Annual Return	* 257.9%

WMATA-INV 008084

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds	Investor Equity
Type	Equity

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Timed Contribution: Project	0	0	0	0	0	0	0	0
Auto Project Contribution	(12,573,090)	0	0	(1,223,760)	(11,349,330)	0	0	0
Total Contribution	**(12,573,090)**	**0**	**0**	**(1,223,760)**	**(11,349,330)**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment: Project	0	0	0	0	0	0	0	0
Auto Repayment	12,573,090	0	0	0	0	0	0	6,204,836
Total Repayment	**12,573,090**	**0**	**0**	**0**	**0**	**0**	**0**	**6,204,836**
Closing Balance	**0**	**0**	**0**	**(1,223,760)**	**(12,573,090)**	**(12,573,090)**	**(12,573,090)**	**(6,368,255)**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**32,967,903**	**0**	**0**	**0**	**0**	**0**	**0**	**4,302,902**
Net Cash Flow (IRR)	**32,967,903**	**0**	**0**	**(1,223,760)**	**(11,349,330)**	**0**	**0**	**10,507,738**
Cumulative Net Cash Flow		**0**	**0**	**(1,223,760)**	**(12,573,090)**	**(12,573,090)**	**(12,573,090)**	**(2,065,353)**

ASSUMPTIONS	
Contribution Order	3
Contribution %	18.0%
Capped at	$0
Contribution	$0
Repayment Order	4

ANALYSIS	
Contribution	$12,573,090
Timed Repayment	$0
Auto Repayment	$12,573,090
Total Repayment	$12,573,090
Peak Financing Amount	$12,573,090
Profit	$32,967,903
Project IRR	18.9%
Return on Equity	262.2%

CASH ON CASH	As at Jan 2014	Jan 2015	Jan 2016	Jan 2017	Jan 2018	Jan 2019	Jan 2020	Jan 2021
Annual Return	85.1%	7.7%	9.1%	7.0%	0.0%	2.9%	16.9%	18.6%

WMATA-INV 008085

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds	Developer Equity
Type	Equity

[illegible]	[illegible]
Timed Contribution	0
Auto Contribution	0
Total Contribution	0
Interest	0
Timed Repayment	0
Auto Repayment	1,397,010
Total Repayment	1,397,010
Closing Balance	0
Timed Profit Participation	0
Total Profit Participation	28,520,417
Net Cash Flow (IRR)	29,917,427
Cumulative Net Cash Flow	[illegible]

ASSUMPTIONS	
Contribution Order	2
Contribution %	2.0%
Capped at	$0
Contribution	$0
Repayment Order	5

ANALYSIS	
Contribution	$1,397,010
Timed Repayment	$0
Auto Repayment	$1,397,010
Total Repayment	$1,397,010
Peak Financing Amount	$1,397,010
Profit	$28,520,417
Project IRR	26.3%
Return on Equity	2,041.5%

WMATA-INV 008086

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds: Developer Equity
Type: Equity

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Timed Contribution: Project	0	0	0	0	0	0	0	0
Auto Project Contribution	0	0	0	0	0	0	0	0
Total Contribution	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment: Project	0	0	0	0	0	0	0	0
Auto Repayment	0	0	0	0	0	0	0	0
Total Repayment	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Closing Balance	**(1,397,010)**	**(1,397,010)**	**(1,397,010)**	**(1,397,010)**	**(1,397,010)**	**(1,397,010)**	**(1,397,010)**	**(1,397,010)**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Cumulative Net Cash Flow	(1,397,010)	(1,397,010)	(1,397,010)	(1,397,010)	(1,397,010)	(1,397,010)	(1,397,010)	(1,397,010)

ASSUMPTIONS	
Contribution Order	2
Contribution %	2.0%
Capped at	$0
Contribution	$0
Repayment Order	5

ANALYSIS	
Contribution	$1,397,010
Timed Repayment	$0
Auto Repayment	$1,397,010
Total Repayment	$1,397,010
Peak Financing Amount	$1,397,010
Profit	$28,520,417
Project IRR	26.3%
Return on Equity	2,041.5%

CASH ON CASH	Jan 2022
Annual Return	* 2,569.8%

WMATA-INV 008087

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds: Developer Equity
Type: Equity

Heading	1 Mar 2007	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Timed Contribution/ Project	0	0	0	0	0	0	0	0
Auto Project Contribution	(1,397,010)	0	(844,866)	(552,144)	0	0	0	0
Total Contribution	**(1,397,010)**	**0**	**(844,866)**	**(552,144)**	**0**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment/ Project	0	0	0	0	0	0	0	0
Auto Repayment	1,397,010	0	0	0	0	0	0	0
Total Repayment	**1,397,010**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Closing Balance	**0**	**0**	**(844,866)**	**(1,397,010)**	**(1,397,010)**	**(1,397,010)**	**(1,397,010)**	**(1,397,010)**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**28,520,417**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**28,520,417**	**0**	**(844,866)**	**(552,144)**	**0**	**0**	**0**	**0**
Cumulative Net Cash Flow		**0**	**(844,866)**	**(1,397,010)**	**(1,397,010)**	**(1,397,010)**	**(1,397,010)**	**(1,397,010)**

ASSUMPTIONS	
Contribution Order	2
Contribution %	2.0%
Capped at	$0
Contribution	$0
Repayment Order	5

ANALYSIS	
Contribution	$1,397,010
Timed Repayment	$0
Auto Repayment	$1,397,010
Total Repayment	$1,397,010
Peak Financing Amount	$1,397,010
Profit	$28,520,417
Project IRR	26.3%
Return on Equity	2,041.5%

CASH ON CASH	As at Jan 2014	Jan 2015	Jan 2016	Jan 2017	Jan 2018	Jan 2019	Jan 2020	Jan 2021
Annual Return	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

WMATA-INV 008088

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds	Development Loan
Type	Debt

Heading	1 (8) Oct 2022
Timed Contribution: Project	0
Auto: Project Contribution	0
Total Contribution	**0**
Total Loan Fees	0
Interest and Fees	0
Timed Repayment: Project	0
Auto Repayment	0
Total Repayment	**0**
Closing Balance	**0**
Timed Profit Participation	0
Total Profit Participation	**0**
Net Cash Flow (IRR)	**0**
Cumulative Net Cash Flow	**0**

ASSUMPTIONS	
Contribution Order	1
Contribution	$2,000,000
Contribution	($1,592,185)
Repayment Order	2
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$2,050,000
Auto Repayment	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,036,755
Project IRR	0.0%

WMATA-INV 008089

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds: Development Loan
Type: Debt

Heading	108 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Timed Contribution Project	0	0	0	0	0	0	0	0
Auto Project Contribution	0	0	0	0	0	0	0	0
Total Contribution	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Total Loan Fees	0	0	0	0	0	0	0	0
Interest and Fees	0	0	0	0	0	0	0	0
Timed Repayment Project	0	0	0	0	0	0	0	0
Auto Repayment	0	0	0	0	0	0	0	0
Total Repayment	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Closing Balance	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Cumulative Net Cash Flow	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

ASSUMPTIONS	
Contribution Order	1
Contribution	$2,000,000
Contribution	($1,592,185)
Repayment Order	2
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$2,050,000
Auto Repayment	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,036,755
Project IRR	0.0%

WMATA-INV 008090

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

(Merged Phases)

Source of Funds: Development Loan
Type: Debt

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Timed Contribution: Project	0	0	0	0	0	0	0	0
Auto Project Contribution	(1,592,185)	(612,004)	(980,180)	0	0	0	0	0
Total Contribution	**(1,592,185)**	**(612,004)**	**(980,180)**	**0**	**0**	**0**	**0**	**0**
Total Loan Fees	(50,000)	(50,000)	0	0	0	0	0	0
Interest and Fees	(457,815)	(83,218)	(102,602)	(143,424)	(128,572)	0	0	0
Timed Repayment: Project	2,050,000	0	0	0	2,050,000	0	0	0
Auto Repayment	0	0	0	0	0	0	0	0
Total Repayment	**2,050,000**	**0**	**0**	**0**	**2,050,000**	**0**	**0**	**0**
Closing Balance	**0**	**(695,222)**	**(1,778,004)**	**(1,921,428)**	**0**	**0**	**0**	**0**
Timed Profit Participations	0	0	0	0	0	0	0	0
Total Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**(695,222)**	**(1,082,782)**	**(143,424)**	**1,921,428**	**0**	**0**	**0**
Cumulative Net Cash Flow		**(695,222)**	**(1,778,004)**	**(1,921,428)**	**0**	**0**	**0**	**0**

ASSUMPTIONS	
Contribution Order	1
Contribution	$2,000,000
Contribution	($1,592,185)
Repayment Order	2
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$2,050,000
Auto Repayment	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,036,755
Project IRR	0.0%

WMATA-INV 008091

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)
Detailed Cash Flow (Merged Phases)

	180:Sep 2022	181:Oct 2022
Period Total Before Finance	**7,390,029**	**109,434,848**
Finance Costs (All Loans)	0	0
Period Total After Finance	**3,562,526**	**109,119,282**
Cumulative Total C/f Annual	(47,630,963)	61,488,319

WMATA-INV 008092

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)
Detailed Cash Flow (Merged Phases)

	180:Sep 2022	181:Oct 2022
3 Parcel 3 Office Space	0	0
3 Parcel 3 Underground Parkin	0	0
3 Parcel 3 Retail Space	0	0
1 **Ph01 Development Manage**		
1 Dev. Management Fee	0	0
1 **Ph02 Development Manage**		
2 Dev. Management Fee	0	0
1 **Ph03 Development Manage**		
3 Dev. Management Fee	0	0

WMATA-INV 008093

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)
Detailed Cash Flow (Merged Phases)

	180:Sep 2022	181:Oct 2022
2 Permits	0	0
1 **Ph02 TI Costs**		
2 Parcel 1 Retail Space	0	0
1 **Ph02 Professional Fees**		
2 Architect + Engineer	0	0
2 Legal	0	0
2 Soft Cost Contingency	0	0
1 **Ph03 Construction Costs**		
3 Metro Site Work	0	0
3 Parcel 3 Office Space	0	0
3 Parcel 3 Underground Parkin	0	0
3 Parcel 3 Retail Space	0	0
3 Insurance	0	0
3 Real Estate Tax During Cons	0	0
3 Contingency	0	0
3 Permits	0	0
3 Permits	0	0
1 **Ph03 TI Costs**		
3 Parcel 3 Office Space	0	0
3 Parcel 3 Retail Space	0	0
1 **Ph03 Professional Fees**		
3 Architect + Engineer	0	0
3 Legal	0	0
3 Soft Cost Contingency	0	0
1 **Ph01 Marketing/Leasing**		
1 Marketing	0	0
1 Leasing Legal Fees	0	0
1 Parcel 2 Office Space	0	0
1 Parcel 2 Underground Parkin	0	0
1 Parcel 2 Retail Space	0	0
1 **Ph02 Marketing/Leasing**		
2 Marketing	0	0
2 Leasing Legal Fees	0	0
2 Parcel 1 Retail Space	0	0
1 **Ph03 Marketing/Leasing**		
3 Marketing	0	0
3 Leasing Legal Fees	0	0

WMATA-INV 008094

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)
Detailed Cash Flow (Merged Phases)

	180:Sep 2022	181:Oct 2022
1 **Ph02 Acquisition Costs**		
2 WMATA PARCEL 1 PRICE	0	0
2 DC Purchase Recordation Ta	0	0
2 WMATA Acquisition Legal	0	0
2 Third Party Reports	0	0
2 Title Insurance	0	0
1 **Ph03 Acquisition Costs**		
3 WMATA PARCEL 3 PRICE	0	0
3 Arts Credits (assume no bonu	0	0
3 DC Purchase Recordation Ta	0	0
3 WMATA Acquisition Legal	0	0
3 Third Party Reports	0	0
3 Title Insurance	0	0
1 **Ph01 Construction Costs**		
1 Metro Site Work	0	0
1 Parcel 2 Office Space	0	0
1 Parcel 2 Underground Parkin	0	0
1 Parcel 2 Retail Space	0	0
1 Insurance	0	0
1 Real Estate Tax During Cons	0	0
1 Contingency	0	0
1 Permits	0	0
1 Permits	0	0
1 **Ph01 TI Costs**		
1 Parcel 2 Office Space	0	0
1 Parcel 2 Retail Space	0	0
1 **Ph01 Professional Fees**		
1 Architect + Engineer	0	0
1 Legal	0	0
1 Soft Cost Contingency	0	0
1 **Ph02 Construction Costs**		
2 Metro Site Work	0	0
2 Parcel 1 Retail Space	0	0
2 Insurance	0	0
2 Real Estate Tax During Cons	0	0
2 Contingency	0	0
2 Permits	0	0

WMATA-INV 008095

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)
Detailed Cash Flow (Merged Phases)

	180:Sep 2022 (51,193,489)	181:Oct 2022 (47,630,963)
1 **Ph01 Revenue**		
1 Parcel 2 Office Space	3,012,221	0
1 Parcel 2 Underground Parkin	159,726	0
1 Parcel 2 Retail Space	783,585	0
1 Parcel 2 Office Space	0	46,681,782
1 Parcel 2 Underground Parkin	0	2,475,353
1 Parcel 2 Retail Space	0	12,143,583
1 **Ph01 Disposal Costs**		
1 Sales Agent Fee	0	(2,758,532)
1 **Ph02 Revenue**		
2 Parcel 1 Retail Space	280,730	0
2 Parcel 1 Retail Space	0	4,415,368
1 **Ph02 Disposal Costs**		
2 Sales Agent Fee	0	(198,692)
1 **Ph03 Revenue**		
3 Parcel 3 Office Space	2,573,476	0
3 Parcel 3 Underground Parkin	123,573	0
3 Parcel 3 Retail Space	456,718	0
3 Parcel 3 Office Space	0	39,882,337
3 Parcel 3 Underground Parkin	0	1,915,067
3 Parcel 3 Retail Space	0	7,077,974
1 **Ph03 Disposal Costs**		
3 Sales Agent Fee	0	(2,199,392)
1 **Ph01 Acquisition Costs**		
1 WMATA PARCEL 2 PRICE	0	0
1 8th Street Land Option (Year	0	0
1 8th St 1st Year Ground Lease	0	0
1 8th St Ground Lease Renewal	0	0
1 8th St Ground Lease Renewal	0	0
1 Arts Credits (assume no bonu	0	0
1 8th St Combination Fee	0	0
1 8th Street Resubordination F	0	0
1 8th Street RE Tax pre-constr	0	0
1 DC Purchase Recordation Ta	0	0
1 WMATA Acquisition Legal	0	0
1 Third Party Reports	0	0
1 Title Insurance	0	0

WMATA-INV 008096

FOIA CONFIDENTIAL TREATMENT REQUESTED

DETAILED CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

Detailed Cash Flow (Merged Phases)

	084:Sep 2014	096:Sep 2015	108:Sep 2016	120:Sep 2017	132:Sep 2018	144:Sep 2019	156:Sep 2020	168:Sep 2021
Period Total Before Finance	**5,457,753**	**5,807,766**	**5,988,029**	**2,685,300**	**6,565,945**	**6,762,924**	**6,965,811**	**7,174,786**
Finance Costs (All Loans)	(1,367,932)	0	0	0	(210,673)	(81,712)	(138)	0
Period Total After Finance	**1,239,792**	**1,569,622**	**1,797,005**	**(1,455,198)**	**2,268,954**	**2,652,988**	**2,999,745**	**3,275,655**
Cumulative Total C/f Annual	(64,302,260)	(62,732,638)	(60,935,633)	(62,390,831)	(60,121,877)	(57,468,889)	(54,469,145)	(51,193,489)

WMATA-INV 008097

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)
Detailed Cash Flow (Merged Phases)

	084:Sep 2014	096:Sep 2015	108:Sep 2016	120:Sep 2017	132:Sep 2018	144:Sep 2019	156:Sep 2020	168:Sep 2021
3 Parcel 3 Office Space	0	0	0	0	0	0	0	0
3 Parcel 3 Underground Parkin	0	0	0	0	0	0	0	0
3 Parcel 3 Retail Space	0	0	0	0	0	0	0	0
1 **Ph01 Development Manage**								
1 Dev. Management Fee	0	0	0	0	0	0	0	0
1 **Ph02 Development Manage**								
2 Dev. Management Fee	0	0	0	0	0	0	0	0
1 **Ph03 Development Manage**								
3 Dev. Management Fee	0	0	0	0	0	0	0	0

WMATA-INV 008098

DETAILED CASH FLOW

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

Detailed Cash Flow (Merged Phases)

	084:Sep 2014	096:Sep 2015	108:Sep 2016	120:Sep 2017	132:Sep 2018	144:Sep 2019	156:Sep 2020	168:Sep 2021
2 Permits	0	0	0	0	0	0	0	0
1 **Ph02 TI Costs**	0	0	0	0	0	0	0	0
2 Parcel 1 Retail Space	0	0	0	0	0	0	0	0
1 **Ph02 Professional Fees**	0	0	0	0	0	0	0	0
2 Architect + Engineer	0	0	0	0	0	0	0	0
2 Legal	0	0	0	0	0	0	0	0
2 Soft Cost Contingency	0	0	0	0	0	0	0	0
1 **Ph03 Construction Costs**	0	0	0	0	0	0	0	0
3 Metro Site Work	0	0	0	0	0	0	0	0
3 Parcel 3 Office Space	0	0	0	0	0	0	0	0
3 Parcel 3 Underground Parkin	0	0	0	0	0	0	0	0
3 Parcel 3 Retail Space	0	0	0	0	0	0	0	0
3 Insurance	0	0	0	0	0	0	0	0
3 Real Estate Tax During Cons	0	0	0	0	0	0	0	0
3 Contingency	0	0	0	0	0	0	0	0
3 Permits	0	0	0	0	0	0	0	0
3 Permits	0	0	0	0	0	0	0	0
1 **Ph03 TI Costs**	0	0	0	0	0	0	0	0
3 Parcel 3 Office Space	0	0	0	0	0	0	0	0
3 Parcel 3 Retail Space	0	0	0	0	0	0	0	0
1 **Ph03 Professional Fees**	0	0	0	0	0	0	0	0
3 Architect + Engineer	0	0	0	0	0	0	0	0
3 Legal	0	0	0	0	0	0	0	0
3 Soft Cost Contingency	0	0	0	0	0	0	0	0
1 **Ph01 Marketing/Leasing**	0	0	0	0	0	0	0	0
1 Marketing	0	0	0	0	0	0	0	0
1 Leasing Legal Fees	0	0	0	0	0	0	0	0
1 Parcel 2 Office Space	0	0	0	0	0	0	0	0
1 Parcel 2 Underground Parkin	0	0	0	0	0	0	0	0
1 Parcel 2 Retail Space	0	0	0	0	0	0	0	0
1 **Ph02 Marketing/Leasing**	0	0	0	0	0	0	0	0
2 Marketing	0	0	0	0	0	0	0	0
2 Leasing Legal Fees	0	0	0	0	0	0	0	0
2 Parcel 1 Retail Space	0	0	0	0	0	0	0	0
1 **Ph03 Marketing/Leasing**	0	0	0	0	0	0	0	0
3 Marketing	0	0	0	0	0	0	0	0
3 Leasing Legal Fees	0	0	0	0	0	0	0	0

FOIA CONFIDENTIAL TREATMENT REQUESTED
WMATA-INV 008099

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)
Detailed Cash Flow (Merged Phases)

	084:Sep 2014	096:Sep 2015	108:Sep 2016	120:Sep 2017	132:Sep 2018	144:Sep 2019	156:Sep 2020	168:Sep 2021
1 **Ph02 Acquisition Costs**								
2 WMATA PARCEL 1 PRICE	0	0	0	0	0	0	0	0
2 DC Purchase Recordation Ta	0	0	0	0	0	0	0	0
2 WMATA Acquisition Legal	0	0	0	0	0	0	0	0
2 Third Party Reports	0	0	0	0	0	0	0	0
2 Title Insurance	0	0	0	0	0	0	0	0
1 **Ph03 Acquisition Costs**								
3 WMATA PARCEL 3 PRICE	0	0	0	0	0	0	0	0
3 Arts Credits (assume no bonu	0	0	0	0	0	0	0	0
3 DC Purchase Recordation Ta	0	0	0	0	0	0	0	0
3 WMATA Acquisition Legal	0	0	0	0	0	0	0	0
3 Third Party Reports	0	0	0	0	0	0	0	0
3 Title Insurance	0	0	0	0	0	0	0	0
1 **Ph01 Construction Costs**								
1 Metro Site Work	0	0	0	0	0	0	0	0
1 Parcel 2 Office Space	0	0	0	0	0	0	0	0
1 Parcel 2 Underground Parkin	0	0	0	0	0	0	0	0
1 Parcel 2 Retail Space	0	0	0	0	0	0	0	0
1 Insurance	0	0	0	0	0	0	0	0
1 Real Estate Tax During Cons	0	0	0	0	0	0	0	0
1 Contingency	0	0	0	0	0	0	0	0
1 Permits	0	0	0	0	0	0	0	0
1 Permits	0	0	0	0	0	0	0	0
1 **Ph0I TI Costs**								
1 Parcel 2 Office Space	0	0	0	0	0	0	0	0
1 Parcel 2 Retail Space	0	0	0	0	0	0	0	0
1 **Ph01 Professional Fees**								
1 Architect + Engineer	0	0	0	0	0	0	0	0
1 Legal	0	0	0	0	0	0	0	0
1 Soft Cost Contingency	0	0	0	0	0	0	0	0
1 **Ph02 Construction Costs**								
2 Metro Site Work	0	0	0	0	0	0	0	0
2 Parcel 1 Retail Space	0	0	0	0	0	0	0	0
2 Insurance	0	0	0	0	0	0	0	0
2 Real Estate Tax During Cons	0	0	0	0	0	0	0	0
2 Contingency	0	0	0	0	0	0	0	0
2 Permits	0	0	0	0	0	0	0	0

WMATA-INV 008100

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

Detailed Cash Flow (Merged Phases)

	084:Sep 2014 (65,542,053)	096:Sep 2015 (64,302,260)	108:Sep 2016 (62,732,638)	120:Sep 2017 (60,935,633)	132:Sep 2018 (62,390,831)	144:Sep 2019 (60,121,877)	156:Sep 2020 (57,468,889)	168:Sep 2021 (54,469,145)
1 **Ph01 Revenue**								
1 Parcel 2 Office Space	2,377,875	2,449,212	2,522,688	2,598,369	2,676,320	2,756,609	2,839,307	2,924,487
1 Parcel 2 Underground Parkin	126,089	129,872	133,768	137,781	141,915	146,172	150,557	155,074
1 Parcel 2 Retail Space	618,570	637,127	656,240	675,928	696,205	717,092	738,604	760,762
1 Parcel 2 Office Space	0	0	0	0	0	0	0	0
1 Parcel 2 Underground Parkin	0	0	0	0	0	0	0	0
1 Parcel 2 Retail Space	0	0	0	0	0	0	0	0
1 **Ph01 Disposal Costs**								
1 Sales Agent Fee	0	0	0	0	0	0	0	0
1 **Ph02 Revenue**								
2 Parcel 1 Retail Space	221,610	228,259	235,107	242,160	249,425	256,907	264,614	272,553
2 Parcel 1 Retail Space	0	0	0	0	0	0	0	0
1 **Ph02 Disposal Costs**								
2 Sales Agent Fee	0	0	0	0	0	0	0	0
1 **Ph03 Revenue**								
3 Parcel 3 Office Space	2,031,525	2,092,471	2,155,245	2,219,903	2,286,500	2,355,095	2,425,748	2,498,520
3 Parcel 3 Underground Parkin	97,550	100,476	103,490	106,595	109,793	113,087	116,479	119,974
3 Parcel 3 Retail Space	360,538	371,354	382,494	393,969	405,788	417,962	430,501	443,416
3 Parcel 3 Office Space	0	0	0	0	0	0	0	0
3 Parcel 3 Underground Parkin	0	0	0	0	0	0	0	0
3 Parcel 3 Retail Space	0	0	0	0	0	0	0	0
1 **Ph03 Disposal Costs**								
3 Sales Agent Fee	0	0	0	0	0	0	0	0
1 **Ph01 Acquisition Costs**								
1 WMATA PARCEL 2 PRICE	0	0	0	0	0	0	0	0
1 8th Street Land Option (Year	0	0	0	(3,420,000)	0	0	0	0
1 8th St 1st Year Ground Lease	0	0	0	0	0	0	0	0
1 8th St Ground Lease Renewal	0	0	0	0	0	0	0	0
1 8th St Ground Lease Renewal	(200,004)	(200,004)	(200,004)	(200,004)	0	0	0	0
1 Arts Credits (assume no bonu	0	0	0	0	0	0	0	0
1 8th St Combination Fee	0	0	0	0	0	0	0	0
1 8th Street Resubordination F	(175,000)	0	0	0	0	0	0	0
1 8th Street RE Tax pre-constr	0	0	0	0	0	0	0	0
1 DC Purchase Recordation Ta	0	0	0	(51,300)	0	0	0	0
1 WMATA Acquisition Legal	0	0	0	0	0	0	0	0
1 Third Party Reports	0	0	0	0	0	0	0	0
1 Title Insurance	(1,000)	(1,000)	(1,000)	(18,100)	0	0	0	0

WMATA-INV 008101

FOIA CONFIDENTIAL TREATMENT REQUESTED

DETAILED CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)
Detailed Cash Flow (Merged Phases)

	TOTALS	000:Sep 2007	012:Sep 2008	024:Sep 2009	036:Sep 2010	048:Sep 2011	060:Sep 2012	072:Sep 2013
Period Total Before Finance		**0**	**(612,004)**	**(1,825,047)**	**(1,775,904)**	**(14,863,075)**	**(27,971,028)**	**(12,950,564)**
Finance Costs (All Loans)	(7,204,885)		(83,218)	(102,602)	(143,424)	(240,124)	(1,397,635)	(3,577,428)
Period Total After Finance	**61,488,319**	**0**	**(695,222)**	**(1,927,649)**	**(1,919,327)**	**(15,103,199)**	**(29,368,663)**	**(16,527,992)**
Cumulative Total C/f Annual	61,488,319	0	(695,222)	(2,622,871)	(4,542,198)	(19,645,397)	(49,014,061)	(65,542,053)

WMATA-INV 008102

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

Detailed Cash Flow (Merged Phases)

		TOTALS	000:Sep 2007	012:Sep 2008	024:Sep 2009	036:Sep 2010	048:Sep 2011	060:Sep 2012	072:Sep 2013
3 Parcel 3 Office Space	YN	**(1,089,164)**	0	0	0	0	0	0	(1,089,164)
3 Parcel 3 Underground Parkin	YN	**(54,684)**	0	0	0	0	0	0	(54,684)
3 Parcel 3 Retail Space	YN	**(202,111)**	0	0	0	0	0	0	(202,111)
1 Ph01 Development Management Fee									
1 Dev. Management Fee	YN	**(904,718)**	0	0	(160,839)	(241,258)	(241,258)	(241,258)	(20,105)
1 Ph02 Development Management Fee									
2 Dev. Management Fee	YN	**(42,664)**	0	0	(7,585)	(11,377)	(11,377)	(11,377)	(948)
1 Ph03 Development Management Fee									
3 Dev. Management Fee	YN	**(756,038)**	0	0	(134,407)	(201,610)	(201,610)	(201,610)	(16,801)

WMATA-INV 008103

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

Detailed Cash Flow (Merged Phases)

		TOTALS	000:Sep 2007	012:Sep 2008	024:Sep 2009	036:Sep 2010	048:Sep 2011	060:Sep 2012	072:Sep 2013
2 Permits	YN	(14,969)	0	0	0	0	(14,969)	0	0
1 Ph02 TI Costs									
2 Parcel 1 Retail Space	YY	(284,739)	0	0	0	0	0	(284,739)	0
1 Ph02 Professional Fees									
2 Architect + Engineer	YN	(93,604)	0	0	(46,802)	(46,802)	0	0	0
2 Legal	YN	(11,227)	0	0	(3,208)	(4,811)	(3,208)	0	0
2 Soft Cost Contingency	YN	(32,354)	0	(1,458)	(11,118)	(10,401)	(8,068)	(1,266)	(44)
1 Ph03 Construction Costs									
3 Metro Site Work	YN	(1,839,000)	0	0	0	0	(1,839,000)	0	0
3 Parcel 3 Office Space	YY	(9,775,813)	0	0	0	0	(1,280,718)	(8,210,630)	(284,465)
3 Parcel 3 Underground Parkin	YY	(1,354,096)	0	0	0	0	(177,399)	(1,137,295)	(39,403)
3 Parcel 3 Retail Space	YY	(1,253,506)	0	0	0	0	(164,220)	(1,052,810)	(36,476)
3 Insurance	YN	(71,112)	0	0	0	0	(17,307)	(52,004)	(1,802)
3 Real Estate Tax During Cons	YN	(97,000)	0	0	0	0	(22,824)	(68,471)	(5,706)
3 Contingency	YN	(1,422,242)	0	0	0	0	(189,302)	(1,192,317)	(40,622)
3 Permits	YN	(50,000)	0	0	0	0	(50,000)	0	0
3 Permits	YN	(213,336)	0	0	0	0	(213,336)	0	0
1 Ph03 TI Costs									
3 Parcel 3 Office Space	YY	(4,236,294)	0	0	0	0	0	0	(4,236,294)
3 Parcel 3 Retail Space	YY	(571,790)	0	0	0	0	0	0	(571,790)
1 Ph03 Professional Fees									
3 Architect + Engineer	YN	(685,000)	0	0	(342,500)	(342,500)	0	0	0
3 Legal	YN	(213,336)	0	0	(60,953)	(91,430)	(60,953)	0	0
3 Soft Cost Contingency	YN	(138,278)	0	(7,500)	(47,845)	(43,393)	(34,160)	(5,200)	(180)
1 Ph01 Marketing/Leasing									
1 Marketing	YN	(50,000)	0	0	0	0	(11,765)	(35,294)	(2,941)
1 Leasing Legal Fees	YN	(58,610)	0	0	0	0	0	0	(58,610)
1 Parcel 2 Office Space	YN	(1,274,853)	0	0	0	0	0	0	(1,274,853)
1 Parcel 2 Underground Parkin	YN	(70,683)	0	0	0	0	0	0	(70,683)
1 Parcel 2 Retail Space	YN	(346,758)	0	0	0	0	0	0	(346,758)
1 Ph02 Marketing/Leasing									
2 Marketing	YN	(50,000)	0	0	0	0	(18,182)	(31,818)	0
2 Leasing Legal Fees	YN	(58,610)	0	0	0	0	0	0	(58,610)
2 Parcel 1 Retail Space	YN	(122,408)	0	0	0	0	0	(122,408)	0
1 Ph03 Marketing/Leasing									
3 Marketing	YN	(50,000)	0	0	0	0	(11,765)	(35,294)	(2,941)
3 Leasing Legal Fees	YN	(58,610)	0	0	0	0	0	0	(58,610)

WMATA-INV 008104

FOIA CONFIDENTIAL TREATMENT REQUESTED

DETAILED CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

Detailed Cash Flow (Merged Phases)

		TOTALS	000:Sep 2007	012:Sep 2008	024:Sep 2009	036:Sep 2010	048:Sep 2011	060:Sep 2012	072:Sep 2013
1 **Ph02 Acquisition Costs**									
2 WMATA PARCEL 1 PRICE	YN	**(590,000)**	0	0	0	0	(590,000)	0	0
2 DC Purchase Recordation Ta	YN	**(8,850)**	0	0	0	0	(8,850)	0	0
2 WMATA Acquisition Legal	YN	**(100,000)**	0	(75,000)	(25,000)	0	0	0	0
2 Third Party Reports	YN	**(50,000)**	0	0	(50,000)	0	0	0	0
2 Title Insurance	YN	**(2,950)**	0	0	0	0	(2,950)	0	0
1 **Ph03 Acquisition Costs**									
3 WMATA PARCEL 3 PRICE	YN	**(2,700,000)**	0	0	0	0	(2,700,000)	0	0
3 Arts Credits (assume no bonu	YN	**(239,325)**	0	0	0	0	(239,325)	0	0
3 DC Purchase Recordation Ta	YN	**(44,090)**	0	0	0	0	(44,090)	0	0
3 WMATA Acquisition Legal	YN	**(100,000)**	0	(75,000)	(25,000)	0	0	0	0
3 Third Party Reports	YN	**(50,000)**	0	0	(50,000)	0	0	0	0
3 Title Insurance	YN	**(14,697)**	0	0	0	0	(14,697)	0	0
1 **Ph01 Construction Costs**									
1 Metro Site Work	YN	**(1,500,000)**	0	0	0	0	(1,500,000)	0	0
1 Parcel 2 Office Space	YY	**(11,595,394)**	0	0	0	0	(1,519,099)	(9,738,882)	(337,413)
1 Parcel 2 Underground Parkin	YY	**(1,752,360)**	0	0	0	0	(229,575)	(1,471,794)	(50,992)
1 Parcel 2 Retail Space	YY	**(2,150,624)**	0	0	0	0	(281,751)	(1,806,292)	(62,581)
1 Insurance	YN	**(84,992)**	0	0	0	0	(17,652)	(65,085)	(2,255)
1 Real Estate Tax During Cons	YN	**(150,000)**	0	0	0	0	(35,294)	(105,882)	(8,824)
1 Contingency	YN	**(1,699,838)**	0	0	0	0	(226,250)	(1,425,036)	(48,551)
1 Permits	YN	**(50,000)**	0	0	0	0	(50,000)	0	0
1 Permits	YN	**(254,976)**	0	0	0	0	(254,976)	0	0
1 **Ph01 TI Costs**									
1 Parcel 2 Office Space	YY	**(4,958,530)**	0	0	0	0	0	0	(4,958,530)
1 Parcel 2 Retail Space	YY	**(981,013)**	0	0	0	0	0	0	(981,013)
1 **Ph01 Professional Fees**									
1 Architect + Engineer	YN	**(841,000)**	0	0	(420,500)	(420,500)	0	0	0
1 Legal	YN	**(254,976)**	0	0	(72,850)	(109,275)	(72,850)	0	0
1 Soft Cost Contingency	YN	**(163,594)**	0	(6,827)	(53,534)	(50,921)	(44,659)	(7,392)	(260)
1 **Ph02 Construction Costs**									
2 Metro Site Work	YN	**(50,000)**	0	0	0	0	(50,000)	0	0
2 Parcel 1 Retail Space	YY	**(698,440)**	0	0	0	0	(193,363)	(505,078)	0
2 Insurance	YN	**(3,742)**	0	0	0	0	(1,217)	(2,525)	0
2 Real Estate Tax During Cons	YN	**(12,500)**	0	0	0	0	(4,545)	(7,955)	0
2 Contingency	YN	**(74,844)**	0	0	0	0	(20,889)	(53,955)	0
2 Permits	YN	**(50,000)**	0	0	0	0	(50,000)	0	0

WMATA-INV 008105

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

Detailed Cash Flow (Merged Phases)

Period ending AnnualB/F	SET Int Inf	TOTALS	000:Sep 2007	012:Sep 2008 0	024:Sep 2009 (695,222)	036:Sep 2010 (2,622,871)	048:Sep 2011 (4,542,198)	060:Sep 2012 (19,645,397)	072:Sep 2013 (49,014,061)
1 **Ph01 Revenue**									
1 Parcel 2 Office Space	YN	**24,738,475**	0	0	0	0	0	0	581,388
1 Parcel 2 Underground Parkin	YN	**1,373,443**	0	0	0	0	0	0	92,486
1 Parcel 2 Retail Space	YN	**6,737,832**	0	0	0	0	0	0	453,718
1 Parcel 2 Office Space	YN	**46,681,782**	0	0	0	0	0	0	0
1 Parcel 2 Underground Parkin	YN	**2,475,353**	0	0	0	0	0	0	0
1 Parcel 2 Retail Space	YN	**12,143,583**	0	0	0	0	0	0	0
1 **Ph01 Disposal Costs**									
1 Sales Agent Fee	YN	**(2,758,532)**	0	0	0	0	0	0	0
1 **Ph02 Revenue**									
2 Parcel 1 Retail Space	YN	**2,519,909**	0	0	0	0	0	53,389	215,156
2 Parcel 1 Retail Space	YN	**4,415,368**	0	0	0	0	0	0	0
1 **Ph02 Disposal Costs**									
2 Sales Agent Fee	YN	**(198,692)**	0	0	0	0	0	0	0
1 **Ph03 Revenue**									
3 Parcel 3 Office Space	YN	**21,135,187**	0	0	0	0	0	0	496,705
3 Parcel 3 Underground Parkin	YN	**1,062,569**	0	0	0	0	0	0	71,552
3 Parcel 3 Retail Space	YN	**3,927,193**	0	0	0	0	0	0	264,453
3 Parcel 3 Office Space	YN	**39,882,337**	0	0	0	0	0	0	0
3 Parcel 3 Underground Parkin	YN	**1,915,067**	0	0	0	0	0	0	0
3 Parcel 3 Retail Space	YN	**7,077,974**	0	0	0	0	0	0	0
1 **Ph03 Disposal Costs**									
3 Sales Agent Fee	YN	**(2,199,392)**	0	0	0	0	0	0	0
1 **Ph01 Acquisition Costs**									
1 WMATA PARCEL 2 PRICE	YN	**(1,600,000)**	0	0	0	0	(1,600,000)	0	0
1 8th Street Land Option (Year	YN	**(3,420,000)**	0	0	0	0	0	0	0
1 8th St 1st Year Ground Lease	YN	**(325,000)**	0	(318,750)	(6,250)	0	0	0	0
1 8th St Ground Lease Renewal	YN	**(600,000)**	0	0	(150,000)	(150,000)	(150,000)	(150,000)	0
1 8th St Ground Lease Renewal	YN	**(1,000,020)**	0	0	0	0	0	0	(200,004)
1 Arts Credits (assume no bonu	YN	**(300,000)**	0	0	0	0	(300,000)	0	0
1 8th St Combination Fee	YN	**(30,000)**	0	0	(30,000)	0	0	0	0
1 8th Street Resubordination F	YN	**(175,000)**	0	0	0	0	0	0	0
1 8th Street RE Tax pre-constr	YN	**(203,500)**	0	(50,875)	(50,875)	(50,875)	(50,875)	0	0
1 DC Purchase Recordation Ta	YN	**(79,800)**	0	0	0	0	(28,500)	0	0
1 WMATA Acquisition Legal	YN	**(100,000)**	0	(75,000)	(25,000)	0	0	0	0
1 Third Party Reports	YN	**(50,000)**	0	0	(50,000)	0	0	0	0
1 Title Insurance	YN	**(36,225)**	0	(1,594)	(781)	(750)	(10,250)	(750)	(1,000)

WMATA-INV 008106

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

Escalation on Capitalized Rent		Unescalated	Escalation	Total
Parcel 2 Office Space	Office Rent at 3.00%	30,634,936	16,046,846	46,681,782
Parcel 2 Underground Parking	Office Rent at 3.00%	1,624,451	850,902	2,475,353
Parcel 2 Retail Space	Office Rent at 3.00%	7,969,231	4,174,353	12,143,583
Parcel 1 Retail Space	Office Rent at 3.00%	2,855,077	1,560,291	4,415,368
Parcel 3 Office Space	Office Rent at 3.00%	26,172,798	13,709,539	39,882,337
Parcel 3 Underground Parking	Office Rent at 3.00%	1,256,763	658,303	1,915,067
Parcel 3 Retail Space	Office Rent at 3.00%	4,644,923	2,433,051	7,077,974

Inflation on Construction Costs		Uninflated	Inflation	Total
Parcel 2 Office Space	Construction CPI at 3.00%	10,190,205	1,405,189	11,595,394
Parcel 2 Underground Parking	Construction CPI at 3.00%	1,540,000	212,360	1,752,360
Parcel 2 Retail Space	Construction CPI at 3.00%	1,890,000	260,624	2,150,624
Parcel 1 Retail Space	Construction CPI at 3.00%	618,600	79,840	698,440
Parcel 3 Office Space	Construction CPI at 3.00%	8,591,130	1,184,683	9,775,813
Parcel 3 Underground Parking	Construction CPI at 3.00%	1,190,000	164,096	1,354,096
Parcel 3 Retail Space	Construction CPI at 3.00%	1,101,600	151,906	1,253,506

WMATA-INV 008107

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

Dev. Management Fee	5.00%	904,718	
Dev. Management Fee	5.00%	42,664	
Dev. Management Fee	5.00%	756,038	
			1,703,419
FINANCE			
Interest paid to Debt Sources:			
Development Loan (8.00%)	407,815		
Construction Loan (8.00%)	6,647,070		
Total Interest paid to debt financing		7,054,885	
Mortgage Interest (7.00%)		35,542,366	
Total Interest Paid		42,597,251	
Debt Financing Fees			
Development Loan - Legal (Single)	50,000		
Construction Loan - Legal Fees (Single)	100,000		
Total Debt Financing Fees		150,000	
Total Finance Cost			42,747,251
TOTAL COSTS			**114,597,752**
PROFIT			
Developer Equity			
Residual Percentage (50.00%)	24,760,046		
Preferred Return (10.00%)	3,760,371		
		28,520,417	
Investor Equity			
Residual Percentage (50.00%)	24,760,046		
Preferred Return (10.00%)	8,207,857		
		32,967,903	
			61,488,319
Performance Measures			
Profit on Cost%	53.66%		
Profit on GDV%	53.66%		
Development Yield% (on Rent)	6.50%		
Pre-Finance IRR%	11.84%		
Project IRR% (with Interest)	13.61%		
Equity IRR% (with Interest)	21.25%		

‡ Inflation/Escalation applied

WMATA-INV 008108

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

Permits	2.00%	14,969	
Permits		50,000	
Permits	1.50%	213,336	
			7,219,204
Other Construction			
Insurance	0.50%	84,992	
Insurance	0.50%	3,742	
Insurance	0.50%	71,112	
			159,846
Municipal Costs			
Real Estate Tax During Construction		150,000	
Real Estate Tax During Construction		12,500	
Real Estate Tax During Construction		97,000	
			259,500
TI Costs			
TI Cost Area Rate - Parcel 2 Office Space	60.00 pf²	4,958,530	
TI Cost Area Rate - Parcel 2 Retail Space	60.00 pf²	981,013	
TI Cost Area Rate - Parcel 1 Retail Space	60.00 pf²	284,739	
TI Cost Area Rate - Parcel 3 Office Space	60.00 pf²	4,236,294	
TI Cost Area Rate - Parcel 3 Retail Space	60.00 pf²	571,790	
			11,032,366
PROFESSIONAL FEES			
Architect + Engineer		1,619,604	
Legal	1.50%	479,538	
Soft Cost Contingency	10.00%	163,594	
Soft Cost Contingency	10.00%	32,354	
Soft Cost Contingency	10.00%	138,278	
			2,433,369
MARKETING & LEASING			
Marketing		150,000	
Leasing Legal Fees	2.00%	175,831	
Leasing Commissions			
Parcel 2 Office Space		1,274,853	
Parcel 2 Underground Parking		70,683	
Parcel 2 Retail Space		346,758	
Parcel 1 Retail Space		122,408	
Parcel 3 Office Space		1,089,164	
Parcel 3 Underground Parking		54,684	
Parcel 3 Retail Space		202,111	
			3,486,491
DISPOSAL FEES			
Sales Agent Fee	4.50%	5,156,616	
			5,156,616
Additional Costs			

WMATA-INV 008109

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

DEVELOPMENT COSTS

ACQUISITION COSTS

WMATA PARCEL 2 PRICE		1,600,000		
8th Street Land Option (Year 10)		3,420,000		
8th St 1st Year Ground Lease		325,000		
8th St Ground Lease Renewal 1-4		600,000		
8th St Ground Lease Renewal 5-9		1,000,020		
Arts Credits (assume no bonus)		300,000		
8th St Combination Fee		30,000		
8th Street Resubordination Fee		175,000		
8th Street RE Tax pre-construction		203,500		
WMATA PARCEL 1 PRICE		590,000		
WMATA PARCEL 3 PRICE		2,700,000		
Arts Credits (assume no bonus)		239,325		
Total Acquisition (0.92 Acres $12,155,266.30 pAcre)			11,182,845	
DC Purchase Recordation Tax		1.50%	123,890	
DC Purchase Recordation Tax		1.50%	8,850	
WMATA Acquisition Legal Fees			300,000	
Third Party Reports			150,000	
Title Insurance		0.50%	50,922	
Title Insurance		0.50%	2,950	
				11,819,457

CONSTRUCTION COSTS

Construction	ft²	Rate ft²	Cost	
‡ Parcel 2 Office Space	75,483	$135.00	11,595,394	
‡ Parcel 2 Underground Parking	19,885	$77.45	1,752,360	
‡ Parcel 2 Retail Space	14,000	$135.00	2,150,624	
‡ Parcel 1 Retail Space	4,124	$150.00	698,440	
‡ Parcel 3 Office Space	63,638	$135.00	9,775,813	
‡ Parcel 3 Underground Parking	15,955	$74.58	1,354,096	
‡ Parcel 3 Retail Space	8,160	$135.00	1,253,506	
Totals	201,245		28,580,233	**28,580,233**
Contingency		10.00%	1,699,838	
Contingency		10.00%	74,844	
Contingency		10.00%	1,422,242	
Metro Site Work			1,500,000	
Metro Site Work			50,000	
Metro Site Work			1,839,000	
Permits			50,000	
Permits		1.50%	254,976	
Permits			50,000	

WMATA-INV 008110

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, All Office / Retail (no Hotel)

Project Pro Forma for Merged Phases 1 2 3

REVENUE Rental Area Summary	ft²	Rate ft²	Rent at Lease Start	Rent At Sale
‡ Parcel 2 Office Space	70,763	$42.00	3,470,971	4,528,830
‡ Parcel 2 Underground Parking	19,885	$5.31	123,315	160,898
‡ Parcel 2 Retail Space	14,000	$37.00	604,958	789,333
‡ Parcel 1 Retail Space	4,124	$45.00	213,554	286,999
‡ Parcel 3 Office Space	60,456	$42.00	2,965,406	3,869,182
‡ Parcel 3 Underground Parking	15,955	$5.12	95,403	124,479
‡ Parcel 3 Retail Space	8,160	$37.00	352,604	460,068
Totals	193,343		7,826,211	10,219,789

Investment Valuation				
Parcel 2 Office Space				
- 33.000% non recov. cost				
Capitalized Rent	3,034,316	Cap Rate	6.5000%	46,681,782
Parcel 2 Underground Parking				
Capitalized Rent	160,898	Cap Rate	6.5000%	2,475,353
Parcel 2 Retail Space				
Capitalized Rent	789,333	Cap Rate	6.5000%	12,143,583
Parcel 1 Retail Space				
Capitalized Rent	286,999	Cap Rate	6.5000%	4,415,368
Parcel 3 Office Space				
- 33.000% non recov. cost				
Capitalized Rent	2,592,352	Cap Rate	6.5000%	39,882,337
Parcel 3 Underground Parking				
Capitalized Rent	124,479	Cap Rate	6.5000%	1,915,067
Parcel 3 Retail Space				
Capitalized Rent	460,068	Cap Rate	6.5000%	7,077,974
				114,591,464

Income from Tenants		
Parcel 2 Office Space	24,738,475	
Parcel 2 Underground Parking	1,373,443	
Parcel 2 Retail Space	6,737,832	
Parcel 1 Retail Space	2,519,909	
Parcel 3 Office Space	21,135,187	
Parcel 3 Underground Parking	1,062,569	
Parcel 3 Retail Space	3,927,193	
		61,494,608
TOTAL PROJECT REVENUE		**176,086,071**

WMATA-INV 008111

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds Type	Combined Sources Scenario
Holding	
Auto Project Cost Funding	0
Tested Condition Project	0
Total Contribution	0
Non-Mortgage Loan Proceeds	0
Auto Repayment	0
Tested Loan Repayment	0
Total Repayment	0
Profit Participation	47,780,264
Net Cash Flow (IRR)	47,780,264
Net Cash Flow (Equity IRR)	47,780,264
Cumulative Net Cash Flow	[illegible]

ASSUMPTIONS

ANALYSIS

Project IRR	16.0%

WMATA-INV 008112

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Combined Sources
Type: Scenario

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Auto Project Contribution	0	0	(3,505,150)	0	0	0	0	0
Timed Contribution Project	0	0	0	0	0	0	0	0
Total Contribution	**0**	**0**	**(3,505,150)**	**0**	**0**	**0**	**0**	**0**
Non-Mortgage Interest and Fees	0	0	0	(193,138)	(39,188)	0	0	0
Auto Repayment	0	0	159,632	2,080,030	1,497,813	0	0	0
Timed Repayment Project	0	0	0	0	0	0	0	0
Total Repayment	**0**	**0**	**159,632**	**2,080,030**	**1,497,813**	**0**	**0**	**0**
Profit Participation	**1,216,471**	**1,447,466**	**1,513,259**	**0**	**811,864**	**2,545,897**	**2,789,408**	**3,039,726**
Net Cash Flow (IRR)	**1,216,471**	**1,447,466**	**(1,832,259)**	**1,886,893**	**2,270,490**	**2,545,897**	**2,789,408**	**3,039,726**
Net Cash Flow (Equity IRR)	1,216,471	1,447,466	1,513,259	0	811,864	2,545,897	2,789,408	3,039,726
Cumulative Net Cash Flow	**6,778,152**	**8,225,618**	**6,393,360**	**8,280,252**	**10,550,742**	**13,096,639**	**15,886,047**	**18,925,773**

ASSUMPTIONS

ANALYSIS

Project IRR	16.0%

WMATA-INV 008113

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Combined Sources
Type: Scenario

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Auto Project Contribution	(68,444,770)	(615,201)	(2,104,546)	(2,099,311)	(17,862,517)	(32,320,875)	(9,886,920)	(50,251)
Timed Contribution: Project	0	0	0	0	0	0	0	0
Total Contribution	**(68,444,770)**	**(615,201)**	**(2,104,546)**	**(2,099,311)**	**(17,862,517)**	**(32,320,875)**	**(9,886,920)**	**(50,251)**
Non-Mortgage Interest and Fees	(7,641,133)	(83,337)	(103,965)	(143,424)	(248,651)	(1,688,778)	(3,784,468)	(1,356,184)
Auto Repayment	74,035,903	0	0	0	0	53,389	3,545,030	66,700,009
Timed Repayment: Project	2,050,000	0	0	0	2,050,000	0	0	0
Total Repayment	**76,085,903**	**0**	**0**	**0**	**2,050,000**	**53,389**	**3,545,030**	**66,700,009**
Profit Participation	**66,706,037**	**0**	**0**	**0**	**0**	**0**	**0**	**5,561,681**
Net Cash Flow (IRR)	**66,706,037**	**(698,538)**	**(2,208,511)**	**(2,242,734)**	**(16,061,168)**	**(33,956,264)**	**(10,126,359)**	**70,855,254**
Net Cash Flow (Equity IRR)	66,706,037	0	(1,129,044)	(2,099,311)	(10,867,070)	0	0	19,657,106
Cumulative Net Cash Flow		**(698,538)**	**(2,907,049)**	**(5,149,783)**	**(21,210,951)**	**(55,167,215)**	**(65,293,574)**	**5,561,681**

ASSUMPTIONS

ANALYSIS

Project IRR	16.0%

WMATA-INV 008114

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds	Balancing Account
Type	Balancing Account

Heading	181 Oct 2022
Timed Contribution	0
Timed Contribution Profit	0
Total Contribution	**0**
Interest	0
Timed Repayment Profit	0
Total Repayment	**0**
Closing Balance	**0**
Profit Participation	**0**
Net Cash Flow (IRR)	**0**
Cumulative Net Cash Flow	**0**

ASSUMPTIONS	
Contribution Order	5
Contribution	($2,050,000)
Repayment Order	1

ANALYSIS	
Contribution	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,050,000
Project IRR	0.0%

WMATA-INV 008115

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Balancing Account
Type: Balancing Account

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Timed Contribution	0	0	0	0	0	0	0	0
Timed Contribution Profit	0	0	0	0	0	0	0	0
Total Contribution	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment Profit	0	0	0	0	0	0	0	0
Total Repayment	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Closing Balance	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Cumulative Net Cash Flow	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

ASSUMPTIONS	
Contribution Order	5
Contribution	($2,050,000)
Repayment Order	1

ANALYSIS	
Contribution	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,050,000
Project IRR	0.0%

WMATA-INV 008116

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel

(Merged Phases)

Source of Funds: Balancing Account
Type: Balancing Account

Heading	Initial	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Timed Contribution	(2,050,000)	0	0	0	(2,050,000)	0	0	0
Timed Contribution Profit	0	0	0	0	0	0	0	0
Total Contribution	**(2,050,000)**	**0**	**0**	**0**	**(2,050,000)**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment Profit	0	0	0	0	0	0	0	0
Total Repayment	**2,050,000**	**0**	**0**	**0**	**0**	**53,389**	**1,996,611**	**0**
Closing Balance	**0**	**0**	**0**	**0**	**(2,050,000)**	**(1,996,611)**	**0**	**0**
Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**0**	**0**	**0**	**(2,050,000)**	**53,389**	**1,996,611**	**0**
Cumulative Net Cash Flow					**(2,050,000)**	**(1,996,611)**	**0**	**0**

ASSUMPTIONS	
Contribution Order	5
Contribution	($2,050,000)
Repayment Order	1

ANALYSIS	
Contribution	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,050,000
Project IRR	0.0%

WMATA-INV 008117

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds	Mortgage
Type	Mortgage

Heading	
Opening Balance	61,586,595
Interest	359,255
Principal Repaid	61,586,595
Total PI Payment	61,945,850
Closing Balance	[illegible]
Net Cash Flow (IRR)	61,945,850

ASSUMPTIONS	
Month to Place Mortgage	76
Monthly Stabilized Income	$557,201
Annual Stabilized Income	$6,686,415
Manual Stabilized Income	$0
Mortgage Amount as % of Value	73.00%
Cap Rate to Determine Value	7.00%
Project Cap Rate Value	$95,520,209
Maximum Funding Amount	$69,729,752
Mortgage Issued	$69,729,752

ANALYSIS	
Amortization Period (Months)	360
Annual Interest Rate	7.00%
Compounding Frequency	Monthly
Monthly Interest Factor	0.005833
Monthly Debt Service P+I	$463,914
Annual Debt Service P+I	$5,566,965
Debt Service Ratio	1.20
Project IRR	7.2%

WMATA-INV 008118

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds	Mortgage
Type	Mortgage

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Opening Balance	69,263,052	68,520,992	67,725,289	66,872,065	65,957,161	64,976,118	63,924,156	62,796,147
Interest	4,824,906	4,771,262	4,713,741	4,652,061	4,585,923	4,515,003	4,438,957	4,357,413
Principal Repaid	742,059	795,703	853,224	914,904	981,043	1,051,962	1,128,009	1,209,553
Total P+I Payment	5,566,965	5,566,965	5,566,965	5,566,965	5,566,965	5,566,965	5,566,965	5,566,965
Closing Balance	68,520,992	67,725,289	66,872,065	65,957,161	64,976,118	63,924,156	62,796,147	61,586,595
Net Cash Flow (IRR)	5,566,965	5,566,965	5,566,965	5,566,965	5,566,965	5,566,965	5,566,965	5,566,965

ASSUMPTIONS	
Month to Place Mortgage	76
Monthly Stabilized Income	$557,201
Annual Stabilized Income	$6,686,415
Manual Stabilized Income	$0
Mortgage Amount as % of Value	73.00%
Cap Rate to Determine Value	7.00%
Project Cap Rate Value	$95,520,209
Maximum Funding Amount	$69,729,752
Mortgage Issued	$69,729,752

ANALYSIS	
Amortization Period (Months)	360
Annual Interest Rate	7.00%
Compounding Frequency	Monthly
Monthly Interest Factor	0.005833
Monthly Debt Service P+I	$463,914
Annual Debt Service P+I	$5,566,965
Debt Service Ratio	1.20
Project IRR	7.2%

WMATA-INV 008119

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds	Mortgage
Type	Mortgage

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Opening Balance	0	0	0	0	0	0	0	69,729,752
Interest	40,463,131	0	0	0	0	0	0	3,244,610
Principal Repaid	69,729,752	0	0	0	0	0	0	466,700
Total P+I Payment	110,192,883	0	0	0	0	0	0	3,711,310
Closing Balance	[illegible]	0	0	0	0	0	0	69,263,052
Net Cash Flow (IRR)	**40,463,131**	**0**	**0**	**0**	**0**	**0**	**0**	**(66,018,442)**

ASSUMPTIONS	
Month to Place Mortgage	76
Monthly Stabilized Income	$557,201
Annual Stabilized Income	$6,686,415
Manual Stabilized Income	$0
Mortgage Amount as % of Value	73.00%
Cap Rate to Determine Value	7.00%
Project Cap Rate Value	$95,520,209
Maximum Funding Amount	$69,729,752
Mortgage Issued	$69,729,752

ANALYSIS	
Amortization Period (Months)	360
Annual Interest Rate	7.00%
Compounding Frequency	Monthly
Monthly Interest Factor	0.005833
Monthly Debt Service P+I	$463,914
Annual Debt Service P+I	$5,566,965
Debt Service Ratio	1.20
Project IRR	7.2%

WMATA-INV 008120

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds	Construction Loan
Type	Debt

Heading	[illegible]
Timed Contribution	0
Auto Project Contribution	0
Total Contribution	0
Total Draws	0
Interest and Fees	0
Timed Repayment	0
Auto Repayment	0
Total Repayment	0
Closing Balance	0
Closing Partnership	0
Total Partnership	0
Net Cash Flow (IRR)	0
Cumulative Net Cash Flow	0

ASSUMPTIONS	
Contribution Order	4
Contribution %	80.0%
Capped at	$0
Contribution	($50,708,643)
Repayment Order	3
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$0
Auto Repayment	$57,890,478
Total Repayment	$57,890,478
Peak Financing Amount	$51,668,046
Project IRR	0.0%

WMATA-INV 008121

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Construction Loan
Type: Debt

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Timed Contribution: Project	0	0	0	0	0	0	0	0
Auto: Project Contribution	0	0	(3,505,150)	0	0	0	0	0
Total Contribution	**0**	**0**	**(3,505,150)**	**0**	**0**	**0**	**0**	**0**
Total Loan Fees	0	0	0	0	0	0	0	0
Interest and Fees	0	0	0	(193,138)	(39,188)	0	0	0
Timed Repayment: Project	0	0	0	0	0	0	0	0
Auto: Repayment	0	0	159,632	2,080,030	1,497,813	0	0	0
Total Repayment	**0**	**0**	**159,632**	**2,080,030**	**1,497,813**	**0**	**0**	**0**
Closing Balance	**0**	**0**	**(3,345,518)**	**(1,458,625)**	**0**	**0**	**0**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**0**	**(3,345,518)**	**1,886,893**	**1,458,625**	**0**	**0**	**0**
Cumulative Net Cash Flow	**0**	**0**	**(3,345,518)**	**(1,458,625)**	**0**	**0**	**0**	**0**

ASSUMPTIONS	
Contribution Order	4
Contribution %	80.0%
Capped at	$0
Contribution	($50,708,643)
Repayment Order	3
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$0
Auto Repayment	$57,890,478
Total Repayment	$57,890,478
Peak Financing Amount	$51,668,046
Project IRR	0.0%

WMATA-INV 008122

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW — LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Construction Loan
Type: Debt

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Timed Contribution: Project	0	0	0	0	0	0	0	0
Auto: Project Contributions	(50,708,643)	0	0	0	(4,945,447)	(32,320,875)	(9,886,920)	(50,251)
Total Contribution	**(50,708,643)**	**0**	**0**	**0**	**(4,945,447)**	**(32,320,875)**	**(9,886,920)**	**(50,251)**
Total Loan Fees	(100,000)	0	0	0	(100,000)	0	0	0
Interest and Fees	(7,181,835)	0	0	0	(120,079)	(1,688,778)	(3,784,468)	(1,356,184)
Timed Repayment: Project	0	0	0	0	0	0	0	0
Auto: Repayment	57,890,478	0	0	0	0	0	1,548,418	52,604,584
Total Repayment	**57,890,478**	**0**	**0**	**0**	**0**	**0**	**1,548,418**	**52,604,584**
Closing Balance	**0**	**0**	**0**	**0**	**(5,065,526)**	**(39,075,178)**	**(51,198,149)**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**0**	**0**	**0**	**(5,065,526)**	**(34,009,652)**	**(12,122,970)**	**51,198,149**
Cumulative Net Cash Flow		**0**	**0**	**0**	**(5,065,526)**	**(39,075,178)**	**(51,198,149)**	**0**

ASSUMPTIONS	
Contribution Order	4
Contribution %	80.0%
Capped at	$0
Contribution	($50,708,643)
Repayment Order	3
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$0
Auto Repayment	$57,890,478
Total Repayment	$57,890,478
Peak Financing Amount	$51,668,046
Project IRR	0.0%

WMATA-INV 008123

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds	Investor Equity
Type	Equity
Heading	[illegible]
Timed Contribution	0
Auto Contribution	0
Total Contribution	0
Cash	0
Timed Repayment	0
Auto Repayment	0
Total Repayment	0
Closing Balance	0
Timed Participation	0
Total Profit Participation	23,890,132
Net Cash Flow (IRR)	23,890,132
Cumulative Net Cash Flow	34,981,595

ASSUMPTIONS	
Contribution Order	3
Contribution %	18.0%
Capped at	$0
Contribution	$0
Repayment Order	4

ANALYSIS	
Contribution	$12,685,883
Timed Repayment	$0
Auto Repayment	$12,685,883
Total Repayment	$12,685,883
Peak Financing Amount	$12,685,883
Profit	$34,981,595
Project IRR	23.9%
Return on Equity	275.8%

WMATA-INV 008124

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Investor Equity
Type: Equity

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Timed Contribution: Project	0	0	0	0	0	0	0	0
Auto: Project Contribution	0	0	0	0	0	0	0	0
Total Contribution	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment: Project	0	0	0	0	0	0	0	0
Auto: Repayment	0	0	0	0	0	0	0	0
Total Repayment	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Closing Balance	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**608,236**	**723,733**	**756,630**	**0**	**405,932**	**1,272,948**	**1,394,704**	**1,519,863**
Net Cash Flow (IRR)	**608,236**	**723,733**	**756,630**	**0**	**405,932**	**1,272,948**	**1,394,704**	**1,519,863**
Cumulative Net Cash Flow	**5,017,652**	**5,741,385**	**6,498,015**	**6,498,015**	**6,903,947**	**8,176,896**	**9,571,600**	**11,091,463**

ASSUMPTIONS	
Contribution Order	3
Contribution %	18.0%
Capped at	$0
Contribution	$0
Repayment Order	4

ANALYSIS	
Contribution	$12,685,883
Timed Repayment	$0
Auto Repayment	$12,685,883
Total Repayment	$12,685,883
Peak Financing Amount	$12,685,883
Profit	$34,981,595
Project IRR	23.9%
Return on Equity	275.8%

CASH ON CASH	Jan 2022
Annual Return	* 237.0%

WMATA-INV 008125

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Investor Equity
Type: Equity

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Timed Contribution/Project	0	0	0	0	0	0	0	0
Auto Project Contribution	(12,685,883)	0	0	(1,818,812)	(10,867,070)	0	0	0
Total Contribution	**(12,685,883)**	**0**	**0**	**(1,818,812)**	**(10,867,070)**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment Project	0	0	0	0	0	0	0	0
Auto Repayment	12,685,883	0	0	0	0	0	0	12,685,883
Total Repayment	**12,685,883**	**0**	**0**	**0**	**0**	**0**	**0**	**12,685,883**
Closing Balance	**0**	**0**	**0**	**(1,818,812)**	**(12,685,883)**	**(12,685,883)**	**(12,685,883)**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**34,981,595**	**0**	**0**	**0**	**0**	**0**	**0**	**4,409,417**
Net Cash Flow (IRR)	**34,981,595**	**0**	**0**	**(1,818,812)**	**(10,867,070)**	**0**	**0**	**17,095,299**
Cumulative Net Cash Flow		**0**	**0**	**(1,818,812)**	**(12,685,883)**	**(12,685,883)**	**(12,685,883)**	**4,409,417**

ASSUMPTIONS	
Contribution Order	3
Contribution %	18.0%
Capped at	$0
Contribution	$0
Repayment Order	4

ANALYSIS	
Contribution	$12,685,883
Timed Repayment	$0
Auto Repayment	$12,685,883
Total Repayment	$12,685,883
Peak Financing Amount	$12,685,883
Profit	$34,981,595
Project IRR	23.9%
Return on Equity	275.8%

CASH ON CASH	As at Jan 2014	Jan 2015	Jan 2016	Jan 2017	Jan 2018	Jan 2019	Jan 2020	Jan 2021
Annual Return	135.7%	5.2%	5.9%	4.5%	0.0%	5.5%	10.3%	11.2%

WMATA-INV 008126

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel

(Merged Phases)

Source of Funds	Developer Equity
Type	Equity
Heading	1181 08/20/22
Timed Contribution: Project	0
Auto. Project Contribution	0
Total Contribution	**0**
Interest	0
Timed Repayment: Project	0
Auto. Repayment	0
Total Repayment	**0**
Closing Balance	**0**
Timed Profit Participation	0
Total Profit Participation	**23,890,132**
Net Cash Flow (IRR)	**23,890,132**
Cumulative Net Cash Flow	**31,724,442**

ASSUMPTIONS	
Contribution Order	2
Contribution %	2.0%
Capped at	$0
Contribution	$0
Repayment Order	5

ANALYSIS	
Contribution	$1,409,543
Timed Repayment	$0
Auto Repayment	$1,409,543
Total Repayment	$1,409,543
Peak Financing Amount	$1,409,543
Profit	$31,724,442
Project IRR	36.6%
Return on Equity	2,250.7%

WMATA-INV 008127

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW — LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Developer Equity
Type: Equity

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Timed Contribution Project	0	0	0	0	0	0	0	0
Auto Project Contribution	0	0	0	0	0	0	0	0
Total Contribution	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment Project	0	0	0	0	0	0	0	0
Auto Repayment	0	0	0	0	0	0	0	0
Total Repayment	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Closing Balance	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**608,236**	**723,733**	**756,630**	**0**	**405,932**	**1,272,948**	**1,394,704**	**1,519,863**
Net Cash Flow (IRR)	**608,236**	**723,733**	**756,630**	**0**	**405,932**	**1,272,948**	**1,394,704**	**1,519,863**
Cumulative Net Cash Flow	1,760,500	2,484,233	3,240,863	3,240,863	3,646,795	4,919,743	6,314,447	7,834,310

ASSUMPTIONS	
Contribution Order	2
Contribution %	2.0%
Capped at	$0
Contribution	$0
Repayment Order	5

ANALYSIS	
Contribution	$1,409,543
Timed Repayment	$0
Auto Repayment	$1,409,543
Total Repayment	$1,409,543
Peak Financing Amount	$1,409,543
Profit	$31,724,442
Project IRR	36.6%
Return on Equity	2,250.7%

CASH ON CASH	Jan 2022
Annual Return	* 2,132.9%

WMATA-INV 008128

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Developer Equity
Type: Equity

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Timed Contribution: Project	0	0	0	0	0	0	0	0
Auto. Project Contribution	(1,409,543)	0	(1,129,044)	(280,498)	0	0	0	0
Total Contribution	**(1,409,543)**	**0**	**(1,129,044)**	**(280,498)**	**0**	**0**	**0**	**0**
Interest	0	0	0	0	0	0	0	0
Timed Repayment: Project	0	0	0	0	0	0	0	0
Auto. Repayment	1,409,543	0	0	0	0	0	0	1,409,543
Total Repayment	**1,409,543**	**0**	**0**	**0**	**0**	**0**	**0**	**1,409,543**
Closing Balance	**0**	**0**	**(1,129,044)**	**(1,409,543)**	**(1,409,543)**	**(1,409,543)**	**(1,409,543)**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**31,724,442**	**0**	**0**	**0**	**0**	**0**	**0**	**1,152,264**
Net Cash Flow (IRR)	**31,724,442**	**0**	**(1,129,044)**	**(280,498)**	**0**	**0**	**0**	**2,561,807**
Cumulative Net Cash Flow		**0**	**(1,129,044)**	**(1,409,543)**	**(1,409,543)**	**(1,409,543)**	**(1,409,543)**	**1,152,264**

ASSUMPTIONS	
Contribution Order	2
Contribution %	2.0%
Capped at	$0
Contribution	$0
Repayment Order	5

ANALYSIS	
Contribution	$1,409,543
Timed Repayment	$0
Auto Repayment	$1,409,543
Total Repayment	$1,409,543
Peak Financing Amount	$1,409,543
Profit	$31,724,442
Project IRR	36.6%
Return on Equity	2,250.7%

CASH ON CASH	As at Jan 2014	Jan 2015	Jan 2016	Jan 2017	Jan 2018	Jan 2019	Jan 2020	Jan 2021
Annual Return	190.0%	46.6%	52.9%	40.4%	0.0%	49.8%	92.4%	101.1%

WMATA-INV 008129

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds	Development Loan
Type	Debt

[illegible]	[illegible]
[illegible]	
Timed Contribution - Projects	0
Auto Project Contributions	0
Total Contribution	0
Total Loan Fees	0
Interest and Fees	0
Timed Repayment - Projects	0
Auto Repayments	0
Total Repayment	0
Closing Balance	0
[illegible]	
Total Profit Participation	0
Total Profit Participation Repayment	0
[illegible]	
Net Cash Flow (IRR)	0
Cumulative Net Cash Flow	0

ASSUMPTIONS	
Contribution Order	1
Contribution	$2,000,000
Contribution	($1,590,702)
Repayment Order	2
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$2,050,000
Auto Repayment	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,036,755
Project IRR	0.0%

WMATA-INV 008130

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Development Loan
Type: Debt

Heading	96 Sep 2015	108 Sep 2016	120 Sep 2017	132 Sep 2018	144 Sep 2019	156 Sep 2020	168 Sep 2021	180 Sep 2022
Timed Contribution Project	0	0	0	0	0	0	0	0
Auto Project Contribution	0	0	0	0	0	0	0	0
Total Contribution	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Total Loan Fees	0	0	0	0	0	0	0	0
Interest and Fees	0	0	0	0	0	0	0	0
Timed Repayment Project	0	0	0	0	0	0	0	0
Auto Repayment	0	0	0	0	0	0	0	0
Total Repayment	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Closing Balance	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Cumulative Net Cash Flow	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

ASSUMPTIONS	
Contribution Order	1
Contribution	$2,000,000
Contribution	($1,590,702)
Repayment Order	2
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$2,050,000
Auto Repayment	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,036,755
Project IRR	0.0%

WMATA-INV 008131

FOIA CONFIDENTIAL TREATMENT REQUESTED

FUNDING SOURCE CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
(Merged Phases)

Source of Funds: Development Loan
Type: Debt

Heading	Total	12 Sep 2008	24 Sep 2009	36 Sep 2010	48 Sep 2011	60 Sep 2012	72 Sep 2013	84 Sep 2014
Timed Contribution: Project	0	0	0	0	0	0	0	0
Auto Project Contribution	(1,590,702)	(615,201)	(975,502)	0	0	0	0	0
Total Contribution	**(1,590,702)**	**(615,201)**	**(975,502)**	**0**	**0**	**0**	**0**	**0**
Total Loan Fees	(50,000)	(50,000)	0	0	0	0	0	0
Interest and Fees	(459,298)	(83,337)	(103,965)	(143,424)	(128,572)	0	0	0
Timed Repayment: Project	2,050,000	0	0	0	2,050,000	0	0	0
Auto Repayment	0	0	0	0	0	0	0	0
Total Repayment	**2,050,000**	**0**	**0**	**0**	**2,050,000**	**0**	**0**	**0**
Closing Balance	**0**	**(698,538)**	**(1,778,004)**	**(1,921,428)**	**0**	**0**	**0**	**0**
Timed Profit Participation	0	0	0	0	0	0	0	0
Total Profit Participation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Net Cash Flow (IRR)	**0**	**(698,538)**	**(1,079,467)**	**(143,424)**	**1,921,428**	**0**	**0**	**0**
Cumulative Net Cash Flow		**(698,538)**	**(1,778,004)**	**(1,921,428)**	**0**	**0**	**0**	**0**

ASSUMPTIONS	
Contribution Order	1
Contribution	$2,000,000
Contribution	($1,590,702)
Repayment Order	2
Interest Rate	8.00% var.

ANALYSIS	
Contribution	$0
Timed Repayment	$2,050,000
Auto Repayment	$0
Total Repayment	$2,050,000
Peak Financing Amount	$2,036,755
Project IRR	0.0%

WMATA-INV 008132

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	180:Sep 2022	181:Oct 2022
Period Total Before Finance	**8,606,691**	**109,726,114**
Finance Costs (All Loans)	0	0
Period Total After Finance	**4,249,278**	**109,366,859**
Cumulative Total C/f Annual	(42,660,822)	66,706,037

WMATA-INV 008133

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	180:Sep 2022	181:Oct 2022
3 Parcel 3 Underground Parkin	0	0
3 Parcel 3 Retail Space	0	0
1 Ph01 Development Manage		
1 Dev. Management Fee	0	0
1 Ph02 Development Manage		
2 Dev. Management Fee	0	0
1 Ph03 Development Manage		
3 Dev. Management Fee	0	0

WMATA-INV 008134

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	180:Sep 2022	181:Oct 2022
2 Permits	0	0
1 **Ph02 TI Costs**		
2 Parcel 1 Retail Space	0	0
1 **Ph02 Professional Fees**		
2 Architect + Engineer	0	0
2 Legal	0	0
2 Soft Cost Contingency	0	0
1 **Ph03 Construction Costs**		
3 Metro Site Work	0	0
3 Parcel 3 Underground Parkin	0	0
3 Parcel 3 Retail Space	0	0
3 FF&E	0	0
3 Hotel Hard Cost	0	0
3 Franchise Charge	0	0
3 Insurance	0	0
3 Real Estate Tax During Cons	0	0
3 Contingency	0	0
3 Permits	0	0
3 Permits	0	0
1 **Ph03 TI Costs**		
3 Parcel 3 Retail Space	0	0
1 **Ph03 Professional Fees**		
3 Architect + Engineer	0	0
3 Legal	0	0
3 Soft Cost Contingency	0	0
1 **Ph01 Marketing/Leasing**		
1 Marketing	0	0
1 Leasing Legal Fees	0	0
1 Parcel 2 Office Space & Lob	0	0
1 Parcel 2 Underground Parkin	0	0
1 Parcel 2 Retail Space	0	0
1 **Ph02 Marketing/Leasing**		
2 Marketing	0	0
2 Leasing Legal Fees	0	0
2 Parcel 1 Retail Space	0	0
1 **Ph03 Marketing/Leasing**		
3 Marketing	0	0

WMATA-INV 008135

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	180:Sep 2022	181:Oct 2022
1 **Ph02 Acquisition Costs**		
2 WMATA PARCEL 1 Land P	0	0
2 DC Purchase Recordation Ta	0	0
2 WMATA Acquisition Legal	0	0
2 Third Party Reports	0	0
2 Title Insurance	0	0
1 **Ph03 Acquisition Costs**		
3 WMATA PARCEL 3 Land P	0	0
3 Arts Credits (assume no bonu	0	0
3 DC Purchase Recordation Ta	0	0
3 WMATA Acquisition Legal	0	0
3 Third Party Reports	0	0
3 Title Insurance	0	0
1 **Ph01 Construction Costs**		
1 Metro Site Work	0	0
1 Parcel 2 Office Space & Lob	0	0
1 Parcel 2 Underground Parkin	0	0
1 Parcel 2 Retail Space	0	0
1 Insurance	0	0
1 Real Estate Tax During Cons	0	0
1 Contingency	0	0
1 Permits	0	0
1 Permits	0	0
1 **Ph01 TI Costs**		
1 Parcel 2 Office Space & Lob	0	0
1 Parcel 2 Retail Space	0	0
1 **Ph01 Professional Fees**		
1 Architect + Engineer	0	0
1 Legal	0	0
1 Soft Cost Contingency	0	0
1 **Ph02 Construction Costs**		
2 Metro Site Work	0	0
2 Parcel 1 Retail Space	0	0
2 Insurance	0	0
2 Real Estate Tax During Cons	0	0
2 Contingency	0	0
2 Permits	0	0

WMATA-INV 008136

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel

Detailed Cash Flow (Merged Phases)

	180:Sep 2022 (46,910,100)	181:Oct 2022 (42,660,822)
1 **Ph01 Revenue**		
1 Parcel 2 Office Space & Lob	3,012,221	0
1 Parcel 2 Underground Parkin	159,726	0
1 Parcel 2 Retail Space	783,585	0
1 Parcel 2 Office Space & Lob	0	46,681,782
1 Parcel 2 Underground Parkin	0	2,475,353
1 Parcel 2 Retail Space	0	12,143,583
1 **Ph01 Disposal Costs**		
1 Sales Agent Fee	0	(2,758,532)
1 **Ph02 Revenue**		
2 Parcel 1 Retail Space	280,730	0
2 Parcel 1 Retail Space	0	4,415,368
1 **Ph02 Disposal Costs**		
2 Sales Agent Fee	0	(198,692)
1 **Ph03 Revenue**		
3 Parcel 3 Hotel Rooms	3,790,137	0
3 Parcel 3 Underground Parkin	123,573	0
3 Parcel 3 Retail Space	456,718	0
3 Parcel 3 Hotel Rooms	0	40,187,328
3 Parcel 3 Underground Parkin	0	1,915,067
3 Parcel 3 Retail Space	0	7,077,974
1 **Ph03 Disposal Costs**		
3 Sales Agent Fee	0	(2,213,117)
1 **Ph01 Acquisition Costs**		
1 WMATA PARCEL 2 Land P	0	0
1 8th Street Land Option (Year	0	0
1 8th St 1st Year Ground Lease	0	0
1 8th St Ground Lease Renewal	0	0
1 8th St Ground Lease Renewal	0	0
1 Arts Credits (assume no bonu	0	0
1 8th St Combination Fee	0	0
1 8th Street Resubordination F	0	0
1 8th Street RE Tax pre-constr	0	0
1 DC Purchase Recordation Ta	0	0
1 WMATA Acquisition Legal	0	0
1 Third Party Reports	0	0
1 Title Insurance	0	0

WMATA-INV 008137

FOIA CONFIDENTIAL TREATMENT REQUESTED

DETAILED CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel

Detailed Cash Flow (Merged Phases)

	084:Sep 2014	096:Sep 2015	108:Sep 2016	120:Sep 2017	132:Sep 2018	144:Sep 2019	156:Sep 2020	168:Sep 2021
Period Total Before Finance	**6,192,997**	**6,783,437**	**7,014,432**	**3,734,707**	**7,646,996**	**7,876,643**	**8,112,862**	**8,356,373**
Finance Costs (All Loans)	(1,356,184)	0	0	0	(193,138)	(39,188)	0	0
Period Total After Finance	**1,592,202**	**1,958,531**	**2,243,169**	**(979,034)**	**2,801,797**	**3,251,532**	**3,597,859**	**3,917,417**
Cumulative Total C/f Annual	(63,701,371)	(61,742,840)	(59,499,671)	(60,478,705)	(57,676,908)	(54,425,376)	(50,827,517)	(46,910,100)

WMATA-INV 008138

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	084:Sep 2014	096:Sep 2015	108:Sep 2016	120:Sep 2017	132:Sep 2018	144:Sep 2019	156:Sep 2020	168:Sep 2021
3 Parcel 3 Underground Parkin	0	0	0	0	0	0	0	0
3 Parcel 3 Retail Space	0	0	0	0	0	0	0	0
1 **Ph01 Development Manage**								
1 Dev. Management Fee	0	0	0	0	0	0	0	0
1 **Ph02 Development Manage**								
2 Dev. Management Fee	0	0	0	0	0	0	0	0
1 **Ph03 Development Manage**								
3 Dev. Management Fee	0	0	0	0	0	0	0	0

WMATA-INV 008139

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	084:Sep 2014	096:Sep 2015	108:Sep 2016	120:Sep 2017	132:Sep 2018	144:Sep 2019	156:Sep 2020	168:Sep 2021
2 Permits	0	0	0	0	0	0	0	0
1 **Ph02 TI Costs**								
2 Parcel 1 Retail Space	0	0	0	0	0	0	0	0
1 **Ph02 Professional Fees**								
2 Architect + Engineer	0	0	0	0	0	0	0	0
2 Legal	0	0	0	0	0	0	0	0
2 Soft Cost Contingency	0	0	0	0	0	0	0	0
1 **Ph03 Construction Costs**								
3 Metro Site Work	0	0	0	0	0	0	0	0
3 Parcel 3 Underground Parkin	0	0	0	0	0	0	0	0
3 Parcel 3 Retail Space	0	0	0	0	0	0	0	0
3 FF&E	0	0	0	0	0	0	0	0
3 Hotel Hard Cost	0	0	0	0	0	0	0	0
3 Franchise Charge	0	0	0	0	0	0	0	0
3 Insurance	0	0	0	0	0	0	0	0
3 Real Estate Tax During Cons	0	0	0	0	0	0	0	0
3 Contingency	0	0	0	0	0	0	0	0
3 Permits	0	0	0	0	0	0	0	0
3 Permits	0	0	0	0	0	0	0	0
1 **Ph03 TI Costs**								
3 Parcel 3 Retail Space	0	0	0	0	0	0	0	0
1 **Ph03 Professional Fees**								
3 Architect + Engineer	0	0	0	0	0	0	0	0
3 Legal	0	0	0	0	0	0	0	0
3 Soft Cost Contingency	0	0	0	0	0	0	0	0
1 **Ph01 Marketing/Leasing**								
1 Marketing	0	0	0	0	0	0	0	0
1 Leasing Legal Fees	0	0	0	0	0	0	0	0
1 Parcel 2 Office Space & Lob	0	0	0	0	0	0	0	0
1 Parcel 2 Underground Parkin	0	0	0	0	0	0	0	0
1 Parcel 2 Retail Space	0	0	0	0	0	0	0	0
1 **Ph02 Marketing/Leasing**								
2 Marketing	0	0	0	0	0	0	0	0
2 Leasing Legal Fees	0	0	0	0	0	0	0	0
2 Parcel 1 Retail Space	0	0	0	0	0	0	0	0
1 **Ph03 Marketing/Leasing**								
3 Marketing	0	0	0	0	0	0	0	0

WMATA-INV 008140

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	084:Sep 2014	096:Sep 2015	108:Sep 2016	120:Sep 2017	132:Sep 2018	144:Sep 2019	156:Sep 2020	168:Sep 2021
1 **Ph02 Acquisition Costs**								
2 WMATA PARCEL 1 Land P	0	0	0	0	0	0	0	0
2 DC Purchase Recordation Ta	0	0	0	0	0	0	0	0
2 WMATA Acquisition Legal	0	0	0	0	0	0	0	0
2 Third Party Reports	0	0	0	0	0	0	0	0
2 Title Insurance	0	0	0	0	0	0	0	0
1 **Ph03 Acquisition Costs**								
3 WMATA PARCEL 3 Land P	0	0	0	0	0	0	0	0
3 Arts Credits (assume no bonu	0	0	0	0	0	0	0	0
3 DC Purchase Recordation Ta	0	0	0	0	0	0	0	0
3 WMATA Acquisition Legal	0	0	0	0	0	0	0	0
3 Third Party Reports	0	0	0	0	0	0	0	0
3 Title Insurance	0	0	0	0	0	0	0	0
1 **Ph01 Construction Costs**								
1 Metro Site Work	0	0	0	0	0	0	0	0
1 Parcel 2 Office Space & Lob	0	0	0	0	0	0	0	0
1 Parcel 2 Underground Parkin	0	0	0	0	0	0	0	0
1 Parcel 2 Retail Space	0	0	0	0	0	0	0	0
1 Insurance	0	0	0	0	0	0	0	0
1 Real Estate Tax During Cons	0	0	0	0	0	0	0	0
1 Contingency	0	0	0	0	0	0	0	0
1 Permits	0	0	0	0	0	0	0	0
1 Permits	0	0	0	0	0	0	0	0
1 **Ph01 TI Costs**								
1 Parcel 2 Office Space & Lob	0	0	0	0	0	0	0	0
1 Parcel 2 Retail Space	0	0	0	0	0	0	0	0
1 **Ph01 Professional Fees**								
1 Architect + Engineer	0	0	0	0	0	0	0	0
1 Legal	0	0	0	0	0	0	0	0
1 Soft Cost Contingency	0	0	0	0	0	0	0	0
1 **Ph02 Construction Costs**								
2 Metro Site Work	0	0	0	0	0	0	0	0
2 Parcel 1 Retail Space	0	0	0	0	0	0	0	0
2 Insurance	0	0	0	0	0	0	0	0
2 Real Estate Tax During Cons	0	0	0	0	0	0	0	0
2 Contingency	0	0	0	0	0	0	0	0
2 Permits	0	0	0	0	0	0	0	0

WMATA-INV 008141

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	084:Sep 2014 (65,293,574)	096:Sep 2015 (63,701,371)	108:Sep 2016 (61,742,840)	120:Sep 2017 (59,499,671)	132:Sep 2018 (60,478,705)	144:Sep 2019 (57,676,908)	156:Sep 2020 (54,425,376)	168:Sep 2021 (50,827,517)
1 **Ph01 Revenue**								
1 Parcel 2 Office Space & Lob	2,377,875	2,449,212	2,522,688	2,598,369	2,676,320	2,756,609	2,839,307	2,924,487
1 Parcel 2 Underground Parkin	126,089	129,872	133,768	137,781	141,915	146,172	150,557	155,074
1 Parcel 2 Retail Space	618,570	637,127	656,240	675,928	696,205	717,092	738,604	760,762
1 Parcel 2 Office Space & Lob	0	0	0	0	0	0	0	0
1 Parcel 2 Underground Parkin	0	0	0	0	0	0	0	0
1 Parcel 2 Retail Space	0	0	0	0	0	0	0	0
1 **Ph01 Disposal Costs**								
1 Sales Agent Fee	0	0	0	0	0	0	0	0
1 **Ph02 Revenue**								
2 Parcel 1 Retail Space	221,610	228,259	235,107	242,160	249,425	256,907	264,614	272,553
2 Parcel 1 Retail Space	0	0	0	0	0	0	0	0
1 **Ph02 Disposal Costs**								
2 Sales Agent Fee	0	0	0	0	0	0	0	0
1 **Ph03 Revenue**								
3 Parcel 3 Hotel Rooms	2,766,769	3,068,142	3,181,648	3,269,309	3,367,550	3,468,814	3,572,798	3,680,108
3 Parcel 3 Underground Parkin	97,550	100,476	103,490	106,595	109,793	113,087	116,479	119,974
3 Parcel 3 Retail Space	360,538	371,354	382,494	393,969	405,788	417,962	430,501	443,416
3 Parcel 3 Hotel Rooms	0	0	0	0	0	0	0	0
3 Parcel 3 Underground Parkin	0	0	0	0	0	0	0	0
3 Parcel 3 Retail Space	0	0	0	0	0	0	0	0
1 **Ph03 Disposal Costs**								
3 Sales Agent Fee	0	0	0	0	0	0	0	0
1 **Ph01 Acquisition Costs**								
1 WMATA PARCEL 2 Land P	0	0	0	0	0	0	0	0
1 8th Street Land Option (Year	0	0	0	(3,420,000)	0	0	0	0
1 8th St 1st Year Ground Lease	0	0	0	0	0	0	0	0
1 8th St Ground Lease Renewal	0	0	0	0	0	0	0	0
1 8th St Ground Lease Renewal	(200,004)	(200,004)	(200,004)	(200,004)	0	0	0	0
1 Arts Credits (assume no bonu	0	0	0	0	0	0	0	0
1 8th St Combination Fee	0	0	0	0	0	0	0	0
1 8th Street Resubordination F	(175,000)	0	0	0	0	0	0	0
1 8th Street RE Tax pre-constr	0	0	0	0	0	0	0	0
1 DC Purchase Recordation Ta	0	0	0	(51,300)	0	0	0	0
1 WMATA Acquisition Legal	0	0	0	0	0	0	0	0
1 Third Party Reports	0	0	0	0	0	0	0	0
1 Title Insurance	(1,000)	(1,000)	(1,000)	(18,100)	0	0	0	0

WMATA-INV 008142

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

	TOTALS	000:Sep 2007	012:Sep 2008	024:Sep 2009	036:Sep 2010	048:Sep 2011	060:Sep 2012	072:Sep 2013
Period Total Before Finance		**0**	**(615,201)**	**(2,104,546)**	**(2,099,311)**	**(15,812,517)**	**(32,267,486)**	**(6,341,891)**
Finance Costs (All Loans)	(7,641,133)		(83,337)	(103,965)	(143,424)	(248,651)	(1,688,778)	(3,784,468)
Period Total After Finance	**66,706,037**	**0**	**(698,538)**	**(2,208,511)**	**(2,242,734)**	**(16,061,168)**	**(33,956,264)**	**(10,126,359)**
Cumulative Total C/f Annual	66,706,037	0	(698,538)	(2,907,049)	(5,149,783)	(21,210,951)	(55,167,215)	(65,293,574)

WMATA-INV 008143

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

		TOTALS	000:Sep 2007	012:Sep 2008	024:Sep 2009	036:Sep 2010	048:Sep 2011	060:Sep 2012	072:Sep 2013
3 Parcel 3 Underground Parkin	YN	**(54,684)**	0	0	0	0	0	0	(54,684)
3 Parcel 3 Retail Space	YN	**(202,111)**	0	0	0	0	0	0	(202,111)
1 **Ph01 Development Management Fee**									
1 Dev. Management Fee	YN	**(904,718)**	0	0	(160,839)	(241,258)	(241,258)	(241,258)	(20,105)
1 **Ph02 Development Management Fee**									
2 Dev. Management Fee	YN	**(42,664)**	0	0	(7,585)	(11,377)	(11,377)	(11,377)	(948)
1 **Ph03 Development Management Fee**									
3 Dev. Management Fee	YN	**(1,009,874)**	0	0	(179,533)	(269,300)	(269,300)	(269,300)	(22,442)

WMATA-INV 008144

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
Detailed Cash Flow (Merged Phases)

		TOTALS	000:Sep 2007	012:Sep 2008	024:Sep 2009	036:Sep 2010	048:Sep 2011	060:Sep 2012	072:Sep 2013
2 Permits	YN	**(14,969)**	0	0	0	0	(14,969)	0	0
1 **Ph02 TI Costs**									
2 Parcel 1 Retail Space	YY	**(284,739)**	0	0	0	0	0	(284,739)	0
1 **Ph02 Professional Fees**									
2 Architect + Engineer	YN	**(93,604)**	0	0	(46,802)	(46,802)	0	0	0
2 Legal	YN	**(11,227)**	0	0	(3,208)	(4,811)	(3,208)	0	0
2 Soft Cost Contingency	YN	**(32,354)**	0	(1,458)	(11,118)	(10,401)	(8,068)	(1,266)	(44)
1 **Ph03 Construction Costs**									
3 Metro Site Work	YN	**(1,839,000)**	0	0	0	0	(1,839,000)	0	0
3 Parcel 3 Underground Parkin	YY	**(1,354,096)**	0	0	0	0	(177,399)	(1,137,295)	(39,403)
3 Parcel 3 Retail Space	YY	**(1,253,506)**	0	0	0	0	(164,220)	(1,052,810)	(36,476)
3 FF&E	YN	**(2,900,000)**	0	0	0	0	(385,994)	(2,431,176)	(82,831)
3 Hotel Hard Cost	YN	**(11,454,841)**	0	0	0	0	(1,524,653)	(9,603,012)	(327,176)
3 Franchise Charge	YN	**(58,000)**	0	0	0	0	(58,000)	0	0
3 Insurance	YN	**(94,007)**	0	0	0	0	(20,456)	(71,121)	(2,429)
3 Real Estate Tax During Cons	YN	**(97,000)**	0	0	0	0	(22,824)	(68,471)	(5,706)
3 Contingency	YN	**(1,880,144)**	0	0	0	0	(250,250)	(1,576,194)	(53,701)
3 Permits	YN	**(50,000)**	0	0	0	0	(50,000)	0	0
3 Permits	YN	**(282,022)**	0	0	0	0	(282,022)	0	0
1 **Ph03 TI Costs**									
3 Parcel 3 Retail Space	YY	**(571,790)**	0	0	0	0	0	0	(571,790)
1 **Ph03 Professional Fees**									
3 Architect + Engineer	YN	**(1,020,000)**	0	0	(510,000)	(510,000)	0	0	0
3 Legal	YN	**(376,029)**	0	0	(107,437)	(161,155)	(107,437)	0	0
3 Soft Cost Contingency	YN	**(197,206)**	0	(10,696)	(68,235)	(61,885)	(48,717)	(7,417)	(257)
1 **Ph01 Marketing/Leasing**									
1 Marketing	YN	**(50,000)**	0	0	0	0	(11,765)	(35,294)	(2,941)
1 Leasing Legal Fees	YN	**(58,610)**	0	0	0	0	0	0	(58,610)
1 Parcel 2 Office Space & Lob	YN	**(1,274,853)**	0	0	0	0	0	0	(1,274,853)
1 Parcel 2 Underground Parkin	YN	**(70,683)**	0	0	0	0	0	0	(70,683)
1 Parcel 2 Retail Space	YN	**(346,758)**	0	0	0	0	0	0	(346,758)
1 **Ph02 Marketing/Leasing**									
2 Marketing	YN	**(50,000)**	0	0	0	0	(18,182)	(31,818)	0
2 Leasing Legal Fees	YN	**(58,610)**	0	0	0	0	0	0	(58,610)
2 Parcel 1 Retail Space	YN	**(122,408)**	0	0	0	0	0	(122,408)	0
1 **Ph03 Marketing/Leasing**									
3 Marketing	YN	**(50,000)**	0	0	0	0	(11,765)	(35,294)	(2,941)

WMATA-INV 008145

FOIA CONFIDENTIAL TREATMENT REQUESTED

DETAILED CASH FLOW

LAKRITZ ADLER DEVELOPMENT

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel

Detailed Cash Flow (Merged Phases)

		TOTALS	000:Sep 2007	012:Sep 2008	024:Sep 2009	036:Sep 2010	048:Sep 2011	060:Sep 2012	072:Sep 2013
1 **Ph02 Acquisition Costs**									
2 WMATA PARCEL 1 Land P	YN	**(590,000)**	0	0	0	0	(590,000)	0	0
2 DC Purchase Recordation Ta	YN	**(8,850)**	0	0	0	0	(8,850)	0	0
2 WMATA Acquisition Legal	YN	**(100,000)**	0	(75,000)	(25,000)	0	0	0	0
2 Third Party Reports	YN	**(50,000)**	0	0	(50,000)	0	0	0	0
2 Title Insurance	YN	**(2,950)**	0	0	0	0	(2,950)	0	0
1 **Ph03 Acquisition Costs**									
3 WMATA PARCEL 3 Land P	YN	**(2,700,000)**	0	0	0	0	(2,700,000)	0	0
3 Arts Credits (assume no bonu	YN	**(239,325)**	0	0	0	0	(239,325)	0	0
3 DC Purchase Recordation Ta	YN	**(44,090)**	0	0	0	0	(44,090)	0	0
3 WMATA Acquisition Legal	YN	**(100,000)**	0	(75,000)	(25,000)	0	0	0	0
3 Third Party Reports	YN	**(50,000)**	0	0	(50,000)	0	0	0	0
3 Title Insurance	YN	**(14,697)**	0	0	0	0	(14,697)	0	0
1 **Ph01 Construction Costs**									
1 Metro Site Work	YN	**(1,500,000)**	0	0	0	0	(1,500,000)	0	0
1 Parcel 2 Office Space & Lob	YY	**(11,595,394)**	0	0	0	0	(1,519,099)	(9,738,882)	(337,413)
1 Parcel 2 Underground Parkin	YY	**(1,752,360)**	0	0	0	0	(229,575)	(1,471,794)	(50,992)
1 Parcel 2 Retail Space	YY	**(2,150,624)**	0	0	0	0	(281,751)	(1,806,292)	(62,581)
1 Insurance	YN	**(84,992)**	0	0	0	0	(17,652)	(65,085)	(2,255)
1 Real Estate Tax During Cons	YN	**(150,000)**	0	0	0	0	(35,294)	(105,882)	(8,824)
1 Contingency	YN	**(1,699,838)**	0	0	0	0	(226,250)	(1,425,036)	(48,551)
1 Permits	YN	**(50,000)**	0	0	0	0	(50,000)	0	0
1 Permits	YN	**(254,976)**	0	0	0	0	(254,976)	0	0
1 **Ph01 TI Costs**									
1 Parcel 2 Office Space & Lob	YY	**(4,958,530)**	0	0	0	0	0	0	(4,958,530)
1 Parcel 2 Retail Space	YY	**(981,013)**	0	0	0	0	0	0	(981,013)
1 **Ph01 Professional Fees**									
1 Architect + Engineer	YN	**(841,000)**	0	0	(420,500)	(420,500)	0	0	0
1 Legal	YN	**(254,976)**	0	0	(72,850)	(109,275)	(72,850)	0	0
1 Soft Cost Contingency	YN	**(163,594)**	0	(6,827)	(53,534)	(50,921)	(44,659)	(7,392)	(260)
1 **Ph02 Construction Costs**									
2 Metro Site Work	YN	**(50,000)**	0	0	0	0	(50,000)	0	0
2 Parcel 1 Retail Space	YY	**(698,440)**	0	0	0	0	(193,363)	(505,078)	0
2 Insurance	YN	**(3,742)**	0	0	0	0	(1,217)	(2,525)	0
2 Real Estate Tax During Cons	YN	**(12,500)**	0	0	0	0	(4,545)	(7,955)	0
2 Contingency	YN	**(74,844)**	0	0	0	0	(20,889)	(53,955)	0
2 Permits	YN	**(50,000)**	0	0	0	0	(50,000)	0	0

WMATA-INV 008146

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel

Detailed Cash Flow (Merged Phases)

Period ending AnnualB/F	SET Int Inf	TOTALS	000:Sep 2007	012:Sep 2008 0	024:Sep 2009 (698,538)	036:Sep 2010 (2,907,049)	048:Sep 2011 (5,149,783)	060:Sep 2012 (21,210,951)	072:Sep 2013 (55,167,215)
1 **Ph01 Revenue**									
1 Parcel 2 Office Space & Lob	YN	**24,738,475**	0	0	0	0	0	0	581,388
1 Parcel 2 Underground Parkin	YN	**1,373,443**	0	0	0	0	0	0	92,486
1 Parcel 2 Retail Space	YN	**6,737,832**	0	0	0	0	0	0	453,718
1 Parcel 2 Office Space & Lob	YN	**46,681,782**	0	0	0	0	0	0	0
1 Parcel 2 Underground Parkin	YN	**2,475,353**	0	0	0	0	0	0	0
1 Parcel 2 Retail Space	YN	**12,143,583**	0	0	0	0	0	0	0
1 **Ph01 Disposal Costs**									
1 Sales Agent Fee	YN	**(2,758,532)**	0	0	0	0	0	0	0
1 **Ph02 Revenue**									
2 Parcel 1 Retail Space	YN	**2,519,909**	0	0	0	0	0	53,389	215,156
2 Parcel 1 Retail Space	YN	**4,415,368**	0	0	0	0	0	0	0
1 **Ph02 Disposal Costs**									
2 Sales Agent Fee	YN	**(198,692)**	0	0	0	0	0	0	0
1 **Ph03 Revenue**									
3 Parcel 3 Hotel Rooms	YN	**32,031,551**	0	0	0	0	0	0	1,866,277
3 Parcel 3 Underground Parkin	YN	**1,062,569**	0	0	0	0	0	0	71,552
3 Parcel 3 Retail Space	YN	**3,927,193**	0	0	0	0	0	0	264,453
3 Parcel 3 Hotel Rooms	YN	**40,187,328**	0	0	0	0	0	0	0
3 Parcel 3 Underground Parkin	YN	**1,915,067**	0	0	0	0	0	0	0
3 Parcel 3 Retail Space	YN	**7,077,974**	0	0	0	0	0	0	0
1 **Ph03 Disposal Costs**									
3 Sales Agent Fee	YN	**(2,213,117)**	0	0	0	0	0	0	0
1 **Ph01 Acquisition Costs**									
1 WMATA PARCEL 2 Land P	YN	**(1,600,000)**	0	0	0	0	(1,600,000)	0	0
1 8th Street Land Option (Year	YN	**(3,420,000)**	0	0	0	0	0	0	0
1 8th St 1st Year Ground Lease	YN	**(325,000)**	0	(318,750)	(6,250)	0	0	0	0
1 8th St Ground Lease Renewal	YN	**(600,000)**	0	0	(150,000)	(150,000)	(150,000)	(150,000)	0
1 8th St Ground Lease Renewal	YN	**(1,000,020)**	0	0	0	0	0	0	(200,004)
1 Arts Credits (assume no bonu	YN	**(300,000)**	0	0	0	0	(300,000)	0	0
1 8th St Combination Fee	YN	**(30,000)**	0	0	(30,000)	0	0	0	0
1 8th Street Resubordination F	YN	**(175,000)**	0	0	0	0	0	0	0
1 8th Street RE Tax pre-constr	YN	**(203,500)**	0	(50,875)	(50,875)	(50,875)	(50,875)	0	0
1 DC Purchase Recordation Ta	YN	**(79,800)**	0	0	0	0	(28,500)	0	0
1 WMATA Acquisition Legal	YN	**(100,000)**	0	(75,000)	(25,000)	0	0	0	0
1 Third Party Reports	YN	**(50,000)**	0	0	(50,000)	0	0	0	0
1 Title Insurance	YN	**(36,225)**	0	(1,594)	(781)	(750)	(10,250)	(750)	(1,000)

WMATA-INV 008147

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel

‡ Inflation/Escalation applied

Escalation on Capitalized Rent		Unescalated	Escalation	Total
Parcel 2 Office Space & Lobby	Office Rent at 3.00%	30,634,936	16,046,846	46,681,782
Parcel 2 Underground Parking	Office Rent at 3.00%	1,624,451	850,902	2,475,353
Parcel 2 Retail Space	Office Rent at 3.00%	7,969,231	4,174,353	12,143,583
Parcel 1 Retail Space	Office Rent at 3.00%	2,855,077	1,560,291	4,415,368
Parcel 3 Underground Parking	Office Rent at 3.00%	1,256,763	658,303	1,915,067
Parcel 3 Retail Space	Office Rent at 3.00%	4,644,923	2,433,051	7,077,974

Inflation on Construction Costs		Uninflated	Inflation	Total
Parcel 2 Office Space & Lobby	Construction CPI at 3.00%	10,190,205	1,405,189	11,595,394
Parcel 2 Underground Parking	Construction CPI at 3.00%	1,540,000	212,360	1,752,360
Parcel 2 Retail Space	Construction CPI at 3.00%	1,890,000	260,624	2,150,624
Parcel 1 Retail Space	Construction CPI at 3.00%	618,600	79,840	698,440
Parcel 3 Underground Parking	Construction CPI at 3.00%	1,190,000	164,096	1,354,096
Parcel 3 Retail Space	Construction CPI at 3.00%	1,101,600	151,906	1,253,506

WMATA-INV 008148

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel

			5,170,340
Additional Costs			
Dev. Management Fee	5.00%	904,718	
Dev. Management Fee	5.00%	42,664	
Dev. Management Fee	5.00%	1,009,874	
			1,957,255
FINANCE			
Interest paid to Debt Sources:			
Development Loan (8.00%)	409,298		
Construction Loan (8.00%)	7,081,835		
Total Interest paid to debt financing		7,491,133	
Mortgage Interest (7.00%)		40,463,131	
Total Interest Paid		47,954,264	
Debt Financing Fees			
Development Loan - Legal (Single)	50,000		
Construction Loan - Legal Fees (Single)	100,000		
Total Debt Financing Fees		150,000	
Total Finance Cost			48,104,264
TOTAL COSTS			**120,581,389**
PROFIT			
Developer Equity			
Residual Percentage (50.00%)	30,936,627		
Preferred Return (10.00%)	787,816		
		31,724,442	
Investor Equity			
Residual Percentage (50.00%)	30,936,627		
Preferred Return (10.00%)	4,044,968		
		34,981,595	
			66,706,037
Performance Measures			
Profit on Cost%	55.32%		
Profit on GDV%	58.06%		
Development Yield% (on Rent)	7.19%		
Pre-Finance IRR%	12.84%		
Project IRR% (with Interest)	16.01%		
Equity IRR% (with Interest)	27.70%		

WMATA-INV 008149

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel

Permits		50,000	
Permits	1.50%	254,976	
Permits		50,000	
Permits	2.00%	14,969	
Permits		50,000	
Permits	1.50%	282,022	
			7,745,792
Other Construction			
Insurance	0.50%	84,992	
Insurance	0.50%	3,742	
Insurance	0.50%	94,007	
			182,741
Municipal Costs			
Real Estate Tax During Construction		150,000	
Real Estate Tax During Construction		12,500	
Real Estate Tax During Construction		97,000	
			259,500
TI Costs			
TI Cost Area Rate - Parcel 2 Office Space & Lobby	60.00 pf²	4,958,530	
TI Cost Area Rate - Parcel 2 Retail Space	60.00 pf²	981,013	
TI Cost Area Rate - Parcel 1 Retail Space	60.00 pf²	284,739	
TI Cost Area Rate - Parcel 3 Retail Space	60.00 pf²	571,790	
			6,796,072
PROFESSIONAL FEES			
Architect + Engineer		1,954,604	
Legal	1.50%	266,202	
Legal	2.00%	376,029	
Soft Cost Contingency	10.00%	163,594	
Soft Cost Contingency	10.00%	32,354	
Soft Cost Contingency	10.00%	197,206	
			2,989,989
MARKETING & LEASING			
Marketing		150,000	
Leasing Legal Fees	2.00%	117,220	
Leasing Commissions			
Parcel 2 Office Space & Lobby		1,274,853	
Parcel 2 Underground Parking		70,683	
Parcel 2 Retail Space		346,758	
Parcel 1 Retail Space		122,408	
Parcel 3 Underground Parking		54,684	
Parcel 3 Retail Space		202,111	
			2,338,718
DISPOSAL FEES			
Sales Agent Fee	4.50%	5,170,340	

WMATA-INV 008150

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel
DEVELOPMENT COSTS

ACQUISITION COSTS				
WMATA PARCEL 2 Land Purchase		1,600,000		
8th Street Land Option (Year 10)		3,420,000		
8th St 1st Year Ground Lease		325,000		
8th St Ground Lease Renewal 1-4		600,000		
8th St Ground Lease Renewal 5-9		1,000,020		
Arts Credits (assume no bonus)		300,000		
8th St Combination Fee		30,000		
8th Street Resubordination Fee		175,000		
8th Street RE Tax pre-construction		203,500		
WMATA PARCEL 1 Land Purchase		590,000		
WMATA PARCEL 3 Land Purchase		2,700,000		
Arts Credits (assume no bonus)		239,325		
Total Acquisition (0.92 Acres $12,155,266.30 pAcre)			11,182,845	
DC Purchase Recordation Tax		1.50%	123,890	
DC Purchase Recordation Tax		1.50%	8,850	
WMATA Acquisition Legal Fees			300,000	
Third Party Reports			150,000	
Title Insurance		0.50%	50,922	
Title Insurance		0.50%	2,950	
				11,819,457
CONSTRUCTION COSTS				
Construction	**ft²**	**Rate ft²**	**Cost**	
‡ Parcel 2 Office Space & Lobby	75,483	$135.00	11,595,394	
‡ Parcel 2 Underground Parking	19,885	$77.45	1,752,360	
‡ Parcel 2 Retail Space	14,000	$135.00	2,150,624	
‡ Parcel 1 Retail Space	4,124	$150.00	698,440	
Parcel 3 Hotel Rooms				
FF&E	145 units	$20,000.00 /un	2,900,000	
Hotel Hard Cost	63,638 ft²	$180.00 pf²	11,454,841	
Franchise Charge	145 units	$400.00 /un	58,000	
			14,412,841	
‡ Parcel 3 Underground Parking	15,955	$74.58	1,354,096	
‡ Parcel 3 Retail Space	8,160	$135.00	1,253,506	
Totals	137,607		33,217,261	**33,217,261**
Contingency		10.00%	1,699,838	
Contingency		10.00%	74,844	
Contingency		10.00%	1,880,144	
Metro Site Work			1,500,000	
Metro Site Work			50,000	
Metro Site Work			1,839,000	

WMATA-INV 008151

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Shaw-Howard/Florida Avenue JDS Pro Forma
All Parcels: Land Purchase and 15-year hold, Office and Hotel

Project Pro Forma for Merged Phases 1 2 3

REVENUE Rental Area Summary	ft²	Rate ft²	Rent at Lease Start	Rent At Sale
‡ Parcel 2 Office Space & Lobby	70,763	$42.00	3,470,971	4,528,830
‡ Parcel 2 Underground Parking	19,885	$5.31	123,315	160,898
‡ Parcel 2 Retail Space	14,000	$37.00	604,958	789,333
‡ Parcel 1 Retail Space	4,124	$45.00	213,554	286,999
Parcel 3 Hotel Rooms	60,456	$41.16	2,488,369	3,817,796
‡ Parcel 3 Underground Parking	15,955	$5.12	95,403	124,479
‡ Parcel 3 Retail Space	8,160	$37.00	352,604	460,068
Totals	193,343		7,349,174	10,168,403

Investment Valuation				
Parcel 2 Office Space & Lobby				
- 33.000% non recov. cost				
Capitalized Rent	3,034,316	Cap Rate	6.5000%	46,681,782
Parcel 2 Underground Parking				
Capitalized Rent	160,898	Cap Rate	6.5000%	2,475,353
Parcel 2 Retail Space				
Capitalized Rent	789,333	Cap Rate	6.5000%	12,143,583
Parcel 1 Retail Space				
Capitalized Rent	286,999	Cap Rate	6.5000%	4,415,368
Parcel 3 Hotel Rooms				
Capitalized Rent	3,817,796	Cap Rate	9.5000%	40,187,328
Parcel 3 Underground Parking				
Capitalized Rent	124,479	Cap Rate	6.5000%	1,915,067
Parcel 3 Retail Space				
Capitalized Rent	460,068	Cap Rate	6.5000%	7,077,974
				114,896,454

Income from Tenants		
Parcel 2 Office Space & Lobby	24,738,475	
Parcel 2 Underground Parking	1,373,443	
Parcel 2 Retail Space	6,737,832	
Parcel 1 Retail Space	2,519,909	
Parcel 3 Hotel Rooms	32,031,551	
Parcel 3 Underground Parking	1,062,569	
Parcel 3 Retail Space	3,927,193	
		72,390,972
TOTAL PROJECT REVENUE		**187,287,426**

WMATA-INV 008152

The references below can provide further information regarding the financial and construction capabilities of DANAC Corporation.

DANAC Credit Authorization Letters Attached in EXHIBIT H.

M&T Bank
Stewart Cooper
25 South Charles Street
17th Floor (mailstop 101-747)
Baltimore, MD 21201
Phone (301) 397-5574
E-mail dcooper@mandtbank.com

Bank of America
Rebecca Greenspan
VA9-200-03-01
8300 Greensboro Drive
Suite 300
McLean, VA 22102-3604
Phone (703) 761-8715
E-mail becca.k.greenspan@bankofamerica.com

Lehman Brothers
Jacquelyn Hamilton
399 Park Ave, 9th Floor
New York, NY 10022
Phone (212) 526-2086
E-mail jhamilton@lehman.com

EXHIBITS
EXHIBIT A: 15-Year Pro Forma & Cash Flow, All Phases, Parcel 3 Hotel, Purchase
EXHIBIT B: 15-Year Pro Forma & Cash Flow, All Phases, Parcel 3 Office, Purchase
EXHIBIT C: 15-Year Pro Forma & Cash Flow, All Phases, Parcel 3 Hotel, Ground Lease
EXHIBIT D: 15-Year Pro Forma & Cash Flow, All Phases, Parcel 3 Office/Retail, Ground Lease
EXHIBIT E — Tax Impact Detail
EXHIBIT F — LaKritz | Adler Development Consolidated Financials: 2005, 2006, 2007 YTD
EXHIBIT G — Milestone Hotel Partners P&L and Balance Sheets, 2005, 2006, 2007 YTD
EXHIBIT H — CREDIT AUTHORIZATION LETTERS

Also Attached: CD-ROM with Excel Models
Also Attached: Section 2.5 Proposal Security Form C – Letter of Credit

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008153

Builders Bank has extended more than $5 million in credit to LaKritz | Adler and its affiliates in a single transaction
Contact: Daniel Ruvalcaba, President
Builders Bank
77 W. Wacker Drive, Suite 3100
Chicago, IL 60601
Tel. 312-977-1436
Fax. 312-977-1439
druvalcaba@buildersbank.com

Milestone Statement and References
Milestone principals Sander Mednick and Michael L. Wachtell have a combined personal net worth of approximately $50 million, with liquid assets in the range of $5 million. Detail regarding Milestone's development experience is provided in Volume 1.

The references below can provide further information regarding the financial and construction capabilities of Milestone Capital Corporation and its affiliates.

Milestone Credit Authorization Letters attached in EXHIBIT H.

Marathon Asset Management
Michael Amoia, Director
461 Fifth Avenue, 11th Floor
New York, NY 10017
Tel. 212-381-4426
Fax. 212-381-4497

Preferred Bank
John Nixon, First Vice President
601 South Figeroa Street, 20th Floor
Los Angeles, CA 90017
Tel. 213-891-1188
Fax. 213-622-0369

DANAC Statement and References
DANAC Corporation, John F Jaeger, and related entities are private entities with assets of over $200 million and revenues greater than $20 million. The company is managed at very low leverage levels providing the ability for the company to expand and contract quickly depending on acquisition and construction opportunities. DANAC Corporation currently owns over 1 million square feet of commercial and retail property excluding the Rockville Town Square. The Rockville Town Square by itself is roughly 1 million square feet including retail, residential, and parking. Detail regarding DANAC's development experience is provided in Volume 1.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008154

I. Developer's balance sheets and income statements for past three fiscal years.

EXHIBIT F — LaKritz | Adler Development Consolidated Financial Statements for 2005, 2006, and 2007 YTD.

EXHIBIT G—Milestone Hotel Partners P&L Statements and Balance Sheets, 2005, 2006, 2007 YTD.

DANAC Corporation does not disclose its financial statements.

J. Statements regarding Developer's financial creditworthiness and past development experience.

LaKritz | Adler Development Statement and References
LaKritz | Adler Development, LLC, its affiliated companies, and its principals Robb LaKritz and Joshua Adler have a combined personal net worth in excess of $10 million, and liquid assets of more than $1 million. Detail regarding LaKritz | Adler Development's development experience is included with Volume 1 of this submission.

The references below can provide further information regarding the financial capabilities and development experience of LaKritz | Adler Development.

Branch Banking & Trust
BB&T has extended credit well in excess of $10 million to LaKritz | Adler and its affiliates in multiple transactions
Contact: Greg Dougherty, Senior Vice President, City Executive for Washington, D.C.
Branch Banking & Trust Co.
1909 K Street, NW
Washington, DC 20006
Tel. 202-835-9332
Fax. 202-835-9285
gdougherty@bbandt.com

PNC Bank
PNC has approved LaKritz | Adler and its affiliates for $10 million in a single transaction
Contact: Casey Brill, Vice President
PNC Real Estate Finance
808 17th Street, NW
Washington, DC 20006
Tel. 202-835-4460
Fax. 202-835-5982
casey.brill@pnc.com

Builders Bank

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008155

H. Detailed financial analysis with assumptions of Project's impact on the tax base of the local jurisdiction:

1. Identification of property taxes, sales taxes, amount of fees and contributions and other local public income

[SEE EXHIBIT E – TAX IMPACT for detail]

2.3.H.1. TAX BASE IMPACT ANALYSIS

ONE-TIME TAX EVENTS		
Construction Permitting Fees	$	376,062.60
Purchase Recordation Tax	$	132,740.00
Sale Transfer & Recordation Tax	$	2,785,610.58
Financing Recordation Tax	$	800,628.00
Construction Job Income Tax on Avg $50k, 50% in D.C.	$	688,464.00
Legal/Professional Job Income Tax on Avg $120k, 50% in D.C.	$	334,834.00
Franchise Tax on Development Profits	$	2,493,837.00
TOTAL ONE-TIME D.C TAXES:	**$**	**7,612,176.18**
Total Construction/Development Jobs Created:	**473**	
Jobs Created in D.C. Only:	**237**	
ONGOING TAXES ON OPERATIONS (at stabilization)		
Restaurant & Retail Sales Taxes		
Parcel 1	$	213,554.00
Parcel 2	$	623,107.00
Parcel 3	$	385,300.00
Restaurant/Retail Jobs Income Tax on Avg $30k, 75% D.C.	$	182,345.00
Office Jobs Income Tax on Avg $75k, 50% D.C.	$	989,797.00
Hotel Jobs Income Tax on Avg $45k, 60% D.C.	$	51,939.00
Hotel Taxes		
Room Sales @ 14.5%	$	1,458,958.00
Dining Sales @ 10%	$	93,985.00
Parking Taxes All Parcels @ 12%	$	27,752.00
Property Taxes (1.85%/year on pro forma cap rate values)		
Parcel 1 Value	$	60,780.79
Parcel 2 Value	$	895,240.03
Parcel 3 Value	$	761,772.37
TOTAL ONGOING D.C. ANNUAL TAXES GENERATED	$	5,744,530.19
Long-Term Jobs Created:	**514**	
Long-Term D.C. Jobs Created:	**293**	

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008156**

F. Summary table of the sources and uses of funds

Summary of Values & Workbook Variance Analysis (15 Year Development & Hold Period)						
	Annual CF	**Monthly CF**	**Proformas**	**S&U**	**S&U Audit**	**Finance**
C:\Documents and Settings\HP_Owner\My Documents\REAL ESTATE\WMATA Florida Ave Lots\WMATA RFP Submission\07 10 04 WMATA JDS Pro Forma 15 YEAR Land Purchase All Phases w Hotel.wcf						
Total Revenue	187,287,432	187,287,432	187,287,432	-	-	-
Total Costs						
Acquisition Costs	11,819,457	11,819,457	11,819,457	-	11,819,457	-
Construction Costs	35,860,023	35,860,023	35,860,023	-	35,860,023	-
Professional Fees	2,989,989	2,989,989	2,989,989	-	2,989,989	-
Marketing & Disposal	7,394,816	7,394,816	7,394,816	-	7,394,816	-
Addn'l Costs + Vac. Costs	0	0	0	-	0	-
Total Costs (Excl Int)						
Excl. Vacancy Costs	58,064,285	58,064,285	58,064,285	-	-	-
Incl. Vacancy Costs	58,064,285	58,064,285	58,064,285	-	-	
Sources of Funds and Profit						
Equity Contributions	-	-	-	14,095,425	-	14,095,425
Debt Contributions	-	52,299,344	-	52,299,344	-	52,299,344
Total Contributions	-	66,394,769	-	66,394,769	-	66,394,769
Finance Costs	48,104,265	48,104,265	48,104,265	48,104,265	-	48,104,265
Total Costs Incl Interest	106,168,549	106,168,549	106,168,549			
Total Profit incl. Pref. Returns	-	66,706,042	81,118,882	66,706,042	66,706,042	66,706,042
Preferred Returns						

G. A 15-year pre-development, construction and operating period cash flow statement which starts in October 2007.

See the following Exhibits:
EXHIBIT A: 15-Year Pro Forma & Cash Flow, All Phases, Parcel 3 Hotel, Purchase
EXHIBIT B: 15-Year Pro Forma & Cash Flow, All Phases, Parcel 3 Office, Purchase
EXHIBIT C: 15-Year Pro Forma & Cash Flow, All Phases, Parcel 3 Hotel, Ground Lease
EXHIBIT D: 15-Year Pro Forma & Cash Flow, All Phases, Parcel 3 Office/Retail, Ground Lease

Also see Attached CD-ROM with Complete 15-Year Excel Models

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008157

2. The amount and timing of predevelopment fees to be paid to WMATA during the interval period after the development agreement is executed but before WMATA realizes income from the sale (including estimate of this period).

None/Not Applicable. Settlement will occur immediately prior to construction start, currently estimated as approximately November 1, 2011.

3. Proposed purchase price for each portion of JDS

Parcel	Purchase Price
1	$590,000
2	$1,600,000
3	$2,700,000

a. Schedule of purchase price escalations if sale is not completed by date projected.

Purchase Price shall be increased by 3% per annum, prorated monthly, for any delay in settlement found to be caused by fault of Developer.

b. Method of adjusting purchase price if final approved density is greater than proposed.

None/Not Applicable

4. How any environmental remediation costs will be handled.

WMATA will perform any required environmental remediation to a standard sufficient for Purchaser's intended development plans and uses for the sites, and will obtain a No Further Action letter from the DC Department of the Environment reasonably acceptable to Purchaser, all at WMATA's sole expense, prior to commencement of any of Purchaser's obligations under the Development Agreement. Purchaser, in its sole discretion, shall be permitted to receive a full refund of all deposits and payments to WMATA and cancel any obligations to WMATA under the Development Agreement at any time prior to issuance of the acceptable NFA or Case Closure.

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.

None/Not Applicable.

6. Identification of any additional payments to WMATA

None/Not Applicable

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008158

4. The method of adjusting the base rent if it does no commence by the date projected and/or the final approved density is greater than that proposed.

If a delay in rent payment commencement is found to be caused by fault of Tenant, Starting Base Rent will be increased by 2% for each year after the current estimated commencement date that the actual rent commencement date occurs, prorated monthly, for the portion of the delayed caused by Tenant.

5. How environmental remediation costs will be handled.

WMATA will perform any required environmental remediation to a standard sufficient for Tenant's intended development plans and uses for the sites, and will obtain a No Further Action or Case Closure letter (as Tenant prefers) from the DC Department of the Environment reasonably acceptable to Tenant, all at WMATA's sole expense, prior to commencement of any of Tenant's obligations under a lease. Tenant, in its sole discretion, shall be permitted to receive a full refund of all deposits and payments to WMATA and cancel any obligations to WMATA under the Development Agreement at any time prior to issuance of the acceptable NFA or Case Closure.

6. WMATA's participating share of gross income from the project.

None/Not Applicable

7. WMATA's share of proceeds form 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.

None/Not Applicable

8. Identification of any additional payments to WMATA based upon factors chosen by developer.

None/Not Applicable

E. Proposed Sale Terms

1. Statement

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 Term Sheet.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008159

Equity Percentage of Total Cost	20%

To calculate ground lease rates, the current rate of the 30-year Treasury Bond (4.77% on October 4, 2007) was applied to the current imputed land value of each parcel. This is the best security index of comparable duration to the 29-year ground lease base term. Unsubordinated ground lease rates are always well below the long-term permanent financing rates for a purchase of equal value, as the land owner must discount the financing cost of the land to induce the tenant to accept the ground lease rather than a purchase, given the lack of equity accumulation, depreciating value, more difficult market financing terms and lower valuation of a property developed and held on a ground lease rather than fee simple land. In recent years, pricing for senior long-term debt on stabilized, new-construction, multi-tenant buildings in the downtown core have typically been priced at 100 to 120 basis points over the 30-year or 10-year Treasury Bond (depending on the term of the debt). We have discounted by approximately 100 basis points from that rate estimate, taking the straight 30-year Treasury Rate (the 10-year is 20 basis points lower) to derive the ground lease rate.

D. Proposed Ground Lease Terms

1. Statement

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 Term Sheet.

2. The amount and timing of predevelopment rent to be paid to WMATA.

None/Not Applicable.

3. The guaranteed base rent to be paid to WMATA through the term of the lease, including escalations.

Ground Lease Base Rent will escalate by 20% every ten years of the lease term and at the start of each ten-year renewal period.

		Parcel 1	Parcel 2	Parcel 3
Estimated Rent Start Date:		1/1/2013	1/1/2013	1/1/2013
Base Rent Per Annum		$ 28,143.00	$ 76,320.00	$ 128,790.00
1st Escalation @ 20%	1/1/2023	$ 33,771.60	$ 91,584.00	$ 154,548.00
2nd @ 20%	1/1/2033	$ 40,525.92	$ 109,900.80	$ 185,457.60
Renewal	1/1/2043	$ 48,631.10	$ 131,880.96	$ 222,549.12
Renewal	1/1/2053	$ 58,357.32	$ 158,257.15	$ 267,058.94
Renewal	1/1/2063	$ 70,028.79	$ 189,908.58	$ 320,470.73
Renewal	1/1/2073	$ 84,034.55	$ 227,890.30	$ 384,564.88
Renewal	1/1/2083	$ 100,841.46	$ 273,468.36	$ 461,477.86
Renewal	1/1/2093	$ 121,009.75	$ 328,162.03	$ 553,773.43
Renewal	1/1/2103	$ 145,211.70	$ 393,794.44	$ 664,528.11

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008160

However, a 25% ROC (corresponding to a 20% gross development margin) is generally the lowest return on cost for a new construction project that can attract private equity investment. Indeed, most seek 25% to 30% GDM as a threshold.

The complete set of calculations and assumptions for all proposed projects over a 15-year development period – as requested in the WMATA RFP – is included on a CD-ROM and as printed exhibits with this Volume 2. A few of the major assumptions include the following:

Valuation Factors	
Market Cap Rate for Office and Retail	6.5% fee-simple 7.0% on ground lease
Market Cap Rate for Hotel	9.5% fee-simple 10% on ground lease
Income Factors	
Current Office Rent	$42/net-sf full service 33% operating cost + vacancy ($14/sf) 6-month initial abatement
Current Retail Rent	$37/sf triple-net, Parcel 2 & 3 $45/sf triple-net, Parcel 1
Current Parking Rent	$200/month, underground garage
Hotel Occupancy Rate	70% in first year of operations 73% in second year 75% in all years thereafter
Hotel Average Daily Rate	$172.50 in first year $180.00 in second year $185.00 in third year Increasing at 3% per annum thereafter
Hotel Net Operating Income Factor	Approximately 35%
All Commercial Lease Terms	10 years, renewing automatically
All Rent Escalations	3% per annum from October 2007
Leasing Brokers	5% of gross lease value
Construction Costs	
Commercial Base Building Hard Cost	$135/sf ($150/sf for Parcel 1)
Tenant Improvement Allowance	$60/sf
Underground Parking	$35,000/space
Metro Sitework	$115/ground-foot Parcel 3 $75/ground-foot Parcel 2 + 8th St N/A Parcel 1
All Construction Cost Escalations	3% per annum from October 2007
Financing Costs	
Construction Loan Rate	8% Fixed Interest-Only
Permanent Loan Rate	7% Fixed 30-year Amortization
Maximum Construction Loan-to-Cost	80%
Maximum Permanent Loan-to-Value	80%
Minimum Permanent Debt Coverage Ratio	1.2 DCR

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008161

B. Executive Summary of Economic Information

LaKritz | Adler Development is offering the following purchase or ground lease terms for the Shaw-Howard/Florida Avenue Parcels:

Parcel	Purchase Price	Ground Lease Base Rent	Ground lease Term	Increases
1	$590,000	$28,143	29 years + 7 ten-year renewals	20% every 10 years
2	$1,600,000	$76,320	29 years + 7 ten-year renewals	20% every 10 years
3	$2,700,000	$128,790	29 years + 7 ten-year renewals	20% every 10 years

Purchase settlements will occur prior to construction start, currently estimated as approximately November 1, 2011. Ground rent payments would begin upon substantial completion of construction, currently estimated for January 1, 2013.

C. Estimated Fair Market Value of WMATA Land

Parcel	Purchase Price	Ground Lease Base Rent
1	$590,000	$28,143
2	$1,600,000	$76,320
3	$2,700,000	$128,790

Fair Market Sale Values for Parcel 1 and Parcel 3 were derived by calculating the residual land value at stabilization (not at the end of the 15-year holding period) for the project proposed for each parcel, such that the project would produce a 25% total return on project cost. For Parcel 3, the land value was calculated on the basis of the alternate plan for new office and retail, rather than the hotel plan, for consistency, because the office plan is by-right and the hotel plan is not. (However, the hotel cash flows, assuming approval of the parking reduction, will support the office land valuation.)

For Parcel 2, the return on cost calculations also include the costs and returns associated with the 10-year fee-subordinated ground lease and purchase option held by LaKritz | Adler Development on the much larger abutting 1920 8th Street parcel, and therefore are based on the land residual for the larger combined project that has been proposed. The total return on cost target at stabilization for the combined site is only 20%, because the fee-subordinated 8th Street parcel provides a significant infusion of low-cost equity into the project that significantly increases the leveraged IRR of the project. (In other words, because of the subordinated structure of the 1920 8th Street ground lease, the developer will be able to keep a larger share of a smaller total profit, while still compensating a equity investors at market rates.)

A 20% return on cost (ROC) is generally the lowest return on cost for a new construction real estate project that can be financed by conventional, market-rate construction lenders.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008162

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Also Attached: CD-ROM with Excel Models 12
Also Attached: Section 2.5 Proposal Security Form C – Letter of Credit 12

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008163**

ARTICLE 10

INSURANCE REQUIREMENTS (Revised 12/7/09)

Developer shall require its general contractor and all subcontractors to procure and maintain, at their sole cost and expense, the types of insurance specified below, or general contractor may, at its option, provide the coverage for any or all subcontractors, provided the evidence of insurance submitted by general contractor to WMATA so stipulates. Developer shall ensure that evidence of all required insurance in the form of original signed certificates of insurance and all applicable endorsements are submitted to WMATA prior to commencement of any work on WMATA property. All insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the work is to be performed. Developer shall require general contractor and all subcontractors to carry the insurance required herein. The insurance shall provide for thirty (30) days prior written notice to WMATA in the event coverage is substantially changed, canceled or non-renewed. All insurance shall remain in force until all work is satisfactorily completed and formally accepted (unless otherwise noted below), and all contractor and subcontractor personnel and equipment have been removed from WMATA property. Developer's failure to comply with the insurance requirements set forth herein shall constitute a violation of the Agreement.

1.1

1.2 **During the Construction Period.**

Commercial General Liability Insurance, issued to and covering the liability of the general contractor and subcontractors for all activities and obligations under or in connection with this Lease Agreement and the other Transaction Documents. The Policy shall include the following coverages: 1) Products & Completed Operations Liability, 2) Independent Contractor's Liability, and Contractual Liability with all railroad exclusions deleted; and all XCU (explosion, collapse and underground) exclusions are to be deleted, wherever required. If the insurance is written on a claims made basis, then the extended discovery period must be at least three (3) years following completion and acceptance of the project. The coverage under such an insurance policy or policies shall have a limit of liability of at least $10,000,000 per occurrence combined single limit. WMATA shall be included as an additional insured with respect to activities related to this Lease Agreement and the other Transaction Documents.

1.2.1

1.2.2 **Builder's Risk Coverage**, covering physical damage or destruction to the building(s), improvements, 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 in the general contractor's or subcontractors' care, custody and control. 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, in respect of all construction, installation, alteration and other similar construction activities.

Deleted: **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 (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 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, such coverage and policies having the scope and limits not less than as set forth below.

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Deleted: Improvements

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Deleted: and stored off-site

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1.2.3 **Workers' Compensation Insurance**, in accordance with the statutes of the District of Columbia, and with all requirements of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, Admiralty Laws, and the Federal Employers' Liability Act. Such insurance shall conform to all applicable statutory limits and, to the extent not specified to the following minimum coverage limits:

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

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Deleted: policies, without limitation,

1.2.4 **Automobile Liability Insurance**, covering the general contractor's and any subcontractors', 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. 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 $2,000,000 per occurrence.

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1.2.5 **Contractor's Pollution Legal Liability Insurance**, covering the liability of the general contractor and any of its subcontractors 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 insurance policies shall have limits not less than $3,000,000 per occurrence of claims made.

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1.2.6 **Railroad Protective Liability Insurance**. The Developer shall procure and maintain Railroad Protective Liability insurance (RRP) issued to WMATA, covering the liability of the general contractor and any subcontractors, for any and all bodily injury, death, personal injury and any and all damage to property, equipment and facilities caused by work performed by the general contractor or any subcontractors on, above, below, adjacent or within fifty (50) feet of WMATA property. The coverage under such policy shall have limits not less than $5,000,000 combined single limit for bodily injury and property damage with a $10,000,000 aggregate. As an option, WMATA will waive the requirement for the Developer to procure the RRP for a fee of $208,845 and add the project to WMATA's blanket RRP program.

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1.2.7 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 Improvement, its construction, and its use and occupancy.

1.3 **During Operation Period. As a condition of tenancy, Developer shall ensure that all commercial tenants** procure and at all times maintain without interruption throughout the remainder of the Lease Term, at their sole cost and expense, insurance to protect itself, the tenants and WMATA and all of their respective officers, directors, agents, and employees, such coverage and policies having the scope and limits not less than as set forth below.

1.3.1 **Commercial General Liability Insurance,** covering the liability of the tenant, for all activities and obligations under or in connection with this Lease Agreement and the other Transaction Documents. The Developer and WMATA shall be included as additional insureds on an appropriate endorsement. Coverage shall include, without limitation, premises, operations, products liability, products completed operations, independent contractors, protective broad form property damage, personal injury, blanket contractual liability insurance and explosion, collapse, and underground hazards. The coverage under such an insurance policy or policies shall have at least the following limits:

1.3.1.1 **Non-Construction Activities and Obligations:** $2,000,000 Combined Single Limit Each Occurrence.

1.3.1.2 **Construction Activities and Obligations:** $5,000,000 Combined Single Limit Each Occurrence.

1.3.2 **Commercial Property Insurance.** The Developer shall procure and maintain all-risk property insurance covering the full replacement value of the structure, all common areas, and all improvements and betterments on the Property that inure to the benefit of the Developer. The Developer shall ensure that all its commercial tenants procure and maintain all-risk property insurance covering the leased space and all improvements and betterments.

1.3.3 **Rental Value Insurance Policy.** Beginning with the Base Rent Effective Date and continuing during the entire period of operation of this Lease, Developer shall procure and maintain a Rental Value Insurance Policy. During the first two (2) years of the Term following the Base Rent Effective Date, the insurable limit of said policy shall be in the amount of twelve (12) months Base Rent. Within forty-five (45) days before the beginning of the third year of the Term following the Base Rent Effective Date, and before the beginning of each subsequent year of the Term, WMATA and Developer shall review Developer's revenue projections and determine the total amount of rent expected to be payable during the lease year. Said policy shall then be

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Field Code Changed

amended to reflect this review but the maximum limit of the policy shall be the aggregate amount of the Base Rent for a twelve (12) month lease year. The Rental Value Insurance Policy shall name WMATA as a loss payee to the extent of the Base Rent.

1.3.4 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.

1.4 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 carried with respect to premises similarly situated. **WMATA's Interests.** The Developer shall cause its general contractor's, subcontractors', and tenants' insurance carriers to name WMATA as an additional insured under their general and auto liability insurance policies and to provide not less than thirty (30) days' written Notice to WMATA of modification, termination, or cancellation of any required policy 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 (i) shall be written on an occurrence basis; (except for pollution and professional liability) (ii) general contractor's/subcontractors' coverage shall be specified as primary and not contributing with or in excess of any coverage which WMATA may carry; (iii) 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; (iv) 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 (v) shall provide for a deductible or self insured retention not to exceed $100,000. Neither the issuance of any insurance policies required hereunder, nor the minimum limits specified herein shall be deemed to release, limit or restrict in any way the general contractor's, subcontractors' or tenants' liability arising under or out of this Lease or otherwise.

1.5 **Verification of Coverage.** With respect to each and every one of the insurance policies herein required to be procured, 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 within thirty (30) days of the renewal date, Developer 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) the original Railroad Protective Liability policy and original signed certificates of insurance and all applicable endorsements for each such required insurance coverage or renewal thereof, as the case may be. Each and every insurance policy required to be carried hereunder shall provide (and any certificate

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evidencing the existence of each such insurance policy shall certify) that, unless WMATA shall first have been given thirty (30) 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 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, Developer 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. **Failure to Procure or Maintain Insurance.** In the event that any required insurance is not maintained or the coverage is unacceptable, 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 Developer, without the need of any notice to the Developer, 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.

1.6 **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 "VII" 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 Lease Premises is located. WMATA's approval or failure to approve the insurance furnished by the Developer's general contractor, subcontractors or tenants shall not release, limit or restrict in any way Developer's liability arising under or out of this Lease or otherwise.

1.7 **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.

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Deleted: <#>Compliance with Insurance Requirements. The Developer shall not itself and shall not suffer any of the Insurance Obligors 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 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, 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. ¶

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WMATA shall be included as an additional insured under the coverage for Commercial General Liability Insurance on an appropriate endorsement. Coverage shall include, without limitation, premises, operations, products liability, products completed operations, independent contractors, protective broad form property damage, personal injury, blanket contractual liability insurance and explosion, collapse, and underground hazards. The coverage under such an insurance policy or policies shall be maintained for three (3) years after Final Completion and shall have at least the following limits:

1.1.1

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

Construction Activities and Obligations. Personal Injury and Property Damage Liability: $10,000,000 Combined Single Limit Each Occurrence.

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the Developer shall cause its general contractor to procure and maintain one or more policies of builder's risk insurance on

1.1.2

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This insurance shall include the interests of WMATA and the Insurance Obligors.

1.1.3

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. Said insurance policies shall be in such amounts as shall be reasonably required by WMATA

1.1.4

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(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, nor shall any such actions or omissions affect or limit the obligation of the insurance company to pay the amount of any loss sustained

1.2

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; and (viii) shall not include restrictive language to WMATA's additional insured status

1.3

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not less than sixty (60) days before any such insurance policy shall expire

7.2 DEVELOPER shall make a lump sum Initial Capitalized Lease Payment of $x,xxx,xxx at Closing. This payment represents the entire rent for the project for the 60-year base term of the lease as long as the original HUD insurance for the project remains in effect. Upon termination of HUD insurance for the project, the property will be reappraised through the three-appraiser method and rent adjusted accordingly, including taking into account appropriate additional annual rent payments and escalations at 3% per annum. In no event will any part of the Initial Capitalized Lease Payment be refunded.

7.3 Participation Rent at 1.5% of Effective Gross Income shall be paid starting 45 months after the Effective Date, with 1% unsubordinated, to operating expenses or member loans or Equity and .5% paid in accordance with HUD requirements. Any Participation Rent not paid in a given year shall accumulate with interest at 5.8 % and be paid from next annual cash flow or from Capital Event proceeds prior to any return on or return of equity. At all times during the Initial Lease Term, the debt service coverage ratio on any senior loans, other than HUD-insured senior loans or public subsidies, shall be no less than 1.2%

Add'l Density

JWM Comments
11/3/09

Amended and Restated
WMATA Term Sheet
Shaw-Howard/Florida Avenue Sites

This Term Sheet, ("Term Sheet"), for a 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 The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company (the "DEVELOPER") will be the developer of the Project (as defined in Section 4 below). The DEVELOPER'S initial principals shall be Banneker Ventures, LLC, a District of Columbia limited liability company ("Banneker"), and Banc of America Community Development Corporation, a North Carolina corporation qualified to do business in the District of Columbia ("BACDC") [subject to the substitution of a different principal for BACDC upon WMATA's approval, not to be unreasonably withheld]. At or after the Closing until the "Completion of the Total Project" (as defined in Section 6.4 below), DEVELOPER shall be permitted to only admit other members who are tax credit investors, tax credit syndicators and equity investors for the Total Project (as defined in Section 4.2(b) below) so long as such admissions are not a disguised sale of the Project or transfer of control to another developer, except in the limited circumstance where there is an imminent default under the tax credits and the tax credit syndicator exercises its right to replace the manager of the Total Project. After the Completion of the Total Project, there shall be limited restrictions on the DEVELOPER'S ~~composition, members, managers, leasing or financing~~principals and the identity of any successor lessee/owner of the Total Project.

OK → ?
Cannot approve TS w/o knowing who it is.

Comment [JM1]: OK

2. **Definitive Agreement**

2.1 The Definitive Agreement will be a Joint Development Agreement ("Definitive Agreement") together with all necessary related documentation upon which WMATA and DEVELOPER mutually agree. The Definitive Agreement will be prepared initially by WMATA. Both parties commit to complete the Definitive

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Agreement so WMATA can present the agreed-upon Definitive Agreement to its Board for approval within one month of the Board's approval of this Term Sheet. WMATA and DEVELOPER shall execute the Definitive Agreement within three (3) business days of Board approval.

2.2 The parties shall attach the above referenced necessary related documentation to the Definitive Agreement as exhibits. Such exhibits shall include, but not be limited to:

a) a ground lease agreement (the "Lease") whereby WMATA will lease the Lease Property to the DEVELOPER for ~~an initial~~a single term of ~~sixty~~ninety-nine (~~60~~99) years, with ~~two DEVELOPER~~no renewal or option periods ~~totaling an additional thirty-nine (39) years~~. 66/39

Comment [JM2]: This must be confirmed with Mr. Graham and/or Mr. Catoe.

b) A conditions, covenants and reservations agreement ("CCRs"), to be recorded among the land records, which will: (i) protect WMATA's interests in its tunnel and associated elements and access thereto; and (ii) include transit oriented development covenants.

c) A co-tenancy agreement ("Co-Tenancy Agreement") between WMATA and DEVELOPER to be recorded among the land records after the CCRs which will control the operation and disposition of the Total Project after the Lease and any replacement lease provided to a lender have either expired or been irrevocably terminated.

Comment [JM3]: OK

D.) Alley Easement

2.3 The execution of the Lease ("Closing") will take place no later than six hundred (600) days after the WMATA Board approves the Definitive Agreement. The Definitive Agreement shall terminate no later than the Completion of the Total Project with any surviving obligations being included in the CCRs.

Comment [JM4]: OK

3. Property to Be Leased To DEVELOPER

3.1 WMATA will lease to DEVELOPER approximately 28,376 square feet of land, which area is outlined in yellow on **Exhibit A** and attached hereto (the "Lease Property"). The land is in three separate parcels: 1) approximately 3,799 square feet in Square 393, Lot 44; 2) approximately 8,621 square feet in Square 393, Lot 45; and 3) approximately 15,956 square feet in Square 416, Lot 31. The Lease Property shall not include those property interests necessary for protection of WMATA's transit facilities, which include the existing WMATA tunnel and associated elements.

3.2 DEVELOPER will cause an preliminary ALTA survey and title commitment to be prepared within two (2) months of the effective date of the Definitive Agreement and the final ALTA survey (assuming a closed public alley) and title commitment no later than thirty (30) days before the Closing.

- Enough time to do Reservations of Rights?

JH - legal description of Excluded

- Everything below is not being Conveyed
- or Everything From a Certain part of tunnel

Tarek?

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008173

4. Project

DEVELOPER will construct improvements on the Lease Property (the "Project") in substantially the same configuration shown in **Exhibit B** and attached hereto, which configuration includes the Total Project, in accordance with a project schedule to be finalized and agreed upon at the Closing in accordance with the Definitive Agreement. The Project may not be materially changed without WMATA's written approval, such approval not to be unreasonably withheld, delayed or conditioned. The Project will consist of:

Comment [JM5]: Per our 10/29 meeting with John Hagner, project schedule was to be attached to the Lease; Developer's failure to keep up with project schedule is a default under the Lease. This was supposed to be similar to the reversion idea. Developer was not at this meeting, so this may be something that he did not OK, but we should still ask for this.

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 100,711 gross FAR square feet including approximately 80,169 gross FAR square feet for residential apartment units per District of Columbia ("District") approvals and approximately 10,000 gross FAR square feet of retail/arts use, and approximately 10,542 gross FAR square feet of associated loading, lobbies, ramps, and residential and retail parking, per District approvals.

4.2 Assemblage.

a) Adjacent Parcels. An affiliate of DEVELOPER is the contract purchaser of Lot 41 & A&T Lot 826 in Square 393, comprising approximately [7,720] square feet of land fronting on 9th Street, NW and located contiguous to Lot 44 near the southwest corner of the intersection of 9th Street and Florida Avenue, N.W., in the District of Columbia (the "DEVELOPER Property"). The DEVELOPER Property is outlined in blue on the attached **Exhibit A**.

b) Total Project. WMATA and DEVELOPER have agreed to apply to close the portion of the public alley in Square 393 contiguous to Lots 41, 44 & 45 and A&T Lot 826 prior to the Closing so that promptly after the Closing, DEVELOPER can resubdivide such Lots and the portion of the closed public alley into a buildable lot of approximately [21,244] square feet. DEVELOPER is acquiring an interest in the Lease Property to develop a single, mixed-use, Transit-Oriented Development project on the combined Lease Property and DEVELOPER Property (the "Total Project").

Kw - unravel Alley closing Costs out of Sec. Deposit

Parties Land Records costs to Developer

c) Alley Closing. WMATA will consent to the alley closing prior to Closing, provided that when the portion of the public alley is closed, an easement will be recorded among the owners to preserve the use of the closed portion of the public alley to protect WMATA's interests until the Closing. Such easement will be terminated upon the post-Closing resubdivision of the relevant land in Square 393 into a buildable lot. **Exhibit A** shows the portion of the closed alley that will become part of the Lease

Kw - among the owners

- Adjacent owners
- Land Records
- JH - why not leave alley close?

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008174

· Property in red; the portion that will become part of the ~~DEVELOPER's~~DEVELOPER Property is shown in green.

d) Co-Tenancy Agreement. At Closing, the parties will execute ~~a~~the Co-Tenancy Agreement, which will govern the operation, management and sale of all the improvements ~~on~~and the assembled ~~Lots 41, 44, 45 and A&T Lot 826 on Square 393, upon~~Lease Property and DEVELOPER Property upon termination or expiration of the Lease without a new lease being obtained by a lender. The Co-Tenancy Agreement shall provide, *inter alia*, after the expiration or termination of the Lease~~.~~, (i) each owner shall have an equal vote on the operation and management of the Total Project unless the Lease is terminated for an uncured default by the DEVELOPER without a new lease being obtained by a lender, whereupon voting shall be pro rata by ownership percentage, and (ii) WMATA shall have the right during pre-set time windows to sell the Total Property for all cash to an unrelated purchaser.

Developer pays all costs Easement Satisfactory to WMATA

ownership Split is Described in 7.3

Always Pro Rata

· JH · Right of partition may give either party the Right to force Sale

independently Require

Comment [JM6]: Pro Rata voting in all circumstances should be a prerequisite for including the Co-Tenancy Agreement in the deal.

Comment [JM7]: Remove pre-set time windows language – time windows will greatly restrict WMATA's ability to sell; may also create undesirable time periods where WMATA has to come up with costs of operation.

4.3 The DEVELOPER Improvements will be built in a single phase on the Lease Property as part of the Total Project.

5. Due Diligence

5.1 Lease Property 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 Lease Property 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 Lease Property 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 onto the Lease Property, 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 Lease Property (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

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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.

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 Dollars ($250,000.00), (the "Security Deposit") to secure DEVELOPER'S performance. The DEVELOPER'S Proposal Security currently being held by WMATA, in the amount of One Hundred Thousand Dollars ($100,000.00), will be applied to the Security Deposit. The DEVELOPER shall also receive a credit in the amount of One Hundred Thousand Dollars ($100,000.00) for added legal, financial and related expenses incurred by DEVELOPER ("Expense Credit"), which will be applied to the Security Deposit. At Closing, the Capitalized Lease Payment shall be reduced by the amount of the Expense Credit and the resulting deficiency ($100,000) to the Security Deposit, shall be replenished by the DEVELOPER.

Comment [JM8]: This must be confirmed with Mr. Graham and/or Mr. Catoe.

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← Subject to Appropriate Documentation

Comment [JM9]: The "expense credit" must be confirmed with Mr. Graham and/or Mr. Catoe.

In any event, to apply it to the Deposit and then the Payment is gratuitous.

We must also confirm the developer's sale/lease expenses per Mr. Graham's email of 10/22.

6.2 The Security Deposit will not be applied to any 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, with interest accrued, within twenty (20) business days following the "Completion of the Total Project," which is hereby defined as: (i) the issuance of one or more final certificates of occupancy for all residential apartment units and common areas, including parking; and (ii) one or more "shell" certificates of occupancy or equivalent for the retail portions of the Total Project, subject to completion of the tenant improvements for each unoccupied retail space; and (iii) correction of any damage to WMATA's property caused by Developer or its contractors, subcontractors or consultants;

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008176

and (iv) satisfaction of all requirements of the WMATA Design Construction Standards applicable to the DEVELOPER Improvements.

7. Consideration

7.1 Option Fee: The DEVELOPER has previously paid WMATA One Hundred Thousand Dollars ($100,000.00) as an option fee (the "Option Fee"). The Option Fee is non-refundable and shall not be applicable to the Lease Consideration.

7.2 Rent:

a) Pre-Closing Rent. The DEVELOPER shall make quarterly non-refundable Pre-Closing Rent payments beginning upon the effective date of the Definitive Agreement. Pre-Closing Rent for the first twelve (12) months will be $50,000.00 per year, payable in advance in quarterly instalments of $12,500.00. Pre-Closing Rent will increase to $65,000.00 per year for the next twelve (12) months. For the remainder of the Pre-Closing Period, Pre-Closing Rent shall be $80,000.00 per year. Pre-Closing Rent shall be prorated for partial quarters.

b) Capitalized Lease Payment. DEVELOPER shall make a lump sum initial Capitalized Lease Payment of $_____ ~~at Closing~~Two Million Fifty Thousand Dollars ($2,050,000) at Closing, which includes an adjustment for the 99-year versus the 60-year Lease term in the appraisal, less a credit of $100,000 for added expenses incurred by DEVELOPER. This payment represents the entire base rent for the Project for the ~~60~~99-year ~~initial~~ term of the Lease ~~as long as the original HUD insurance for the project remains in effect. Upon termination of the HUD insurance for the Project, the Lease Property will be re-appraised through the three-appraiser method and base rent will be adjusted accordingly, including taking into account appropriate additional annual rent payments and escalations at three percent (3%) per annum~~. In no event will any part of the Capitalized Lease Payment be refunded.

60yrs plus 39 option
MTM at option

Comment [JM10]: This must be confirmed with Mr. Graham and/or Mr. Catoe.

Comment [JM11]: SAAM decision

c) Participation Rent. Participation Rent, at one and a half percent (1.5%) of Effective Gross Income shall be paid to WMATA beginning at the ~~forty-fifth (45th) month after the effective date of~~earlier of the DEVELOPER's receipt of Effective Gross Income or, ~~until the~~ Final Completion of the Total Project, the amount of Effective Gross Income DEVELOPER was projected to receive under the Project Schedule in the Definitive Agreement; one percent (1%) shall be unsubordinated to operating expenses, debt service, member loans, or equity; one-half

upon

Comment [JM12]: The wording here is confusing. When does it begin?

1.) D Receives EGI;

2.) if project Delayed beyond Final project
- "not later than" EGI in Schedule
- Covers after Schedule
- Receive projected Amounts
- once Completed, Go back to actual

(0.5%) shall be paid in accordance with HUD requirements. Any Participation Rent not paid in a given year shall accumulate interest at five and eight-tenths percent (5.8%) and be paid from the next annual cash flow or from Capital Event proceeds prior to any return on, or return of, equity. At all times during the ~~Initial~~ Lease term, the debt service coverage ratio on any senior loans, other than HUD-insured senior loans or public subsidies, shall be no less than 1.20:1.00.

d) Capital Event Rent. Capital Events (defined below) shall be permitted in accordance with this Section 7.2(d). Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). A "Capital Event" will include, but not be limited to, 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 change the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement but not including transfers among existing members, transfers to wholly-owned entities, intra-family transfers, transfers caused by death, transfers required for the initial debt and equity of the Total Project before the permanent loan closing and transfers of interests in publicly traded entities. 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 debt to construct the Project secured by DEVELOPER Improvements and repayment of the original equity and member loans to DEVELOPER not yet repaid including an Internal Rate of Return of twenty percent (20%). To confirm DEVELOPER's original project debt and equity, within thirty days of the Closing, DEVELOPER will provide WMATA with documentation confirming such amounts. 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. In no event will member loans and equity exceed thirty percent (30%) of development costs to construct the Project.

what is change to Gross (%)

Comment [JM13]: SAAM decision; Could any of these transfers be structured to 1) generate income or 2) disguised sale?

Supposed to be 10%

Comment [JM14]: Should be "audited documentation"

Final Structure TBD in Def Agreement

e) ~~Option Period Rent. Rent shall be paid during the option period at market rate. To determine market rate, the Lease Property shall be appraised as vacant.~~

→ Reinstate

Comment [JM15]: Depends on lease term

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008178

7.3 Pro Rata Split After Assemblage: The Definitive Agreement and Lease (as defined in Section 2.1 above) shall lease only the Lease Property, but shall provide that any Additional Density determination applicable to the Lease Property, the "DEVELOPER Improvements" ~~(as defined in Section 4.1 above)~~ or the "Project" ~~(as defined in Section 4 above)~~ shall be determined by using the pro rata share of the Total Project based on the ratio of the square feet of land of the Lease Property and the DEVELOPER Property. WMATA's pro rata share of the Total Project is 79.0%, subject to the final survey which shall be attached as an Exhibit to the Definitive Agreement.

Comment [JM16]: These are defined already in Section 4.1 and Section 4

7.4 Additional Density: If at any time during the ~~initial 60~~99-year term, DEVELOPER has received approval for additional density over 100,711 gross FAR square feet attributable to the Lease Property, DEVELOPER will adjust the Capitalized Lease Payment using the same methodology for calculating the Capitalized Lease Payment with an adjustment for any time between the Closing and the date the Additional Density is placed in service. The measurement of gross FAR square feet shall be the highest amount generated by the Lease Property, whether used on the Lease Property or not, in (i) any final zoning approval by the District of Columbia; (ii) building permit approval; or (iii) an amount approved in any revisions to the building permit prior to issuance of the final certificates of occupancy. Such additional density adjustments shall include any gross FAR square feet attributable to portions of the public alley located between 8th and 9th Streets, NW, which become part of the Lease Property in the alley closing process.

50/80 down as inflated by 5.8% for Remaining term (not 60 yrs)

Comment [JM17]: SAAM – what is the "same methodology"? Is this FMV or does this mean the $50/$80 adjustment described in 7.4a?

a) Prior Final Certificate of Occupancy: If the DEVELOPER receives approval for additional density prior to receipt of the final certificate of occupancy for the Total Project or while a HUD ~~insurance~~insured loan remains in place, the additional density Capitalized Lease Payment adjustment shall be as follows:

Change all to this language

(i) An upward adjustment in the Capitalized Lease Payment by $50/gross FAR square feet for additional density generated by the Lease Property over 100,711 gross FAR square feet; and

(ii) After the additional density consideration in ~~7.6~~7.4(a)(i) is added, a downward adjustment in the Capitalized Lease Payment by $80/gross FAR square feet for such additional density generated by the Lease Property which increases the Project's affordable housing requirement pursuant to the District's mandatory Inclusionary Zoning regulations (Chapter 26 of the Zoning Regulations of the District) over 6,414 gross FAR square feet

NOTE: WMATA expects to adjust these amounts based on the relationship of the Capitalized Lease Payment for a period of years to the fee simple land value.

b) After Final Certificate of Occupancy: During the term of the Lease, if HUD insurance no longer remains in place, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those in effect at receipt of the Final Certificate of Occupancy for the Project and for which no increase in Capitalized Lease Payment has been paid, such additional densities or unit totals will require DEVELOPER to pay additional Capitalized Lease Payment. The additional Capitalized Lease Payment payments will be determined through the three-appraiser method, to be defined in the Definitive Agreement and based on the then-remaining term of the Lease.

7.5 Additional Consideration: The Capitalized Lease Payment, including any adjustments made under Section 7.4(a) above, shall be increased annually by five and 8/10ths percent (5.8%) per year from the execution of the Definitive Agreement, if Closing or Additional Density occurs later than six hundred (600) days from execution of the Definitive Agreement. No Additional Consideration increase shall be applied for any delay caused by WMATA under Section 7.6. If Additional Density occurs after Closing, then only the increase in the Capitalized Lease Payment for such Additional Density shall be subject to the 5.8% annual increase.

7.6 WMATA Delays: The maximum length of six hundred (600) days to Closing will be extended for delays caused solely by WMATA actions or failure to act, including requesting FTA Approval in accordance with Section 8.5 below. Such extension(s) shall be for the amount of time reasonably necessary to compensate for the delay caused solely by WMATA, *e.g.*, if such a delay causes DEVELOPER to miss a planned filing date which results in a one day-for-one day delay, then the extension shall be measured in days with respect to that filing date, however, if the filing date is for some action which is only available in a certain "time window" and the delay causes DEVELOPER to miss the filing date for such "time window," then the extension shall be measured in a period equal to the next available "time window" with respect to that filing date. In no other event, other than Force Majeure Delays as defined in Section 7.7 below, will Closing be delayed, even though DEVELOPER'S schedule may take longer than anticipated.

7.7 Force Majeure Delays: The maximum length of six hundred (600) days to Closing may be extended 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. Such Force Majeure Delays shall be subject to an increase in the Capitalized Lease Payment, as provided in Section 7.5 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

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 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 ten (10) days of execution of the Definitive Agreement and prior to any final submission to the District, DEVELOPER shall submit to WMATA for its approval a conceptual Total Project site plan in substantial conformance with Exhibit B, including building elevations and floor plans (the "WMATA-Approved Site Plan"). The design of the Total 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 Lease Property. WMATA shall make all reviews and approvals or disapprovals of DEVELOPER'S initial submission to WMATA within thirty (30) days of receipt of such submission by WMATA.

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 Total Project and as shall otherwise be reasonably satisfactory to DEVELOPER and WMATA.

9. Special Considerations

9.1 Community Contact: Within one hundred twenty (120) days of the execution of the Definitive Agreement DEVELOPER shall contact the appropriate community groups in the area as specified by WMATA to apprise such groups of the Total 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. WMATA will include a list of all such groups as part of the Definitive Agreement.

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

a) DEVELOPER will fund any and all costs of the Approvals. WMATA will not incur any costs in connection with the Approvals either in the actual Approvals process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.
b) 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, partial alley closing and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.
c) WMATA shall cooperate with DEVELOPER in all zoning and other related Approvals, including the filing of the alley closing application, lot consolidation/resubdivision application, etc.

d) The resubdivision of the Lease Property ~~and~~, the DEVELOPER Property and the closed portion of the public alleys in Square 393 will not be completed until after Closing.

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

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 previously approved by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval, not to be unreasonably withheld, delayed or conditioned.

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 improvements on the Lease Property or the DEVELOPER Property that materially and adversely affect WMATA's operations. The design and construction plans for such improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation, WMATA's Adjacent Construction Project Manual, Revision 3, dated December 2008 (collectively, "WMATA Design and Construction Standards"). If the DEVELOPER commences construction of the DEVELOPER Improvements within three (3) years of the date of the Definitive Agreement, the DEVELOPER may use the version of the WMATA Design and Construction Standards that is in effect on the date of the Definitive Agreement, without subsequent amendments or revisions, with respect to the Approvals, the WMATA-approved Site Plan and the design and construction plans for the DEVELOPER Improvements; otherwise, the most recent versions of the WMATA Design and Construction Standards, as amended and revised from time to time, shall be applicable. The Total Project will be reviewed in accordance with, and must conform to the requirements of, the aforementioned documents. Safety

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the DEVELOPER 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 unless WMATA is prohibited from being so

named by the FHA lender under the HUD financing utilized by DEVELOPER, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at ~~least ten (10) days prior to~~ Closing.

Comment [JM18]: OK

9.7 Interim Improvements: intentionally omitted.

9.8 Guaranty: At the Closing, ~~BACDC~~BACDC Banneker or another guarantor reasonably acceptable to WMATA will execute an unconditional guaranty ("Guaranty") to WMATA with the total liability thereunder limited to One Million Dollars ($1,000,000) plus the cost of enforcing the Guaranty against the guarantor. The Guaranty will be released by WMATA upon the Completion of the Total Project. The Definitive Agreement will include a minimum financial test to be met by ~~BACDC,~~the guarantor which will be ~~100% of the estimated costs of the construction costs of the Total Project~~$1,000,000. The adequacy of security and need for this Guaranty to be further discussed in the Definitive Agreement. The Guaranty ~~agreement~~ will guarantee to WMATA, subject to the above, the following:

Banneker is not acceptable Guarantor (Nat/Steve)

Cap:

Comment [JM19]: Guaranty should be for lease/operation period also because of SPE, limits on indemnification imposed by Lender, tunnel issue.

Is this enough of a guaranty for a project over our tunnel? Can Banneker even provide this? Can we make additional partners provide additional guaranties?

Deleted: unconditionally

a) the completion of construction of the DEVELOPER Improvements;
b) the completion of infrastructure required by either the District or WMATA that is not included in the Site Work;
c) the completion of any demolition and removal of DEVELOPER Improvements as and when required under the terms of the Definitive Agreement;
d) the remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities;
e) the required parties maintain the insurance required by WMATA under the Definitive Agreement; and in the event such insurance is not maintained and no insurer pays a claim that would have been paid if such WMATA required insurance had been maintained, the Guarantor shall indemnify WMATA up to the relevant insurance limit amounts;
f) the restoration of the Lease Property to the condition it was in on the date of Closing should work cease on the excavation portion of the project above the Lease Property longer than 30 days; and
g) the timely payment all DEVELOPER obligations under the Definitive Agreement, including full payment of any increase in the Capitalized Lease Payment for any Additional Density which increases the Capitalized Lease Payment after the Closing.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the DEVELOPER Improvements 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.

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

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Lease Property, 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 District 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 Lease Property 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 Lease Property or breach of any agreement with WMATA, 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 who physically alter the Lease Property will be obligated, at their sole cost and expense, to restore the Lease Property to the similar condition existing immediately prior to those activities. Both the Lease and the CCRs shall contain indemnification of WMATA.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors that enter onto the Lease Property, 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 except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of one hundred fifty (150) days 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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008186

Art Hanson / 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?
(c) do you give them a chance to cure? + when

+ draft memo to Carol

"ex parte"

BANNEKER VENTURES, LLC

May 9, 2008

VIA EMAIL

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.

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

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

Keysia 4/27/11

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

- No Final Decision/Agency Action
- Deliberative
- only Release winning Proposal

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. Deliberative

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. Deliberative

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.

What happens to Board Records? Does this Request include Jim Graham

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008189

4. Documents discussing any decision to postpone or discontinue negotiations with Banneker Ventures, LLC related to the Shaw-Howard/Florida Avenue Joint Development Site. Deliberations

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. Releasable

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. Deliberative, But Some may have been Released

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

03/17/08

Fl AVE

Cost & Time Terms (Friday Email)

① Pre Development Rent (OK)

② Base ~~Rent~~ (NO)

- Josh — Changes in Finance Market
  - 12 mo Appraisal too old
    - Todays would be lower
  - New Appraisal ?
  - $597 as Base
    - Appraisal @ X date
    - Adjust Base Rent in range $517 – 597$

No need for #

Extension of time? 3%

Banzhaf
- Can't do the Appraisal #'s Today. Need to review

- FTA Appraisal Issue
  - Ties our hands
  - Time to move on if No Agreement

Metropolis Agreement ?? Sending via PDF.

Is Nitty - Email?

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 Regina 5/28/08 **CC:** Joel R. Washington, Marc Berndt

(A) Rox supplies Carol reads

(1) Assurance of financial responsibility of winning team
(2) Legal review of record of decision making
(3) "Coaching" or ex parte communications

(b) Clean Hands Criteria

From: Rosalyn Doggett
To: Joel R. Washington
Date: 11/7/2008 3:43:54 PM
Subject: Fwd: FL Ave

Our economic consultant has manipulated the Florida Avenue pro forma to see what is required to get both affordable housing and a value equal to or exceeding the net present value (NPV) of the next highest offeror. By adjusting certain variables within what he thinks is reason, Eric believes that we can still get the lion's share of what we were to get (except that base rent is $430k instead of $597k). What he shows is not the only way to skin the cat, but just an example that better conforms to the term sheet. (I haven't examined it in detail yet.)

>>> <eric.smart@bolansmart.com> 11/7/2008 2:51 PM >>>
Roz

Attached is Omar's latest proforma with a series of inputs marked by BSA that are either WMATA requirements and / or possible places for changes based on reasonable assumptions. Note that a required year one WMATA rent of $430,000 escalated at 3.0% gets you to approximately the next highest proposal NPV, including adjusting the next highest proposal to assume a 2009 contract start date (deferred option payment from 2008 in earlier modeling).

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

CC: Joanne Waszczak; Joshua W. Montague

The Jazz @ Florida Avenue
Mixed-Use
Apartment and Retail Project

700 & 800 blocks of Florida Avenue, NW
Washington, DC 20001

Financial Model

as of 8/21/08

FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential - Budget and Proforma (The Jazz @ Florida Avenue)

Summary Data

Site Area	SF		28,892
Total Possible Project GSF	6.00	FAR	178,752
Total Buildable Residential + Retail GSF			178,752
Retail GSF			14,000
Retail NSF	94%	efficiency	13,160
Residential Gross SF	100%		164,752
Residential Net SF	83%	efficiency	136,744
Residential Net SF - Market	**80%**		109,395
Residential Net SF - Affordable	**20%**		27,349
Total No. of Residential Units	950	SF avg	144
Market Rate Units	80%		115
Affordable Units	20%		29
Below Grade Parking (Resid Parking)	450.0	SF	45
Below Grade Parking (Dedicated Retail/Share Parking)			15
Total Parking Spaces			60
affordable unit size @ 95% of market?			

Program % Breakdown

Residential	92.17%
Retail	7.83%

Lease Payments

WMATA - Year 1 of Stabilization	$ 430,000

Project Vacancy

Residential	5%
Retail	5%

% of Project Revenue

Residential	92%
Retail	8%

Residential Per SF revenues

Market	*2012?*	$ 2.85
Affordable Units (at 50% of AMI)		$ 1.15

Loan Rate	7.40%

WMATA Annual Lease Payment - Year 1		$ 430,000
Security Deposit	*credited*	100,000
Pre-Lease Payment		275,000

Sources and Uses of Funds

Sources		**Residential**	**Retail**	**Total**
FHA Bonds	76% LTC	$ 36,638,000	$ -	$ 36,638,000
LIHTC		2,429,720	$ -	$ 2,429,720
Private Equity		5,160,095	3,722,095	8,882,190
Total Sources of Funds		**$ 44,227,815**	**$ 3,722,095**	**$ 47,949,910**

Uses	**Residential**	**Retail**	**Total**
Land	$ 345,630	$ 29,370	$ 375,000
Hard Costs	35,860,207	2,192,546	38,052,754
Transaction/Leasing Fees	305,997	26,003	332,000
Architectural/MEP, Structural Services	1,455,506	123,683	1,579,189
Marketing	442,406	37,594	480,000
General and Administrative	1,377,910	217,090	1,595,000
Financing Costs	2,607,898	41,608	2,649,506
Real Estate Taxes	341,021	28,979	370,000
Permit, Utility and Municipal Fees	376,444	31,989	408,433
Legal and Accounting	460,840	39,160	500,000
Retail	-	898,502	898,502
Insurance	25,917	2,202	28,119
Miscellaneous Expenses	628,038	53,368	681,407
Total Uses of Funds	**$ 44,227,815**	**$ 3,722,095**	**$ 47,949,910**

Summary of Stabilized Returns at Sale

2015	**Residential**	**Retail**	**Total**
Effective Gross Income	$ 4,558,750	$ 403,864	$ 4,962,614
Expenses	$ 1,382,974	$ 44,760	$ 1,427,733
Net Operating Income	**$ 3,175,776**	**$ 359,104**	**$ 3,534,881**
Less			
Reserves	$ 37,076	$ 21,224	$ 58,300
Debt Service	$ 2,710,873	-	$ 2,710,873
Stabilized Net Cash Flow 2015	**$ 427,827**	**$ 337,880**	**$ 765,708**

Avail Proceeds before LEED, WMATA & Returns		**13,838,893**
Avail pre WMATA share		13,838,893
WMATA Share of Avail Profit	**10% avail profit**	1,383,889
Net Proceeds after WMATA share paid		12,455,004
Equity Yield Target	**17.00% IRR**	11,419,184
Potential proceeds avail after IRR met		1,035,820

WMATA-INV 008195

	PROJECT COSTS					Residential	Retail
1	**LAND COSTS**						
	WMATA Parcels						
	WMATA - Option Fee			100,000.00		92,167.92	7,832.08
	WMATA - Security Deposit			0.00	*gets credited?*	0.00	0.00
	Pre-Development Lease Payments			275,000.00		253,461.78	21,538.22
	TOTAL LAND COSTS				**375,000.00**	**345,629.70**	**29,370.30**
2	**HARD COSTS**						
	Residential Units	$185	SF	30,479,120.00		30,479,120.00	0.00
	Retail Space	$100	SF	1,400,000.00		0.00	1,400,000.00
	Below-grade parking (Residential)	$30,000	per space	1,350,000.00		1,350,000.00	0
	Below-grade parking (Retail)	$30,000	per space	450,000.00		0.00	450,000.00
	Infrastructure Costs			500,000.00		460,839.60	39,160.40
	Index to start Q2/2010	4%		2,164,677.60		1,995,138.31	169,539.29
	Contingency	5%		1,708,956.00		1,575,109.20	133,846.80
	TOTAL HARD COSTS				**38,052,753.60**	**35,860,207.11**	**2,192,546.49**
	SOFT COSTS						
3	**Transaction/Leasing Fees**						
	Title Insurance - Lender's Policy	$0.60	per $1000 of loan	32,000.00		29,493.73	2,506.27
	Surveys			20,000.00		18,433.58	1,566.42
	Legal - Term Sheet and Joint Development Agreement			150,000.00		138,251.88	11,748.12
	Legal - Partnership Documents			25,000.00		23,041.98	1,958.02
	Appraisal Fee			30,000.00		27,650.38	2,349.62
	Geotechnical & Environmental			75,000.00		69,125.94	5,874.06
	Total Transaction/Leasing Fees				**332,000.00**	**305,997.49**	**26,002.51**
4	**Architectural/MEP, Structural Services**						
	A/E Fees	3.00%	hard costs	1,141,582.61		1,052,172.94	89,409.67
	Structural Services	1.00%	hard costs	380,527.54		350,724.31	29,803.22
	Reimburseables	5.00%	A/E fees	57,079.13		52,608.65	4,470.48
	Total Architectural/MEP, Structural Services				**1,579,189.27**	**1,455,505.90**	**123,683.37**
5	**Marketing**						
	Marketing Center			100,000.00		92,167.92	7,832.08
	Marketing Materials			100,000.00		92,167.92	7,832.08
	Media (newspapers, etc.)			100,000.00		92,167.92	7,832.08
	Signage			50,000.00		46,083.96	3,916.04
	Special Events			40,000.00		36,867.17	3,132.83
	Model			75,000.00		69,125.94	5,874.06
	Website			15,000.00		13,825.19	1,174.81
	Total Marketing				**480,000.00**	**442,406.02**	**37,593.98**
6	**General and Administrative**						
	Development Management	$30,000	mo. 24 mos.	720,000.00		663,609.02	56,390.98
	Project Management/Administration	$10,000	mo. 30 mos.	300,000.00		276,503.76	23,496.24

	Construction Management	$25,000 mo.	18 mos.	450,000.00		414,755.64	35,244.36
	Consulting Fees - Retail			100,000.00		0.00	100,000.00
	Security			25,000.00		23,041.98	1,958.02
	Total General and Administrative				**1,595,000.00**	**1,377,910.40**	**217,089.60**
7	**Financing Costs**						
	Construction Period Interest			1,362,279.72		1,362,279.72	0.00
	DCHFA Application Fee	0.10%		36,638.00		36,638.00	0.00
	DCHFA Construction Monitoring Fee	0.40%		146,552.00		146,552.00	0.00
	DCHFA Financing Fee	0.40%		146,552.00		146,552.00	0.00
	DCHFA Tax Credit Allocation Fee	0.10%		36,638.00		36,638.00	0.00
	DCHFA Internal, External Legal & Consulting			100,000.00		100,000.00	0.00
	Administrative Agent Fee			150,000.00		150,000.00	0.00
	Credit Enhancement Fee	0.25%		91,595.00		91,595.00	0.00
	Lender Inspection Fees	$2,000 mo.	24 mos.	48,000.00		48,000.00	0.00
	Transfer & Record Taxes (Construct Loan)	1.45%		531,251.00		489,643.00	41,608.00
	Total Financing Costs				**2,649,505.72**	**2,607,897.72**	**41,608.00**
8	**Real Estate Taxes**						
	Land ($1.85 per $100)	24 mos.		370,000.00	valuing land at $10M		
	Total Real Estate Taxes				**370,000.00**	**341,021.30**	**28,978.70**
9	**Permit, Utility and Municipal Fees**						
	Permits	2% hard costs x 40%		273,432.96		252,017.47	21,415.49
	Water Connection Fee			5,000.00		4,608.40	391.60
	Submetering			20,000.00		18,433.58	1,566.42
	Tap/Connection Fees			40,000.00		36,867.17	3,132.83
	Stormwater Management Fee			20,000.00		18,433.58	1,566.42
	Sidewalk Bond			50,000.00		46,083.96	3,916.04
	Total Permit, Utility and Municipal Fees				**408,432.96**	**376,444.16**	**31,988.80**
10	**Legal and Accounting**						
	Legal - Financing (General)			100,000.00		92,167.92	7,832.08
	Legal - Zoning			150,000.00		138,251.88	11,748.12
	Legal - General/Retail Leases, etc.			150,000.00		138,251.88	11,748.12
	Accounting			100,000.00		92,167.92	7,832.08
	Total Legal and Accounting:				**500,000.00**	**460,839.60**	**39,160.40**
11	**Retail**						
	Tenant Allowance	$50 per SF		658,000.00		0.00	658,000.00
	Commissions	6.00%		240,502.20		0.00	240,502.20
	Total Retail				**898,502.20**	**0.00**	**898,502.20**
12	**Insurance**						
	Builder's Risk (Hard Costs)	$0.06 per $100		22,831.65		21,043.46	1,788.19
	Builder's Risk (Soft Costs)	$0.06 per $100		5,287.58		4,873.45	414.13
	Total Insurance				**28,119.23**	**25,916.91**	**2,202.32**
13	**Miscellaneous Expenses**						

Lease-up Reserves		-462,616.31		-426,383.83	-36,232.48
Testing Expenses		150,000.00		138,251.88	11,748.12
Third Party Inspections		100,000.00		92,167.92	7,832.08
Misc Soft Costs & Contingencies	5% soft costs	431,406.65		397,618.54	33,788.12
Total Miscellaneous Expenses			**218,790.35**	**628,038.34**	**53,368.32**
TOTAL SOFT COSTS			**9,059,539.74**	**8,021,977.84**	**1,500,178.20**
TOTAL PROJECT COSTS		**47,487,293.34**		**44,227,814.65**	**3,722,094.99**
		1.52%			

SUMMARY

Market			80%		
# of Units			115		
$ per SF		$	2.85	Monthly 08 dollars $	2.85
Affordable			20%		
# of Units			29		
$ per SF		$	1.15	Monthly 08 dollars $	1.15
Parking					
# of spaces			45		
$ per space		$	150.00	Monthly 08 dollars $	150.00
Income			**Year 1**		
Market Units		$	3,741,320		
Affordable Units		$	377,414		
Other Income	2.00%	$	82,375		
Parking		$	81,000		
Vacancy	5.00%	$	(214,105)		
Total Income		$	4,068,003		
Expenses					
WMATA Land Lease		$	396,322		
Real Estate Taxes (Market)	$2,000	$	230,306		
Real Estate Taxes (Affordable)	$1,000	$	28,788		
Property Insurance	1.00%	$	40,680		
Utilities	2.00%	$	81,360		
Repairs and Maintenance	2.00%	$	81,360		
Property Management	6.00%	$	244,080		
Asset Management	1.00%	$	40,680		
Advertising & Marketing	1.00%	$	40,680		
Professional Fees	1.00%	$	40,680		
General and Administrative	1.00%	$	40,680		
Total Expenses		$	1,265,617		
per unit $	8,793				
NOI		**$**	**2,802,387**		
Reserves	$250	$	35,985		
Cash Flow before Debt Service		$	2,766,401		
Debt Service		$	2,710,873		
Net Cash Flow Before Taxes		**$**	**55,528**		

FOIA CONFIDENTIAL TREATMENT REQUESTED

Year		1 2012	2 2013	3 2014	4 2015	5 2016
Income	% of Income					
Market Units		$ 3,741,320	$ 3,890,973	$ 4,046,612	$ 4,208,476	$ 4,376,815
Affordable Units		$ 377,414	386,849	396,520	406,433	416,594
Other Income	3.00%	$ 82,375	85,670	89,096	92,660	96,367
Parking		$ 81,000	84,240	87,610	91,114	94,759
Vacancy	5.00%	(214,105)	(222,387)	(230,992)	(239,934)	(249,227)
Effective Gross Income		$ 4,068,003	$ 4,225,345	$ 4,388,847	$ 4,558,750	$ 4,735,308
Operating Expenses	Escalation					
WMATA Land Lease	3.00% *	$ 396,322	408,212	420,458	433,072	446,064
Real Estate Taxes (Market)	3.00%	$ 230,306	237,215	244,332	251,662	259,211
Real Esate Taxes (Afford)	3.00%	$ 28,788	29,652	30,541	31,458	32,401
Property Insurance	3.00%	$ 40,680	41,900	43,157	44,452	45,786
Utilities	3.00%	$ 81,360	83,801	86,315	88,904	91,571
Repairs and Maintenance	3.00%	$ 81,360	83,801	86,315	88,904	91,571
Property Management	3.00%	$ 244,080	251,403	258,945	266,713	274,714
Asset Management	3.00%	$ 40,680	41,900	43,157	44,452	45,786
Advertising & Marketing	3.00%	$ 40,680	41,900	43,157	44,452	45,786
Professional Fees	3.00%	$ 40,680	41,900	43,157	44,452	45,786
General and Administrative	3.00%	$ 40,680	41,900	43,157	44,452	45,786
		1,265,617	1,303,585	1,342,693	1,382,974	1,424,463
Net Operating Income		$ 2,802,387	$ 2,921,760	$ 3,046,154	$ 3,175,776	$ 3,310,845
Reserves		35,985	36,345	36,709	37,076	37,446
Cash Flow Before Debt Service		2,766,401	2,885,415	3,009,445	3,138,701	3,273,399
Total Annual Debt Service		2,710,873	2,710,873	2,710,873	2,710,873	2,710,873
Before Tax Cash Flow		$ 55,528	$ 174,542	$ 298,572	$ 427,827	$ 562,526

4.0% annual escalation in market rate unit income and parking
2.5% annual escalation in affordable rate unit income
3.0% annual escalation in expenses (except land lease where first 10 years, increase is at 1.5% and next 3% thereafter)*
1.0% annual escalation in reserves

WMATA-INV 008200

FOIA CONFIDENTIAL TREATMENT REQUESTED

6 2017	7 2018	8 2019	9 2020	10 2021	11 2022	12 2023	13 2024	14 2025	15 2026
$4,551,888	$4,733,964	$4,923,322	$5,120,255	$5,325,065	$5,538,068	$5,759,591	$5,989,974	$6,229,573	$6,478,756
427,009	437,684	448,627	459,842	471,338	483,122	495,200	507,580	520,269	533,276
100,221	104,230	108,399	112,735	117,245	121,935	126,812	131,885	137,160	142,646
98,549	102,491	106,590	110,854	115,288	119,900	124,696	129,684	134,871	140,266
(258,883)	(268,918)	(279,347)	(290,184)	(301,447)	(313,151)	(325,315)	(337,956)	(351,094)	(364,747)
$4,918,784	$5,109,451	$5,307,592	$5,513,502	$5,727,490	$5,949,873	$6,180,983	$6,421,166	$6,670,780	$6,930,197
459,446	473,229	487,426	502,049	517,110	532,624	548,602	565,060	582,012	599,473
266,988	274,997	283,247	291,745	300,497	309,512	318,797	328,361	338,212	348,358
33,373	34,375	35,406	36,468	37,562	38,689	39,850	41,045	42,277	43,545
47,159	48,574	50,031	51,532	53,078	54,671	56,311	58,000	59,740	61,532
94,319	97,148	100,063	103,064	106,156	109,341	112,621	116,000	119,480	123,064
94,319	97,148	100,063	103,064	106,156	109,341	112,621	116,000	119,480	123,064
282,956	291,445	300,188	309,193	318,469	328,023	337,864	348,000	358,440	369,193
47,159	48,574	50,031	51,532	53,078	54,671	56,311	58,000	59,740	61,532
47,159	48,574	50,031	51,532	53,078	54,671	56,311	58,000	59,740	61,532
47,159	48,574	50,031	51,532	53,078	54,671	56,311	58,000	59,740	61,532
47,159	48,574	50,031	51,532	53,078	54,671	56,311	58,000	59,740	61,532
1,467,197	1,511,213	1,556,549	1,603,245	1,651,343	1,700,883	1,751,910	1,804,467	1,858,601	1,914,359
$3,451,587	$3,598,238	$3,751,043	$3,910,257	$4,076,147	$4,248,990	$4,429,074	$4,616,699	$4,812,179	$5,015,838
37,821	38,199	38,581	38,967	39,357	39,750	40,148	40,549	40,955	41,364
3,413,767	3,560,039	3,712,462	3,871,290	4,036,790	4,209,240	4,388,926	4,576,150	4,771,224	4,974,474
2,710,873	2,710,873	2,710,873	2,710,873	2,710,873	2,710,873	2,710,873	2,710,873	2,710,873	2,710,873
$702,893	$849,166	$1,001,588	$1,160,417	$1,325,917	$1,498,366	$1,678,053	$1,865,277	$2,060,351	$2,263,601

WMATA-INV 008201

FOIA CONFIDENTIAL TREATMENT REQUESTED

The Jazz @ Florida Avenue
Retail Proforma

Assumptions

Rentable S.F.	13,160
Market Space	7,760
Affordable/Non-Profit Space	5,400
Triple Net Lease	

	Per S.F.	Escalation	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Operating Income												
Retail Tenants - Market	$30.00	3%	232,800	239,784	246,978	254,387	262,018	269,879	277,975	286,315	294,904	303,751
Retail Tenants - Affordable/Non-Profit	$10.00	2%	54,000	55,080	56,182	57,305	58,451	59,620	60,813	62,029	63,270	64,535
Parking	$50.00	2%	9,000	9,180	9,364	9,551	9,742	9,937	10,135	10,338	10,545	10,756
Less: General Vacancy	5%		(14,790)	(15,202)	(15,626)	(16,062)	(16,511)	(16,972)	(17,446)	(17,934)	(18,436)	(18,952)
Net Rental Income			281,010	288,842	296,897	305,181	313,701	322,464	331,477	340,748	350,283	360,090
Expense Recovery			131,271	135,209	139,265	143,443	147,747	152,179	156,744	161,447	166,290	171,279
Total Operating Revenue			412,281	424,051	436,162	448,624	461,448	474,643	488,222	502,195	516,573	531,369
Recoverable Expenses												
Pass-through expenses	$2.50	3.00%	32,900	33,887	34,904	35,951	37,029	38,140	39,284	40,463	41,677	42,927
Real Estate Taxes	$8.00 SF		105,280	108,438	111,692	115,042	118,494	122,048	125,710	129,481	133,366	137,367
Total Operating Expenses			138,180	142,325	146,595	150,993	155,523	160,188	164,994	169,944	175,042	180,294
Non-recoverable Expenses												
Non-recoverable WMATA Expenses		3.00%	33,678	34,688	35,729	36,801	37,905	39,042	40,213	41,420	42,662	43,942
Non-recoverable Ownership Expenses		2.00%	7,500	7,650	7,803	7,959	8,118	8,281	8,446	8,615	8,787	8,963
Total Expenses			41,178	42,338	43,532	44,760	46,023	47,323	48,659	50,035	51,450	52,905
Net Operating Income			371,103	381,713	392,630	403,864	415,425	427,321	439,562	452,160	465,123	478,464
Capital Reserves			20,000	20,400	20,808	21,224	21,649	22,082	22,523	22,974	23,433	23,902
Before Tax Cash Flow			$ 351,103	$ 361,313	$ 371,822	$ 382,640	$ 393,776	$ 405,239	$ 417,039	$ 429,186	$ 441,690	$ 454,562

WMATA-INV 008202

SUPPORTABLE DEBT CALCULATIONS

	Loan
Base Residential NOI (net of reserves)	2,766,401
Base Retail NOI (net of reserves)	351,103
	3,117,504
DSCR	1.15
Amount Available for Debt Service	2,710,873
Calculation of Loan Constant	
Amortization Term	40
Loan Constant	7.40%
Max Supportable Mortgage	36,638,000
Bond Rate	5.60%
DCHFA Fee	0.40%
Trustee Fee	0.05%
GNMA/Freddie Mac Fee	0.25%
Aggregate Rate	6.30%
Loan Constant	$0.07
Mortgage Insurance Premium	0.50%
Calculation of Loan Constant	7.40%

NOI Projection	2009	2010	2011	2012	2013	2014	2015
Net Operating Income				$ 3,173,490	$ 3,303,473	$ 3,438,784	$ 3,579,641
Debt Service	$ 36,638,000			$ 2,710,873	$ 2,710,873	$ 2,710,873	$ 2,710,873
Net Cash Flow				$ 462,616	$ 592,599	$ 727,910	$ 868,767

IRR Calculation	2009	2010	2011	2012	2013	2014	2015
Equity (Cash)	$ (2,220,548)	$ (6,661,643)	$ -	$ -	$ -	$ -	$ -
Net Cash Flow	-			462,616	592,599	727,910	868,767
Return of Equity (Sale)							6,230,297
Net Sales Proceeds							13,838,893
Preferred Return							
Promote							
Total Paid to All Equity	$ (2,220,548)	$ (6,661,643)	$ -	$ 462,616	$ 592,599	$ 727,910	$ 20,937,957

ACTUAL PROJECT IRR	20.26%
NPV @ 8%	5,651,807

Assumed Sale in 2016			Amount
NOI in 2016			3,726,270
Cap Value	6.50%		57,327,000
Cost of Sale	3.00%		(1,719,810)
Gross Sale Proceeds			55,607,190
Balance of Loan		*what about paid principal?*	(35,538,000)
Net Sales Proceeds			20,069,190
Return of Outstanding Equity			(6,230,297)
Net Sales Proceeds Before Pref and Splits			**13,838,893**

WMATA Share		10% sales proceeds	1,383,889
Net Proceeds after WMATA share paid			**12,455,004**
Targeted IRR	17.00%	2009 equity	3,475,521
		2010 equity	7,943,663
Equity Yield Target			**11,419,184**
Potential proceeds avail after IRR met			**1,035,820**

FOIA CONFIDENTIAL TREATMENT REQUESTED

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LIHTC Calculation

Qualifying Costs	**LIHTC**
Total Development Cost (Residential Portion)	$ 44,227,815
Less:	
FF&E	150,000
Parking	1,350,000
Marketing	442,406
Total Non-Qualifying Costs	$ 1,942,406
Total Eligible Costs	$ 42,285,409

Valuation	
Total Eligible Costs (see above)	$ 42,285,409
x Factor (LIHTC - High Cost Area Adjustment)	130%
Total Adjusted Basis	54,971,031
x Applicable Fraction	20%
Total Qualified Basis	**10,994,206**
x Annual Tax Rate	3.4%
Annual Credit	373,803
Applicable Period (Years)	10
Credit Amount	3,738,030
x Equity Proceeds from Sale of Credits @	$0.65
Realized Value to Project	**$ 2,429,720**

WMATA-INV 008205

FOIA CONFIDENTIAL TREATMENT REQUESTED

Closing 1:

FHA/GNMA Loan Balance	Month	Monthly Draw	Interest Earnings 2.50%	Interest Cost 6.30%	Net Interest
18,319,000	0	200,000	-		
18,119,000	1	500,000	38,165	96,175	58,010
17,619,000	2	750,000	37,748	96,175	58,427
16,869,000	3	1,000,000	36,706	96,175	59,469
15,869,000	4	1,500,000	35,144	96,175	61,031
14,369,000	5	2,394,833	33,060	96,175	63,114
11,974,167	6	2,394,833	29,935	96,175	66,239
9,579,333	7	2,394,833	24,946	96,175	71,229
7,184,500	8	2,394,833	19,957	96,175	76,218
4,789,667	9	2,394,833	14,968	96,175	81,207
2,394,833	10	2,394,833	9,978	96,175	86,196
TOTAL		**18,319,000**	**280,608**	**961,748**	**681,140**

Closing 2:

FHA/GNMA Loan Balance	Month	Monthly Draw	Interest Earnings 2.50%	Interest Cost 6.30%	Net Interest
18,319,000	0	200,000	-		
18,119,000	1	500,000	38,165	96,175	58,010
17,619,000	2	750,000	37,748	96,175	58,427
16,869,000	3	1,000,000	36,706	96,175	59,469
15,869,000	4	1,500,000	35,144	96,175	61,031
14,369,000	5	2,394,833	33,060	96,175	63,114
11,974,167	6	2,394,833	29,935	96,175	66,239
9,579,333	7	2,394,833	24,946	96,175	71,229
7,184,500	8	2,394,833	19,957	96,175	76,218
4,789,667	9	2,394,833	14,968	96,175	81,207
2,394,833	10	2,394,833	9,978	96,175	86,196
TOTAL		**18,319,000**	**280,608**	**961,748**	**681,140**

WMATA-INV 008206

GROUND LEASE AGREEMENT

BETWEEN

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

AS WMATA

AND

~~DEVELOPER, LLC~~

THE JAZZ @ FLORIDA AVENUE LLC

AS DEVELOPER

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008207

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GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this "**Lease**") is entered into as of ~~October, _____, 2008~~ _____, 200__ (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~~**limited liability company** having a principal address at ~~_____~~**700 12th Street, N.W., Washington, DC 20005** ("**Developer**").

RECITALS

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 the joint development project at the Property, and on _____, 2008 a term sheet was executed approved by Developer and WMATA.

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 _____.

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008210

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.~~**1.1.30.**

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008211**

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**, except as expressly excluded below,** 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. **Notwithstanding anything in this Lease to the contrary, Capital Event shall not include (i) takings, or insurance proceeds resulting from a casualty; (ii) the initial obtaining of construction loan financing (or permanent loan financing, if construction loan financing is not used); (iii) the obtaining of new equity financing through the admission of new or additional partners, members, or shareholders or other forms of owners being admitted to Developer, including syndications permitted pursuant to this Lease but only to the extent the equity so raised is used for capital or operating expenses of the construction or operation of the Developer Improvements and is not provided to refinance existing debt or to be paid out to any person or entity with an existing ownership interest in, or Control of, Developer; (iv) the conversion of construction loan financing described in item (ii) to permanent loan financing, but only to the extent such permanent loan financing is used to repay construction loan financing and reasonable and necessary costs associated therewith; (v) loan financing obtained by Developer after initial construction of the Developer Improvements and used exclusively for the redevelopment, reconstruction, or expansion of Developer Improvements and reasonable and necessary costs associated therewith; (vi) any Sublease; (vii) a transfer by a shareholder, partner, member or owner of Developer as of the Effective Date to any other shareholder, partner, member or owner as of the Effective Date; (viii) a transfer to a spouse in connection with any property settlement agreement or decree of dissolution of marriage or legal separation; (ix) a transfer not for value and/or for estate planning purposes of ownership interests in Developer or in constituent entities of Developer to a member of the immediate family (spouse, children, parents, siblings and grandchildren) of the transferor or to a trust for the benefit of a member of the immediate family of the transferor, whether such transfer is the**

Too easy to manipulate?

what if used for Adjacent property?

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008212

result of gift, devise, intestate succession or operation of law; (x) a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation whose stock is traded publicly on a national stock exchange or is traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services; provided, however, that this exclusion shall not apply to a single transaction or series of related transactions undertaken in such quantities that after such transfers to any person or entity, such person or entity will have Control of Developer; (xi) a mere change in the form, method or status of ownership (other than a transfer of beneficial interests between or among individuals and/or entities controlled by such individuals); provided that this exclusion shall not apply to a single transaction or series of related transactions undertaken such that after such transfers to any person or entity, such person or entity will have Control of Developer; and (xiii) a transfer, by sale, assignment, operation of law or otherwise, of control of a majority of the issued and outstanding capital stock of any corporate tenant of this Lease or the transfer, by sale, assignment, operation of law of otherwise, of control of a majority interest in the capital or beneficial ownership determining Control of any non-corporate tenant where the value of this Lease and the Developer Improvements constitutes less than five percent (5%) of the assets of the corporate or non-corporate Developer.

?

?

1.1.18 "**Capital Event Participation Rent**" shall have the meaning set forth in Section ~~5.7.~~**Error! Reference source not found..** Dev. Removed

1.1.19 **Catastrophic Environmental Condition" shall mean the presence on the Leased Premises of any Hazardous Materials, discovered after the Effective Date, where the presence of the Hazardous Materials will increase the cost of building the Developer Improvements by 10% or more of the projected construction cost of the Developer Improvements.** why 10%

1.1.20 ~~1.1.19~~ "**Change of Control**" means**, subject to rights and powers set forth in Article 17 hereof,** (a) the sale or transfer, in a single transaction or a series of related or unrelated transactions, of beneficial ownership of either (i) the **Controlling** membership interests in Developer, (ii) the **Controlling** membership interests of the members of the Developer, or (iii) the combined voting power of Developer's outstanding **Controlling** 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**; in each case, for items (a) through (c) above, only where such transaction results in a sale, conveyance or transfer of a Controlling interest in the subject entity**.

Right to Assign

what about other members?

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008213

~~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 **"Commercially Reasonable Best Efforts" means those steps usually, customarily and fiscally prudent under the circumstances that a real estate developer or property owner would take to lawfully achieve approval of, and construction of, and leasing of improvements similar to the Developer Improvements. Commercially Reasonable Best Efforts means the party timely and diligently taking steps usually and customarily taken by a real estate developer or property owner seeking with due diligence to lawfully achieve the objective to which the particular effort pertains and, as applied to the Developer under this Lease, requires that the Developer is using commercially reasonable efforts in filing all applications and making all appearances, and is providing documents, studies and other materials and satisfying such other requirements required by the applicable ordinance procedures or otherwise reasonably requested by the applicable governmental authorities in connection therewith; and Developer is timely in its responses to inquiries of public officials and other interested parties and in meeting deadlines, Developer is procuring such competent professional support as is commercially reasonable to achieve the objective, is overseeing and is making all payments associated with such steps and the achievement of such objective in a timely manner. In determining whether the above standards have been breached, either party's failure to adhere to the foregoing standards in any single instance shall not be deemed a breach of that party's covenant absent a showing of prejudice to or material adverse impact on the other party's overall efforts to obtain the objective or a willful breach. Notwithstanding the foregoing, neither party shall be required to commence judicial proceedings, including appeals, in order to exercise Commercially Reasonable Best Efforts.**

1.1.22 ~~1.1.21~~ "**Condemnation Costs**" shall have the meaning set forth in Section 23.4.

1.1.23 ~~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, including, but not limited to, all required engineering permits and building permits.

1.1.24 ~~1.1.23~~ "**Construction Related Obligations**" shall have the meaning set forth in Section 6.2.

1.1.25 ~~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.

1.1.26 ~~1.1.25~~ "**Consumer Price Index**" shall have the meaning set forth in Section ~~1.1.29.~~**1.1.30.**

1.1.27 ~~1.1.26~~ "**Continuing Transit Orientation**" shall have the meaning set forth in Section 8.3.

1.1.28 ~~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,~~**the** management ~~and~~**or** policies of ~~another Person~~**Developer**, whether through ownership of ~~voting securities, by contract or otherwise~~**securities, by contract, or otherwise in accordance with the following conditions. One controls a corporation if one (i) directly or indirectly has the right to vote more than 50% percent of a class of the corporation's voting securities; or (ii) has the power to sell or direct the sale of more than 50 percent or more of a class of the corporation's voting securities. One controls a general partnership if one has the right to receive, upon dissolution, or has contributed, more than 50 percent of the capital of the partnership. One controls a limited partnership if one has more than 50% of the ownership of the general partnership interests. One controls a limited liability company (LLC) if (i) for a member-controlled LLC, one controls the majority of the voting interests in connection with the management of the LLC; or (ii) for a manager-controlled LLC, one is an elected manager of the LLC, or controls the election of the LLC' s manager. One controls a trust if one is a trustee or managing agent of the trust**.

1.1.29 ~~1.1.28~~ "**Covenants, Conditions and Restrictions**" shall mean the covenants, conditions, and restrictions created pursuant to Section 11.17 of the JDA, a copy of which is attached hereto as Exhibit _____.

1.1.30 ~~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~~**[2009] []** ("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.

1.1.31 ~~1.1.30~~ "**Cure Actions**" shall have the meaning set forth in Section 18.2.

1.1.32 ~~1.1.31~~ "**Current CPI**" shall have the meaning set forth in Section ~~1.1.29.~~**1.1.30.**

1.1.33 ~~1.1.32~~ "**Day or day**" means a calendar day except when stated to be "Business Day".

1.1.34 ~~1.1.33~~ "**Default**" shall have the meaning set forth in ARTICLE 19.

~~1.1.34~~

1.1.35 "**Default Rate of Interest**" shall mean ~~the greater of (a) fifteen~~**three** 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.~~**3%) per annum.**

1.1.36 ~~1.1.35~~ "**Density or Densities**" shall have the meaning set forth in Section 3.1.1.

1.1.37 ~~1.1.36~~ "**Density Adjustment Rent**" shall have the meaning set forth in Section 5.8.

1.1.38 ~~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 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.

1.1.39 ~~1.1.38~~ "**Designated Representative**" shall have the meanings set forth in Section 28.2.5 and Section 28.3.7.

1.1.40 ~~1.1.39~~ "**Developer**" shall mean _____, ~~LLC,~~ **The Jazz @ Florida Avenue LLC,** a **District of Columbia** limited liability company formed by Banneker Ventures, ~~LLC,~~ **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,~~**and** _____ as _____% owner.

1.1.41 ~~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.

1.1.42 ~~1.1.41~~ "**Developer Improvements**" means ~~those Improvements that at any time may exist or be constructed on the Lease Premises.~~**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.**

~~1.1.42 "**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).~~

Search —

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

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008217**

and this Lease 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 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. **[[ARE THESE DIFFERENT FROM THE CCRs?]**

1.1.44 **Development Equity – The direct equity or capital contribution invested by or in the Developer at any time for the purpose of (i) forming the Developer; (ii) negotiating this Lease; (iii) paying all "soft" (including, without limitation, professional fees and costs) and "hard" development and construction costs of the Developer Improvements; and (iv) funding any fees or deposits needed to finance the initial construction of the Developer Improvements.**

1.1.45 ~~1.1.44~~ "**Dispute Notice**" shall have the meaning set forth in Section 24.1.

1.1.46 ~~1.1.45~~ "**Dispute Review Panel**" shall have the meaning set forth in Section 24.1.1.

1.1.47 ~~1.1.46~~ "**Effective Date**" shall have the meaning set forth in the Preamble.

1.1.48 ~~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 **Equity – Development Equity and Post-Development Equity.**

1.1.50 ~~1.1.49~~ "**Fair Market Value**" shall mean fair market value determined pursuant to the provisions of Article 27.

1.1.51 ~~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.

1.1.52 ~~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.

1.1.53 ~~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.** ADR

1.1.54 ~~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.

1.1.55 ~~1.1.54~~ "**Financial Statement**" shall have the meaning set forth in Section ~~5.12.~~**5.11.**

1.1.56 ~~1.1.55~~ "**First Leasehold Mortgage**" shall have the meaning set forth in Section 18.1.

1.1.57 ~~1.1.56~~ "**First Leasehold Mortgagee**" shall have the meaning set forth in Section 18.1.

1.1.58 ~~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.

1.1.59 ~~1.1.58~~ "**FTA**" means the Federal Transit Administration of the United States Department of Transportation.

1.1.60 ~~1.1.59~~ "**FTA Project Approval**" shall have the meaning set forth in Section 8.4.

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1.1.61 ~~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.~~

~~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.~~

1.1.62 ~~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).

1.1.63 ~~1.1.65~~ "**Impositions**" means all ~~taxes~~**Real Estate Taxes (other than taxes on WMATA's fee simple interest in the Leased Property)**, 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,~~

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~~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~~**or taxes of whatsoever kind and nature levied or assessed with respect to the Leased Premises and Developer Improvements. Impositions shall not include any franchise, estate, inheritance, succession, capital levy or transfer tax of the landlord, or any income, excess profits or revenue tax, or any other tax, assessment, charge or levy upon the rent payable by Developer under this Lease, all to the extent such taxes might be charged to landlord notwithstanding its tax exemption.**

Is this supposed to be a pass-thru to Developer as Tenant?

~~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.~~

1.1.64 ~~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, 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").

1.1.65 ~~1.1.68~~ "**Insurance ~~Obligors~~Obligor**" shall have the meaning set forth in Section 10.1.

1.1.66 ~~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.

1.1.67 ~~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.

1.1.68 ~~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.

1.1.69 ~~1.1.73~~ "**Lease Obligations**" shall have the meaning set forth in Section 6.1.

1.1.70 ~~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.

1.1.71 ~~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 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.

1.1.72 ~~1.1.76~~ "**Leasehold Interest**" shall mean Developer's leasehold interest in the Lease Premises pursuant and subject to the provisions of this Agreement.

1.1.73 ~~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.

1.1.74 ~~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.~~

~~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.~~

1.1.75 ~~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 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.

1.1.76 ~~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 _____.~~

1.1.77 ~~1.1.84~~ "**Notice**" shall have the meaning set forth in Section 29.5.

1.1.78 ~~1.1.85~~ "**Nullification Notice**" shall have the meaning set forth in Section 18.2.

1.1.79 ~~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.

1.1.80 ~~1.1.87~~ "**Operating Year**" shall have the meaning set forth in Section ~~5.12.~~**5.11.**

1.1.81 ~~1.1.88~~ "**Partial Taking**" shall have the meaning set forth in Section 23.2.

1.1.82 ~~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.

1.1.83 ~~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.

1.1.84 ~~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.

1.1.85 **"Post-Development Equity" means the direct equity or capital contribution invested by the Developer in the maintenance, capital improvement or tenant build out expenses in the Developer Improvements at any time and for any reason other than Development Equity.**

1.1.86 ~~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.

1.1.87 ~~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.

1.1.88 ~~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.

1.1.89 ~~1.1.95~~ "**Project Schedule**" shall have the meaning set forth in Section 11.8 of the JDA.

1.1.90 ~~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.

1.1.91 **"Qualified Assignee" means a person or entity who or which is actively engaged in the ownership, management, financing, leasing and/or development of commercial real estate.**

1.1.92 **"Real Estate Taxes" means the total of all taxes and assessments (including payments "in lieu" of taxes), general and special, ordinary and extraordinary, foreseen or unforeseen, assessed, levied or imposed upon the leasehold estate and Developer Improvements (but not WMATA's interest in the underlying fee simple interest) and interests including all taxes, rates and assessments, general and special, levied or imposed for school, public betterment and/or general or local improvements, for any calendar year.**

1.1.93 ~~1.1.97 "**Qualified Team**~~**"Reconstruction Activity(ies)**" shall have the meaning set forth in Section ~~2.2.1 and 2.2.2.~~**16.1.**

1.1.94 ~~1.1.98 "**Reconstruction Activity(ies)**~~**"Rent**" shall have the meaning set forth in Section ~~16.1.~~**5.2.**

1.1.95 ~~1.1.99 "**Rent**~~**Repair**" shall have the meaning set forth in Section ~~5.2.~~**20.1.1.**

1.1.96 ~~1.1.100 "**Repair**~~ **"Scope of Work"** 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.

1.1.97 ~~1.1.103~~ "**Secure**" shall have the meaning set forth in Section 20.1.1.

1.1.98 ~~1.1.104~~ "**Security Deposit**" shall have the meaning set forth in Section 4.1.

1.1.99 ~~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 Improvements, if there is no such lien, then the entity providing equity or debt financing for such construction.

1.1.100 ~~1.1.106~~ "**Stabilization**" means the Project achieving ~~90~~**95**% occupancy.

1.1.101 ~~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.

1.1.102 ~~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.

1.1.103 ~~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.

1.1.104 ~~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 one hundred and twenty (120) days following Substantial Completion,** Developer shall deliver to WMATA copies of ~~all~~**relevant** certificates, permits, approvals and consents ~~promptly after its receipt of the same.~~.

ADR

1.1.105 ~~1.1.111~~ "**Subtenant**" means the tenant or licensee under any Sublease.

1.1.106 ~~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

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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.

1.1.107 ~~1.1.113~~ "**Temporary Taking**" shall have the meaning set forth in Section 23.6.1.

1.1.108 ~~1.1.114~~" **Term**" means the Term as set forth in Section 2.4.

1.1.109 ~~1.1.115~~ "**Title Commitment**" shall have the meaning set forth in Section 22.2.

1.1.110 ~~1.1.116~~ "**Title Commitment Issuer**" shall have the meaning set forth in Section 22.2.

1.1.111 ~~1.1.117~~ "**Title Policy**" shall have the meaning set forth in Section 22.2.

1.1.112 ~~1.1.118~~ "**Total Taking**" shall have the meaning set forth in Section 23.1.

1.1.113 ~~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.

1.1.114 ~~1.1.120~~ "**Transit-Oriented Development**" shall have the meaning set forth in Section 8.3.

1.1.115 ~~1.1.121~~ "**Use Type**" shall have the meaning set forth in Section 3.1.1.

1.1.116 ~~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.

1.1.117 ~~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.

1.1.118 ~~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.

1.1.119 ~~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.

1.1.120 ~~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 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.

1.1.121 ~~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) the WMATA's transit customers, (v) 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, (vii) the other Metro Facilities, (viii) the WMATA's Reserved Areas and Interests, WMATA's Residual Property, the Interim Replacement Facilities or the Replacement Facilities, (ix) the WMATA's Adjacent Property, or (x) ingress or egress relating to any of the foregoing.~~

Need for Protection of Tunnel

1.1.122 ~~1.1.129~~ "**Zoning Ordinance**" shall have the meaning set forth in Section 3.2.

? Study Period is under JDA

ARTICLE 2
LEASE PREMISES AND TERM

2.1 **[PRESUMING THAT STUDY PERIOD IS OCCURRING NOW, PRIOR TO EFFECTIVE DATE. CONFIRM THIS. ALSO – IS A FINANCING CONTINGENCY REQUIRED BEYOND THE LEASE EFFECTIVE DATE?]** **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 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 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~~**; provided, however, that WMATA excepts and reserves from this demise WMATA's Reserved Areas and Interests. Upon the request of either party hereto, Developer and WMATA agree to negotiate reasonably and in good faith the commercially reasonable terms of a reciprocal cross easement agreement, not inconsistent with the WMATA Compact, applicable FTA requirements and or other federal or municipal statutes, regulations, and ordinances, and any WMATA public hearing requirements, to permit and facilitate the entry of each onto the area under the control of the other to construct and maintain the Developer Improvements and the Metro Facilities**.

Easement Need for Tunnel

Why cross easement?

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~~**and [_____]**. Developer represents, warrants and covenants that Banneker Ventures, LLC~~, District Development Group, LLC, and Metropolis Development Company, LLC~~ **and [_____]** 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.~~ **and [_____].**

~~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.~~

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**, excluding the Developer Improvements,** shall be and remain in WMATA for and during the term of this Lease, without any subordination whatsoever **[SUBJECT TO LENDER REVIEW]**. 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.~~**all Developer Improvements located on the Leased Premises shall remain vested in Developer. On the expiration of the Lease, provided Developer has not exercised the Extension Option (as defined in Section 2.4 below), WMATA shall purchase the Developer Improvements from Developer for Fair Market Value pursuant to the terms of a purchase and sale agreement to be agreed upon by the parties within sixty (60) days following the date of expiration. [OWNERSHIP OF IMPROVEMENTS AT END OF LEASE NEEDS TO BE DISCUSSED PER PAUL MYERS COMMENTS]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 **(the "Term"), with one (1) option to extend for a period of thirty nine (39) years (the "Extension Option")**.

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~~ **for a period of thirty (30) days**.

what can not limit to 30 Days?

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~~**61** 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 **attempt to** construct all of the Developer Improvements to be constructed on the Lease 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 a reciprocal cross easement agreement as described in Section 2.1.**

why Reciprocal?
what does WMATA need besides Access to Tunnel?

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~~**50,000.00**), in cash, as security for the faithful performance of the terms and conditions of the JDA and this Lease. **Upon WMATA's receipt of One Hundred Thousand Dollars ($100,000) ("The Proposal Security") from Developer, WMATA shall refund the Security Deposit to Developer.**

4.2 **Release of the Security Deposit.** WMATA shall return the Security Deposit **plus interest earned thereon**, pursuant to the terms of the JDA, to Developer within ~~twenty~~**seven** (~~20~~7) Business Days of WMATA's receipt of a copy of the Certificate of Occupancy for the Project.

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,~~**and** 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~~**monthly** installments, in advance, on ~~January 1, April 1, July 1 and October 1~~**the first** of each ~~lease year~~**month**.

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~~**monthly** installment of the Base Rent, in the amount of ~~$149,250.00.~~**12,500.00.** The date payment is received will be the "**Base Rent Effective Date**". A/H

5.4.2 The Base Rent for the first year following the Base Rent Effective Date shall be an annual amount equal to ~~Five~~**One** Hundred ~~Ninety Seven~~**Fifty** Thousand Dollars (~~$597,000.00~~**150,000**).

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 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 **one and** three **hundredths** percent (~~3~~**1.03** %) over the previous year's Base Rent.

5.6 ~~**Periodic Base Rent Adjustment.**~~ **Reserved.**

~~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.**~~**Reserved.** ~~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.~~

~~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.~~

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~~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.~~

5.8 ~~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~~**monthly** payments due being payable in advance on ~~January 1, April 1, July 1, and October 1.~~**the first of each month.** Any amounts due WMATA for the period prior to the first ~~quarterly~~**monthly** due date shall be prorated and paid in advance to the next ~~quarterly~~**monthly** 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.

5.9 ~~5.10 **Late Charge.**~~**Late Charge. In the event that any payment of Rent due under this Lease shall not be received by WMATA for a period of fifteen (15) Business Days from the specified due date, Developer shall pay to WMATA as Additional Rent interest on the delinquent amount at the Default Rate of Interest.** ~~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.

Need this to Verify Capital Events

~~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.**~~

Was in JDS

~~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 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 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.~~

5.11 Reserved.

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.**

From who?

7.1.1 **Following receipt of written invoices,** 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.

How is this normally handled? Seemed excessive by WMATA

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, 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~~**shall** 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 **for a period of thirty (30) days**.

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 **each** be responsible for ~~the~~ payment **of half (50%)** of any and all taxes and Impositions, including, without limitation, ~~real estate taxes~~**Real Estate Taxes (other than taxes on WMATA's fee simple interest in the Leased Property)**, relating to the Lease Premises **following Developer's receipt of a written invoice from the appropriate governmental authority**.

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EAST\~~42209240.1~~**42202491.2**

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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.

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

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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"). **WMATA shall apply for said FTA Project Approval within thirty (30) days after full execution of the JDA. WMATA acknowledges that the maximum length of 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.**

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 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.

ARTICLE 9
ENVIRONMENTAL MATTERS

9.1 **WMATA's Covenants.**

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9.1.1 **[NEED WMATA REPRESENTATION REGARDING THE ENVIRONMENTAL HISTORY AND CONDITION OF THE PROPERTY PER 5.1 OF LETTER OF INTENT]**

9.1.2 ~~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.

9.1.3 ~~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.

9.1.4 **WMATA hereby agrees to indemnify, defend and hold Developer harmless from and against any and all loss, cost, liability, damage or expense which Developer may incur or sustain or which may be asserted against Developer by reason of any liability Developer may incur for clean-up, restoration costs, fines, or penalties resulting from WMATA's breach of the covenants contained in this Article 9 or from the violation of any Law relating to Hazardous Materials released on or from WMATA's Residual Property, WMATA's Adjacent Property or WMATA's Reserved Areas and Interests occurring after the Effective Date of this Lease.**

Indemnification is limited to problems on WMATA Controlled Property

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 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.

Should this All Be Removed?

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.~~ **Reserved.**

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 (collectively, the "Insurance Obligors~~**or Developer's general contractor, as applicable (the "Insurance 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, 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~~**100**%) of the full replacement cost of all Improvements on the Property. Rot

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

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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 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008247**

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 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~~**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 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, without the need of any notice to any of~~**Obligor, so long as WMATA has provided** the Insurance ~~Obligors~~**Obligor with fifteen (15) days prior written notice**, and the premium so paid by WMATA together with a service charge equal to ~~ten~~**three** percent (~~10~~**3**%) shall be immediately due and payable by Developer to WMATA.

WMATA Policy?

*Limit notice to prevent uninsured situation
*Limit policies where notice required

10.6 **Compliance with Insurance Requirements.** The Developer shall not ~~itself and shall not suffer any of the Insurance Obligors 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 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 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 **for a period of thirty (30) days** 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 written 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 **and WMATA immediately notifies Developer of such circumstances**, Developer's obligation to repair shall be immediate.

No Restriction on timing of notice

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 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 **as soon as reasonably practical**. 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 **within thirty (30) days following Developer's contractor's**

what if affects Tunnel?

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008251

Limit to Exclude Reasonable Time Requirt on anything involving Tunnel

failure to conduct such work as soon as reasonably practical shall be an Event of Default under this Lease.

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. **If WMATA notifies Developer pursuant to Section 11.3.3 and Developer has repaired or replaced the defective work, such work shall be deemed approved by WMATA within five (5) days following completion unless WMATA otherwise provides written notice to Developer.**

No Automatic Approvals

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.

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 **to Developer** by reason of such support or execution of such documents for which it cannot be indemnified.

Who else Could Be liable to?

11.5.2.2 WMATA agrees, subject to any limitations under the WMATA Compact and the provisions of this Lease, to join with Developer

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008252

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.

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 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.

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 **for a period of thirty (30) days**.

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 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 **conditioned, delayed or** 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 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 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.** **Prior to completion of the Developer Improvements and except for Developer's right to assign this Lease and any sublease(s) to its leasehold mortgagee pursuant to Section 18, the Developer may not assign this Lease without WMATA's consent unless certain criteria are met. If the proposed assignee is a Qualified Assignee, Developer may change its composition without WMATA's prior consent, but in all such events, Developer shall give WMATA not less than thirty (30) Days prior written notice of such assignment. The Developer's notice must provide detailed evidence, including audited financial statements, that the proposed assignee is a Qualified Assignee. If the proposed assignee is not a Qualified Assignee and if the assignment is made prior to completion of the Developer Improvements, Developer may assign this Lease with WMATA's consent, not to be unreasonably withheld, delayed or conditioned. Following Substantial Completion of the Developer Improvements, Developer may assign this Lease without WMATA's consent, provided that Developer gives WMATA not less than thirty (30) Days written notice of such assignment.**

~~Subject to the terms and conditions of this Article 17, this Lease shall not be assignable by Developer without 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.

For purposes of securing equity financing through syndication, the Developer may syndicate ownership interests in Developer provided that Developer certifies and covenants that its owners are not convicted felons or "debarred". Restrictions on the Developer's right to assign this Lease will not be applicable to the Leasehold Mortgagee in the event of foreclosure or deed in lieu of foreclosure and anyone acquiring title, by through or under the Leasehold Mortgagee. workaround of no 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.~~ WMATA policy →

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.~~

17.4 ~~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 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.

Not in Term sheet negotiate in?

17.4.1 Right of First Offer

Nothwithstanding the foregoing, if WMATA desires to sell, assign or transfer all or any portion of, or interest in, the Leased Property owned by WMATA (other than a sale to another governmental entity), then before entering into an agreement so to do, WMATA will notify the Developer in writing of its desire to do the same, and WMATA will, in good faith, provide the price and basic terms it is asking. If, within ninety (90) Days after receipt of the notice, the Developer gives WMATA written notice of its interest in purchasing the property or interest being offered for sale, transfer or assignment, at the price and upon the terms contained in WMATA's notice to the Developer, then WMATA and the Developer agree to negotiate a legally binding agreement to carry out their previously expressed intent promptly and in good faith. If Developer fails to respond to the notice within the ninety (90) Day period, or if WMATA and the Developer fail, in good faith, to enter into a written sales agreement within one hundred twenty (120) Days after the date of the Developer's notice of interest in purchasing the property being offered for sale, then WMATA will be free to sell, transfer or assign the property or interest to anyone else upon the same terms and without any further obligation to the Developer.

ARTICLE 18
LEASEHOLD MORTGAGES

18.1 **Leasehold Mortgage.** [SUBJECT TO LENDER REVIEW] 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,

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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 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, 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:

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

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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 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

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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

19.1.1 Catastrophic Environmental Condition.

If, during construction of the Developer Improvements, Developer discovers the existence of a Catastrophic Environmental Condition on the Leased Premises, then Developer, upon sixty (60) Days prior written notice to WMATA, may terminate this Lease, subject to the following limitations:

A. Developer shall not have the right to terminate this Lease pursuant to this Section with respect to any Hazardous Material the presence of which Developer was actually aware prior to the Effective Date. If the Developer actually knew of the presence of a Hazardous Material prior the Effective Date, it shall not have the right to terminate under this Section, even if the Developer did not know of or appreciate the magnitude or extent of the contamination or its effect on construction costs.

B. Termination of this Lease pursuant to this Section is conditioned upon the Developer's restoration of the Leased Premises at Developer's sole expense to a condition that is level with the surrounding street grade or as close to this restored condition as is allowed under applicable Environmental Laws in light of the Catastrophic Environmental Condition. The effective date of the termination shall be the date upon which Developer tenders the restored Leased Premises back to WMATA.

C. Termination of this Lease is conditioned upon Developer's payment of all Base Rent and additional rent through the date of termination and upon Developer's compliance with all other terms and conditions of this Lease.

D. Developer shall have no right to terminate this Lease pursuant to this section after the date upon which Developer receives its first certificate of use and occupancy for any portion of the Developer Improvements.

19.2 ~~19.1~~ **Developer Default.** The following shall constitute a "Default" by Developer under this Lease:

19.2.1 ~~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 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~~**thirty (30) Business Days** after written notice from WMATA to Developer;

19.2.2 ~~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~~**twenty** (~~5~~**20**) Business Days after receipt of Notice from WMATA;

19.2.3 ~~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~~**twenty** (~~5~~**20**) Business Days after receipt of Notice from WMATA;

19.2.4 ~~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~~**twenty** (~~15~~**20**) Business Days after receipt of Notice from WMATA;

19.2.5 ~~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~~**twenty** (~~10~~**20**) Business Days after receipt of Notice from WMATA;

19.2.6 ~~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;

19.2.7 ~~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;

19.2.8 ~~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;

19.2.9 ~~19.1.9~~ If Developer **knowingly** makes any material misrepresentation in this Lease or any of the other Transaction Documents, or if Guarantor **knowingly** makes any material misrepresentation in the Guaranty, or if any of them **knowingly** make any material misrepresentation in any other material submission to WMATA;

19.2.10 ~~19.1.10~~ If Developer or Guarantor **knowingly** make any material misrepresentation to any governmental authority for or in connection with the transactions contemplated by this Lease;

19.2.11 ~~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 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;

19.2.12 ~~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

19.2.13 ~~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.

19.3 WMATA Default. The following shall constitute a "Default" by WMATA under this Lease:

19.3.1.1 If WMATA fails to pay Impositions it is legally required to pay; → include notice

19.3.1.2 If WMATA fails to keep the Leased Premises free of liens (other than the lien of any financing obtained by WMATA or Developer or the lien of any easements placed against the Leased Premises by the Developer, as permitted under this Lease); and what liens could WMATA mean?

19.3.1.3 If WMATA fails to perform any other material obligation of WMATA under this Lease.

19.4 ~~19.2~~ **WMATA Remedies.** If a **Developer** 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:

19.4.1 ~~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.

19.4.2 ~~19.2.2~~ WMATA may, ~~whether or not~~**provided** the Term shall have been terminated pursuant to Section ~~19.2.4,~~**19.4.4,** 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.~~

19.4.3 ~~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~~**15 Business Days** following Notice by WMATA).

19.4.4 ~~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.

19.4.5 ~~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

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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.~~**19.4.4.** 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.

19.5 Developer Remedies. If WMATA defaults and fails to cure its default after notice and opportunity to cure, then Developer has the following remedies:

(i) the right to money damages measured as the difference between the Fair Market Rental Value of the Leased Premises without WMATA's performance and the Fair Market Rental Value of the Leased Premises with WMATA's performance with fair market value where "Fair Market Rental Value" means what a landlord under no compulsion to lease the Leased Premises and a tenant under no compulsion to lease the Leased Premises would determine as rent, taking into consideration the period of time remaining on the Term of this Lease, the terms of this Lease, the highest and best use under the zoning of the Leased Premises, as such use may be limited by the areas and uses permitted under this Lease; the quality, size, condition and location of the Leased Premises; and the rent for comparable land located in the vicinity of the Leased Premises; and/or

(ii) the right to seek specific performance or injunctive relief; and/or

Default Rate is prime Rate

Payment on Demand

(iii) the right to self-help as follows: Developer may (but will not be required to) discharge WMATA's obligations, or pay Impositions or the costs of repairs, as the case may be. If it does, all amounts paid by Developer in doing so and all costs and expenses incurred by Developer in connection with doing so (together with interest at the Wall Street Journal Prime Rate from the date of Developer's payment of the amount or incurring of each cost or expense until the date of full payment by WMATA) will be payable by WMATA to Developer on demand. If WMATA fails to make the repayment after notice and 30 Days opportunity to pay, then, in addition to any other rights it may have, Developer will have the right to offset the amount of the repayment against Base Rent and other charges under this Lease; however, Developer will have no lien or claim against WMATA's reversionary interest in the Leased Premises or the WMATA Excepted Areas; and/or

No offsets

(iv) the right, without the requirement that Developer first vacate the Leased Premises, to seek a declaratory judgment that that WMATA's default so substantially and adversely interferes with the Developer's use and enjoyment of the Leased Premises such that termination of the Lease is the appropriate remedy. If a court enters such a declaratory judgment, then Developer shall have 60 days after the date of a

final, nonappealable judgment to vacate the Leased Premises, in accordance with the provisions of this Lease. Base Rent and other charges payable hereunder shall be paid through the date Developer vacates the Leased Premises. Upon such termination and surrender of the Leased Premises, Developer shall be entitled to recover its actual money damages.

19.6 ~~19.3~~ **No Developer Redemption Rights.** **Upon a Developer Default hereunder,** 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.

19.7 ~~19.4~~ **Remedies Cumulative.** Except as expressly otherwise provided herein, no right or remedy conferred upon or reserved to WMATA **or Developer (as the case may be)** 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 **or Developer (as the case may be)** 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.

19.8 ~~19.5~~ **No Waiver.** No delay or failure by WMATA **or Developer (as the case may be)** 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 **or WMATA (as the case may be)** 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 **or Developer (as the case may be)** shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition by the other.

ARTICLE 20
DAMAGE AND DESTRUCTION

20.1 **Developer's Rights, Duties and Obligations.**

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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) 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, **WMATA shall promptly provide written notice to Developer of such damage, and** 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 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

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of $_____**1,000,000** (adjusted by the CPI Adjustment), and shall post appropriate notices of WMATA's non responsibility.

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 $_____**2,500,000,** 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~~**one hundred eighty (180)** 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.

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.

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.

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

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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~~**WMATA shall have the right to purchase Developer's interest in the** Developer Improvements ~~to WMATA without delay~~**at fair market value**, in the condition provided in Section ~~14.1.~~ **14.1 [NEED TO DISCUSS OWNERSHIP OF IMPROVEMENTS AND CONSIDERATION TO BE PAID PER PAUL MYERS COMMENTS]** 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.

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 **for a period of thirty (30) days**.

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 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.

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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:

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 execution, delivery and performance of this Lease, except that in accordance with Section ____, this Lease is subject to FTA approval**;

True?

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

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.

28.1.8 Other than as a result of a breach by Developer of its representations, warranties and covenants contained herein:

Does WMATA Normally make these Reps in connection to Retained property

28.1.8.1.1 WMATA and WMATA's Reserved Areas and Interests and WMATA's Residual Property will remain in compliance with all applicable laws, ordinances, and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including all Environmental Laws. WMATA will obtain and comply with all governmental permits relating to the use or operation of WMATA's Reserved Areas and Interests and WMATA's Residual Property required by applicable Environmental Laws. WMATA will conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all hazardous materials on, from or affecting WMATA's Reserved Areas and Interests and WMATA's Residual Property in accordance with all applicable Environmental Laws.

Either
- Limit to Actions which will cause damage to Developer; or
- Remove clause entirely

28.1.8.1.2 WMATA will not permit to occur any release, generation, manufacture, storage, treatment, transportation, or disposal of Hazardous Materials, except in compliance with Environmental Laws, on, in, under, or from WMATA's Reserved Areas and Interests and WMATA's Residual Property. WMATA will promptly notify Developer, in writing, if WMATA has or acquires notice or knowledge that any Hazardous Material has been or is threatened to be released, discharged, disposed of, transported, or stored on, in, under, or from WMATA's Reserved Areas and Interests and WMATA's Residual Property; and if any Hazardous Material is found on WMATA's Reserved Areas and Interests and WMATA's Residual Property, WMATA, at its own cost and expense, will immediately take such action as is necessary to detain the spread of and remove the Hazardous Material in compliance with Environmental Laws.

28.1.8.1.3 WMATA will immediately notify Developer and provide copies upon receipt of all written citations relating to the condition of WMATA's Reserved Areas and Interests and WMATA's Residual Property or compliance with Environmental Laws. WMATA will promptly cure and have dismissed with prejudice any actions and proceeding brought pursuant to any Environmental Laws. Except as described below, WMATA will promptly notify Developer of any liens threatened or attached against the Leased Premises pursuant to any Environmental Law. If such a lien is filed against the Leased Premises with respect to an environmental condition caused by a breach by WMATA of any of its covenants in this Section, then, within thirty (30) Days from the date that the lien is placed against the Leased Premises, and before any governmental authority commences proceedings to sell WMATA's reversionary interest in the Leased Premises and/or the Leased Premises pursuant to the lien, WMATA will either (1) pay the claim and remove the lien from the Leased Premises; or (2) furnish either (i) a bond or cash deposit reasonably satisfactory to Developer and Developer's title insurance company in an amount not less than the claim from which the lien arises; or (ii) other security satisfactory to Developer in an amount not less than that which is sufficient to discharge the claim from which the lien arises.

28.2 **As Is, Where Is Terms.** Except for the representations and warranties expressly set forth above in Section ~~28.1,~~**28.1 and subject to Developer's Study Period rights and the satisfaction of conditions precedent in accordance with the JDA,** 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~~**Except for the representations and warranties expressly set forth above in Section 28.1, 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 **Except for the representations and warranties expressly set forth above in Section 28.1,** 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 **Except for the representations and warranties expressly set forth above in Section 28.1,** 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 **for a period of one (1) year**. In 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,~~**The Jazz @ Florida Avenue** 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 _____ 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 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.

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, Maryland 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
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
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
600 Fifth Street, NW

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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.

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

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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.

~~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.~~

WMATA Policy?

29.14 ~~29.15~~ **Time Of The Essence.** The parties agree that time is of the essence under this Lease.

29.15 ~~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.

29.16 ~~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.

29.17 ~~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.

29.18 ~~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.

29.19 ~~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 **in the form approved by Developer and attached hereto as Exhibit ____ (the "Memorandum of Termination")**. Developer shall execute and deliver ~~to WMATA on the Effective Date~~**the Memorandum of Termination to WMATA within fifteen (15) days following the date of termination of the Lease,** in recordable form ~~a memorandum of termination~~, which WMATA is authorized to record following the occurrence of any termination. Developer shall ~~pay~~**not be responsible for** any ~~and all~~ recording fees ~~and~~**or** charges to record the memorandum ~~and~~**or** 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 provision~~. The provisions of this Section 29.20 shall survive any termination of this Lease.

29.20 ~~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:

_____[SEAL]

~~[DEVELOPER]~~**BANNEKER VENTURES, LLC**
a District of Columbia limited liability company
By:_____

Name:_____

Title:_____

EAST\~~42209240.1~~**42202491.2**

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008290

ATTEST/WITNESS:

_____[SEAL]

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

By: _____

Title: Contracting Officer

FOIA CONFIDENTIAL TREATMENT REQUESTED

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: _____.

FOIA CONFIDENTIAL TREATMENT REQUESTED

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. WMATA RESERVED AREAS AND INTERESTS
K. TITLE COMMITMENTS
L. DEVELOPMENT COVENANTS

FOIA CONFIDENTIAL TREATMENT REQUESTED

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11/4
D2A Comments

JOINT DEVELOPMENT AGREEMENT

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
WMATA

and

~~**DEVELOPER, LLC,**~~
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~~**November** _____, 2008

EAST\~~42197999.1~~**42197999.3**
368072-000001

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008295

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008298

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EXHIBITS

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B. EXISTING IMPROVEMENTS
C. PROJECT SCHEDULE
D. FORM OF GUARANTY
E. LEASE PREMISES
F. MINIMUM PROJECT COMPLETION MILESTONE REQUIREMENTS
G. PROJECT CONCEPT PLAN
H. WMATA RESERVED AREAS AND INTERESTS
I. LEASE
J. PROJECT IMPROVEMENTS
K. ROE
L. PROPOSED DEVELOPMENT PLAN
M. DEVELOPMENT COVENANTS

FOIA CONFIDENTIAL 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"**). OK

RECITALS

R-1. 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. 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"**.

R-3. 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 approved by Developer and WMATA.

R-4. Developer has agreed to ~~attempt~~ 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)~~, to the Developer~~;

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008301

R-~~3.~~**5.** **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 CONFIDENTIAL TREATMENT REQUESTED

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, 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, 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~~a 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~~a 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.

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008303

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 **Controlling** membership interests in Developer, (ii) the **Controlling** membership interests of the members of the Developer, or (iii) the combined voting power of Developer's outstanding **Controlling** 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,~~**one** or ~~a~~ series of related sales or conveyances~~,~~ to any person or entity of all or substantially all of Developer's assets**; in each case, for items (a) through (c) above, only where such transaction results in a sale, conveyance or transfer of a Controlling interest in the subject entity**.

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008304

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.~~ **those steps usually, customarily and fiscally prudent under the circumstances that a real estate developer or property owner take to lawfully achieve approval of, and construction of, and leasing of improvements similar to the Developer Improvements. Commercially Reasonable Best Efforts means the party timely and diligently taking steps usually and customarily taken by a real estate developer or property owner seeking with due diligence to lawfully achieve the objective to which the particular effort pertains and, as applied to the Developer under this Lease, requires that the Developer is using commercially reasonable efforts in filing all applications and making all appearances, and is providing documents, studies and other materials and satisfying such other requirements required by the applicable ordinance procedures or otherwise reasonably requested by the applicable governmental authorities in connection therewith; and Developer is timely in its responses to inquiries of public officials and other interested parties and in meeting deadlines, Developer is procuring such competent professional support as is commercially reasonable to achieve the objective, is overseeing and is making all payments associated with such steps and the achievement of such objective in a timely manner. In determining whether the above standards have been breached, either party's failure to adhere to the foregoing standards in any single instance shall not be deemed a breach of that party's covenant absent a showing of prejudice to or material adverse impact on the other party's overall efforts to obtain the objective or a willful breach. Notwithstanding the foregoing, neither party shall not be required to commence judicial proceedings, including appeals, in order to exercise Commercially Reasonable Best Efforts.**

Why Change?

WMATA not Doing Anything here.

Too Easy to Circumvent

1.1.14 **"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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008305

What if changes partners?

- way to assign
- capital Event

1.1.17 **"Control"** means the power~~ of a Person~~, directly or indirectly, to direct ~~or cause the direction of the disposition of property,~~**the** management ~~and~~**or** policies of ~~another Person~~**Developer**, whether through ownership of ~~voting securities, by contract or otherwise~~**securities, by contract, or otherwise in accordance with the following conditions. One controls a corporation if one (i) directly or indirectly has the right to vote 50 percent or more of a class of the corporation's voting securities; or (ii) has the power to sell or direct the sale of 50 percent or more of a class of the corporation's voting securities. One controls a general partnership if one has the right to receive, upon dissolution, or has contributed, 50 percent or more of the capital of the partnership. One controls a limited partnership if one has 50% of more of the ownership of the general partnership interests. One controls a limited liability company (LLC) if (i) for a member-controlled LLC, one controls the majority of the voting interests in connection with the management of the LLC; or (ii) for a manager-controlled LLC, one is an elected manager of the LLC, or controls the election of the LLC' s manager. One controls a trust if one is a trustee or managing agent of the trust**.

1.1.18 **"Covenants, Conditions and Restrictions"** 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 _____**The Jazz @ Florida Avenue LLC**, ~~LLC,~~ a **District of Columbia** limited liability company formed by Banneker Ventures, ~~LLC,~~ **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,~~**and** _____ as _____% owner.

1.1.24 **"Developer Project Representative"** shall have the meaning set forth in Section ~~7.10.9.~~**7.9.9.**

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008306

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 **"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 7.6.5.

1.1.28 **"Development Plan Submission Deadline"** shall have the meaning set forth in Section 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). SKK

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** _____.

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008307

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.** → ADR

1.) Release Bonds
2.) Application of Bond proceeds
ins. proceeds
Guar. proceeds

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 ~~theLease~~**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.

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008308

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.

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008309

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.~~

1.1.52 ~~1.1.53~~ **"Loan Covenants"** shall have the meaning set forth in Section 6.5.

1.1.53 ~~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~~.

1.1.54 ~~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** _____.~~

1.1.55 ~~1.1.57~~ **"Notice"** shall have the meaning set forth in Section 22.5.

1.1.56 ~~1.1.58~~ **"Partial Taking"** shall have the meaning set forth in Section 20.2.4.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008310

1.1.57 ~~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.

1.1.58 ~~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.

1.1.59 ~~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.

1.1.60 ~~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.

1.1.61 ~~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.

1.1.62 ~~1.1.64~~ **"Project Schedule"** shall have the meaning set forth in Section 11.8.

1.1.63 ~~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.

1.1.64 ~~1.1.66~~ **"Proposed Development Plan"** shall have the meaning set forth in Section 7.6.3.

1.1.65 ~~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.~~

1.1.66 ~~1.1.69~~ **"ROE"** shall have the meaning set forth in Section 4.1.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008311

1.1.67 ~~1.1.70~~ **"Stabilization"** shall be achieved upon 90% occupancy of the Project.

1.1.68 ~~1.1.71~~ **"Study Period"** shall have the meaning set forth in Section 4.1.

1.1.69 ~~1.1.72~~ **"Study Period Termination Notice"** shall have the meaning set forth in Section 4.2.

1.1.70 ~~1.1.73~~ **"Submission"** shall have the meaning set forth in Section ~~7.10.1.~~**7.9.1.**

1.1.71 ~~1.1.74~~ **"Submission Correction Deadline"** shall have the meaning set forth in Section ~~7.10.5.~~**7.9.5.**

1.1.72 ~~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. **Within one hundred and twenty (120) days following Substantial Completion,** Developer shall deliver to WMATA copies of ~~all~~**relevant** certificates, permits, approvals and consents ~~promptly after its receipt of the same~~.

1.1.73 ~~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.

1.1.74 ~~1.1.77~~ **"Title Commitment"** shall mean a commitment for leasehold title insurance for the Lease Premises ("Title Commitment"), 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.

1.1.75 ~~1.1.78~~ **"Title Insurer"** means a national title insurance company licensed to do business in the jurisdiction in which the Property is located.

1.1.76 ~~1.1.79~~ **"Total Taking"** shall have the meaning set forth in Section 20.1.

1.1.77 ~~1.1.80~~ **"Transaction Documents"** means this Agreement, the Lease, any and all separate right of entry agreements, the Development Covenants **[NOTE: the Developer Covenants should be the same as the CC&R's]**, the Covenants, Conditions and Restrictions, the Guaranty and the Payment and Performance Bonds.

1.1.78 ~~1.1.81~~ **"Transit-Oriented Development"** shall have the meaning set forth in Section 13.1.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008312

1.1.79 ~~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.

1.1.80 ~~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.

1.1.81 ~~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.

1.1.82 ~~1.1.85~~ **"WMATA Information"** shall have the meaning set forth in Section 9.3.

1.1.83 ~~1.1.86~~ **"WMATA Project Representative"** shall have the meaning set forth in Section ~~7.10.9.~~**7.9.9.**

1.1.84 ~~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.

1.1.85 ~~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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008313

1.1.86 ~~1.1.89~~ **"WMATA's Unconditional Approval Matters"** means any and all matters that in the ~~sole and unreviewable~~**reasonable** judgment of WMATA (such standard to apply in all circumstances without expressly so stating in an applicable context) would have ~~an~~**a material** 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) 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~~**iii**) the Metro Station, (~~viii~~**iv**) the Metro Facilities, (~~viii~~**v**) 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.

- Need to include any areas which might Affect Tunnel!
- Replace Existing Improvements Comment w/ ~~Tunnel~~ Broad Tunnel Language

FOIA CONFIDENTIAL TREATMENT REQUESTED

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**, which approval shall not be unreasonably withheld, conditioned or delayed**.

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008315

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-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~~61 months from the Effective Date (the "**Pre-Stabilization Period**"). **The Pre-Stabilization Period shall be extended on a day-for-day basis, for delays caused by WMATA actions or failure to act, including obtaining FTA Project Approval in accordance with Section 13.2., provided, however, that Developer shall not be responsible for payments of Pre-Stabilization Rent beyond 61 months and Initial Base Rent and Base Rent payments shall be delayed during the extended period.**

2.3.3 ~~2.4~~ **Ratification and Confirmation of ~~WMATA~~Developer's Retained Rights.** WMATA's fee simple **right, title, and** interest in the Lease Premises**, excluding the Developer Improvements,** shall be and ~~always remain unsubordinated~~**remain in WMATA for and during the term of this Lease, without any subordination whatsoever [SUBJECT TO LENDER REVIEW]**. On the expiration or **other** termination of ~~the~~**this** 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.~~**and rights in and relating to all Developer Improvements located on the Leased Premises shall remain vested in Developer. On the expiration of the Lease, provided Developer has not exercised the Extension Option (as defined in Section 2.4 of the Ground Lease), WMATA shall purchase the Developer Improvements from Developer pursuant to the terms of a purchase and sale agreement to be agreed upon by the parties within sixty (60) days following the date of expiration. [OWNERSHIP OF IMPROVEMENTS AT END OF LEASE NEEDS TO BE DISCUSSED PER PAUL MYERS COMMENTS]**

2.4 ~~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.

2.5 ~~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:

2.5.1 ~~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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008316

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~~ **and** _____. Developer represents, warrants and covenants that Banneker Ventures, LLC~~, the District Development Group, LLC, and Metropolis Development Company, LLC~~ **and** _____ 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~~**and** _____.

~~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 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.

2.6 ~~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.

2.6.1 ~~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**, so long as WMATA provides 24 hours prior notice to Developer and shall not unreasonably interfere with Developer's timely**

Except in An Emergency

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008317

construction of the Project or limit Developer's ability to fulfill its development obligations in accordance with this Agreement.

2.6.2 ~~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**.

2.6.3 ~~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.

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~~)**50,000)]**, 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 the expiration 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008318

3.1.4 WMATA ~~may~~**shall** 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 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 to the Developer~~**cause Bank of America, N.A., to release** the proposal security deposit, in the amount of $100,000.00, currently being held by ~~WMATA~~**Bank of America, N.A**.

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008319

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)], **subject to Section 2.3.2.** Payments shall be paid in equal quarterly installments.

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008320

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.~~**remain subject to the accuracy of the representations and warranties of WMATA provided herein.**

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 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~~**ninety** (~~10~~**90**) days following the date of such attachment. If Developer fails to cause the same to be removed of record or bonded off within ~~ten~~**ninety** (~~10~~**90**) 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.

Provisions for Foreclosure on Liens

30 Days
45
60

~~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.~~

4.6 ~~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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008321

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. **[PLEASE PROVIDE COPY OF TITLE COMMITMENT AND ALL DOCUMENTS LISTED AS EXCEPTIONS FOR REVIEW]**

Developer gets title commit.

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008322

would frustrate or materially impair consummation of the Closing, which Developer otherwise is required to consummate under the terms of this Agreement.

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 ok

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**"). **[SUBJECT TO LENDER REVIEW]**

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008323

otherwise be secured by such Payment Bond and Performance Bond until such Final Completion is achieved; and

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008324

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~~**forty five** (~~10~~**45**) 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.

Are these able to be provided w/in 2 Days?

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~~**two** (~~30~~**2**) 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.**

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008325

7.6.1 **Project Concept Plan.** Not later than ~~ten~~**thirty** (~~10~~**30**) 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.~~

unconditional approval
Need for Tunnel

7.6.2 ~~**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~~

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~~plans include changes to the proposed Project as reflected in the Public Hearing 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.~~ **Reserved.**

7.6.3 **Proposed Development Plan**. Not later than thirty (30) days after ~~WMATA~~**the Zoning Commission** approves **a Planned Unit development for** the Project ~~Concept Plan~~ (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, 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~~

WMATA Review prior to Zoning Commission

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008327

~~under the terms of this Agreement that expressly survive any termination of this Agreement.~~

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

7.6.4 **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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008328

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 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 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 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 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.

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

7.6.6 **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~~

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008329

by reason of its approval of the Proposed Development Plan, nor shall such approval be construed to be a warranty thereof.

7.6.7 **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~~**conditioned, delayed or withheld**. After the Approvals Achievement Date, WMATA shall have no right to make or require changes to the Approved Development Plan.

7.6.8 **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 **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 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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008330

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. **WMATA shall cooperate with Developer in all zoning and other related land use matters.** → No costs to WMATA

~~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.~~ · Does this matter?

· No Retained Areas

7.9 ~~7.10~~ **Submission of Proposed Applications for Approvals and Infrastructure Development**

7.9.1 ~~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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008331

- Is 7 Days possible?
- Not Default.
- If so, Required notice and opportunity to cure

quasi-governmental authority, for WMATA's review and approval in conformity with Section 7.10.5 (each, a "**Submission**"). **WMATA shall respond to Developer within seven (7) days following WMATA's receipt of each Submission. The failure of WMATA to timely respond to Developer shall be deemed an event of default by WMATA hereunder.** 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.

7.9.2 ~~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.

7.9.3 ~~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:

7.9.3.1 ~~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

7.9.3.2 ~~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

7.9.3.3 ~~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.

7.9.4 ~~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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008332

Developer at Developer's expense, within ten (10) days of Notice of any such default, termination or failure, at the request of WMATA.

7.9.5 ~~7.10.5~~ **Submission Procedures.** Within ~~thirty~~**seven** (~~30~~7) 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. **WMATA's approval shall not be unreasonably conditioned, delayed or withheld.** If approval is denied on the basis of ~~any~~**a reasonable** 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~~, **provided, however that the Pre-Development Period shall be extended to a date mutually agreed upon by Developer and WMATA**. Pre-Stab.

7.9.6 ~~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

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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.

7.9.7 ~~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 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~~

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~~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.~~

7.9.8 ~~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 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, 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, 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.

7.9.9 ~~7.10.10~~ **Extensions of Time for Developer's Performance.**

7.9.9.1 ~~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.

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7.9.9.2 ~~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.

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 **nine** (~~20~~**29**) months following the Effective Date (the "Closing Date").

8.1.2 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 [redacted]~~, if in the~~**legal counsel, DLA Piper LLP (US), 500 Eighth Street, NW,** Washington, ~~D.C. metropolitan area,~~**DC 20004,** or at such other place as the parties shall mutually agree. Developer agrees to conduct closing through a pre-closing escrow or other

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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 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,

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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.

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 Development Covenants in the form of Exhibit _____ attached hereto.

8.2.1.3 A closing statement executed by WMATA.

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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 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 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 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 [NEED WMATA REPRESENATION REGARDING THE ENVIRONMENTAL HISTORY AND CONDITION OF THE PROPERTY PER 5.1 OF LETTER OF INTENT]

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 provided or provides any information, data, reports, studies or the like (**"WMATA**

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

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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 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.

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

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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 [redacted]. 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 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

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

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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;~~**Reserved.**

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;

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,

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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.

11.7.1 Reserved.

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.~~ **Reserved.**

Other way for WMATA to monitor progress? Need for Contract & And for Tunnel

~~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~~

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~~allowances for periods of time required for WMATA's review and approval and for inspections and approvals by the various governmental authorities having jurisdiction 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~~**twenty (20) days** following receipt thereof.

11.9.1.2 If WMATA requires changes in any item submitted for review pursuant to **this** Section ~~11.8,~~, 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

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11.9 shall continue to be applied until WMATA has approved the latest resubmission.

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

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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 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

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(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 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.** **[TO DISCUSS]** 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

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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 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** **[TO DISCUSS]**

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

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Documents. The proceeds of such bond shall be applied to Final Completion of the Project.

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~~**three** (~~10~~**3**) 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)

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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 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

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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.

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~~**tenth** (~~90~~**10**th) day following Final Completion of the Project, 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 (collectively,~~ **or, in the case of policies required pursuant to Section 12.1.6, 12.1.7 and 12.1.8, Developer's general contractor, as applicable (**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~~**Obligor** 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~~**Obligor** 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.

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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 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~~**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 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:	
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

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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.

12.1.7 **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.

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~~**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 Property 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

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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~~**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 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~~**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 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~~**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 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 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~~**Obligor** to WMATA at least twenty (20) days prior to the respective expiration of the applicable policies.

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12.2 **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 Insurance ~~Obligors~~**Obligor**, and the premium so paid by WMATA together with a service charge equal to ~~ten~~**two** percent (~~10~~**2**%) shall be immediately due and payable by Insurance ~~Obligors~~**Obligor** to WMATA.

12.3 **Compliance with Insurance Requirements.** The Insurance ~~Obligors~~**Obligor** 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~~**Obligor** 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~~**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 Insurance ~~Obligors~~**Obligor** 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.** **[UNDER REVIEW BY DEVELOPER]** 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~~**Obligor** shall not release, limit or restrict in any way Insurance ~~Obligors'~~**Obligor's** 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 **for a period of thirty (30) days**, shall be embodied in the Development Covenants and the Covenants, Conditions and Restrictions.

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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 **and shall secure FTA Project Approval within sixty (60) 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**, WMATA shall pay Developer $300,000 as compensation for Developer's costs incurred in connection with Developer's due diligence and the negotiation and execution of this Agreement,** 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.

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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~~**reasonable** 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.~~

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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.

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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:

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18.3.1.1 If any Closing is not consummated ~~for any reason other than WMATA's Default,~~**due to** 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~~**fifteen** (~~5~~**15**) 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~~**fifteen** (~~5~~**15**) 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~~**fifteen** (~~5~~**15**) 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~~

18.3.1.5 ~~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

18.3.1.6 ~~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

18.3.1.7 ~~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 **and Developer has received prior written notice from WMATA of such breach within**

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fifteen (15) Business Days prior to the expiration of any applicable cure periods; or

18.3.1.8 ~~18.3.1.9~~ If Developer **knowingly** makes any material misrepresentation in this Agreement or any of the other Transaction Documents, or if Guarantor **knowingly** makes any material misrepresentation in the Guaranty, or if any of them **knowingly** make any material misrepresentation in any other material submission to WMATA; or

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18.3.1.9 ~~18.3.1.10~~ If Developer or Guarantor **knowingly** make any material misrepresentation to any governmental authority for or in connection with the transactions contemplated by this Agreement; or

18.3.1.10 ~~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.

18.3.1.11 ~~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

18.3.1.12 ~~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.

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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.**

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008372

18.5 **Intentionally Omitted.**

18.6 **Refund of Deposit.**

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

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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.

20.2.2 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

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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 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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008375

make such decision binding, which agreement shall be in each party's sole and absolute discretion.

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**

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

Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
Attn: Omar A. Karim
Phone: (202) 667-4110
Fax: (202) 558-5157

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008376

postage prepaid, on the Fifth (5th) Business Day following the date of mailing addressed as follows:If to Developer:

And with a copy to:

DLA Piper LLP (US)
The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 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
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
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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008377

Authority
600 Fifth Street, NW
Washington, D.C. 20001
Attn: Carol O'Keeffe
Phone: _____
Fax:_____

22.5.1 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.

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008378

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 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008379

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.

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008380

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008381

Document comparison done by Workshare Professional on Tuesday, November 04, 2008 9:21:11 AM

Input:	
Document 1	interwovenSite://EASTDMS/EAST/42197999/1
Document 2	interwovenSite://EASTDMS/EAST/42197999/3
Rendering set	DLAPiper

Legend:	
Insertion	
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~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	207
Deletions	264
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	475

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008382

9/11/08
BPH Comments

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
REAL ESTATE PERMIT

THIS REAL ESTATE PERMIT (the "**Permit**") is made and entered into this day of_____, 2008 (hereinafter "**Effective Date**"), by and between the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, a body corporate and politic (hereinafter "**WMATA**") with principal offices at 600 Fifth Street, NW, Washington, DC 20001 and **Banneker Ventures, LLC,** a District of Columbia limited liability company, with principal offices at 700 12th Street, NW, Washington, DC 20005 (hereinafter "**Permittee**"). Permittee and WMATA are sometimes referred to herein jointly as the "**Parties**" or individually as a "**Party**".

WITNESSETH:

WHEREAS, Permittee has requested permission from WMATA to enter upon WMATA property consisting of Lots 44 and 45 in Square 393 and Lots 18 and 31 in Square 416 in the District of Columbia (the "**Permitted Premises**"), as shown in Exhibit A which is attached hereto and made a part hereof, to perform work set forth in Section 3 of this permit.

WHEREAS, WMATA has agreed to allow Permittee and its contractor(s), subcontractor(s) and consultants (hereinafter "**Contractor**" and collectively with the Permittee, "**Permitted Parties**" or individually as a "**Permitted Party**") the right and privilege to enter upon and use the Permitted Premises to perform the above-referenced work upon the terms and conditions specifically set forth in this Permit

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Incorporation of Recitals**. The Recitals set forth above and attached Exhibits are incorporated herein by this reference and have the same force and effect as if fully hereinafter set forth.

2. **Permitted Access**. This Permit allows Permitted Parties and others acting on behalf of Permitted Parties to enter onto the Permitted Premises, provided that the conditions contained herein are met.

3. **Use of Permitted Premises**. In accordance with the terms of this Permit, WMATA grants unto Permitted Parties the right to perform the following work

FOIA CONFIDENTIAL TREATMENT REQUESTED

("**Permitted Activities**") on the Permitted Premises:

- Site survey
- Environmental investigative studies
- Other site investigative studies, including soil borings

all in accordance with the Term Sheet between the Parties dated July 28, 2008 ("Agreement").

4. **Permitted Entry Time.** During the Term, the Permitted Parties' right to enter the Permitted Premises and perform the Permitted Activities shall be restricted to the period between Monday at 6:00am and Friday at 3:00pm ("Permitted Entry Time"). Pursuant to Paragraph 26, the Permitted Parties have the limited right to store testing equipment, needed for the Permitted Activities, on Parcel 3 (Lots 18 and 31 in Square 416) from Friday at 3:00pm to Monday at 6:00am (the "Non-permitted Time"). LIABILITY! ~~If the Permitted Party~~

5. **Conditions on Use**.

a. Permitted Parties may only exercise this Permit upon WMATA review and approval of the proposed site investigative studies and schedule of proposed work. Prior to entering the Permitted Premises, Permitted Parties shall submit to WMATA's Office of Joint Development and Adjacent Construction for review and written approval, a description of the work to be undertaken, including detailed plans, as applicable, showing the location of the work, such as each soil boring, and a schedule of work (the "**Work Plan**").

and its depth

b. Prior to each investigative study, Permittee shall submit to WMATA's Office of Joint Development and Adjacent Construction for review and approval at least seven (7) copies of the proposed work.

c. All work shall be planned and performed in accordance with the requirements of WMATA's Adjacent Construction Design Manual, Rev.2) or as further revised (the "**Manual**"). If certain requirements listed as the conditions in this Permit differ from those in the Manual, Permittee shall immediately contact WMATA's Supervisor of Field Projects or the Field Project Facilitator (see Subparagraph "h" below) for written clarification.

d. Unless waived in writing by WMATA, Permittee shall submit the Work Plan to WMATA's for review and written approval at least thirty (30) business days prior to the start of work, to ensure that WMATA operations are not disrupted.

e. Plans, operation sequences and equipment positioning plans must ensure adequate safety for the general public entering/exiting WMATA facilities by car, on foot and riding on WMATA trains and buses and must be approved by WMATA prior to the start of any work.

and property

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008384

f. Unless waived in writing by WMATA, WMATA will review and provide written comments or approval on design or investigative studies submittals to Permitted Parties within thirty (30) business days after receipt of the plans and schedules. If approval is denied, a re-submittal for approval with all comments resolved shall be made to WMATA. This action shall be repeated until WMATA conveys final written approval. No changes may be made to the approved Work Plan without the prior written approval of WMATA's Field Project Facilitator.

g. WMATA accepts no liability and waives none of its rights under this Permit solely by reason of its approval of any drawings or specifications.

h. Permitted Parties shall contact WMATA's Supervisor of Field Projects, Mr. William Milner of the Office of Joint Development and Adjacent Construction, telephone: 301-618-100~~1 (office) or 202- 253-7226~~ (cell) to schedule a pre-work meeting. This request shall be made at least ten (10) business days prior to any planned start of work on the Permitted Premises. At this meeting, Mr. Milner will designate WMATA's Field Project Facilitator and provide Permitted Parties with the requisite contact information for the Field Project Facilitator.

Is this the right title for the office

i. Upon written approval from WMATA, Permitted Parties may conduct the necessary exploration or tests to determine the location of WMATA's existing facilities.

j. Swinging a crane and suspended loads over WMATA property is strictly prohibited except with WMATA's written approval. If WMATA authorizes construction activities which involve swinging a crane and suspended loads over Metrorail facilities, such work shall be performed only during WMATA's non-revenue hours, currently the hours of 1:30 a.m. to 4:00 a.m., Monday to Friday and 4:30 a.m. to 6:00 a.m. on Saturday and Sunday (non-revenue hours are subject to change by WMATA, at its sole discretion, to reflect WMATA's operating requirements). Crane inspection paperwork must be submitted to WMATA's Field Project Facilitator. All construction equipment used in the work shall be oriented in accordance with the instructions of WMATA's Field Project Facilitator.

k. When support functions and electrical power outages are required, WMATA's Field Project Facilitator must be contacted at least ten (10) business days prior to the requested start of the respective work. The *General Orders and Track Rights System (GOTRS) Account Request Form* must be submitted to the WMATA Office of Joint Development and Adjacent Construction by Friday noon at least one week preceding the WMATA Operating Week, which begins Saturday morning at 12:01 a.m., to allow WMATA sufficient advance notice to schedule personnel and equipment and to adjust WMATA operations and maintenance to accommodate Permittee's request insofar as possible.

this seems superfluous

l. Permitted Parties planning to work within twenty-five (25) feet of WMATA's operating tracks must undergo WMATA safety training. WMATA's Field Project Facilitator must be contacted at least ten (10) business days prior to the desired training date. The *Certification of Eligibility for WMATA Contractor Identification (ID) Card* form Section 1 (*Appendix B*), must be completed and submitted to WMATA's Field Project Facilitator prior to the class date.

m. Permitted Parties shall monitor or cause to be monitored the Metrorail structures and tracks during any construction or installation within WMATA's Zone of Influence, as that term is further defined and explained in WMATA's *Manual*, proximate to WMATA structures and interests. The monitoring and contingency plans must be approved by WMATA in writing prior to the start of the work. The monitoring plans must include threshold values and survey control data.

n. Protective fencing to be approved by WMATA shall be installed at the boundary of the areas with public access.

o. Temporary sidewalks or pedestrian ways which will be in use more than ten (10) days shall be constructed of four inch (4") thick Portland cement concrete or four inches of asphaltic concrete placed and finished by a machine.

p. All work within twenty-five (25) feet of WMATA's tracks must be done during non-revenue hours which are currently 1:30 a.m. to 4:00 a.m., Monday to Friday and 4:30 a.m. to 6:00 a.m. on Saturday and Sunday (non-revenue hours are subject to change by WMATA, at its sole discretion, to reflect WMATA's operating requirements). Work in this location may require a "red tag" power outage as determined by WMATA's Field Project Facilitator who must be contacted at least ten (10) business days prior to the requested start date to coordinate the power outage and escort.

q. Work within twenty-five (25) feet of WMATA tracks will require WMATA escorts from Metrorail Operations, and power outages may be required during pre-work surveys and inspections. *Track Access Request* forms must be submitted by Permitted Parties to WMATA's Field Project Facilitator ten (10) business days before the requested date of work.

r. All utilities must be located by Permitted Parties in advance of work by using WMATA As-Built Drawings and Miss Utility information and must be protected from any damage. Permitted Parties should be aware that WMATA As-Built Drawings may not reflect current site conditions and WMATA will not be responsible for any damage caused by such inaccuracies. Any excavation in the vicinity of WMATA or Potomac Electric

FOIA CONFIDENTIAL TREATMENT REQUESTED

Power Company power feeders to the Metrorail system and other underground utilities or within the work site shall be through hand excavation.

s. Flammable liquids shall not to be stored within twenty-five (25) feet horizontally or vertically, regardless of topographic or man-made barriers, of WMATA underground facilities, except in the tanks of automobiles. If a flammable liquid storage container of any kind is to be installed between twenty-five (25) and one hundred (100) feet of WMATA underground facilities, protective encasement of the storage container will be required in accordance with NFPA STD 130. Existing underground tanks located within one hundred (100) feet of WMATA facilities and scheduled to be abandoned are to be disposed of in accordance with Appendix C of NFPA STD 130. NFPA STD 130 should also be applied to the construction of new fuel tanks.

t. WMATA reserves the right to inspect the Permitted Premises at any time. Additionally, WMATA reserves the right to inspect, at reasonable times, the Permittee's activities for conformance with the approved work plan and OSHA safety requirements and to ensure that the operations of Metrorail are not impeded at any time. WMATA's designated representative(s) shall have full access to the Permitted Premises for the purpose of determining the safety of the operations and their impact on Metrorail operations, and such person(s) shall have the absolute authority to stop the work (until such time as the condition requiring stoppage is cured) if, in WMATA's sole opinion, Permitted Parties are working in a manner that is unsafe for WMATA operations, the work is not in full compliance with the approved Work Plan or is interfering with WMATA operations.

u. Other than as may be expressly provided to the contrary in the WMATA Joint Development Term Sheet for this transaction or any Definitive Agreement relating thereto, Permitted Parties accept the Permitted Premises and adjacent areas in an "as is" condition, including any possible concrete over pours, sheeting and shoring which remain in place, inaccurate location of utilities or portions of the facilities and similar conditions. It shall be Permitted Parties' responsibility to verify the actual location of existing facilities, structures and utilities on the site and provide WMATA with a copy. Permitted Parties agree that the existence of any unknown or inaccurately portrayed facility will not be the subject of a claim against WMATA.

v. Upon completion of tests, Permittee shall provide WMATA's Office of Joint Development and Adjacent Construction with a copy of all surveys, test information, including but not limited to Phase I and Phase II results, boring logs, test results, and all draft and final reports arising out of or relating to the tests.

Wrong name?

FOIA CONFIDENTIAL TREATMENT REQUESTED

w. Permitted Parties shall not be released before the final acceptance of the site improvements/restoration by WMATA. Grand Lease or

6. **Term of Permit**. This Permit commences on the Effective Date and terminates on the earlier of sixty (60) days after the effective date of the Joint Development Agreement or February 28, 2009 ("**Term**") unless terminated for cause as provided in **Paragraphs 10 and 25** herein.

7. **Extension Option**. The Parties may mutually agree in writing to extend the Term of this Permit. Permittee shall request an extension of the Term in writing, at least thirty (30) calendar days prior to the expiration of the Term.

8. **Payment by Permittee**. Not Applicable.

9. **Assignment**. This Permit is not assignable or transferable by Permittee in any way. The rights, privileges, duties and obligations extended to or assumed by Permittee are personal to Permittee, its officers, employees, agents and contractors only.

10. **Suspension/Termination**. WMATA may suspend this Permit, in whole or in part, at its sole option and discretion at any time, if any condition created by Permitted Parties on or about the Permitted Premises threatens the safety or security of the Permitted Premises, any WMATA operation or function, the public, or is in violation of any applicable laws, rules, regulations, policies, instruction or directions whether federal or local relating to this Permit and/or any Permitted Party's work hereunder. If Permitted Parties do not correct the condition which serves as the basis for WMATA's suspension decision within ten (10) calendar days following receipt of written notice of such condition from WMATA, then WMATA may terminate this Permit, in whole or in part, by notice to Permittee without any further opportunity to cure such condition. This Permit may also be terminated or revoked by WMATA, in whole or in part, at its sole option and discretion, at any time, if deemed necessary by WMATA for the purposes of safety, security, operational necessity or any overriding public requirement. Upon termination or earlier revocation of this Permit, all Permitted Parties shall remove their equipment and restore the Permitted Premises to the satisfaction of WMATA. Permittee may terminate this Permit at any time by providing ten (10) calendar days prior written notice to WMATA. All obligations and liabilities of Permitted Parties under this Permit shall survive the termination of this Permit pursuant to this Paragraph or the expiration of the Permit pursuant to **Paragraphs 6 and 7** above.

11. **Conduct of Work**. In the conduct of work undertaken herein, the Permitted Parties shall require all parties working on the Permitted Premises to exercise all normal and reasonable safety precautions. Permitted Parties shall maintain the Permitted Premises in a clean and presentable manner.

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12. **Employee and Public Safety**. Barricades, fences, signs, lanterns and other suitable devices necessary for employee and public safety shall be provided and adequately maintained by Permitted Parties at their sole cost and expense.

13. **Security**. Permitted Parties shall maintain the security of the work site to the satisfaction of WMATA during the entire period of use and occupancy under this Permit.

14. **Restoration**. Upon completion of all Permitted Activities, the expiration of the Term, or other termination of this Permit, Permitted Parties shall remove all of their equipment and restore the Permitted Premises to its previous condition or in accordance with pre-approved plans and specifications, and to WMATA's satisfaction.

15. **Responsibility for Licenses and Permits**. Permitted Parties shall be responsible for obtaining any necessary licenses and permits for the work permitted under this Permit including transportation and disposal of materials.

16. **Compliance with Orders and Directions of WMATA**. With respect to all work permitted under this Permit, Permitted Parties shall at all times conform with and abide by the reasonable orders and directions of WMATA officials or their duly authorized representatives, regardless of whether such orders and directions are oral or written. Nothing in this **Paragraph 16** shall be deemed to limit in any way WMATA's independent right under **Paragraph 10** above, to suspend or terminate this Permit.

17. **Non-Interference with WMATA Activities**. Pursuant to the terms of this Permit, Permitted Parties may only use the Permitted Premises in such manner and at such times as not to interfere with the use, construction, maintenance, repair and operations of WMATA.

18. **Damage to WMATA Property**. Permittee shall be responsible for, and must make good at its own expense, all damage to WMATA property caused in whole or in part by the acts or omissions of any Permitted Party and others acting on behalf of a Permitted Party, in carrying out the operations permitted under this Permit. Permittee shall ensure that such repair or replacement is carried out within fifteen (15) business days of Permittee's receipt of notice from WMATA except in the case of any emergency as determined by WMATA in its sole discretion, in which event Permittee's obligation of repair or replacement shall be immediate upon receipt of notice from WMATA.

19. **Utility Charges**. Permitted Parties at their sole cost and expense, shall pay all charges for any utilities used on the Permitted Premises during occupancy thereof when and as the same shall become due and payable. Permitted Parties are prohibited, without the prior written consent of WMATA (in its sole discretion) from making any connection to any utility line serving WMATA operations.

FOIA CONFIDENTIAL TREATMENT REQUESTED

20. Indemnification.

a. Permittee shall indemnify and save harmless WMATA, its directors, officers, employees and agents from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, including employees of Permittee or its Contractors, and for loss or damage to any property, occurring in connection with, or in any way arising out of (i) the Permitted Parties' use, occupancy and performance of the work permitted by this Permit and/or (ii) any acts in connection with activities to be performed under this Permit resulting in whole or in part from the acts, errors or omissions of Permittee or its Contractor, or any employee, agent or representative of Permittee or its Contractor. Nothing in the preceding sentence shall be deemed to relieve Permittee from ultimate liability for any obligation of Permittee under this Permit.

b. Permittee shall ~~and~~ require ~~its~~ any Contractor to, indemnify, defend and hold harmless WMATA its directors, officers, employees and agents against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including reasonable attorneys fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the Permitted Premises by Permitted Parties or anyone acting on their behalf.

c. If any action or proceeding relating to the indemnification required by this **Paragraph 20** is brought against WMATA, then upon written notice from WMATA to the indemnitor, indemnitor shall, at indemnitor's expense, resist or defend such action or proceeding by counsel approved by WMATA in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same.

d. Permittee understands and agrees that it is Permittee's, its Contractor and all Permitted Parties' responsibility to provide indemnification to WMATA pursuant to this **Paragraph 20**. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of insurance to fully fund any indemnification shall not relieve Permittee and other Permitted Paries of any obligation assumed under this indemnification.

21. Insurance.

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a. It is Permittee's responsibility to ensure that Permittee, its Contractor and Permitted Parties have adequate and complete coverage as contemplated in this Permit. This responsibility is not waived, nor is any requirement to indemnify waived by WMATA's review and approval of any Policy.

b. WMATA is acknowledged and understood to be a third party beneficiary of any insurance policy carried by any Permitted Party.

c. As may be required in any insurance policy carried by any Permitted Party, this Permit is understood and agreed to be a written contract or an Insured Contract between that Permitted Party and WMATA.

d. Permittee understands and agrees that provision of a complete copy of the Policy or Policies which provide the below required insurance (as indicated by an "**x**" before said type of insurance), including a copy of any endorsement or exclusion thereto, for review and approval by WMATA is a prerequisite for entry onto WMATA property. It is the Permittee's responsibility to ensure adequate and complete coverage as contemplated in this agreement. This responsibility is not waived, nor is any requirement to indemnify waived, by WMATAs review and approval of any Policy.

e. Permittee understands and agrees that WMATA is a self-insured governmental entity and that the insurance and indemnification provided by any Permitted Party under the terms of this Permit shall be Primary. Permittee agrees that to the extent any endorsement contemplates issuance of a permit by a state or political subdivision, WMATA shall be considered a state or political subdivision issuing a permit for the purposes of those policies and endorsements.

f. Insurance Companies. Insurance companies providing the required coverages must be rated by A.M. Best or a comparable rating company and carry at least an "A" rating. All insurance shall be procured from insurance or indemnity companies acceptable to WMATA and licensed and authorized to conduct business in the jurisdiction where the work is to be performed. WMATA's approval or failure to disapprove the insurance shall not release Permitted Parties of full responsibility for liability for damage and accidents.

g. Changes in Insurance Coverage. The requisite insurance policies shall not be canceled, terminated or modified (except to increase the amount of coverage) without thirty (30) calendar days prior written notice from Permittee to WMATA's Office of Insurance, Room, 8D01, and Office of Station Area Planning and Asset Management, Room 5B, 600 Fifth Street, NW, Washington, DC 20001. All correspondence and insurance certificates must include the **joint development project name referenced in the Agreement**. If any required insurance policies should

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be canceled, terminated or modified so that the insurance is not in full force and effect, then WMATA can hold Permittee in default of this Permit. Under such circumstances, WMATA shall give Permittee a notice of default and after the expiration of the cure period prescribed in **Paragraph 25**, WMATA may terminate this Permit for an event of default or obtain insurance coverage equal to that required herein, the full cost of which shall be paid by Permittee to WMATA on demand.

h. Evidence of Insurance Coverage. Evidence of the requisite insurance policies in the form of the complete insurance policy including any endorsements and certificates of insurance stating work to be performed and joint development project name referenced in the Agreement shall be submitted to WMATA at least ten (10) business days prior to commencement of operations and from time to time at WMATA's request. Permitted Parties shall not be allowed to enter the Permitted Premises until the evidence of insurance has been received and approved in writing by WMATA. All evidence of insurance shall be sent to:

Office of Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

With a copy to:

Office of Insurance
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Room 8D01
Washington, DC 20001

I. Permittee shall require each Contractor, at all tiers, to provide evidence of insurance coverage specified herein (as indicated by an "**x**" before said type of insurance) and such evidence of coverage shall be provided to WMATA.

j. Any contract of insurance or indemnification naming WMATA, the United States of America, or any of the departments, agencies, administrators or authorities as an additional insured shall be endorsed to provide that the insurer will not contend in the event of any occurrence, accident, or claim that WMATA or the United States of America, et al, are not liable in tort by virtue of the fact of being governmental instrumentalities or public or quasi-public bodies.

k. Limits and Modification of Coverage. The limits of liability included herein are minimum limits. WMATA reserves the right to review or change these

FOIA CONFIDENTIAL TREATMENT REQUESTED

limits if the terms of the Permit or standards in the industry change. If requested by WMATA, Permittee shall require its Contractor to make any necessary adjustments in such limits or in the type of coverage to reflect then currently acceptable, commercially reasonable policy limits and types of coverage for similar uses and operations. Permittee's failure to cooperate with WMATA regarding this subparagraph shall constitute a Default in accordance with **Paragraph 25** of this Permit. During the term of this Permit and any extensions, except for such longer terms as may be required herein, Permittee shall have its Contractor provide or cause to be provided at least the types and amounts of insurance indicated below.

l. ☒ --- Worker's Compensation. An insurance policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, and if there is any exposure to personnel of any Permitted Party with the U. S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or the Federal Employers' Liability Act, Permittee will provide coverage for these exposures on an "if any basis" with limits not less than:

Worker's Compensation:	Statutory
Employers' Liability:	
Each Accident	$1,000,000
Disease - Policy Limit	$1,000,000
Disease - Each Employee	$1,000,000

m. ☒ --- Commercial General Liability Insurance. A Commercial General Liability Insurance policy issued to and covering the liability for all work and operations under or in connection with this Permit and all obligations assumed by Permittee under this Permit. Coverage shall include Products Liability, Completed Operations and Contractual Liability Insurance in addition to coverage for explosion, collapse, and underground hazards, wherever required. The coverage under such an insurance policy or policies shall be maintained for three (3) years after the termination of this Permit and shall have at least the following limits:

Bodily Injury and Property Damage Liability:	$1,000,000 Each Occurrence; $2,000,000 Aggregate
Premises Medical Payments:	$5,000
Fire Legal Liability (if applicable)	$1,000,000
Personal Injury/Advertising	$1,000,000 or Combined Single Limit not less than $2,000,000

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WMATA shall be included as an additional insured under the coverage for Commercial General Liability Insurance on an appropriate endorsement.

If construction or demolition work is being performed within 50 feet of the center line of WMATA's railroad tracks, then an endorsement that removes the railroad exclusion from the definition of an "Insured Contract" shall be included.

n. ☒ --- Automobile Liability Insurance. A commercial auto insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicles bearing valid license plates appropriate for the circumstances for which the vehicles are being used. These vehicles should bear license plates applicable to the state laws for which the vehicle(s) are registered. Liability for contractor's mobile equipment is not subject to this coverage and therefore the aforementioned general liability insurance is required. Contract employees are not permitted to operate any vehicle owned by WMATA whether in commission of the contract or outside the same.

The coverage under such an insurance policy or policies shall include mandatory Uninsured Motorist Coverage where applicable. Form MCS-90 as required by the Motor Carrier Act of 1980 shall also be included where applicable.

The coverage under such an insurance policy or policies shall have limits not less than:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY	$2,000,000 Combined Single Limit
Uninsured Motorist Coverage	Minimum Limit $50,000

WMATA must be included as an additional insured under the auto liability insurance coverage with respect to activities related to this Permit.

o. ☒ --- Railroad Protective Liability Insurance. A railroad protective liability insurance policy shall be required, prior to entry on the Permitted Premises, for work within 50 feet in any direction of the center-line of WMATA's operating railroad tracks. Surveying, soil borings to a depth less than fifteen (15) feet, and any investigations that do not disturb the ground in any way shall be excepted from this requirement. An insurance policy issued to WMATA as the named insured and covering the liability of all Permitted Parties for the work to be performed on, above, adjacent to or underneath WMATA's operating railroad property for any personal injuries or deaths or any damage to the property, equipment and facilities caused by the activities of any Permitted Party resulting from performance of this project work. The coverage under such an insurance policy shall have a limit of liability not less than:

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BODILY INJURY AND PROPERTY DAMAGE LIABILITY	$5,000,000 per occurrence; $10,000,000 aggregate

p. ☒ --- Contractor's Pollution Legal Liability Insurance. (Environmental Impairment Liability) Permittee shall require its Contractor to provide an insurance policy covering the liability of Permitted Parties during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and or asbestos abatement. The policy should also include coverage for bodily injury and 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, liquids, or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental.

Limits shall not be less than $3,000,000 Per Occurrence.

The policy form shall include an extended reporting period of at least three (3) years. WMATA shall be included as an additional insured.

q. ☒ --- Professional Errors and Omissions Liability Insurance. A separate insurance policy to pay on behalf of Permittee all costs Permittee's Contractor shall become legally obligated to pay as damages due to any claim caused by any negligent act, error or omission of any Permitted Party out of their acts or omissions in performance of their work under this Permit.

Such insurance shall be maintained for five (5) years after the final acceptance of the work by either continuation of the policy every year or if coverage is moved to another carrier, the same prior acts retro date should be continued. If coverage is not renewed, an extended reporting period of five (5) years should be purchased and such coverage should be evidenced on the certificate of insurance. In addition, Permittee's Contractor should purchase unintentional errors and omissions and cross liability coverage by endorsement if not already provided.

For Each Wrongful Act	$3,000,000 per occurrence; $3,000,000 aggregate

r. ☒ --- Builder's Risk Insurance. (Required if Permittee is constructing a building adjacent to WMATA property.) An insurance policy covering all risk of physical damage to property under construction shall be procured. Coverage for damage to building materials to be installed may be written separately or by endorsement to this policy; damage to Permittee's owned, leased or rented equipment may be written separately or by

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endorsement to this policy. Insurance shall be on an all-risk policy form including the perils of fire, extended coverage, theft, vandalism, certified acts of terrorism, malicious mischief, collapse and earthquake. Coverage limits shall be equal to the initial contract construction amount and any amendments to the contract which affect the project cost on a replacement cost basis.

22. **Non-Liability of WMATA**. WMATA shall have no liability for any injury or property damage whatsoever unless the injury or damage arises solely from WMATA's negligence. Neither the grant of this right of entry, nor any provision thereof, shall impose upon WMATA any new or additional duty or liability or enlarge any existing duty or liability of WMATA. Nothing in this Permit shall be deemed to waive WMATA's immunity as a sovereign entity.

23. **No Impairment of WMATA's Title**. This Permit constitutes a mere license, and nothing in this Permit and no action or inaction by WMATA shall be construed to mean that WMATA has granted Permittee or any other person or entity any legal or equitable estate in the Permitted Premises, or any right, power, or permission to do any act or make any agreement which may create, give rise to, or be the foundation for any right, title, interest, lien, charge, or other encumbrance upon the estate of WMATA in the Permitted Premises. In amplification and not in limitation of the foregoing, Permittee shall not allow any portion of the Permitted Premises to be used by any persons or entities, in such manner as would likely impair WMATA's title or interest in the Permitted Premises or would result in a claim of adverse use, adverse possession, prescription, dedication or other similar claims with respect to the Permitted Premises or any part thereof.

24. **Compliance With All Laws, Rules and Regulations**. Permitted Parties shall comply with all applicable laws, rules and regulations, policies, instructions and directives, whether Federal or Local, relating to this Permit and Permitted Parties' work hereunder. Should any Permitted Parties' work involve use of, or create materials considered to be hazardous waste which require special handling, Permittee shall ensure that disposal of waste and residue is made in accordance with applicable environmental laws and regulations including, but not limited to the Resource Conservation Recovery Act (RCRA), the Toxic Substances Control Act (TSCA) and where required, shall include preparation and filing of reports and travel manifest documents. WMATA shall be provided with copies of all such reports and documents.

25. **Default/Termination**. Permittee shall be deemed to be in default of this Permit if any Permitted Party shall fail to observe or perform any of the provisions, covenants, conditions, or agreements contained herein and such failure shall continue for a period of ten (10) calendar days after written notice is received from WMATA. If an event of default shall have occurred and be continuing, WMATA, at its option, may at once, or at any time thereafter, terminate this Permit by written notice to Permittee, whereupon this Permit shall end and all rights of Permitted Parties hereunder (but not their liabilities) shall expire and

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terminate. Upon such termination by WMATA, and without in any way limiting the remedies available to WMATA at law, in equity or under the terms of this Permit, Permittee shall at once remove all Permitted Parties their persons and equipment from the Permitted Premises, and restore the Permitted Premises in accordance with **Paragraph 14** above. WMATA may enter into or repossess the Permitted Premises either by force, by summary proceeding or otherwise. WMATA shall have no liability by reason of any such reentry, repossession or removal other than as set forth in **Paragraph 22** above. Nothing in this **Paragraph 25** shall be deemed to limit in any way WMATA's independent right under **Paragraph 10** above, to suspend or terminate this Permit.

26. **Licensees**. The Permittee acknowledges that WMATA licenses out part of the Permitted Premises for use by certain licensees (collectively, the "Licensees") during the Non-permitted Time. Each week, prior to the end of the Permitted Entry Time, the Permittee shall remove any equipment, trash, or any other items it brought on to the Permitted Premises and restore the Permitted Premises to its previous condition, to the satisfaction of WMATA. Notwithstanding the above, the Permittee may store its testing equipment during the Non-permitted Time, pursuant to the terms of Paragraph 4.

27. **Notices**. Notices given in connection with this Permit shall be in writing and shall be sent by (i) registered or certified mail, return receipt requested; (ii) hand delivery; or (iii) a nationally recognized overnight courier service for next business day delivery. Notices and other communications shall be deemed to have been given on the earlier of actual receipt or, in the case of overnight courier, on the first business day after delivery to such courier.

If to WMATA:
Director
Office of Station Area Planning
and Asset Management
600 Fifth Street, NW
Washington, DC 20001

If to Permittee:
Omar A. Karim
Banneker Ventures, LLC
700 12th Street, NW
Washington, DC 2005
202-667-4110

28. **Officials Not To Benefit**.

a. No member (i.e., Representative or Senator) of, or delegate to Congress, or any similar official, or resident commissioner, or any member of such person's family, shall be admitted to any share or part of this Permit, or to any benefit that may arise therefrom; but this provision shall not apply if this Permit 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. Permittee warrants, represents and agrees that as of the date of this Permit, no person described in this Subparagraph, nor any entity with which such person is affiliated, has any

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such interest in any Permitted Party. Permittee 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.

b. 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 Permit.

29. **Gratuities**. In connection with this Permit, or any amendments or modifications thereto, the giving of, or offering to give, gratuities (in the form of entertainment, gifts or otherwise) by a Permitted Party or any agent, representative, or other person deemed to be acting on behalf of a Permitted Party, or any contractor, subcontractor or supplier furnishing material to or performing work under this Permit, to any director, officer or employee of WMATA, or to any director, officer, employee of any of WMATA's agents, consultants or representatives, with an intent to secure an agreement or favorable treatment or the making of any determinations with respect to performance under this Permit is expressly forbidden. The terms of this Paragraph shall be strictly construed and enforced in the event of violation hereto.

30. **Governing Law**. This Permit shall be governed by the laws of the District of Columbia and, except that to the extent that District of Columbia law conflicts with the WMATA Compact, WMATA shall be governed by the WMATA Compact.

31. **Counterparts**. The Parties hereto agree that this Permit may be executed in one or more identical counterparts, each of which shall be deemed to be an original thereof, and shall be enforceable against each of the Parties hereto.

32. **Authority**. The Parties represent and warrant that they have the power and authority to enter into and perform their obligations under this Permit.

33. **Entire Agreement**. This Permit constitutes the entire agreement between the Parties. The Parties acknowledge that no representations or warranties have been made except as set forth herein. This Permit shall not be modified or amended in any manner except by an instrument in writing executed by the Parties as an amendment to this Permit.

SIGNATURES ON NEXT PAGE

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008398

IN WITNESS WHEREOF, the Parties have caused this Permit to be executed in two counterparts as of the date and year first written above.

WITNESS OR ATTEST:

_____

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

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

WITNESS OR ATTEST:

_____

Banneker Ventures LLC

By:_____
Print Name:_____

Title:_____

FOIA CONFIDENTIAL TREATMENT REQUESTED

Shaw-Howard ROE 8/7/08

5d/e - Staff Requires
- Cannot Commit to 10 → Staff cannot turn around
- will Try to Beat
- Added "unless waived"

6 - Date → 60 Days from JDA ED
- Can Do now
- Phase I now, Phase II if needed

10 - Safety/Security → must be 10 days

14 ok → lower case or
upon Completion of work in ¶ 3 or expiration of agreement

18 Out

20 Why? → Soften

21 h - limited ins. staff
- time must stay
- Approved in writing → verbally explain emails work

21 xx - Clarify
- Possibly limit to Subsurface engineering → Tom Robinson
- Tracks - Acceptable Activities?

25. OK

- Prior to JDA → Revoke?

ROE

From: Marc E. Biondi
To: Joshua W. Montague; Rosalyn Doggett
Date: 8/5/2008 8:51:42 AM
Subject: Fwd: RE: Fl. Ave. Property - Right of Entry

Roz / Josh,

Attached are comments from Guy on the ROE.

Marc

>>> "Flynn, Guy" <guy.flynn@dlapiper.com> 8/4/2008 6:02:58 PM >>>
Marc - Thank you for your latest revision of this document. Below are my remaining comments, most of which are holdovers from my prior set of comments to your earlier draft. Once you've reviewed these, Omar and I look forward to wrapping this up -- perhaps via telephone conference -- at your soonest convenience. Also, please let us know when we can expect drafts of the JDA and lease. Thanks.

-Section 5(d) -- Please change 30 days to 10. - made "unless waived By WMATA"

-Section 5(f) -- Please change 30 days to 10.

-Section 6 -- Per Section 5.2 of the Term Sheet, Banneker has 60 days from the effective date of the JDA to conduct its diligence under the ROE. Accordingly, please change the 90-day reference in Section 6 of the ROE to coincide with the Section 5.2 Term Sheet timeframe.

-Section 10 -- Please change 10 days to 30.

-Section 14 -- "Permitted Activities" is capitalized here but not defined anywhere.

-Section 18 -- Please add "Permittee's default of this Permit, including" between the words "by" and "the" in the third line, and add the words "which result in a default of this Permit" after the words "Permitted Party" in the fourth line.

-Section 20 -- Please delete the words "in whole or in part" from the fifth line from the bottom.

-Section 21(h) -- Please change 10 days to 5. Also, please delete the words "and approved in writing" from the next-to-last line.

-Section 21xx, page 12 (Railroad Protective Liability Insurance) -- You added the words "prior to entry." Not sure why or whether this is doable.

-Section 25 -- Please add the words "other than as set forth in Section 22 above" at the end of the next-to-last sentence (after the word "removal").

Guy E. Flynn

DLA Piper US LLP

The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 21209-3600

410-580-4149 T
410-580-3149 F
guy.flynn@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: Marc E. Biondi [mailto:mebiondi@wmata.com]
Sent: Monday, July 28, 2008 3:43 PM
To: Omar A. Karim; Flynn, Guy
Cc: Joel R. Washington; Rosalyn Doggett
Subject: Fl. Ave. Property - Right of Entry

Guy/Omar:

Attached for your review and comment please find the revised ROE for the FL. Ave. project.

I have attempted to clean up the document and transfer proposed edits from the Banneker/DLA draft into the new MSWord version. (Note that not all clean-up edits (formatting/sections/spaces) are shown in redline).

You will note that proposed changes to Sections 10 and 18 were not included, we can discuss if needed. Also, Guy, please be aware that some, but not all, of the changes requested to Section 20(a) are included in this draft.

I think we can hammer this out this week, however, please note for scheduling purposes that I will be out of the office on leave on Friday (8/1) and Monday (8/4).

Regards,

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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Thank you.

Marc B
Review & Confirm
Documents

~~Lines in yellow change w/each permit~~

ADJ
WMATA PARCEL NO.:

~~MINIMUM PERMIT FEE IS $2,500.~~

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
REAL ESTATE PERMIT

THIS REAL ESTATE PERMIT (the "Permit") is made and entered into as of ~~this~~ this 1st day of July, 2008~~6~~, by and between the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, a body corporate and politic (hereinafter "WMATA") with principal offices at 600 Fifth Street, NW, Washington, DC 20001 and Banneker Ventures, LLC with principal offices at 700 12th Street, NW, Washington, DC 20005 (hereinafter "Permittee"). Permittee and WMATA are sometimes referred to herein jointly at the "Parties" or individually as a "Party".

WITNESSETH:

WHEREAS, Permittee has requested from WMATA permission to enter upon and use WMATA Parcel No: _____ in Section ____, ~~property in Section ____, above WMATA's right-of-way between Station Markers~~ (the "Permitted Premises"), as shown in Exhibit A which is attached hereto and made a part hereof, to perform the following: (i) ALTA boundary and topographic surveys of above ground utility features on the Permitted Premises, including trees, utility poles, manholes and any other above ground structures within the Permitted Premises. Manholes will be opened to measure pipe size and invert elevation; (ii) look for the presence of environmental hazards, refuse, debris, stressed vegetation, or other indications of the presence of toxic or hazardous substances or materials; and (iii) such other diligence, studies, tests, investigations and activities as may be undertaken by Permittee in accordance with this Permit (the matters set forth in items (i), (ii) and (iii) immediately above are collectively referred to as the "Permitted Activities").
~~and~~

WHEREAS, WMATA has agreed to allow Permittee the right and privilege to enter upon and use the Permitted Premises to perform the Permitted Activities upon the terms and conditions specifically set forth in this Permit.

NOW, THEREFORE, in consideration of the sum of ~~**TWO THOUSAND FIVE ONE HUNDRED DOLLARS**~~ ($~~2,510~~01.00), and for the mutual covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals**. The Recitals set forth above and attached Exhibits are incorporated herein by this reference and have the same force and effect as if fully hereinafter set forth.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008405

2. **Permittee Defined**. As used in this Permit, Permittee shall mean Banneker Ventures, LLC and no other person or entity~~includes all officers, employees, contractors, subcontractors, consultants, agents and others acting on behalf of Permittee, individually and collectively~~.

3. **Use of Permitted Premises**. WMATA grants unto Permittee, its officers, employees, including contractor(s), subcontractor(s) and agents, if any (hereinafter, collectively and individually, "Contractor"), the right to perform the Permitted Activities.

4. **Description of Permitted Premises**. The Permitted Premises which is the subject of this Permit is described as WMATA Parcel No. ___ – as shown on Exhibit A hereto.

5. **Conditions on Use**.

   a. This Permit may only be exercised by Permittee upon WMATA review and approval of the construction and structural monitoring plans and schedule of construction, unless this requirement is waived in whole or in part by WMATA in the interest of time as to certain aspects of the Permitted Activities. Prior to construction, Permittee shall submit to WMATA's Office of Joint Development and Adjacent Construction for review and approval, twelve (12) copies of final design drawings, schedules and specifications.

   b. Prior to each phase of the construction, Permittee shall submit to WMATA for review and approval at least seven (7) copies of the diagrams, shop drawings, cut sheets, product information, details of planned construction staging/safety plans, materials, specifications and schedules. Two (2) copies will be returned to Permittee.

   c. Permittee's work shall be planned and performed in accordance with the requirements of WMATA's Adjacent Construction Design Manual, Rev.1 or as further revised. If certain requirements listed as the conditions in this Permit differ from those in the Manual, priority shall be given to the Permit.

   d. Permittee shall submit the detailed construction plans and timetables for each installation and each operation to WMATA for review and approval at least ~~twenty~~ ten (1~~2~~0) business days prior to the start of any construction work, to ensure that WMATA operations are not disrupted.

   e. The safety and traffic maintenance plans, operation sequences and equipment positioning plans must ensure adequate safety for the general public entering/exiting WMATA facilities by car, on foot and riding on WMATA trains and buses and must be approved by WMATA prior to the start of any work.

   f. WMATA will review and provide written comments or approval on design or development plan submittals in writing to Permittee or its architect/contractor within ten~~twenty-one~~ (~~2~~1~~0~~) business days after receipt of the drawings and

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008406

specifications. If approval is denied, a re-submittal for approval with all comments resolved shall be made to WMATA. This action shall be repeated until final approval is conveyed to Permittee. The design or development plan submittal approved by WMATA shall constitute the Approved Construction Drawings and Specifications. No construction work shall commence until WMATA has provided its final approval for all drawings and specifications.

g. WMATA accepts no liability and waives none of its rights under this Permit solely by reason of its approval of any drawings or specifications.

h. Permittee shall contact Mr./Ms. _____ WMATA Field Project Coordinator, Office of Infrastructure Renewal Programs, telephone (__) _____ at least ten (10) business days prior to the pre-construction and pre-activity meeting.

i. Upon written approval from WMATA, Permittee may conduct the necessary exploration or tests to determine the location of WMATA's existing facilities. These rights shall not impede or be hazardous to WMATA's patrons.

j. Swinging a crane and suspended loads over WMATA property is strictly prohibited. On a case by case basis, some crane permits will be granted by WMATA. In those cases, construction activities which involve swinging a crane and suspended loads over pedestrian areas, Metrorail station entrances and escalators, Metrobus facilities and Metrobus passenger areas shall be performed only during the hours of 12:30 a.m. to 4:00 a.m. Sunday to Thursday nights and 3:30 a.m. to 6:00 a.m. on Friday and Saturday nights (non-revenue hours are subject to change without notice). Crane inspection paperwork must be submitted to WMATA's Field Project Coordinator. All construction equipment used in the work shall be oriented in accordance with the WMATA Field Project Coordinator's instructions.

k. When support functions and electrical power outages are required, Mr./Ms. _____ must be contacted at least ten (10) business days prior to the start of the respective work. The General Orders and Track Rights System (GOTRS) Account Request (*Appendix A*) must be submitted to the WMATA Office of Joint Development and Adjacent Construction by Friday noon at least one week preceding the WMATA Operating Week, which begins Saturday morning at 12:01 a.m., to allow WMATA sufficient advance notice to schedule personnel and equipment and to adjust WMATA operations and maintenance to accommodate Permittee's request insofar as possible.

l. Permittee's representatives and contractors planning to work within twenty-five (25) feet of the WMATA operating right-of-way must undergo WMATA safety training. Mr./Ms. _____, Office of Infrastructure Renewal Programs, telephone (__) _____ must be contacted at least ten (10) business days prior to the desired training date. The Certification of Eligibility for WMATA Contractor

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008407

Identification (ID) Card form Section 1 (*Appendix B*), must be completed and submitted to the Office of Infrastructure Renewal Programs prior to the class date.

m. Permittee shall monitor the Metrorail structures and tracks during any construction or installation within the Influence Zone of WMATA station and tracks. The monitoring and contingency plans must be approved by WMATA prior to the start of the work. The monitoring plans must include threshold values and survey control data. Permittee shall monitor the inside of the WMATA tunnel and record any movement.

n. Wooden construction fencing shall be installed at the boundary of the areas with public access. The fencing shall be at least six-feet high and be of substantial construction using one (1) hour fire-rated materials.

o. Temporary sidewalks or pedestrian ways which will be in use more than ten (10) days shall be constructed of four inch (4") thick Portland cement concrete or four inches of asphaltic concrete placed and finished by a machine.

p. Any construction which will include work adjacent to the at-grade WMATA right-of-way will require that the work be done during non-revenue hours (12:30 a.m. to 4:00 a.m. on weekdays and 3:30 a.m. to 6:00 a.m. on Saturdays and Sundays), possibly with a "red tag" power outage. WMATA's Field Project Coordinator must be contacted at least ten (10) business days prior to the start of work to coordinate the power outage and escort.

q. WMATA escorts from Metrorail Operations will be required and power outages may be required during pre-construction surveys and inspections. Track Access Request forms must be submitted by Permittee ten (10) business days in advance.

r. All utilities must be located by Permittee's Contractor in advance of work by using WMATA As-Built Drawings and Miss Utility information and be protected from any damage. Permittee should be aware that WMATA As-Built Drawings may not reflect current site conditions. Any excavation in the vicinity of WMATA or Pepco [redacted] power feeders to the Metrorail system and other underground utilities or within the work site shall be through hand excavation.

s. Flammable liquids are not to be stored over or within 25 feet horizontally of WMATA underground facilities, except in the tanks of automobiles. If installed within 25 to 100 feet horizontally of WMATA underground facilities, protective encasement of the tanks will be required in accordance with NFPA STD 130. Existing underground tanks located within 100 feet horizontally of WMATA facilities and scheduled to be abandoned are to be disposed of in accordance with Appendix C of NFPA STD 130. NFPA STD 130 should also be applied to the construction of new fuel tanks.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008408

t. WMATA reserves the right to inspect, at reasonable times, the Permitted Premises for conformance with the Approved Construction Drawings and Specifications and OSHA safety requirements and to ensure that the operations of Metrorail, Metrobus and other transit carriers are not impeded at any time. WMATA's designated representative(s) shall have full access to the Permitted Premises for the purpose of determining the safety of the Contractor's operation and its impact on Metrorail operation, and such person(s) shall have the absolute authority to stop the construction (until such time as the condition requiring stoppage is cured) if, in WMATA's sole opinion, the Contractor or subcontractor(s) is/are working in a manner that is unsafe for Metrorail or Metrobus operations, the construction is not in full compliance with the Approved Construction Drawings and Specifications or is interfering with the efficient operation of Metrorail, Metrobus or other transit carriers.

u. Permittee shall maintain "as-built" drawings during the construction of any improvements under this Permit. Upon completion of construction, Permitee shall provide WMATA with three (3) copies of the final "as-built" drawings which shall include the Construction Drawings and Specifications, addenda, field orders, shop drawings, operating manuals, maintenance manuals, parts manuals, warranty provisions, cut sheets on proposed or installed equipment and other material dealing with the construction. Permittee shall also provide WMATA with an electronic media copy of the drawings in AutoCAD 2000 or later format. Permittee shall provide certification to WMATA that the accessible path meets Americans with Disabilities Act Accessibility Guidelines (ADAAG) requirements.

v. After the Construction Drawings and Specifications have been approved by WMATA, Permittee may make minor changes in Permittee's work or materials at any time without the necessity for the review and approval of WMATA, provided these changes do not affect WMATA's existing Metrorail facilities and are in compliance with WMATA's Design Criteria and Federal and Local regulations. Changes of this nature must be communicated to and coordinated with WMATA's Field Project Coordinator.

w. Other than as may be expressly provided to the contrary in the WMATA Joint Development Term Sheet for this transaction and/or any Definitive Agreement relating thereto, Permittee accepts the Permitted Premises and adjacent areas in an "as is" condition, including any possible concrete over pours, sheeting and shoring which remain in place, inaccurate location of utilities or portions of the facilities and similar conditions. It shall be Permittee's responsibility to verify the actual location of existing facilities, structures and utilities on the site and Permittee shall perform a pre-construction survey and provide WMATA with a copy. Permittee agrees that the existence of any unknown or inaccurately portrayed facility will not be the subject of a claim against WMATA.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008409

x. Permittee shall furnish WMATA with Contractor's claims, change orders and schedule updates. **[IS THIS REALLY NECESSARY?]** WMATA reserves the right to inspect the site while the project and associated systems are installed.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008410

y. Permittee will not be released **[RELEASED FROM WHAT?]** before the final acceptance of the site improvements/restoration by WMATA. Permittee must provide two (2) copies of the certified as-built drawing sets and two (2) copies of certified as-built drawings on compact disks.

Special Conditions on Use

WMATA is acknowledged and understood to be a third party beneficiary of any insurance policy carried by _____.

This Right of Entry is understood to meet any requirements of a writing between and WMATA as may be required in any insurance policy carried by _____ [???]

[Insert special conditions on use here]

6. **Term of Agreement**. This Permit commences on the date shown on Page 1 and terminates **[WHAT DATE SHOULD WE PUT HERE?]** on _____, 200_ unless terminated for cause as provided in **Paragraph 10** herein.

7. **Extension Option**. Subject to the limitations contained herein and upon the mutual agreement of the Parties, this Permit may be extended. Notice as to the extension of this Permit shall be provided by Permittee to WMATA, in writing, at least thirty (30) calendar days prior to the expiration of the initial term and will be deemed extended only if approved in writing by WMATA.

8. **Payment by Permittee**. In consideration of the permission granted by WMATA to Permittee hereunder, Permittee hereby covenants and agrees to pay WMATA the non-refundable sum of ~~Two Thousand Five~~One ~~Hundred~~ Dollar~~s~~ ($~~2,510~~01.00) for the term of this Permit which shall be paid upon Permittee's execution of said Permit.

9. **Assignment**. This Permit is not assignable or transferable by Permittee in any way. The rights, privileges, duties and obligations extended to or assumed by Permittee are personal to Permittee, its officers, employees, agents and Contractors only.

10. **Suspension/Termination**. Upon prior written notice to Permittee (unless an emergency exists, in which case WMATA shall provide written notice as soon as possible thereafter), WMATA may suspend this Permit at its sole option and discretion at any time, if any condition created by Permittee on or about the Permitted Premises threatens the safety or security of the Permitted Premises, any WMATA operation or function, the public, or is in violation of any applicable laws, rules, regulations, policies, instruction or directions whether federal or local relating to this Permit and/or Permittee's work hereunder. If Permittee does not correct the condition which serves as the basis for WMATA's suspension decision within thirty (30)~~ten (10)~~ calendar days following Permittee's receipt of written notice of such condition from WMATA, then WMATA may terminate this Permit by notice to Permittee without any further opportunity to cure such condition. **[[NEED TO DISCUSS THE FOLLOWING:]]** This Permit may also be terminated or revoked by WMATA at its sole option and discretion, at any time, if

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008411

deemed necessary by WMATA for the purposes of safety, security, operational necessity or any overriding public requirement. Upon termination or earlier revocation of this Permit, Permittee shall remove its equipment and restore the Permitted Premises to the reasonable satisfaction of WMATA. This Permit may be terminated at any time by Permittee by providing ten (10) calendar days prior written notice to WMATA. All obligations and liabilities of Permittee under this Permit shall survive the termination of this Permit pursuant to this Paragraph or the expiration of the Permit pursuant to **Paragraphs 6 and 7** above.

11. **Conduct of Work**. In the conduct of work undertaken herein, Permittee shall require its employees and Contractor to exercise all normal and reasonable safety precautions. Permittee shall maintain the Permitted Premises in a clean and presentable manner.

12. **Employee and Public Safety**. Barricades, fences, signs, lanterns and other suitable devices necessary for employee and public safety shall be provided and adequately maintained by Permittee at Permittee's sole cost and expense.

13. **Security**. Permittee shall maintain the security of the work site to the satisfaction of WMATA during the entire period of use and occupancy under this Permit.

14. **Restoration**. Upon completion of all Permitted Activities~~activities~~, Permittee shall remove all of its equipment and restore the Permitted Premises in accordance with pre-approved plans and specifications.

15. **Responsibility for Licenses and Permits**. Permittee shall be responsible for obtaining any necessary licenses and permits for the work permitted under this Permit including transportation and disposal of materials.

16. **Compliance with Orders and Directions of WMATA**. With respect to all work permitted under this Permit, Permittee shall at all times conform with and abide by the reasonable orders and directions of WMATA officials or their duly authorized representatives, regardless of whether such orders and directions are oral or written. Nothing in this **Paragraph 16** shall be deemed to limit in any way WMATA's independent right under **Paragraph 10~~9~~** above, to suspend or terminate this Permit.

why limited to defaults?

17. **Non-Interference with WMATA Activities.** Pursuant to the terms of this Permit, Permittee may only use the Permitted Premises in such manner and at such times as not to interfere with the use, construction, maintenance, repair and operations of WMATA.

18. **Damage to WMATA Property.** Permittee shall be responsible for, and must make good at its own expense, all damage to WMATA property caused by Permittee's default of this Permit, including defaults caused by Permittee's ~~its acts or those of its~~ employees, contractors, subcontractors, consultants, agents and others acting on behalf of Permittee, in carrying out the operations permitted under this Permit. Permittee shall carry out such repair or replacement within fifteen (15) business days of Permittee's receipt of notice from WMATA except in the case of any emergency as determined by WMATA in its sole discretion, in which event Permittee's obligation of repair or replacement shall be immediate upon receipt of notice from WMATA.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008412

19. **Utility Charges.** Permittee, at its sole cost and expense, shall pay all charges for any utilities used on the Permitted Premises during its occupancy thereof when and as the same shall become due and payable. Permittee is prohibited, without the prior written consent of WMATA (in its sole discretion) from making any connection to any utility line serving WMATA operations.

20. **Indemnification.**

a. Permittee shall indemnify and save harmless WMATA, its directors, officers, employees and agents from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, occurring in connection with, or in any way arising out of (i) Permittee's ~~the~~ use, occupancy and performance of the work permitted under~~by~~ this Permit and/or (ii) any acts in connection with activities to be performed under this Permit resulting ~~in whole or in part~~ from the acts, errors or omissions of Permittee or its Contractor, or any employee, agent or representative of Permittee or its Contractor. Nothing in the preceding sentence shall be deemed to relieve Permittee from ultimate liability for any obligation of Permittee under this Permit.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008413

b. Permittee shall indemnify, defend and hold harmless WMATA its directors, officers, employees and agents against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including reasonable attorneys fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the Permitted Premises by Permittee.

c. If any action or proceeding relating to the indemnification required by this Paragraph is brought against WMATA, then upon written notice from WMATA to the indemnitor, the indemnitor shall, at the indemnitor's expense, resist or defend such action or proceeding by counsel approved by WMATA in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same.

21. **Insurance. [[BV – MAKE SURE WE CAN OBTAIN THESE POLICIES AND OTHERWISE COMPLY WITH THESE REQUIREMENTS.]]** During the term of this Permit and any extensions, Permittee shall provide the following types of insurance for all activities under this Permit and comply with the following requirements:

a. Worker's Compensation. An insurance policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, and if there is any exposure to any of Permittee's personnel with the U. S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or the Federal Employers' Liability Act, Permittee will provide coverage for these exposures on an "if any basis" with limits not less than:

Worker's Compensation:	Statutory
Employers' Liability:	
Each Accident	$1,000,000
Disease - Policy Limit	$1,000,000
Disease - Each Employee	$1,000,000

b. Commercial General Liability Insurance. A Commercial General Liability Insurance policy issued to and covering the liability for all work and operations under or in connection with this Permit and all obligations assumed by Permittee under this Permit. Coverage shall include Products Liability, Completed Operations and Contractual Liability Insurance in addition to coverage for explosion, collapse, and underground hazards, wherever required. The coverage under such an insurance policy or policies shall have not less than the following limits:

Bodily Injury and Property Damage Liability
$1,000,000 Each Occurrence; $2,000,000 Aggregate

Premises Medical Payments $5,000

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008414

Fire Legal Liability	$1,000,000
Personal Injury/Advertising	$1,000,000 or Combined Single Limit not less than $2,000,000

WMATA shall be included as an additional insured under the coverage for Commercial General Liability Insurance with respect to all activities under this Permit.

c. Automobile Liability Insurance. An insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicles bearing license plates appropriate for the circumstances in which they are being used, required by the Motor Vehicle Laws of the District of Columbia, Maryland or Virginia to bear license plates and not covered under the aforementioned Commercial General Liability Insurance. The coverage under such policy or policies shall not be less than:

Combined Single Limit for Bodily Injury Liability and Property Damage Liability of $2,000,000

WMATA must be included as an additional insured under the coverage for Automobile Liability Insurance with respect to all activities under this Permit. If Permittee is hauling contaminants or pollutants, they must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall include coverage Form MCS-90.

d. Railroad Protective Liability Insurance. (To be included if work within 50 feet of Metrorail Right-of-Way). An insurance policy issued to WMATA as sole loss payee and covering the liability of Permittee for the work to be performed on above, adjacent to or underneath WMATA's operating railroad property for any personal injuries or deaths or any damage to the property, equipment and facilities caused by the activities of Permittee resulting from performance of this project work. Such insurance shall be written on the ISO Form. The coverage under such an insurance policy shall have a limit of liability not less than:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY
$5,000,000 per occurrence/$10,000,000 aggregate

e. Contractor's Pollution Legal Liability Insurance. (Environmental Impairment Liability) Permittee shall require its Contractor to provide an insurance policy covering the liability of Permittee/Contractor during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and or asbestos abatement. The policy should also include coverage for bodily injury and 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,

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008415

alkalis, toxic chemicals, liquids, or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental.

Limits shall not be less than $3,000,000 Per Occurrence

The policy form shall include an extended reporting period of at least three (3) years. This coverage shall be secured from an "A" rated insurance carrier acceptable to WMATA and in accordance with the information provided. WMATA shall be included as an additional insured. Prior to commencement of work under this Permit, the policy form shall be submitted to WMATA for review and approval.

f. Professional Errors and Omissions Liability Insurance. A separate insurance policy to pay, on behalf of Contractor, all costs Contractor shall become legally obligated to pay as damages due to any claim caused by any negligent act, error or omission of Contractor or any other person for whose acts Contractor is legally liable arising out of the performance under this Permit.

Such insurance shall be maintained for five years after the final acceptance of the work by either continuation of the policy every year or if coverage is moved to another carrier, the same prior acts retro date should be continued. If coverage is not renewed, an extended reporting period of five years should be purchased and such coverage should be evidenced on the certificate of insurance.

The coverage under such an insurance policy shall have a limit of liability not less than:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY
$3,000,000 per occurrence/$3,000,000 aggregate

g. Builder's Risk Insurance. If Permittee is constructing a building on its adjacent property, an insurance policy covering all risk of physical damage to property under construction shall be procured. Coverage for damage to building materials to be installed may be written separately or by endorsement to this policy; damage to Permittee's owned, leased or rented equipment may be written separately or by endorsement to this policy. Insurance shall be on an all-risk policy form including the perils of fire, extended coverage, theft, vandalism, certified acts of terrorism, malicious mischief, collapse and earthquake. Coverage limits shall be equal to the initial contract construction amount and any amendments to the contract which affect the project cost on a replacement cost basis.

h. Insurance Companies. Insurance companies providing the aforesaid coverages must be rated by A.M. Best or a comparable rating company and carry at least an "A" rating. All insurance shall be procured from insurance or indemnity companies acceptable to WMATA and licensed and authorized to conduct

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008416

business in the District of Columbia, the Commonwealth of Virginia and the State of Maryland. WMATA approval or failure to disapprove the insurance shall not release the Permittee and its Contractor of full responsibility for liability for damage and accidents.

i. Changes in Insurance Coverage. The requisite insurance policies shall not be canceled, terminated or modified (except to increase the amount of coverage) without thirty (30) calendar days prior written notice from Permittee to WMATA's Office of Insurance, Room, 8D01, and Office of Property Development and Management, Room 5B, 600 Fifth Street, NW, Washington, DC 20001. All correspondence and insurance certificates must include the **Adjacent (ADJ) Construction Number |250? WHAT IS THIS|** as indicated on Page 1 of this Permit. If any required insurance policies should be canceled, terminated or modified so that the insurance is not in full force and effect, then WMATA can hold Permittee in default of this Permit. Under such circumstances, WMATA shall give Permittee a notice of default and after the expiration of the cure period prescribed in **Paragraph 25**, WMATA may terminate this Permit for an event of default or obtain insurance coverage equal to that required herein, the full cost of which shall be paid by Permittee to WMATA on demand.

j. Evidence of Insurance Coverage. Evidence of the requisite insurance policies **1.** in the form of certificates of insurance stating work to be performed and **WMATA Adjacent (ADJ) Construction Number |250| as well as 2. complete copies of the actual policies** shall be submitted to WMATA at least ~~fifteen~~ two (~~15~~2) business days prior to commencement of operations and from time to time at WMATA's request. If the required certificates of insurance are not furnished within fifteen (15) business days after execution of the permit, Permittee shall not be allowed to enter the Permitted Premises until the certificates have been received ~~and approved in writing~~ by WMATA. Certified copies of full insurance policies shall be sent to WMATA upon request. All evidence of insurance shall be sent to:

Office of Property Development and Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

k. Permittee is required at all times to provide evidence of insurance coverage specified herein and such evidence of coverage shall include a description of the contract work and contract number and be provided to WMATA prior to commencement of work. Such coverage shall remain in full force and effect during the performance of activities under this Permit.

l. Contractor shall require each subcontractor, at all tiers, to provide evidence of insurance coverage specified herein and such evidence of coverage shall be provided to WMATA.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008417

m. Any contract of insurance or indemnification naming WMATA, the United States of America, or any of the departments, agencies, administrators or authorities as an additional insured shall be endorsed to provide that the insurer will not contend in the event of any occurrence, accident, or claim that WMATA or the United States of America, et al, are not liable in tort by virtue of the fact of being governmental instrumentalities or public or quasi-public bodies.

z

n. In the event the required certificates of insurance as specified herein are not furnished within fifteen (15)~~ten (10)~~ business~~calendar~~ days after the execution of this Permit, Permittee shall not be permitted to enter upon the Permitted Premises to perform the duties outlined in this Permit until all required insurance certificates or evidence of self-insurance has been received ~~and approved~~ by WMATA.

o. Modification of Coverage. WMATA shall have the right from time to time to review the aforesaid insurance requirements and policy limits. If requested by WMATA, Permittee shall make any necessary adjustments in such limits or in the type of coverage to reflect then currently acceptable, commercially reasonable policy limits and types of coverage for similar uses and operations. Permittee's failure to cooperate with WMATA regarding this subparagraph 21.o shall constitute a Default in accordance with **Paragraph 25** of this Permit.

22. Non-Liability of WMATA. WMATA shall have no liability for any injury or property damage whatsoever unless the injury or damage arises solely from WMATA's negligence. Neither the grant of this right of entry, nor any provision thereof, shall impose upon WMATA any new or additional duty or liability or enlarge any existing duty or liability of WMATA. Nothing in this Permit shall be deemed to waive WMATA's immunity as a sovereign entity.

23. No Impairment of WMATA's Title. This Permit constitutes a mere license, and nothing in this Permit and no action or inaction by WMATA shall be construed to mean that WMATA has granted Permittee or any other person or entity any legal or equitable estate in the Permitted Premises, or any right, power, or permission to do any act or make any agreement which may create, give rise to, or be the foundation for any right, title, interest, lien, charge, or other encumbrance upon the estate of WMATA in the Permitted Premises. In amplification and not in limitation of the foregoing, Permittee shall not allow any portion of the Permitted Premises to be used by any persons or entities, in such manner as would likely impair WMATA's title or interest in the Permitted Premises or would result in a claim of adverse use, adverse possession, prescription, dedication or other similar claims with respect to the Permitted Premises or any part thereof.

24. Compliance With All Laws, Rules and Regulations. Permittee shall comply with all applicable laws, rules and regulations, policies, instructions and directives, whether Federal or Local, relating to this Permit and Permittee's work hereunder. Should Permittee's work involve use of, or create materials considered to be hazardous waste which require special handling, Permittee shall dispose of waste and residue in accordance with applicable environmental laws and regulations including, but not limited

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008418

to the Resource Conservation Recovery Act (RCRA), the Toxic Substances Control Act (TSCA) and where required, shall include preparation and filing of reports and travel manifest documents. WMATA shall be provided with copies of all such reports and documents.

25. **Default/Termination.** Permittee shall be deemed to be in default of this Permit if it shall fail to observe or perform any of the provisions, covenants, conditions, or agreements contained herein and such failure shall continue for a period of thirty (30) ~~ten (10)~~ calendar days after written notice is received from WMATA. If an event of default shall have occurred and be continuing, WMATA, at its option, may at once, or at any time thereafter, terminate this Permit by written notice to Permittee, whereupon this Permit shall end and all rights of Permittee hereunder (but not Permittee's liabilities) shall expire and terminate. Upon such termination by WMATA, and without in any way limiting the remedies available to WMATA at law, in equity or under the terms of this Permit, Permittee shall at once remove all of its persons and equipment from the Permitted Premises, and restore the Permitted Premises in accordance with **Paragraph 14** above. WMATA may enter into or repossess the Permitted Premises either by force, by summary proceeding or otherwise. WMATA shall have no liability by reason of any such reentry, repossession or removal, other than as provided in **Paragraph 22**. Nothing in this **Paragraph 25** shall be deemed to limit in any way WMATA's independent right under **Paragraph 10** above, to suspend or terminate this Permit.

26. **Notices.** Notices given in connection with this Permit shall be in writing and shall be sent by (a) registered or certified mail, return receipt requested; (b) hand delivery; or (c) a nationally recognized overnight courier service for next business day delivery. Notices and other communications shall be deemed to have been given on the earlier of actual receipt or, in the case of overnight courier, on the first business day after delivery to such courier.

If to WMATA:
Managing Director
Office of Property Development
and Management
WMATA
600 Fifth Street, NW
Washington, DC 20001

If to Permittee:
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
(202) 667-4110

27. **Officials Not To Benefit.**

a. No member (i.e., Representative or Senator) of, or delegate to Congress, or any similar official, or resident commissioner, or any member of such person's family, shall be admitted to any share or part of this Permit, or to any benefit that may arise therefrom; but this provision shall not apply if this Permit 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. Permittee warrants, represents and agrees that as of the date of this Permit, no person described in this Subparagraph, nor any entity with which such person is affiliated,

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008419

has any such interest in Permittee. Permittee 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.

b. 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 Permit.

28. **Gratuities.** In connection with this Permit, or any amendments or modifications thereto, the giving of, or offering to give, gratuities (in the form of entertainment, gifts or otherwise) by Permittee or any agent, representative, or other person deemed to be acting on behalf of Permittee, or any Contractor, subcontractor or supplier furnishing material to or performing work under this Permit, to any director, officer or employee of WMATA, or to any director, officer, employee of any of WMATA's agents, consultants or representatives, with an intent to secure an agreement or favorable treatment or the making of any determinations with respect to performance under this Permit is expressly forbidden. The terms of this Paragraph shall be strictly construed and enforced in the event of violation hereto.

29. **Governing Law**. This Permit shall be governed by the laws of the District of Columbia~~State of Maryland~~, except that to the extent that ~~Maryland~~ District law conflicts with the WMATA Compact [WHAT IS THIS?], WMATA shall be governed by the WMATA Compact.

30. **Counterparts**. The Parties hereto agree that this Permit may be executed in one or more identical counterparts, each of which shall be deemed to be an original thereof, and shall be enforceable against each of the Parties hereto.

31. **Authority**. The Parties represent and warrant that they have the power and authority to enter into and perform their obligations under this Permit.

32. **Entire Agreement.** This Permit constitutes the entire agreement between the Parties. The Parties acknowledge that no representations or warranties have been made except as set forth herein. This Permit shall not be modified or amended in any manner except by an instrument in writing executed by the Parties as an amendment to this Permit.

IN WITNESS WHEREOF, the Parties have caused this Permit to be executed in two counterparts as of the date and year first written above.

WITNESS:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

_____

By:

Gary Malasky, Managing Director
Office of Property Development

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008420

and Management

WITNESS:

_____

~~Company name~~**BANNEKER VENTURES, LLC**

By:_____

Print Name:_____: Omar A. Karim

Title:_____:Principal

BALTI\4440292.1

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008421

FOIA CONFIDENTIAL TREATMENT REQUESTED

3/19/09 FL Ave meeting w/ O'Karim

R. Doggett Notes

3/19 3pm discussion

Florida Avenue – Offer comparisons

JDA	Term Sheet	WMATA draft	Developer's Latest Offer
Developer	Banneker, District Development, Metropolis	Banneker, District Development, Metropolis	Banneker and BADC
Project	Single phase, including minimum: Gross FAR: 130,014 sf Units: 104 Retail: 11,750 sf Parking: 47 spaces	Single phase, including minimum: Gross FAR: 130,014 sf Units: 104 Retail: 11,750 sf Parking: 47 spaces	Last JDA removed reference to building in a single phase. Pro Forma: Gross FAR: 118,457 Units: 92 Retail: 12,880 Parking: 60 spaces single phase for money, yet
Improvements	No mention of ownership or purchase of improvements.	Developer owns all improvements but ownership rights automatically transfer to WMATA at end of Lease. Defined	Upon ending of Lease, WMATA must purchase improvements from Developer at FMV NO – Maurice wants a week to review with his counsel
Pre-stabilization period	Stabilization or 45 months 18 24 +2 - 54 18 permits 18 build 36 + 12 / 48	Stabilization or 45 months alley closing 9-12 months 12 mo permitting 24 mo	Stabilization or 61 months from JDA
Lease closing	On or before 20 months	On or before 20 months alley closing	~~On or before 29 months~~ OK on 20 months
Pre-stabilization period payments	*Note: paragraph 7.8 appears to have a typo in reference to payments during extensions of pre-stabilization period due to WMATA delay.*	Payments are due from effective date of JDA to Stabilization (at which time rent payments begin)	Pre-stabilization period shall be extended on a day-for-day basis for WMATA caused delays (including FTA approval), however no pre-stabilization payments or rent shall be due during said delay extension
Pre-stabilization period payment amounts	First 15 months: $100,000/year Next 12 months: $115,000/year Thereafter: $130,000 per year	First 15 months: $100,000/year Next 12 months: $115,000/year Thereafter: $130,000 per year	$200,000 total, to be paid over pre-stabilization period and lease up of project look at time vs. money 250
Deposit performance security	Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer	Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer	Upon receipt of ~~$100,000~~ deposit, WMATA returns $100,000 proposal security to developer 250 is standard
Completion Bond	Not mentioned (only have performance and payment)	120% of replacement costs	100% N/A

They will come back

WMATA

dual oblige for developer improvements

WMATA-INV 008422

Florida Avenue – Offer comparisons

WMATA to provide - bifurcation

JDA	Term Sheet	WMATA draft	Developer's counter JDA
Insurance Josh	*WMATA policy:* According to Kim Brown, we will require insurance on everybody.	Everybody: Developer, contractor, subcontractor, etc.	Developer or contractor, as applicable during construction
FTA Approval	WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; JDA will include appropriate termination provisions in the case FTA denies approval	WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; Said agreement is automatically terminated if FTA denies approval and all appeals are exhausted.	WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; WMATA has 60 days to secure FTA approval; ~~If FTA denies approval, WMATA shall pay developer $300,000 as compensation for Developer's costs incurred with due diligence and negotiation of Agreement.~~
Change of control	Section 1.2 states that WMATA consent is needed to: 1) include other parties in the Developer (except for equity finance partners) and 2) assign or sell Developer's interest in the Project or the Improvements.	Prior to Final Completion – no change of control; After Final Completion – only change of control upon WMATA approval.	Prior to Final Completion – no change of control; After Final Completion – Developer can change control freely. acc to criteria BADC would stay in for X years 3-5

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

Florida Avenue – Offer comparisons

LEASE	Term Sheet	WMATA draft	Developer's counter-lease
Developer	See JDA	See JDA	See JDA
Guarantor	Requires guarantor for "remediation of all hazardous materials as required by the Definitive Agreement or by applicable law…and the timely payment and performance of all Developer obligations under the Definitive Agreement." *Q – was guaranty contemplated to be for lease also?* NO	Required guarantor with net worth exceeding 3 times value of project	Removed guarantor requirement Maurice will get back on this - he typically provides a completion guarantee
Term	60 year lease	60-year lease	99-year lease TBD
Stabilization	TBD in JDA	90% occupancy	95% occupancy Maurice will look at economics
Base Rent	$597,000 in quarterly payments	$597,000 in quarterly payments	$300,000 in monthly payments – compared the labels hurdle
Escalation (Years 1 to 10)	1.5% increase *(note: may have been typo on term sheet)*	1.5% increase	1.5% increase
Escalation (Years 11 to end)	3% increase	3% increase	1.03% increase *(this is likely related to typo mentioned above)* 3% / year
Periodic Rent Revaluation	Upon Capital Event or every 10 years	Upon Capital Event or every 10 years	Removed entirely. Maurice wants to discuss more
Capital Event Participation	10% of gross income from Capital Event	10% of ~~gross~~ income from Capital Event a/k/a debt	In the event of a refinance or sale of the project, WMATA would receive 12% of the net ***revenue associated with WMATA's parcels*** (versus 10% that WMATA proposed) after all debt (and related re-financing costs if a refi) are re-paid. Omar will provide an exhibit for a 1st and a 2d. Omar ~~needs to update~~ Capital event

Maurice

X Maurice

WMATA-INV 008424

Florida Avenue – Offer comparisons

Density Adjustment Rent	Add to base rent based on formula in Section 7.11 of term sheet.	Add to base rent based on formula in Section 7.11 of term sheet.	~~Removed entirely~~. Restore
Late Charge	TBD in JDA	20% of delinquent amount	3% of delinquent amount
Default interest rate	Not mentioned. Turnbull PGP	15% or 10% over prime (whichever is higher)	3% Both to double check
Affordable Housing	No mention	No mention	~~30% of the Units will be affordable at 60% AMI~~

Omar agrees: if he does less affordable housing ~~there is~~ more rent will be paid

FOIA CONFIDENTIAL TREATMENT REQUESTED

Florida Avenue – Offer comparisons

LEASE	Term Sheet	WMATA draft	Developer's counter JDA
Right to assign Lease	Section 1.2 states that Developer's interest in the Project or the Improvements may not be assigned or sold without the written consent of WMATA.	Not assignable prior to Final Completion; only assignable upon WMATA consent after Final Completion so long as not unreasonably withheld	Prior to Substantial Completion: assignable without WMATA consent if to a "Qualified Assignee"; otherwise is assignable only upon WMATA consent ~~as long as not~~ After Substantial Completion: assignable w/o WMATA consent Assignment restrictions do not apply to leasehold mortgage remedies.
Right of First Offer	N/A; *Q – was this mentioned in negotiations? What is normal consideration to WMATA for this right?*	N/A	M~~ust first offer to Developer if wis~~h to ~~sell/transfer property.~~ NO
Environ Condition	Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS	Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS	If during construction, Developer discovers "catastrophic environ conditions", then Developer may terminate Lease NO
Insurance	See JDA	See JDA	See JDA

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

03/19/2009 16:51 FAX 001

****
*** ERROR TX REPORT ***
****

TX FUNCTION WAS NOT COMPLETED

TX/RX NO	2132
RECIPIENT ADDRESS	5
DESTINATION ID	
ST. TIME	03/19 16:50
TIME USE	00'00
PAGES SENT	0
RESULT	NG #0018 BUSY/NO SIGNAL

Office of Station Area Planning and Asset Management (SAAM)

Meeting: JAZZ @ Florida Avenue

Date: 3/19/09

Attendance:

	Organization	Telephone	
Joel R. Washington	WMATA / SAAM	202-962-2614	j
Rosalyn Piggott	" "	2208	
OMAR KARIM	BANNEKER	202-667.4110	ok
Maurice Perry	Bank of America CDC	(202) 442-7526	MAU
Tiwana Hicks	Banneker	202.667-4110	th
Eric Smart	Bolan Smart	202 776-7740	Em

WMATA-INV 008427

Admit that the other 3 got it

Jack be nice

UNCONDITIONAL CONSTRUCTION COMPLETION

GUARANTY AGREEMENT

THIS UNCONDITIONAL CONSTRUCTION COMPLETION GUARANTY ("Guaranty"), made as of the _____ day of September, 2009 ("Effective Date"), by BANC OF AMERICA COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation ("Guarantor"), to and for the benefit of 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 ("WMATA").

Not about the information that might be helpful in Congressional Committee

WHEREAS, The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company ("Developer"), ~~which is an affiliate of Guarantor;~~ has entered into a certain Lease Agreement of even date herewith ("Lease") with WMATA, pursuant to which Developer has agreed, among other things, to develop the Project upon the conditions and terms set forth therein; and

WHEREAS, as a condition precedent to the execution of the Lease, Guarantor executes and delivers this Guaranty of completion of the development and construction of the Project pursuant to the terms of the Lease; and

WHEREAS, Guarantor is an affiliate of the Developer and, having a financial interest in the Developer and the Project, ~~has~~ agreed to execute, acknowledge, and deliver this Guaranty; and

NOW THEREFORE, in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Guarantor hereby undertakes, guarantees, covenants and agrees as follows:

~~FOR VALUE RECEIVED, and to induce XXXXXX, a XXXXX limited liability limited partnership (the "*Limited Partner*") to become XXXXXXXX a limited partnership formed under the laws of the District of Columbia (the "*Partnership*"), by entering into a First Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement") and to induce the Partnership to obtain financing for the construction of a one hundred and thirty four (134) unit residential project in twelve (12) buildings located on one site in Washington, D.C. (the "*Project*"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and BANC OF AMERICA COMMUNITY DEVELOPMENT CORPORATION, a North Carolina corporation, (the "*Guarantor*"), as of XXXXX, hereby undertake, guarantee, and agree as follows:~~

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008428

1. ~~1.~~ **Completion of ~~Construction~~Project.** The Guarantor hereby absolutely and unconditionally guarantees to WMATA the following:

a. The due and punctual Final Completion of the Project in accordance with the Approved Design and Construction Drawings upon the terms and conditions set forth in the Lease, the Project Schedule, and all of the Transaction Documents; and

b. The full and prompt payment and performance of all liabilities, obligations, covenants, agreements, and responsibilities of the Developer under the Joint Development Agreement, the Lease, and all of the Transaction Documents during the Term of this Guaranty.

~~a. the due and punctual construction (the "*Work*") of the Project in accordance with the terms and requirements of the Partnership Agreement (including the payment of Development Advances by the General Partner under Section 5.13 of the Partnership Agreement), the Loan Documents and the Project Documents, free and clear of any liens or claims of liens (except for the liens specifically permitted by the Partnership Agreement, the Loan Documents and the Project Documents), in the manner and within the time necessary to comply with all of the terms, covenants and conditions of the Partnership Agreement, the Loan Documents and the Project Documents, including all future amendments thereto; and~~

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~~**2. Should the cost of completion of the Work exceed the amounts available therefor in loan proceeds and Partnership funds, or should any liens be filed against the Partnership Property or the Project (except for liens specifically permitted by the Partnership Agreement, the Loan Documents and the Project Documents) prior to completion of or in connection with the Work, Guarantor hereby absolutely and unconditionally guarantees the prompt, absolute, and unconditional payment of such sums necessary to complete the Work and discharge such liens. All sums due and payable hereunder by Guarantor shall be payable on demand of the Partnership. Any amounts paid by Guarantor shall not be refundable to Guarantor, but shall be treated as a payment to the Partnership in consideration for the Guarantor's receipt of the Development Fee.**~~

2. ~~2.~~ **Acknowledge and Consent.**

a. The Guarantor hereby unconditionally acknowledges and consents to the terms, covenants, and conditions of the Lease, the Joint Development Agreement, the Approved Design and Construction Drawings, the Project Schedule, and the Transaction Documents; and

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008429

b. Guarantor's obligations hereunder shall not be ~~affected~~ diminished by any errors or omissions of any contractor, architect, subcontractor, material supplier, consultant, attorney, government agency, or any agent or employee of them in the supervision or performance of work on the Project, it being understood that such risk is assumed by the Guarantor.

3. **Continuing Guaranty.** It is expressly understood and agreed that this is a current and continuing guaranty and that the obligations of Guarantor hereunder ~~are joint and several and~~ shall be absolute under any and all circumstances, without regard to the validity, regularity, modification, or enforceability of the ~~Partnership Agreement, the Loan Documents, the Project Documents~~Lease, the Joint Development Agreement, the Transaction Documents, any Project finance documents, any partnership agreements, or any other instruments executed in connection therewith.

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4. ~~3.~~ **Certain Waivers.**

a. To the extent permitted by law, Guarantor hereby waives notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest, and any and all notices of nonpayment, non-performance, and non-observance, and other proof, and notice of demand; and

b. Guarantor hereby waives any right to require WMATA to proceed against or exhaust its recourse against Developer or to pursue any other remedy in its power before being entitled to performance from Guarantor or before proceeding against Guarantor. Guarantor hereby waives any defense based upon an election of remedies by WMATA which destroys or otherwise impairs the subrogation rights of Guarantor or the right of Guarantor to proceed against Developer or others for reimbursement, or both; and

c. Guarantor hereby waives all suretyship defenses and defenses in the nature thereof~~.~~; and

d. Guarantor hereby waives any defense that may arise by reason of (i) the incapacity, lack of authority, death or disability of Developer or Guarantor; (ii) the revocation or repudiation hereof by Guarantor, or the revocation or repudiation hereof by Developer, of Developer's obligations under the Lease; or (iii) the failure of WMATA to file or enforce a claim against the estate (either in administration, bankruptcy, or any other proceeding) of Developer or Guarantor; and

e. Guarantor hereby waives any defense based upon any taking, modification, or release of any collateral or guaranties, or any failure to perfect any security interest in, or the taking of, or failure to take

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008430

any other action with respect to any collateral securing payment or performance hereunder; and

~~a.~~f. Guarantor hereby waives any rights or defenses based upon an offset by Guarantor against any obligation now or hereafter owed to Guarantor by Developer, it being the intention hereof that Guarantor shall remain liable, to the extent set forth herein, until the full performance of the obligations hereunder.

~~3.~~5. **Defenses Not Valid.** Guarantor further agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected, or impaired by any of the following:

a. By reason of the assertion by the ~~Partnership or any Partner thereof~~ Developer of any rights or remedies under or with respect to the ~~Partnership Agreement~~Lease, or any other instruments executed in connection therewith, against any Person obligated thereunder~~.~~; or

b. By reason of any failure to exercise, or delay in exercising, any such right or remedy or any right or remedy hereunder or in respect to this Guaranty and Guarantor hereby waives the defense of statute of limitations in any action hereunder; or

~~a.~~c. By reason of the adjudication in bankruptcy of this Guaranty or any guarantor hereunder, any Person obligated under the ~~Partnership Agreement~~Lease or any other instruments executed in connection therewith, or the filing of a petition for any relief under any federal, state, or local bankruptcy law by any such Person.

~~4. **Effect of Certain Assignments, Etc.** Guarantor further covenants that this Guaranty shall remain and continue in full force and effect as to any assignment, modification, extension, or renewal of the Loan Documents, the Project Documents or the release or exchange of any property covered by the Loan Documents or other collateral for any of the Loans, and notwithstanding any amendment of the Partnership Agreement or transfer of the Interest of any Partner thereunder, and that indulgences or forbearance may be granted under any or all of such documents, all of which may be made, done, or suffered without notice to or further consent of the Guarantor.~~

~~5. **Enforcement.** Guarantor hereby agrees that this is a guaranty of payment, not collection, and that this Guaranty may be enforced by the Partnership or any Partner thereof against Guarantor without first resorting to or exhausting any other right or remedy; *provided, however,* that nothing herein contained shall prevent the Partnership or any Partner from suing to enforce the provisions of the Partnership Agreement or from exercising any rights thereunder.~~

6. **Reimbursement of Expenses.** Guarantor agrees that, in the event this Guaranty is placed in the hands of ~~an~~ one or more attorneys for enforcement, collection, collection through legal proceedings affecting creditors' rights, or any other proceedings

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008431

whatsoever in connection with this Guaranty, or any collateral subject hereto, then Guarantor ~~will~~ shall reimburse WMATA, or other party ~~the Partnership and the Partners~~ seeking such enforcement, on demand for all expenses incurred in enforcing this Guaranty, including reasonable attorneys' fees, costs, and expenses, (whether or not suit is brought hereon) and all such expenses incurred in connection with any trial, appeal, arbitration, or bankruptcy proceedings.

7. **Default.** If Guarantor shall fail or refuse to perform or continue performance of all of Guarantor's obligations under this Guaranty, then WMATA ~~the Partnership and/or the Partners thereof~~ shall, at ~~their~~ its sole option, have the right to take, or cause, all necessary action to complete the work described in Section 1 above~~Work in accordance with the terms of the Partnership Agreement, the Loan Documents,~~ and ~~the Project Documents~~ to discharge any liens filed against the Project or the ~~land underlying the Project~~ Lease Premises and to take any other actions necessary or advisable to cure the Guarantor's default hereunder, either before or after the exercise of any other remedy. The amounts of any and all expenditures and advances so made by ~~the Partnership or any Partner~~ WMATA shall be due and payable by Guarantor immediately upon the incurring or advancement thereof and, if not then paid, shall bear interest at ~~two~~ four percent (~~2~~4%) above the prime rate then in effect in *The Wall Street Journal.*

8. **Term.** Except as provided herein, this Guaranty shall terminate three (3) months after the last to occur of the following:

a. A final certificate of occupancy is issued for the Project following the completion of construction of the Project in accordance with the ~~Loan Documents and Project Documents~~Approved Design and Construction Documents;

b. Final payment is made under the construction contracts, and the contractor acknowledges in writing that the contractor and all subcontractors have been paid in full and have no further claims under the construction contracts; and

c. The statutory period within which the contractor and any subcontractors under the construction contracts may file liens against the ~~Partnership Property or the~~ Project has expired; and

d. ~~Loan Conversion~~Final Completion of the Project.

Notwithstanding the foregoing, at any time within three (3) months after the termination of this Guaranty as provided in this Paragraph ~~9~~8, ~~the Partnership or any Partner thereof~~ WMATA may give written notice (the "***Guaranty Notice***") to Guarantor of any outstanding or disputed amount due to WMATA or any third party that relates to the Joint Development Agreement, the Lease, the Transaction Documents, or construction of the Project and may reserve its rights hereunder with respect to such outstanding amount. In the event ~~the Partnership or any Partner thereof~~ WMATA gives such Guaranty Notice to the Guarantor, this Guaranty shall survive to the extent of the matters described in such

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008432

Guaranty Notice and until such matters have been fully paid or resolved to the satisfaction of ~~the Partnership and the Partners that gave such notice~~WMATA. In the event this Guaranty is extended beyond the term by such Guaranty Notice, this Guaranty shall not terminate until such time that WMATA provides Notice of satisfaction of the matters described in the Guaranty Notice.

9. **Assignment**. This Guaranty shall not be assignable by Guarantor without WMATA's prior written approval.

10. **Notices.** ~~A~~All notices, demands, requests and other communications required pursuant to or in connection with the provisions of this Guaranty ("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 other 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~~ll notices to the parties hereto shall be given in the manner and (where applicable) to the addresses specified on Exhibit A-6 to the Partnership Agreement, as the same may be amended from time to time by Notice to the parties hereto. Notices to the Partnership shall be sent in care of the General Partner of the Partnership with a copy to the Limited Partner~~.

~~c.~~a. *Notices to Guarantor shall be sent to*:

Banc of America Community Development Corporation
730 Fifteenth Street, N.W.
Washington, DC 20005-1099
Attn: Maryann Dillon, Senior Vice President
Tel: (202) 624-5160;
Fax: (202) 624-5166

b. *Notices to WMATA shall be sent to*:

Washington Metropolitan Avenue Transit Authority
Attn: Director of Station Area Planning and Asset Management
600 Fifth Street, NW
Washington, D.C. 20001
Phone: 202-962-2616
Fax:

~~9.~~11. **Intended Beneficiary.** ~~The parties intend that the Limited Partner of the Partnership be a third party beneficiary of this Agreement and that the Limited Partner, in such capacity, may enforce the Guarantor's obligations hereunder.~~ No ~~person~~ person other than ~~the Limited Partner and the Partnership~~ WMATA may directly or indirectly rely upon or enforce the provisions of the Agreement, whether as a third party beneficiary or otherwise.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008433**

~~10.~~ **Binding Agreement; ~~Partnership Agreement.~~** ~~Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Partnership Agreement.~~

~~11.~~12. **Burden and Benefit.** This Guaranty and each covenant and agreement contained herein shall be binding upon Guarantor, its permitted successors and assigns, and shall inure to the benefit of WMATA, ~~the Partnership, the Partners thereof,~~ and ~~their respective~~ its successors and assigns.

13. **Authority**. Guarantor represents and warrants to WMATA the following:

a. The Person executing and delivering this Guaranty on Guarantor's behalf is duly authorized to so act; and

b. The Guarantor has the power and authority to enter into this Guaranty; and

c. All action required to authorize Guarantor to enter into this Guaranty has been duly taken.

14. **Entire Agreement**. This Guaranty constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior such agreements and understandings, both written and oral. This Guaranty may not be modified or amended except by a written instrument signed by WMATA and Guarantor.

~~12.~~15. **Severability of Provisions.** ~~Each provision of this Guaranty shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of this Guaranty is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Guaranty that are valid.~~The Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Guaranty and the remaining provisions of this Guaranty 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 Guaranty.

~~13.~~16. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Guaranty shall not operate or be construed to be a waiver of any subsequent breach.

~~14.~~17. **Defined Terms.** Except as expressly provided herein, terms used in this Guaranty ~~Agreement~~ with initial capital letters shall have the meanings set forth in the ~~Partnership Agreement~~Lease.

~~15.~~18. **Governing Law.** This Guaranty shall be governed, construed, and interpreted as to validity and enforcement and in all other respects in accordance with the laws of the District of Columbia and cannot be modified, amended, or terminated orally.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008434**

~~16. **Binding Agreement.** This Agreement shall be binding on the parties hereto, and their heirs, executors, personal representatives, successors and assigns.~~

~~17.~~19. **Headings.** All headings in this Guaranty are for convenience of reference only and are not intended to qualify the meaning of any provision of this Guaranty.

~~18.~~20. **Terminology.** All personal pronouns used in this Guaranty, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

~~19.~~21. **Counterparts.** This Guaranty may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

~~20.~~22. **Guaranty of Payment.** Notwithstanding any other provision of this Guaranty~~Agreement~~:

~~a.~~

a. ~~(i) t~~This ~~Agreement~~ Guaranty constitutes a guaranty of payment, not solely a guaranty of collection; and

b. ~~the~~ This Guaranty ~~guaranty in this A~~agreement is primary and not conditional.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008435**

IN WITNESS WHEREOF, Guarantor has duly executed this Unconditional Construction Completion Guaranty Agreement as of the date first above written.

BANC OF AMERICA COMMUNITY
DEVELOPMENT CORPORATION,
Guarantor

_____ By:_____
Name:_____
Title:_____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008436

3/5/10

RD Comments on 3/9/10

Amended and Restated
WMATA Term Sheet
Shaw-Howard/Florida Avenue Sites

This Amended and Restated Term Sheet, ("Term Sheet"), for a 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. The previous joint development term sheet dated July 17, 2008 is superseded by this Term Sheet.

1. Parties

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

1.2 The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company (the "DEVELOPER") will be the developer of the Project (as defined in Section 4 below). The DEVELOPER'S initial principals shall be Banneker Ventures, LLC, a District of Columbia limited liability company ("Banneker"), and Banc of America Community Development Corporation, a North Carolina corporation qualified to do business in the District of Columbia ("BACDC"), subject to the substitution of a different principal for BACDC upon WMATA's approval, not to be unreasonably withheld.

1.3 At or after the Closing until the "Completion of the Project" (as defined in Section 4.3 below), DEVELOPER shall be permitted to only admit other members who are tax credit investors, tax credit syndicators and equity investors for the Project so long as such admissions are not a disguised sale of the Project or transfer of control to another developer, except in the limited circumstance where there is an imminent default under the tax credits and the tax credit syndicator exercises its right to replace the manager of the Project. After the Completion of the Project, there shall be limited restrictions on the DEVEOPER'S principals and the identity of any successor lessee/owner of the Project.

2. Definitive Agreement

2.1 The Definitive Agreement will be a Joint Development Agreement ("Definitive Agreement") together with all necessary related documentation upon which WMATA and DEVELOPER mutually agree. The Definitive Agreement will be

FOIA CONFIDENTIAL TREATMENT REQUESTED

prepared initially by WMATA. WMATA and DEVELOPER shall execute the Definitive Agreement within three (3) business days of Board approval.

2.2 The parties shall attach the above referenced necessary related documentation to the Definitive Agreement as exhibits. Such exhibits shall include, but not be limited to:

a) A ground lease agreement (the "Lease") whereby WMATA will lease the Lease Property to the DEVELOPER for an initial term of fifty (50) years, with option periods totaling an additional twenty-five (25) years.

b) A conditions, covenants and reservations agreement ("CCRs"), to be recorded among the land records, which will: (i) protect WMATA's interests in its tunnel and associated elements and access thereto; and (ii) include transit oriented development covenants.

2.3 The execution of the Lease ("Closing") will take place no later than six hundred (600) days after the WMATA Board approves the Definitive Agreement. The Definitive Agreement shall terminate no later than the Completion of the Project with any surviving obligations being included in the CCRs.

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3. Property to Be Leased To DEVELOPER

3.1 WMATA will lease to DEVELOPER approximately 28,376 square feet of land, which area is outlined on **Exhibit A** and attached hereto (the "Lease Property"). The land is in three separate parcels: 1) approximately 3,799 square feet in Square 393, Lot 44; 2) approximately 8,621 square feet in Square 393, Lot 45; and 3) approximately 15,956 square feet in Square 416, Lot 31. The Lease Property shall not include those property interests necessary for protection of WMATA's transit facilities, which include the existing WMATA tunnel and associated elements.

3.2 DEVELOPER will cause a preliminary ALTA survey and title commitment to be prepared within two (2) months of the effective date of the Definitive Agreement and the final ALTA survey (assuming a closed public alley) and title commitment no later than thirty (30) days before the Closing. The final ALTA survey shall be completed early enough for WMATA and DEVELOPER to agree upon the legal descriptions to exclude the existing WMATA tunnel and associated elements.

4. Project

DEVELOPER will construct improvements on the Lease Property (the "Project") in substantially the same configuration shown in **Exhibit B** and attached hereto, in

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accordance with a project schedule to be attached to and made a part of the Definitive Agreement. The Project may not be materially changed without WMATA's written approval, such approval not to be unreasonably withheld, delayed or conditioned. The Project will consist of:

4.1 DEVELOPER's improvements (the "Developer Improvements") are a minimum 153,000 gross square feet including: (i) approximately 138 residential apartment units, (ii) approximately 14,000 gross square feet of retail/arts use, and (iii) approximately 41 parking spaces contingent on District of Columbia ("District") approvals.

4.2 The Developer Improvements will be built in a single phase on the Lease Property.

4.3 "Completion of the Project" is hereby defined as: (i) the issuance of one or more final certificates of occupancy for all residential apartment units and common areas, including parking; and (ii) one or more "shell" certificates of occupancy or equivalent for the retail portions of the Project, subject to completion of the tenant improvements for each unoccupied retail space; and (iii) correction of any damage to WMATA's property caused by Developer or its contractors, subcontractors or consultants; and (iv) satisfaction of all requirements of the WMATA Design Construction Standards applicable to the Developer Improvements.

4.4 Project Schedule. The parties shall attach an agreed upon project schedule (the "Project Schedule") as an exhibit to the Definitive Agreement. It shall be a default of the Definitive Agreement if the DEVELOPER has not constructed building foundations on all three parcels, to at least street level, within 780 days of the Effective Date of the Definitive Agreement. 840

5. Due Diligence

5.1 Lease Property 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 Lease Property 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 Lease Property in an "AS IS, WHERE IS" condition.

5.2 Study Period: Upon approval and execution of this Term Sheet, WMATA will grant DEVELOPER a Right of Entry Permit for entry onto the Lease Property,

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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 Lease Property (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. DEVELOPER and its consultants who physically alter the Lease Property will be obligated, at their sole cost and expense, to restore the Lease Property to the similar condition existing immediately prior to those activities.

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 Dollars ($250,000.00) less the Additional Costs Credit (as defined in Section 7.4 below) (the "Security Deposit") to secure DEVELOPER'S performance. At the Closing upon DEVELOPER receiving the Additional Cost Credit against the Capitalized Lease Payment, the Security Deposit will be increased to Two Hundred Fifty Thousand Dollars ($250,000.00). The DEVELOPER'S Proposal Security currently being held by WMATA, in the amount of One Hundred Thousand Dollars ($100,000.00), will be applied to the Security Deposit.

~~150,000~~

OK

6.2 The Security Deposit will not be applied to any 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 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,

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shall be refunded to DEVELOPER, with interest accrued, within twenty (20) business days following the Completion of the Project.

7. Consideration

7.1 Option Fee: The DEVELOPER has previously paid WMATA One Hundred Thousand Dollars ($100,000.00) as an option fee (the "Option Fee"). The Option Fee is non-refundable and shall not be applicable to any other payment in this transaction.

7.2 Pre-Closing Payments. The DEVELOPER shall make quarterly non-refundable Pre-Closing Payments beginning upon the effective date of the Definitive Agreement. Pre-Closing Payments shall be prorated for partial quarters. Pre-Closing Payments shall be made according to the following:

a) Pre-Closing Payments for the first twelve (12) months will be $50,000.00 per year, payable in advance in quarterly instalments of $12,500.00.

b) Pre-Closing Payments will increase to $65,000.00 per year for the next twelve (12) months.

c) Beginning the twenty-fifth (25th) month and continuing until execution of the Lease, Pre-Closing Payments shall be $80,000.00 per year.

7.3 Rent.

a) Capitalized Lease Payment. DEVELOPER shall make a lump sum initial Capitalized Lease Payment of Five Million Two Hundred Thousand Dollars ($5,200,000), less the Additional Costs Credit, at Closing. This payment represents the entire base rent for the Lease Property for the initial fifty (50) year term of the Lease. In no event will any part of the Capitalized Lease Payment be refunded.

b) Monthly Rent Payment. On the 50th anniversary of the Effective Date of the Lease, the DEVELOPER shall begin making monthly base rent payments to WMATA (the "Monthly Lease Payments"). The Monthly Lease Payments amount shall be at Fair Market Value as determined through the three-appraiser method described in the Lease.

(i) Escalation Rate. The Monthly Lease Payments shall escalate annually at the rate of 3% per year.

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(ii) Periodic Rent Revaluation. The Monthly Lease Payments shall be adjusted every ten years. The Monthly Lease Payments will be re-adjusted to then current Fair Market Value as established through the three-appraiser process described in the Lease. Monthly Lease Payments will never decrease from the then payable Monthly Lease Payments as a result of any Periodic Rent Revaluation.

c) Participation Rent. Developer shall pay Participation Rent, at one and a half percent (1.50%) of Effective Gross Income to WMATA.

(i) Effective Gross Income shall be defined in the Lease as all gross revenue generated from the Lease Property, including but not limited to rents, licenses, advertisements, and service fees.

(ii) Payment of Participation Rent shall begin at the earlier of (1) the DEVELOPER's receipt of Effective Gross Income or (2) if no Effective Gross Income is generated prior to Final Completion of the Project, the amount of Effective Gross Income DEVELOPER was projected to receive under the Project Schedule in the Definitive Agreement.

(iii) So long as DEVELOPER's senior loan is HUD insured, Participation Rent shall be paid to WMATA in accordance with the HUD requirements which allow the maximum return to WMATA. At all times during the Lease term, the debt service coverage ratio on any senior loans, other than HUD-insured senior loans or public subsidies, shall be no less than 1.20:1.00.

(iv) Any Participation Rent not paid in a given year shall accumulate interest at six and two-tenths percent (6.2%) and be paid from the next annual cash flow or from Capital Event proceeds prior to any return on, or return of, equity.

d) Capital Event Rent. Capital Events (defined below) shall be permitted in accordance with this Section 7.3(d). Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation").

(i) A "Capital Event" will include, but not be limited to, any of the following by DEVELOPER: (i) assignments of the Definitive Agreement or the Lease, (ii) sales or re-financings of the Developer Improvements, (iii) dispositions or transfers of

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membership interests, (iv) transfers among existing members, and (v) conversions that change the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement but not including (1) transfers for estate planning purposes; and (2) transfers required for the initial debt and equity of the Project before the permanent loan closing. 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.

(ii) For Capital Events that involve transfer or disposition of interests in the Developer or the Developer's interest in the Project, WMATA's share will be two percent (2%) of the gross proceeds. Gross proceeds are defined as all transaction revenues received by the DEVELOPER (and any affiliated entities receiving income from this event).

(iii) For Capital Events that involve any refinance or financial restructuring from which the DEVELOPER realizes proceeds, WMATA's share will be ten percent (10%) of the adjusted gross proceeds. The adjusted gross proceeds are defined as all transaction revenues to the DEVELOPER (and any affiliated entities receiving income from this event) less any original ~~project~~ debt on the Developer Improvements that is paid-off out of said Capital Event proceeds.

Senior mortgage

2%

Comment [JM1]: Developer is sending WMATA new language that it is proposing for this section.

Goes back to N or

left only senior mortgage debt paid off 1st

(iv) To confirm DEVELOPER's original project debt and equity, within thirty days of the Closing, DEVELOPER will provide WMATA with documentation confirming such amounts. 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 Project cost, including both hard and soft costs.

7.3 Additional Density: If at any time during the first 50 years of the Lease, DEVELOPER has received approval for additional density over 153,000 gross square feet attributable to the Lease Property, DEVELOPER will adjust the Capitalized Lease Payment. The measurement of gross FAR square feet shall be the highest amount generated by the Lease Property, whether used on the Lease Property or not, in (i) any final zoning approval by the District of Columbia; (ii) building permit approval; or (iii) an amount approved in any revisions to the building permit prior to issuance of the final certificates of occupancy.

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Including Affordable Housing Bonus Density

a) Prior to Closing: If the DEVELOPER receives approval for additional density prior to Closing, the additional density Capitalized Lease Payment adjustment shall be as follows:
   (i) An upward adjustment in the Capitalized Lease Payment by $46.59/gross FAR square feet for additional density generated by the Lease Property over 153,000 gross FAR square feet; and
   (ii) After the additional density consideration in 7.3(a)(i) is added, a downward adjustment in the Capitalized Lease Payment by $74.55/gross FAR square feet for such additional density generated by the Lease Property which increases the Project's affordable housing requirement pursuant to the District's mandatory Inclusionary Zoning regulations (Chapter 26 of the Zoning Regulations of the District) over 8,705 gross FAR square feet.

b) After Closing: If any time between Closing and the end of the first 50 years of the term of the Lease, any densities or unit totals actually constructed on the Developer Improvements that are more than those in effect at Closing and for which no increase in Capitalized Lease Payment has been paid, DEVELOPER shall pay an additional Capitalized Lease Payment. The additional Capitalized Lease Payment payments will be determined through the three-appraiser method, to be defined in the Lease and based on the then-remaining time until the 51st year of the term of the Lease. Since the resetting of the base rent in the 51st Lease year will be based on FAR value of the land as vacant, there shall be no additional density adjustments after the 50th Lease year.

7.4 Additional Costs Credit. The term "Additional Costs Credit" is defined to be the amount of the third-party costs incurred by DEVELOPER, not to exceed $100,000, in the evaluation and negotiation of the proposed sale of the Lease Property to DEVELOPER based on copies of actual invoices for such third-party costs delivered to WMATA for verification, which may be redacted to exclude any confidential or privileged information. As of the date of this Term Sheet, WMATA has calculated the Additional Costs Credit to be $30,000, based upon invoices provided by the DEVELOPER.

7.5 Additional Consideration: The Capitalized Lease Payment, including any adjustments made under Section 7.3 above, shall be increased annually by six and 2/10ths percent (6.2%) per year from the execution of the Definitive Agreement, if Closing or Additional Density occurs later than six hundred (600) days from execution of the Definitive Agreement. No Additional Consideration increase shall be applied for any delay caused by WMATA under Section 7.6.

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If Additional Density occurs after Closing, then only the increase in the Capitalized Lease Payment for such Additional Density shall be subject to the 6.2% annual increase.

7.6 WMATA Delays: The maximum length of six hundred (600) days to Closing will be extended for delays caused solely by WMATA actions or failure to act, including requesting FTA Approval in accordance with Section 8.5 below. Such extension(s) shall be for the amount of time reasonably necessary to compensate for the delay caused solely by WMATA, *e.g.*, if such a delay causes DEVELOPER to miss a planned filing date which results in a one day-for-one day delay, then the extension shall be measured in days with respect to that filing date, however, if the filing date is for some action which is only available in a certain "time window" and the delay causes DEVELOPER to miss the filing date for such "time window," then the extension shall be measured in a period equal to the next available "time window" with respect to that filing date. In order to receive an extension hereunder, DEVELOPER must provide WMATA with written Notice of said WMATA Delay within thirty (30) days of the commencement of said delay. In no other event, other than Force Majeure Delays as defined in Section 7.7 below, will Closing be delayed, even though DEVELOPER'S schedule may take longer than anticipated.

7.7 Force Majeure Delays: The maximum length of six hundred (600) days to Closing may be extended 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. Such Force Majeure Delays shall be subject to an increase in the Capitalized Lease Payment, as provided in Section 7.5 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In order to receive an extension hereunder, DEVELOPER must provide WMATA with written Notice of said Force Majeure Delay within thirty (30) days of the commencement of said delay. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

8. Conditions to Consummation of the Definitive Agreement

If each of the following conditions is not satisfied pursuant to the terms of this Term Sheet and the Definitive Agreement, then DEVELOPER shall have the right to terminate this Term Sheet or the Definitive Agreement, as applicable, pursuant to the terms therein. If DEVELOPER terminates this Term Sheet, WMATA shall return the Proposal Security 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, expressly survive termination of this Term Sheet. DEVELOPER shall have the right to terminate the Definitive Agreement, and receive the Security Deposit back from WMATA, pursuant to the terms of the Definitive Agreement.

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8.1 Design Approvals: Within ten (10) days of execution of the Definitive Agreement, and prior to any final submission to the District, DEVELOPER shall submit to WMATA for its approval a conceptual Project site plan in substantial conformance with Exhibit B, including building elevations and floor plans (the "Project 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 Lease Property. WMATA shall make all reviews and approvals or disapprovals of DEVELOPER'S initial submission to WMATA within thirty (30) days of receipt of such submission by WMATA.

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.

9. Special Considerations

9.1 Community Contact: Within one hundred twenty (120) days of the execution of the 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

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provision will constitute an event of default under the Definitive Agreement. WMATA will include a list of all such groups as part of the Definitive Agreement.

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

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

b) 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, alley closing, and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

c) WMATA shall cooperate with DEVELOPER in all zoning and other related Approvals.

9.3 Site Plan Approval by the District: DEVELOPER will submit to the applicable District agency or agencies an Approvals request and an application for District approval of the WMATA-approved Project Site Plan, for development of the Lease Property.

9.4 WMATA Review and Approval of Project Site Plan: In the event that DEVELOPER makes any modifications to the Project Site Plan previously approved by WMATA (the "Approved Site Plan"), even if required by the District or other governmental authority, such modifications will be subject to WMATA's approval, not to be unreasonably withheld, delayed or conditioned.

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 improvements on the Lease Property that materially and adversely affect WMATA's operations. The design and construction plans for such improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation, WMATA's

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Adjacent Construction Project Manual, Revision 3, dated December 2008 (collectively, "WMATA Design and Construction Standards"). If the DEVELOPER commences construction of the Developer Improvements within three (3) years of the Effective Date of the Definitive Agreement, the DEVELOPER may use the version of the WMATA Design and Construction Standards that is in effect on the Effective Date of the Definitive Agreement, without subsequent amendments or revisions, with respect to the Approvals, the Project Site Plan, and the design and construction plans for the Developer Improvements. If commencement of the Developer Improvements commences after the third anniversary of the Effective Date of the Definitive Agreement, the most recent versions of the WMATA Design and Construction Standards, then in existence, as amended and revised from time to time, shall be applicable to the Project. The Project will be reviewed in accordance with, and must conform to the requirements of, the aforementioned documents.

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the Developer 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 unless WMATA is prohibited from being so named by the FHA lender under the HUD financing utilized by DEVELOPER, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at Closing.

9.7 Interim Improvements: intentionally omitted.

9.8 Guaranty: At the Closing, BACDC or another guarantor reasonably acceptable to WMATA will execute an unconditional guaranty ("Guaranty") to WMATA with the total liability thereunder limited to One Million Five Hundred Thousand Dollars ($1,500,000) plus the cost of enforcing the Guaranty against the guarantor. The Guaranty will be released by WMATA upon the Completion of the Project. The Definitive Agreement will include a minimum financial test to be met by the guarantor. The adequacy of security to be further discussed in the Definitive Agreement. The Guaranty will unconditionally guarantee to WMATA:

$1,000,000

Comment [JM2]: Per 3/2 meeting, the Developer's GC will provide to WMATA an estimate of how high the liability limit for the Guaranty must be to cover (i) filling in of any excavation, (ii) preserve the foundation or construction completed, and (iii) secure the property to protect the public.

a) the completion of infrastructure required by either the District or WMATA;
b) the remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities;
c) the required parties maintain the insurance required by WMATA under the Definitive Agreement; and in the event such insurance is not

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maintained and no insurer pays a claim that would have been paid if such WMATA required insurance had been maintained, the Guarantor shall indemnify WMATA up to the relevant insurance limit amounts;

d) the restoration of the Lease Property to the condition it was in on the date of Closing should work cease on the excavation portion of the project above the Lease Property prior to completion of the foundation to street level; and

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the Developer Improvements 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.

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

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Lease Property, 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 District 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.

Comment [JM3]: Could be limited by HUD surplus cash requirements.

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 Lease Property 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 Lease Property or breach of any agreement with WMATA, 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. Both the Lease and the CCRs shall contain indemnification of WMATA.

Comment [JM4]: Could be limited by HUD surplus cash requirements.

Comment [JM5]: WMATA should consider alternatives if HUD limits indemnity protection (e.g., Guaranty, LOC, Escrow, increased insurance)

FOIA CONFIDENTIAL TREATMENT REQUESTED

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors that enter onto the Lease Property, 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 and the Lease. 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 except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of one hundred fifty (150) days 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 CONFIDENTIAL TREATMENT REQUESTED

Agreed this _____ day of March, 2010, by

Washington Metropolitan Area Transit Authority

By: _____
Steven E. Goldin
Director, Office of Station Area Planning and Asset Management
Department of Planning and Joint Development

The Jazz @ Florida Avenue, LLC

By: _____

Title: _____

FOIA CONFIDENTIAL TREATMENT REQUESTED

Meet w/ JH COK
KW BPH
10/29/09

Amended & Restated

WMATA Term Sheet
Shaw-Howard/Florida Avenue Sites

This Term Sheet, ("Term Sheet"), for a 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 The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company (the "DEVELOPER") will be the developer of the Project. The DEVELOPER'S initial principals shall be Banneker Ventures, LLC, a District of Columbia limited liability company ("Banneker"), and Banc of America Community Development Corporation, a North Carolina corporation qualified to do business in the District of Columbia ("BACDC"). At or after the Closing until the "Completion of the Total Project" (as defined in Section 6.4 below), DEVELOPER shall be permitted to only admit other members who are tax credit investors, tax credit syndicators and equity investors for the Total Project so long as such admissions are not a disguised sale of the Project or transfer of control to another developer, except in the limited circumstance where there is an imminent default under the tax credits and the tax credit syndicator exercises its right to replace the manager of the Total Project. After the Completion of the Total Project, there shall be limited restrictions on DEVEOPER'S composition, members, managers, leasing or financing of the Total Project.

· Cap Events
· "prohibited persons"
· Ethics cert(?)
· Similar to HUD 2530

2. Definitive Agreement

2.1 The Definitive Agreement will be a Joint Development Agreement ("Definitive Agreement") together with all necessary related documentation upon which WMATA and DEVELOPER mutually agree. The Definitive Agreement will be prepared initially by WMATA. Both parties commit to complete the Definitive Agreement so WMATA can present the agreed-upon Definitive Agreement to its Board for approval within one month of the Board's approval of this Term Sheet. WMATA and DEVELOPER shall execute the Definitive Agreement within three (3) business days of Board approval.

2.2 The parties shall attach the above referenced necessary related documentation to the Definitive Agreement as exhibits. Such exhibits shall include, but not be limited to:

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a) a ground lease agreement (the "Lease") whereby WMATA will lease the Lease Property to the DEVELOPER for an initial term of sixty (60) years, with two DEVELOPER option periods totaling an additional thirty-nine (39) years.

b) A conditions, covenants and reservations agreement ("CCRs"), to be recorded among the land records, which will: (i) protect WMATA's interests in its tunnel and associated elements and access thereto; and (ii) include transit oriented development covenants.

c.) Co-T

2.3 The execution of the Lease ("Closing") will take place no later than six hundred (600) days after the WMATA Board approves the Definitive Agreement.

3. Property to Be Leased To DEVELOPER

3.1 WMATA will lease to DEVELOPER approximately 28,376 square feet of land, which area is outlined in yellow on **Exhibit A** and attached hereto (the "Lease Property"). The land is in three separate parcels: 1) approximately 3,799 square feet in Square 393, Lot 44; 2) approximately 8,621 square feet in Square 393, Lot 45; and 3) approximately 15,956 square feet in Square 416, Lot 31. The Lease Property shall not include those property interests necessary for protection of WMATA's transit facilities, which include the existing WMATA tunnel and associated elements.

3.2 DEVELOPER will cause an ALTA survey and title to be prepared within two (2) months of the effective date of the Definitive Agreement.

4. Project

DEVELOPER will construct improvements on the Lease Property (the "Project") in the configuration shown in **Exhibit B** and attached hereto, which configuration includes the Total Project. The Project may not be materially changed without WMATA's written approval, such approval not to be unreasonably withheld, delayed or conditioned. The Project will consist of:

- Project Schedule will be included in JDA; Default is Terminable

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 100,711 gross FAR square feet including approximately 80,169 gross FAR square feet for residential apartment units per District of Columbia ("District") approvals and approximately 10,000 gross FAR square feet of retail/arts use, and approximately 10,542 gross FAR square feet of associated loading, lobbies, ramps, and residential and retail parking, per District approvals.

4.2 <u>Assemblage</u>.

a) <u>Adjacent Parcels</u>. An affiliate of DEVELOPER is the contract purchaser of Lot 41 & A&T Lot 826 in Square 393, comprising approximately

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[7,720] square feet of land fronting on 9th Street, NW and located contiguous to Lot 44 near the southwest corner of the intersection of 9th Street and Florida Avenue, N.W., in the District of Columbia (the "DEVELOPER Property"). The DEVELOPER Property is outlined in blue on the attached Exhibit A.

b) Total Project. WMATA and DEVELOPER have agreed to apply to close the portion of the public alley in Square 393 contiguous to Lots 41, 44 & 45 and A&T Lot 826 prior to the Closing so that promptly after the Closing, DEVELOPER can resubdivide such Lots and the portion of the closed public alley into a buildable lot of approximately [21,244] square feet. DEVELOPER is acquiring an interest in the Lease Property to develop a single, mixed-use, Transit-Oriented Development project on the combined Lease Property and DEVELOPER Property (the "Total Project").

c) Alley Closing. WMATA will consent to the alley closing prior to Closing, provided that when the portion of the public alley is closed, an easement will be recorded among the owners to preserve the use of the closed portion of the public alley to protect WMATA's interests until the Closing. Such easement will be terminated upon the post-Closing resubdivision the relevant land in Square 393 into a buildable lot. Exhibit A shows the portion of the closed alley that will become part of the Lease Property in red; the portion that will become part of the DEVELOPER's Property is shown in green.

d) Co-Tenancy Agreement. At Closing, the parties will execute a co-tenancy agreement, which will govern the management and sale of the improvements on assembled Lots 41, 44, 45 and A&T Lot 826 on Square 393, upon termination of the Lease. Sq. 416 also
– 79/21 Rights – Right to Sell to 3rd party for Cash (Force Sale)

4.3 The DEVELOPER Improvements will be built in a single phase on the Lease Property as part of the Total Project.

5. Due Diligence

5.1 Lease Property 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 Lease Property 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 Lease Property 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 onto the Lease Property, substantially in the form attached hereto as **Exhibit C**. DEVELOPER shall

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have sixty (60) days from the effective date of the Definitive Agreement to conduct its due diligence related to the Lease Property (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.

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 One Hundred Fifty Thousand Dollars ($150,000.00), (the "Security Deposit") to secure DEVELOPER'S performance. The DEVELOPER'S Proposal Security currently being held by WMATA, in the amount of One Hundred Thousand Dollars ($100,000.00), will be applied to the Security Deposit.

6.2 The Security Deposit will not be applied to any 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, with interest accrued, within twenty (20) business days following the "Completion of the Total Project," which is hereby defined as: (i) the issuance of one or more final certificates of occupancy for all residential apartment units and common areas, including parking; and (ii) one or more "shell" certificates of occupancy or equivalent for the retail portions of the Total Project, subject to completion of the tenant improvements for each unoccupied retail space; and (iii) correction of any damage to WMATA's property caused by Developer or its contractors, subcontractors or consultants;

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and (iv) satisfaction of all requirements of the WMATA Design Construction Standards applicable to the DEVELOPER Improvements.

7. Consideration

7.1 Option Fee: The DEVELOPER has previously paid WMATA One Hundred Thousand Dollars ($100,000.00) as an option fee (the "Option Fee"). The Option Fee is non-refundable and shall not be applicable to the Lease Consideration.

7.2 Rent:

a) Pre-Closing Rent. The DEVELOPER shall make quarterly non-refundable Pre-Closing Rent payments beginning upon the effective date of the Definitive Agreement. Pre-Closing Rent for the first twelve (12) months will be $50,000.00 per year, payable in advance in quarterly instalments of $12,500.00. Pre-Closing Rent will increase to $65,000.00 per year for the next twelve (12) months. For the remainder of the Pre-Closing Period, Pre-Closing Rent shall be $80,000.00 per year.

b) Capitalized Lease Payment. DEVELOPER shall make a lump sum initial Capitalized Lease Payment of $_____ at Closing. This payment represents the entire base rent for the project for the 60-year initial term of the Lease as long as the original HUD insurance for the project remains in effect. Upon termination of the HUD insurance for the Project, the Lease Property will be re-appraised through the three-appraiser method and base rent will be adjusted accordingly, including taking into account appropriate additional annual rent payments and escalations at three percent (3%) per annum. In no event will any part of the Capitalized Lease Payment be refunded.

• Lease up provision
• If not done

c) Participation Rent. Participation Rent, at one and a half percent (1.5%) of Effective Gross Income shall be paid to WMATA beginning at the forty-fifth (45th) month after the effective date of the Definitive Agreement; one percent (1%) shall be unsubordinated to operating expenses, member loans, or equity; one-half (0.5%) shall be paid in accordance with HUD requirements. Any Participation Rent not paid in a given year shall accumulate interest at five and eight-tenths percent (5.8%) and be paid from the next annual cash flow or from Capital Event proceeds prior to any return on, or return of, equity. At all times during the Initial Lease Term, the debt service coverage ratio on any senior loans, other than HUD-insured senior loans or public subsidies, shall be no less than 1.20.

d) Capital Event Rent. Capital Events (defined below) shall be permitted in accordance with this Section 7.2(d). Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). A "Capital Event" will include, but not be limited

FOIA CONFIDENTIAL TREATMENT REQUESTED

to, 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 change the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement. 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 debt to construct the Project secured by DEVELOPER Improvements and repayment of the original equity and member loans to DEVELOPER not yet repaid including an Internal Rate of Return of twenty percent (20%). To confirm DEVELOPER's original project debt and equity, within thirty days of the Closing, DEVELOPER will provide WMATA with documentation confirming such amounts. 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. In no event will member loans and equity exceed thirty percent (30%) of development costs to construct the Project.

- 10% net vs. Fixed % off top
- Look at Dunn Loring
- Net Return is an admin nightmare

Audited

e) Option Period Rent. Rent shall be paid during the option period at market rate. To determine market rate, the Lease Property shall be appraised as vacant.

7.3 Pro Rata Split After Assemblage: The Definitive Agreement and Lease (as defined in Section 2.1 above) shall lease only the Lease Property, but shall provide that any Additional Density determination applicable to the Lease Property, the "DEVELOPER Improvements" (as defined in Section 4.1 above) or the "Project" (as defined in Section 4 above) shall be determined by using the pro rata share of the Total Project based on the ratio of the square feet of land of the Lease Property and the DEVELOPER Property. WMATA's pro rata share of the Total Project is 79.0%, subject to the final survey which shall be attached as an Exhibit to the Definitive Agreement.

7.4 Additional Density: If at any time during the initial 60-year term, DEVELOPER has received approval for additional density over 100,711 gross FAR square feet attributable to the Lease Property, DEVELOPER will adjust the Capitalized Lease Payment. The measurement of gross FAR square feet shall be the highest amount generated by the Lease Property, whether used on the Lease Property or not, in (i) any final zoning approval by the District of Columbia; (ii) building permit approval; or (iii) an amount approved in any revisions to the

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building permit prior to issuance of the final certificates of occupancy. Such additional density adjustments shall include any gross FAR square feet attributable to portions of the public alley located between 8th and 9th Streets, NW, which become part of the Lease Property in the alley closing process.

a) Prior Final Certificate of Occupancy: If the DEVELOPER receives approval for additional density prior to receipt of the final certificate of occupancy for the Total Project or while ~~HUD insurance~~ Federally Insured Loan remains in place, the additional density Capitalized Lease Payment adjustment shall be as follows:

   (i) An upward adjustment in the Capitalized Lease Payment by $50/gross FAR square feet for additional density generated by the Lease Property over 100,711 gross FAR square feet; and

   (ii) After the additional density consideration in 7.6(a) is added, a downward adjustment in the Capitalized Lease Payment by $80/gross FAR square feet for such additional density generated by the Lease Property which increases the Project's affordable housing requirement pursuant to the District's mandatory Inclusionary Zoning regulations (Chapter 26 of the Zoning Regulations of the District) over 6,414 gross FAR square feet

   NOTE: WMATA expects to adjust these amounts based on the relationship of the Capitalized Lease Payment to the land value.

b) After Final Certificate of Occupancy: During the term of the Lease, if HUD insurance no longer remains in place, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those in effect at receipt of the Final Certificate of Occupancy for the Project will require DEVELOPER to pay additional Capitalized Lease Payment. The additional Capitalized Lease Payment payments will be determined through the three-appraiser method, to be defined in the Definitive Agreement.

7.5 Additional Consideration: The Capitalized Lease Payment, including any adjustments made under Section 7.4 above, shall be increased annually by five and 8/10ths percent (5.8%) per year from the execution of the Definitive Agreement, if Closing or Additional Density occurs later than six hundred (600) days from execution of the Definitive Agreement. No Additional Consideration increase shall be applied for any delay caused by WMATA under Section 7.6. If Additional Density occurs after Closing, then only the increase in the Capitalized Lease Payment for such Additional Density shall be subject to the 5.8% annual increase.

7.6 WMATA Delays: The maximum length of six hundred (600) days to Closing will be extended for delays caused solely by WMATA actions or failure to act,

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008458

including requesting FTA Approval in accordance with Section 8.5 below. Such extension(s) shall be for the amount of time reasonably necessary to compensate for the delay caused solely by WMATA, *e.g.*, if such a delay causes DEVELOPER to miss a planned filing date which results in a one day-for-one day delay, then the extension shall be measured in days with respect to that filing date, however, if the filing date is for some action which is only available in a certain "time window" and the delay causes DEVELOPER to miss the filing date for such "time window," then the extension shall be measured in a period equal to the next available "time window" with respect to that filing date. In no other event, other than Force Majeure Delays as defined in Section 7.7 below, will Closing be delayed, even though DEVELOPER'S schedule may take longer than anticipated.

7.7 Force Majeure Delays: The maximum length of six hundred (600) days to Closing may be extended 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. Such Force Majeure Delays shall be subject to an increase in the Capitalized Lease Payment, as provided in Section 7.5 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

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 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 ten (10) days of execution of the Definitive Agreement and prior to any final submission to the District, DEVELOPER shall submit to WMATA for its approval a conceptual Total Project site plan in substantial conformance with Exhibit B, including building elevations and floor plans (the "WMATA-Approved Site Plan"). The design of the Total 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 Lease Property. WMATA shall make all reviews and approvals or disapprovals of DEVELOPER'S initial submission to WMATA within thirty (30) days of receipt of such submission by WMATA.

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.

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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 Total Project and as shall otherwise be reasonably satisfactory to DEVELOPER and WMATA.

9. Special Considerations

9.1 Community Contact: Within one hundred twenty (120) days of the execution of the Definitive Agreement DEVELOPER shall contact the appropriate community groups in the area as specified by WMATA to apprise such groups of the Total 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. WMATA will include a list of all such groups as part of the Definitive Agreement.

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

a) DEVELOPER will fund any and all costs of the Approvals. WMATA will not incur any costs in connection with the Approvals either in the actual Approvals process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.
b) At no expense to WMATA, DEVELOPER also shall be responsible for, and shall diligently and expeditiously pursue, all necessary

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008460

permits and approvals, including, without limitation, land disturbance permits, building permits, partial alley closing and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.

c) WMATA shall cooperate with DEVELOPER in all zoning and other related Approvals, including the filing of the alley closing application, lot consolidation/resubdivision application, etc.

d) The resubdivision of the Lease Property and DEVELOPER Property in Square 393 will not be completed until after Closing.

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

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 previously approved by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval, not to be unreasonably withheld, delayed or conditioned.

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 improvements on the Lease Property or the DEVELOPER Property that materially and adversely affect WMATA's operations. The design and construction plans for such improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation, WMATA's Adjacent Construction Project Manual, Revision 3, dated December 2008 (collectively, "WMATA Design and Construction Standards"). If the DEVELOPER commences construction of the DEVELOPER Improvements within three (3) years of the date of the Definitive Agreement, the DEVELOPER may use the version of the WMATA Design and Construction Standards that is in effect on the date of the Definitive Agreement, without subsequent amendments or revisions, with respect to the Approvals, the WMATA-approved Site Plan and the design and construction plans for the DEVELOPER Improvements; otherwise, the most recent versions of the WMATA Design and Construction Standards, as amended and revised from time to time, shall be applicable. The Total Project will be reviewed in accordance with, and must conform to the requirements of, the aforementioned documents.

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the DEVELOPER 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

Put HUD Language back in

-Require Bond but not co-obligee

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) days prior to Closing. Look at Developer Language in Term sheet "Provide at Closing"

9.7 Interim Improvements: intentionally omitted.

9.8 Guaranty: At the Closing, BACDC will execute an unconditional guaranty ("Guaranty") to WMATA. The Guaranty will be released by WMATA upon the Completion of the Total Project. The Definitive Agreement will include a minimum financial test to be met by BACDC, which will be 100% of the estimated costs of the construction costs of the Total Project. The adequacy of security and need for this Guaranty to be further discussed in the Definitive Agreement. The guaranty agreement will unconditionally guarantee to WMATA:

a) the completion of construction of the DEVELOPER Improvements;
b) the completion of infrastructure required by either the District or WMATA that is not included in the Site Work;
c) the completion of any demolition and removal of DEVELOPER Improvements as and when required under the terms of the Definitive Agreement;
d) the remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities;
e) the required parties maintain the insurance required by WMATA under the Definitive Agreement; and in the event such insurance is not maintained and no insurer pays a claim that would have been paid if such WMATA required insurance had been maintained, the Guarantor shall indemnify WMATA up to the relevant insurance limit amounts;
f) the restoration of the Lease Property to the condition it was in on the date of Closing should work cease on the excavation portion of the project above the Lease Property longer than 30 days;
g) the timely payment all DEVELOPER obligations under the Definitive Agreement, including full payment of any increase in the Capitalized Lease Payment for any Additional Density which increases the Capitalized Lease Payment after the Closing.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the DEVELOPER Improvements 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.

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008462

9.11 Environmental Matters: In the event that DEVELOPER engages in any excavation on the Lease Property, 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 District 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 Lease Property 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 Lease Property or breach of any agreement with WMATA, 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 who physically alter the Lease Property will be obligated, at their sole cost and expense, to restore the Lease Property to the similar condition existing immediately prior to those activities.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors that enter onto the Lease Property, 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 except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of one hundred fifty (150) days 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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008463

Agreed this _____ day of October, 2009, by

Washington Metropolitan Area Transit Authority

By: _____
Steven E. Goldin
Director, Office of Station Area Planning and Asset Management
Department of Planning and Joint Development

The Jazz @ Florida Avenue, LLC

By: _____

Title: _____

FOIA CONFIDENTIAL TREATMENT REQUESTED

Developer
11/4/09

Amended and Restated
WMATA Term Sheet
Shaw-Howard/Florida Avenue Sites

This Amended and Restated Term Sheet, ("Term Sheet"), for a 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. The previous joint development term sheet dated July 17, 2008 is superseded by this Term Sheet.

1. Parties

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

1.2 The Jazz @ Florida Avenue, LLC, a District of Columbia limited liability company (the "DEVELOPER") will be the developer of the Project (as defined in Section 4 below). The DEVELOPER'S initial principals shall be Banneker Ventures, LLC, a District of Columbia limited liability company ("Banneker"), and Banc of America Community Development Corporation, a North Carolina corporation qualified to do business in the District of Columbia ("BACDC")~~[~~, subject to the substitution of a different principal for BACDC upon WMATA's approval, not to be unreasonably withheld~~]~~. At or after the Closing until the "Completion of the Total Project" (as defined in Section 6.4 below), DEVELOPER shall be permitted to only admit other members who are tax credit investors, tax credit syndicators and equity investors for the Total Project (as defined in Section 4.2(b) below) so long as such admissions are not a disguised sale of the Project or transfer of control to another developer, except in the limited circumstance where there is an imminent default under the tax credits and the tax credit syndicator exercises its right to replace the manager of the Total Project. After the Completion of the Total Project, there shall be limited restrictions on the DEVEOPER'S principals and the identity of any successor lessee/owner of the Total Project.

2. Definitive Agreement

2.1 The Definitive Agreement will be a Joint Development Agreement ("Definitive Agreement") together with all necessary related documentation upon which WMATA and DEVELOPER mutually agree. The Definitive Agreement will be prepared initially by WMATA. Both parties commit to complete the Definitive Agreement so WMATA can present the agreed-upon Definitive Agreement to

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its Board for approval within one month of the Board's approval of this Term Sheet. WMATA and DEVELOPER shall execute the Definitive Agreement within three (3) business days of Board approval.

2.2 The parties shall attach the above referenced necessary related documentation to the Definitive Agreement as exhibits. Such exhibits shall include, but not be limited to:

a) a ground lease agreement (the "Lease") whereby WMATA will lease the Lease Property to the DEVELOPER for a single term of ninety-nine (99) years, with no renewal or option periods.
b) A conditions, covenants and reservations agreement ("CCRs"), to be recorded among the land records, which will: (i) protect WMATA's interests in its tunnel and associated elements and access thereto; and (ii) include transit oriented development covenants.
c) A co-tenancy agreement ("Co-Tenancy Agreement") between WMATA and DEVELOPER to be recorded among the land records after the CCRs which will control the operation and disposition of the Total Project after the Lease and any replacement lease provided to a lender have either expired or been irrevocably terminated.

2.3 The execution of the Lease ("Closing") will take place no later than six hundred (600) days after the WMATA Board approves the Definitive Agreement. The Definitive Agreement shall terminate no later than the Completion of the Total Project with any surviving obligations being included in the CCRs.

3. Property to Be Leased To DEVELOPER

3.1 WMATA will lease to DEVELOPER approximately 28,376 square feet of land, which area is outlined in yellow on **Exhibit A** and attached hereto (the "Lease Property"). The land is in three separate parcels: 1) approximately 3,799 square feet in Square 393, Lot 44; 2) approximately 8,621 square feet in Square 393, Lot 45; and 3) approximately 15,956 square feet in Square 416, Lot 31. The Lease Property shall not include those property interests necessary for protection of WMATA's transit facilities, which include the existing WMATA tunnel and associated elements.

3.2 DEVELOPER will cause an preliminary ALTA survey and title commitment to be prepared within two (2) months of the effective date of the Definitive Agreement and the final ALTA survey (assuming a closed public alley) and title commitment no later than thirty (30) days before the Closing. The final ALTA survey shall be completed early enough for WMATA and DEVELOPER to agree upon the legal descriptions to exclude the existing WMATA tunnel and associated elements.

ok for Term sheet But not JDA

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4. Project

DEVELOPER will construct improvements on the Lease Property (the "Project") in substantially the same configuration shown in **Exhibit B** and attached hereto, which configuration includes the Total Project, in accordance with a project schedule to be finalized and agreed upon at the Closing in accordance with the Definitive Agreement. The Project may not be materially changed without WMATA's written approval, such approval not to be unreasonably withheld, delayed or conditioned. The Project will consist of:

4.1 DEVELOPER improvements (the "DEVELOPER Improvements") are a minimum 100,711 gross FAR square feet including approximately 80,169 gross FAR square feet for residential apartment units per District of Columbia ("District") approvals and approximately 10,000 gross FAR square feet of retail/arts use, and approximately 10,542 gross FAR square feet of associated loading, lobbies, ramps, and residential and retail parking, per District approvals.

4.2 Assemblage.

a) Adjacent Parcels. An affiliate of DEVELOPER is the contract purchaser of Lot 41 & A&T Lot 826 in Square 393, comprising approximately [7,720] square feet of land fronting on 9th Street, NW and located contiguous to Lot 44 near the southwest corner of the intersection of 9th Street and Florida Avenue, N.W., in the District of Columbia (the "DEVELOPER Property"). The DEVELOPER Property is outlined in blue on the attached **Exhibit A.**

b) Total Project. WMATA and DEVELOPER have agreed to apply to close the portion of the public alley in Square 393 contiguous to Lots 41, 44 & 45 and A&T Lot 826 prior to the Closing so that promptly after the Closing, DEVELOPER can resubdivide such Lots and the portion of the closed public alley into a buildable lot of approximately [21,244] square feet. DEVELOPER is acquiring an interest in the Lease Property to develop a single, mixed-use, Transit-Oriented Development project on the combined Lease Property and DEVELOPER Property (the "Total Project").

c) Alley Closing. WMATA will consent to the alley closing prior to Closing, provided that when the portion of the public alley is closed, an easement among the owners will be recorded among the ~~owners~~land records to preserve the use of the closed portion of the public alley to protect WMATA's interests until the Closing. Such easement will be terminated upon the post-Closing resubdivision of the relevant land in Square 393 into a buildable lot. **Exhibit A** shows the portion of the closed alley that will become part of the Lease Property in red; the portion that will become part of the DEVELOPER Property is shown in green.

• Developer pay all costs
• Security Deposit covers unwinding or Damages

d) Co-Tenancy Agreement. At Closing, the parties will execute the Co-Tenancy Agreement, which will govern the operation, management and sale of all the improvements and the assembled Lease Property and DEVELOPER Property upon termination or expiration of the Lease without a new lease being obtained by a lender. The Co-Tenancy Agreement shall provide, *inter alia*, after the expiration or termination of the Lease, (i) each owner shall have an equal vote on the operation and management of the Total Project ~~unless~~ and no owner shall have the right to force a sale of the Total Project if the Lease expired without a default by the DEVELOPER, and (ii) the owners shall have a vote proportionate with their percentage of the Total Project on the operation and management of the Total Project and WMATA shall have the right during pre-set time windows to sell the Total Project for all cash to an unrelated purchaser if the Lease is terminated for an uncured default by the DEVELOPER without a new lease being obtained by a lender~~,~~ ~~whereupon voting shall be pro rata by ownership percentage, and (ii) WMATA shall have the right during pre-set time windows to sell the Total Property for all cash to an unrelated purchaser~~.

- if silent, Developer could get Partition
- why Equal vote if only own 21% of Project
- Independently Require Sale →

4.3 The DEVELOPER Improvements will be built in a single phase on the Lease Property as part of the Total Project.

5. Due Diligence

5.1 Lease Property 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 Lease Property 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 Lease Property in an "AS IS, WHERE IS" condition.

5.2 Study Period: Upon approval and execution of ~~the~~this Term Sheet, WMATA will grant DEVELOPER a Right of Entry Permit for entry onto the Lease Property, 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 Lease Property (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.

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 ~~One~~Two Hundred Fifty Thousand Dollars (~~$150,000.00),~~250,000.00) less the Additional Costs Credit (as defined in Section 7.2(b) below) (the "Security Deposit") to secure DEVELOPER'S performance. At the Closing upon DEVELOPER receiving the ~~$100,000~~Additional Cost Credit against the Capitalized Lease Payment, the Security Deposit will be increased to Two Hundred Fifty Thousand Dollars ($250,000.00). The DEVELOPER'S Proposal Security currently being held by WMATA, in the amount of One Hundred Thousand Dollars ($100,000.00), will be applied to the Security Deposit.

6.2 The Security Deposit will not be applied to any 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, with interest accrued, within twenty (20) business days following the "Completion of the Total Project," which is hereby defined as: (i) the issuance of one or more final certificates of occupancy for all residential apartment units and common areas, including parking; and (ii) one or more "shell" certificates of occupancy or equivalent for the retail portions of the Total Project, subject to completion of the tenant improvements for each unoccupied retail space; and (iii) correction of any damage to WMATA's property caused by Developer or its contractors, subcontractors or consultants; and (iv) satisfaction of all requirements of the WMATA Design Construction Standards applicable to the DEVELOPER Improvements.

7. Consideration

7.1 Option Fee: The DEVELOPER has previously paid WMATA One Hundred Thousand Dollars ($100,000.00) as an option fee (the "Option Fee"). The Option Fee is non-refundable and shall not be applicable to the Lease Consideration.

7.2 Rent:

a) Pre-Closing Rent. The DEVELOPER shall make quarterly non-refundable Pre-Closing Rent payments beginning upon the effective date of the Definitive Agreement. Pre-Closing Rent for the first twelve (12) months will be $50,000.00 per year, payable in advance in quarterly instalments of $12,500.00. Pre-Closing Rent will increase to $65,000.00 per year for the next twelve (12) months. For the remainder of the Pre-Closing Period, Pre-Closing Rent shall be $80,000.00 per year. Pre-Closing Rent shall be prorated for partial quarters.

b) Capitalized Lease Payment. DEVELOPER shall make a lump sum initial Capitalized Lease Payment of Two Million ~~Sixty-Four~~Fifty Thousand Dollars (~~$2,064,000)~~2,050,000) less the Additional Costs Credit at Closing~~, which includes an adjustment for the 99-year versus the 60-year Lease term in the appraisal, less a credit of $100,000 for added expenses~~. The term "Additional Costs Credit" is defined to be the amount of the third-party costs incurred by DEVELOPER, not to exceed $100,000, in the evaluation and negotiation of the proposed sale of the Lease Property to DEVELOPER based on copies of actual invoices for such third-party costs delivered to WMATA, which may be redacted to exclude any confidential or privileged information. This payment represents the entire base rent for the ~~Project~~Lease Property for the first 60 years of the 99-year term of the Lease. In no event will any part of the Capitalized Lease Payment be refunded. For the last 39 years of the 99-year Lease term, the fair value of the Lease Property shall be re-appraised through the three-appraiser method and a capitalized lease payment for the remaining 39 years or monthly payments of base rent with a 3% annual escalation shall be determined from either the average or middle of the three appraisals, with the DEVELOPER deciding which payment method will be used for the remaining 39 years.

Salaries?

Solely due to WMATA must Agree

Take it or leave it
99 yrs
- A60 - 3 Appraise
3% escalate
Every 10 years
• Periodic Rent → Revaluations
• why would developer → Decide?

c) Participation Rent. Participation Rent, at one and a half percent (1.5%) of Effective Gross Income from the improvements on the Lease Property shall be paid to WMATA beginning at the earlier of the DEVELOPER's receipt of Effective Gross Income or, until the Final Completion of the Total Project, the amount of Effective Gross Income DEVELOPER was projected to receive from the improvements on the

Lease Property under the Project Schedule in the Definitive Agreement; provided, however, one percent (1%) shall be unsubordinated to the payment of operating expenses, debt service, member loans, or equity~~;~~, and one-half percent (0.5%) shall be paid in accordance with HUD requirements. Any Participation Rent not paid in a given year shall accumulate interest at five and eight-tenths percent (5.8%) and be paid from the next annual cash flow or from Capital Event proceeds prior to any return on, or return of, equity. At all times during the Lease term, the debt service coverage ratio on any senior loans, other than HUD-insured senior loans or public subsidies, shall be no less than 1.20:1.00.

d) Capital Event Rent. Capital Events (defined below) shall be permitted in accordance with this Section 7.2(d). Whenever a Capital Event occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). A "Capital Event" will include, but not be limited to, 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 change the membership of the DEVELOPER to include new members not originally included as of the execution date of the Definitive Agreement but not including transfers among existing members, transfers to wholly-owned entities, intra-family transfers, transfers caused by death, transfers required for the initial debt and equity of the Total Project before the permanent loan closing and transfers of interests in publicly traded entities. 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~~In 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~~Events that involve a Lease or sublease assignment or a sale of the DEVELOPER Improvements, WMATA's share will be two percent (2%) of the gross proceeds. Gross proceeds are defined as all transaction revenues ~~to~~received by the DEVELOPER ~~from a Capital Event,~~(and any affiliated entities receiving income from ~~such a Capital Event, less the payoff of remaining original~~this event). WMATA will also share in the financial return to the DEVELOPER in the event of any refinance or financial restructuring in which the DEVELOPER realizes proceeds therefrom. WMATA's share will be two percent (2%) of the adjusted gross proceeds. The adjusted gross proceeds are defined as all transaction revenues to the DEVELOPER (and any affiliated entities receiving income from this event) less any debt ~~to construct~~on the ~~Project secured by~~ DEVELOPER Improvements ~~and repayment of the original equity and member loans to DEVELOPER not yet repaid including an Internal Rate of Return of twenty percent~~

Debt to unaffiliated parties

~~(20%)~~that is paid-off out of the Capital Event proceeds. To confirm DEVELOPER's original project debt and equity, within thirty days of the Closing, DEVELOPER will provide WMATA with documentation confirming such amounts. 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.~~ In no event will member loans and equity exceed thirty percent (30%) of development costs to construct the Project.~~

7.3 Pro Rata Split After Assemblage: The Definitive Agreement and Lease (as defined in Section 2.1 above) shall lease only the Lease Property, but shall provide that any Additional Density determination applicable to the Lease Property, the DEVELOPER Improvements or the Project shall be determined by using the pro rata share of the Total Project based on the ratio of the square feet of land of the Lease Property and the DEVELOPER Property. WMATA's pro rata share of the Total Project is 79.0%, subject to the final survey which shall be attached as an Exhibit to the Definitive Agreement.

7.4 Additional Density: If at any time during the ~~99-year term~~first 60 years of the Lease, DEVELOPER has received approval for additional density over 100,711 gross FAR square feet attributable to the Lease Property, DEVELOPER will adjust the Capitalized Lease Payment using the same methodology for calculating the Capitalized Lease Payment with an adjustment for any time between the Closing and the date the Additional Density is placed in service. The measurement of gross FAR square feet shall be the highest amount generated by the Lease Property, whether used on the Lease Property or not, in (i) any final zoning approval by the District of Columbia; (ii) building permit approval; or (iii) an amount approved in any revisions to the building permit prior to issuance of the final certificates of occupancy. Such additional density adjustments shall include any gross FAR square feet attributable to portions of the public alley located between 8th and 9th Streets, NW, which become part of the Lease Property in the alley closing process.

a) Prior Final Certificate of Occupancy: If the DEVELOPER receives approval for additional density prior to receipt of the final certificate of occupancy for the Total Project or while a HUD insured loan remains in place, the additional density Capitalized Lease Payment adjustment shall be as follows:

(i) An upward adjustment in the Capitalized Lease Payment by $50/gross FAR square feet for additional density generated by the Lease Property over 100,711 gross FAR square feet; and

(ii) After the additional density consideration in 7.4(a)(i) is added, a downward adjustment in the Capitalized Lease Payment by $80/gross FAR square feet for such additional

density generated by the Lease Property which increases the Project's affordable housing requirement pursuant to the District's mandatory Inclusionary Zoning regulations (Chapter 26 of the Zoning Regulations of the District) over 6,414 gross FAR square feet

NOTE: WMATA expects to adjust these amounts based on the relationship of the Capitalized Lease Payment for a period of 60 years to the fee simple land value.

b) After Final Certificate of Occupancy: During the first 60 years of the term of the Lease, if HUD insurance no longer remains in place, any densities or unit totals actually constructed on the DEVELOPER Improvements that are more than those in effect at receipt of the Final Certificate of Occupancy for the Project and for which no increase in Capitalized Lease Payment has been paid, such additional densities or unit totals will require DEVELOPER to pay additional Capitalized Lease Payment. The additional Capitalized Lease Payment payments will be determined through the three-appraiser method, to be defined in the Definitive Agreement and based on the then-remaining time until the 61st year of the term of the Lease. Since the resetting of the base rent in the 61st Lease year will be based on vacant land, there shall be no additional density adjustments after the 60th Lease year.

7.5 Additional Consideration: The Capitalized Lease Payment, including any adjustments made under Section 7.4(a) above, shall be increased annually by five and 8/10ths percent (5.8%) per year from the execution of the Definitive Agreement, if Closing or Additional Density occurs later than six hundred (600) days from execution of the Definitive Agreement. No Additional Consideration increase shall be applied for any delay caused by WMATA under Section 7.6. If Additional Density occurs after Closing, then only the increase in the Capitalized Lease Payment for such Additional Density shall be subject to the 5.8% annual increase.

7.6 WMATA Delays: The maximum length of six hundred (600) days to Closing will be extended for delays caused solely by WMATA actions or failure to act, including requesting FTA Approval in accordance with Section 8.5 below. Such extension(s) shall be for the amount of time reasonably necessary to compensate for the delay caused solely by WMATA, *e.g.*, if such a delay causes DEVELOPER to miss a planned filing date which results in a one day-for-one day delay, then the extension shall be measured in days with respect to that filing date, however, if the filing date is for some action which is only available in a certain "time window" and the delay causes DEVELOPER to miss the filing date for such "time window," then the extension shall be measured in a period equal to the next available "time window" with respect to that filing

date. In no other event, other than Force Majeure Delays as defined in Section 7.7 below, will Closing be delayed, even though DEVELOPER'S schedule may take longer than anticipated.

7.7 Force Majeure Delays: The maximum length of six hundred (600) days to Closing may be extended 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. Such Force Majeure Delays shall be subject to an increase in the Capitalized Lease Payment, as provided in Section 7.5 above, in order to maintain the net present value of the Definitive Agreement and Lease to WMATA. In no event shall the time for Closing be extended beyond one hundred eighty (180) days due to Force Majeure Delay.

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 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 ten (10) days of execution of the Definitive Agreement and prior to any final submission to the District, DEVELOPER shall submit to WMATA for its approval a conceptual Total Project site plan in substantial conformance with Exhibit B, including building elevations and floor plans (the "WMATA-Approved Site Plan"). The design of the Total 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 Lease Property. WMATA shall make all reviews and approvals or disapprovals of DEVELOPER'S initial submission to WMATA within thirty (30) days of receipt of such submission by WMATA.

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 Total Project and as shall otherwise be reasonably satisfactory to DEVELOPER and WMATA.

9. Special Considerations

9.1 Community Contact: Within one hundred twenty (120) days of the execution of the Definitive Agreement DEVELOPER shall contact the appropriate community groups in the area as specified by WMATA to apprise such groups of the Total 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. WMATA will include a list of all such groups as part of the Definitive Agreement.

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

a) DEVELOPER will fund any and all costs of the Approvals. WMATA will not incur any costs in connection with the Approvals either in the actual Approvals process or for required on-site or off-site improvements or other work. DEVELOPER shall indemnify WMATA against any such costs.
b) 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, partial alley closing and soil and erosion control measures as required by the District or any other local, state, or federal agency having jurisdiction.
c) WMATA shall cooperate with DEVELOPER in all zoning and other related Approvals, including the filing of the alley closing application, lot consolidation/resubdivision application, etc.

d) The resubdivision of the Lease Property, the DEVELOPER Property and the closed portion of the public alleys in Square 393 will not be completed until after Closing.

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

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 previously approved by WMATA (the "Approved Site Plan"), such modifications will be subject to WMATA's approval, not to be unreasonably withheld, delayed or conditioned.

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 improvements on the Lease Property or the DEVELOPER Property that materially and adversely affect WMATA's operations. The design and construction plans for such improvements will incorporate the most recent revisions of WMATA's design and construction standards and criteria, including, without limitation, WMATA's Adjacent Construction Project Manual, Revision 3, dated December 2008 (collectively, "WMATA Design and Construction Standards"). If the DEVELOPER commences construction of the DEVELOPER Improvements within three (3) years of the date of the Definitive Agreement, the DEVELOPER may use the version of the WMATA Design and Construction Standards that is in effect on the date of the Definitive Agreement, without subsequent amendments or revisions, with respect to the Approvals, the WMATA-approved Site Plan and the design and construction plans for the DEVELOPER Improvements; otherwise, the most recent versions of the WMATA Design and Construction Standards, as amended and revised from time to time, shall be applicable. The Total Project will be reviewed in accordance with, and must conform to the requirements of, the aforementioned documents.

9.6 Construction Requirements: DEVELOPER shall cause all of the components of the DEVELOPER 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 unless WMATA is prohibited from being so named by the FHA lender under the HUD financing utilized by DEVELOPER, and evidence of such bonds shall be furnished by DEVELOPER to WMATA at Closing.

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9.7 Interim Improvements: intentionally omitted.

9.8 Guaranty: At the Closing, ~~Bannekar~~BACDC or another guarantor reasonably acceptable to WMATA will execute an unconditional guaranty ("Guaranty") to WMATA with the total liability thereunder limited to One Million Five Hundred Thousand Dollars (~~$1,000,000~~1,500,000) plus the cost of enforcing the Guaranty against the guarantor. The Guaranty will be released by WMATA upon the Completion of the Total Project. The Definitive Agreement will include a minimum financial test to be met by the guarantor which will be ~~$1,000,000~~1,500,000. The adequacy of security and need for this Guaranty to be further discussed in the Definitive Agreement. The Guaranty will unconditionally guarantee to WMATA:

a) the completion of construction of the DEVELOPER Improvements;
b) the completion of infrastructure required by either the District or WMATA that is not included in the Site Work;
c) the completion of any demolition and removal of DEVELOPER Improvements as and when required under the terms of the Definitive Agreement;
d) the remediation of all hazardous materials as required by the Definitive Agreement or by applicable laws, courts or governmental authorities;
e) the required parties maintain the insurance required by WMATA under the Definitive Agreement; and in the event such insurance is not maintained and no insurer pays a claim that would have been paid if such WMATA required insurance had been maintained, the Guarantor shall indemnify WMATA up to the relevant insurance limit amounts;
f) the restoration of the Lease Property to the condition it was in on the date of Closing should work cease on the excavation portion of the project above the Lease Property longer than 30 days; and
g) the timely payment all DEVELOPER obligations under the Definitive Agreement, including full payment of any increase in the Capitalized Lease Payment for any Additional Density which increases the Capitalized Lease Payment after the Closing.

9.9 Transit-Oriented Development/Continuing Transit Orientation: DEVELOPER will design the DEVELOPER Improvements 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.

9.10 Transit Operations: Neither the construction nor the operation of the Project will interfere with the safety or 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 Lease Property, 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 District 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 Lease Property 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 Lease Property or breach of any agreement with WMATA, 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 who physically alter the Lease Property will be obligated, at their sole cost and expense, to restore the Lease Property to the similar condition existing immediately prior to those activities. Both the Lease and the CCRs shall contain indemnification of WMATA.

11. Insurance Requirements

DEVELOPER, and each of its consultants, contractors and subcontractors that enter onto the Lease Property, 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 except that DEVELOPER shall have the exclusive right to negotiate a Definitive Agreement with WMATA for a period of one hundred fifty (150) days 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 CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008479

Agreed this _____ day of November, 2009, by

Washington Metropolitan Area Transit Authority

By: _____
Steven E. Goldin
Director, Office of Station Area Planning and Asset Management
Department of Planning and Joint Development

The Jazz @ Florida Avenue, LLC

By: _____

Title: _____

Summary Report: Litera Change-Pro ML WIX 6.5.0.104 Document Comparison done on 11/4/2009 3:14:48 PM	
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Original Filename:	
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Changes:	
Add	44
~~Delete~~	33
~~Move From~~	2
Move To	2
Table Insert	0
~~Table Delete~~	0
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DRAFT
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JOINT DEVELOPMENT AGREEMENT

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
WMATA

and

BANNEKER VENTURES, LLC,
Developer

The Jazz @ Florida Avenue

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

Washington, DC

Dated as of August ___, 2008

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008482

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008487

JOINT DEVELOPMENT AGREEMENT

THIS JOINT DEVELOPMENT AGREEMENT ("Agreement") is dated as of this _____ day of August, 2008 (the "**Effective Date**"), and 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 **BANNEKER VENTURES, LLC**, a District of Columbia limited liability company (hereinafter, along with permitted successors and assigns, called "**Developer**").

include metropolis (Ts)

RECITALS

WHEREAS, WMATA is the owner of certain real property, consisting of approximately 28,892 square feet of land area (the "**Development Property**"). The Development Property is located at the intersection of 8th Street and Florida Ave, NW and 9th Street and Florida Ave, NW in Washington, DC.

WHEREAS, WMATA issued a Request for Expressions of Interest on _____, 2007 for a possible joint development project on the Development Property; and

WHEREAS, Developer and others were selected to submit detailed proposals for Joint Development Solicitation ("JDS") by October 5, 2007; and

WHEREAS, Developer was selected by WMATA as the developer for the joint development project, NW; and

WHEREAS, in compliance with the JDS, WMATA and Developer wish to enter into this Joint Development Agreement ("Agreement").

NOW THEREFORE, in consideration of the sum of Ten Dollars ($10.00), 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 agree as follows:

ARTICLE 1
DEVELOPMENT PROPERTY, PRECONSTRUCTION PERIODS, DEVELOPMENT PERIOD, DEVELOPER SELECTION, AND DEVELOPMENT COSTS

1.1 Development Property.

1.1.1 Description of Development Property. The Development Property consists of approximately 28,892 square feet of land area. The land is in three separate parcels: 1) Square 393, lot 44 containing approximately 3,799 square feet; 2) Square 393, lot 45 containing approximately 8,621 square feet; and 3) Square 416, lots 18 and 31 containing approximately 16,452 square feet. The Development Property is located at the intersection of **8th Street and Florida Ave, NW and 9th Street and Florida Ave, NW** both in Washington, District of Columbia. The Development Property is more particularly described in the survey attached hereto as **Exhibit 1.1.1A**. The Development Property consists of the WMATA Reserved Areas and the Leased Premises.

1.1.2 Approval of State of Title to the Development Property.

1.1.2.1 Developer hereby unconditionally approves the legal description of the Leased Premises 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**"); (v) the Covenants, Conditions, Cross-Easements and Reservations and (vi) encumbrances arising out of the actions or inactions of Developer or any person or entity acting on Developer's behalf.

Include Definition of Leased Premises

1.1.2.2 WMATA retains ownership of, and shall not sell or lease to Developer, those portions of the Development Property which are described as the "**WMATA Reserved Areas**" on Exhibit 1.1.1B hereto.

1.1.3 Ratification and Confirmation of WMATA's Retained Rights. WMATA's fee simple interest in ~~any~~ The Leased Premises shall be and always remain unsubordinated. On the expiration or termination of ~~a~~ The Lease (by lapse of time or otherwise), sole ownership of the Leased Premises subject to such Lease, and the right to possess and use the same, shall automatically pass to and be vested in WMATA. Likewise, any Tenant's ownership in improvements on the Leased 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008489

1.1.4 Conditions of Demise and of Leasehold Title. This Agreement does not create a present leasehold estate in Developer in the Development Property. Developer and WMATA will execute a lease in the form of the lease attached hereto, and incorporated herein, as Exhibit _____ (the "**Lease**"). The Lease will control the lease of the Development Property by WMATA to a Tenant. govern?

1.2 Preconstruction Periods and Duties

1.2.1 No Representations or Warranties; Acceptance of Duties and Risks.

1.2.1.1 Except as expressly set forth in Article 26 of this Agreement, WMATA has made, and makes, no representation or warranty regarding the Development Property, including its suitability for the Project, its physical or environmental condition (including the existence or non-existence of Hazardous Materials, either surface or subsurface), its value, its compliance or lack of compliance with any Applicable Law or regarding the feasibility of the Project.

1.2.1.2 Developer has been provided with ample opportunity to fully conduct due diligence and is relying solely on such due diligence. Except for liabilities and risks resulting from any noncompliance by WMATA with its environmental obligations under Article 8 of this Agreement or from any act or omission on the part of WMATA or any of its employees, agents or contractors which creates a Hazardous Materials condition on the Development Property on or after the Effective Date, Developer expressly assumes ~~(and each Tenant shall assume)~~ (a) all duties, responsibilities and liabilities related to Developer's ~~and Tenant's~~ respective activities on the Development Property and (b) all risks associated with the Project, including, without limitation, environmental liability, market conditions, and other feasibility related matters, such as, by way of example, those associated with projected development cost requirements, profits, taxes, exactions, rents, demand for rental space, and the like. ~~The foregoing sentence shall not relieve WMATA of its obligation to provide title in conformity with Sections 12.2.1 and 12.3.1, as applicable herein, for each portion of the Development Property being leased to a Tenant pursuant to this Agreement.~~ any tenants

1.2.1.3 Any documents, opinions, or work product prepared by WMATA or by WMATA's consultants, surveyors, architects, engineers, title companies, governmental authorities or any other person or entity have been provided to Developer only for the convenience of both parties, and (a) may not

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008490

be relied upon by Developer ~~or any Tenant~~ or any tenant and (b) do not constitute any representation by WMATA regarding the accuracy or completeness of any such items.

1.2.2 Right of Entry Period and Developer's Due Diligence. Developer will have a "**Right of Entry Period**" pursuant to the terms of a Real Estate Right of Entry Permit dated _____, a copy of which is attached hereto, and incorporated herein, as Exhibit _____ (the "**Real Estate Right of Entry Permit**"). Developer and its agents will prepare, or cause to be prepared, a Phase I environmental assessment of the Development Property (the "**Phase I Assessment**") and, if necessary, a Phase II environmental assessment of the Development Property (the "**Phase II Assessment**") and the report thereof (the "**Phase II Report**"). Developer shall provide copies of the Phase I Environmental Assessment and the Phase II Assessment/Phase II Report, if ~~applicable~~ obtained, to WMATA within Thirty (30) Days of receipt. Subject to any exceptions regarding Hazardous Materials in this Agreement, Developer and each Tenant shall accept the Leased Premises "AS IS" without any liability of WMATA for the existence or nonexistence of Hazardous Materials or any other detrimental physical or environmental conditions on, in, or under the Development Property which existed as of the Effective Date of the Real Estate Right of Entry Permit. match ROE?

1.2.3 Pre-Stabilization Period. The Pre-Stabilization Period shall commence on the Effective Date. What Constitutes Stabilization? Pre-Stabilization period shall End upon ~~the Earlier of~~ Developer obtaining ~~Zoning~~ Approvals Stab ~~or 45 months~~. Defines Stab. Allow Terminate after 45 mos.

1.2.4 WMATA Public Hearing. The Developer and WMATA acknowledge that WMATA has held a public hearing to consider the Project (addressing displacement, construction, and/or replacement of the WMATA Improvements) consistent with the WMATA Compact.

1.2.5 [illegible] 1.2.5

1.3 Development Period

1.3.1 Timing of Development. Developer or the applicable Tenant shall develop the Project following Closing in accordance with the schedule set forth in Section 5.2.1. to the terms of the Lease

1.3.2 Termination Filings. Developer, at WMATA's request and expense (except as otherwise provided in this Agreement), shall perform such acts and execute, acknowledge and deliver such documents and instruments as WMATA may reasonably request to evidence any termination of this Agreement.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008491

1.4 Term of This Agreement.

Dev.

This Agreement shall be effective as of the Effective Date and terminate on the earlier of: 1) the execution and delivery by the last of WMATA or Tenant, as applicable, of the Lease to be delivered in accordance herein; 2) Project Stabilization; 3) Forty-five (45) months from the Effective Date; or 4) as otherwise expressly provided under this Agreement. Nothing contained in this Section 1.4 shall be deemed to release Developer or WMATA in respect of any accrued liability or any surviving indemnity obligations under this Agreement.

1.5 Development Costs.

Define Project

Developer is responsible for all Project costs and expenses, including, but not limited to, all pre-development costs (such as variance, subdividing and permitting) and all costs associated with constructing, installing, operating and maintaining any and all Developer Improvements and infrastructure required to be constructed for the Project [redacted]

1.6 Financing Contingency. → Rep per TS

Developer's right to terminate this Agreement due to lack of financing shall be as set forth in Section 16.13 hereof.

1.7 Developer Selection.

1.7.1 Developer Selection and Grant of Development Rights. WMATA hereby authorizes Developer to develop and, after Lease Closing, construct the Project.

1.7.2 Basis of Selection of Developer. This Agreement is a personal services contract. Developer's principals were originally selected because of their skills, experience, knowledge, past experience and financial standing, Developer has been permitted to serve as the developer based on the unconditional, irrevocable and continuing commitment of Banneker Ventures, LLC, Metropolis Development Company, LLC, and _____ to have and maintain direct and continuing involvement in the Project including, except as permitted by this Agreement, the direct and continuing involvement in the control, direction and management of Developer by Banneker Ventures, LLC, Metropolis Development Company, LLC, and _____.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008492

ARTICLE 2
ZONING

2.1 Zoning Approvals.

Developer shall be responsible for obtaining development plan approval from the City to develop the Development Property with the uses and densities described in Section 3.1.2 all as set forth on **Exhibit 2.1** hereto (**"Zoning Approvals"**). Developer shall also obtain "use permits" from the City for development in accordance with the Zoning Approvals and Section 2.3.1. Subject to Section 5.2.3.2, Developer agrees to use, or cause the Tenant, to use, its Best Efforts to seek all other approvals (including, without limitation, use permits to develop in accordance with the Zoning Approvals and Section 2.3.1), permits and consents (collectively, **"Additional Required Permits"**) needed to develop the Development Property in accordance with the terms of this Agreement, the Lease, and the Zoning Approvals.

2.2 Intentionally Omitted.

2.3 Development Plan.

2.3.1 The allocation of uses and densities based on Section 3.1.2, below, is set forth in the following schedule:

Uses	**Densities** (minimum requirement)
FAR	130,014 gross square feet
Residential	104 units
Retail/Arts space	11,750 gross square feet
Parking Spaces	47 below-grade spaces

2.3.1.1 **Modifications of Zoning Approvals.** Developer shall neither submit to, nor accept any proposals (oral or written) from the City (or any other governmental authority having jurisdiction) that are inconsistent with, in a manner which is adverse to WMATA, or require a material change in the Zoning Approvals, without the prior written consent of WMATA. A material change to the Zoning Approvals shall include, without limitation, any change that (a) is inconsistent with Sections 2.3.1 and 3.1.2 of this Agreement or (b) would have a material adverse effect on any of the following: (i) the Project, (ii) the WMATA Facilities, (iii) the operation of the Metrorail Station, (iv) the WMATA Reserved Areas, (v) the economic value to WMATA of the arrangement described in this Agreement or (vi) the ability of Developer or Tenants to perform their obligations in accordance with the terms of this Agreement or the Lease. Developer need not obtain WMATA consent for non-material changes to the Zoning Approvals

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008493

or changes required by the City (or any other governmental authority having jurisdiction).

2.3.1.2 **No Assumption of Liability or Waiver of Rights.** WMATA accepts no liability and waives none of its rights under this Agreement solely by reason of its approval of the Zoning Approvals, except that WMATA's approval of the Zoning Approvals constitutes a waiver of WMATA's right to object to the Zoning Approvals, to the extent of the information disclosed therein.

2.3.1.3 **Changes to Applications.** Developer may not change the Zoning Approvals that adversely affect the criteria listed in Section 2.3.1 or Section 2.3.1.1, without WMATA's prior written approval. Any proposed changes shall be promptly submitted to WMATA for approval in accordance with the procedure set forth in Section 2.4.3 for Submissions to be made after initial denial by WMATA.

2.3.2 WMATA's Agreement to Cooperate. WMATA, as owner of the Development Property, shall join in or be the applicant under applications for any permits or additional approvals, final site plan (the "**Site Plan**"), subdivision, or other approvals, provided that such applications are consistent with the Zoning Approvals and the requirements of this Agreement, but WMATA shall not incur out of pocket costs or expenses.

2.3.3 Coordination for Obtaining Subdivision and Other Approvals.

2.3.3.1 WMATA and Developer will designate an individual as its Project representative (respectively, the "**WMATA Project Representative**" and the "**Developer Project Representative**"), to coordinate the exchange of information and to process requests relevant to this Agreement. As of the Effective Date, (a) the WMATA Project Representative shall be the Director of WMATA's Office of Property Development and Management and (b) the Developer Project Representative shall be _____. Each party shall deliver to the other notice of any change in the identity of its Project Representative. The WMATA Project Representative shall be kept fully informed (as appropriate in the context by timely advance written submissions and telephone and facsimile communications) of all pending meetings, hearings and conferences with governmental agencies occurring in connection with the Zoning Approvals, subdivision and Site Plan approvals and the Final Approval process and the WMATA Project Representative or its designee 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 from all other

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008494

governmental authorities having jurisdiction shall be promptly delivered to the WMATA Project Representative.

2.3.3.2 Nothing contained in this Section 2.3.3 modifies any obligation of the parties with respect to the delivery of notices under **Article 22.**

2.3.4 Intentionally Omitted.

2.3.5 Subdivision; Approvals. If Developer determines that subdivision and platting of the Development Property or any part thereof shall be necessary or desirable, and Developer pursues same, Developer shall notify WMATA and shall use its Best Efforts to obtain such subdivision approval. Should such determination be made by Developer after Lease Closing, Developer, at Developer's sole cost and expense shall secure all necessary consents therefor from the applicable Tenant to the extent the Lease(s) do not provide therefor. WMATA shall cooperate with Developer's efforts to accomplish such subdivision and platting. Such cooperation shall include, but not be limited to, execution of all documents reasonably necessary or desirable to be executed by WMATA and appearance at all hearings and proceedings necessary or desirable to be attended by WMATA, all as reasonably requested by Developer, but at no out-of-pocket cost or expense to WMATA.

modifications of Zoning Approvals, additional Required permits

2.4 Submission of Proposed Applications for Subdivision, Site Plan Approval and Infrastructure Development.

2.4.1 Compliance of Developer's Submissions with Zoning Approvals. Prior to applying for governmental approval of any proposed Site Plan or subdivision of the Development Property or for infrastructure development (individually, a **"Submission"**), Developer shall first deliver the Submission to WMATA for its review and approval in accordance with the applicable procedures of this Section 2.4. Unless otherwise permitted by WMATA, in its discretion and in writing, all Submissions:

2.4.1.1 Shall comply with this Agreement including, without limitation, the Zoning Approvals;

2.4.1.2 Shall not contain, propose or constitute an acceptance of features that could or would result in any adverse impact on safety, ingress to, egress from, security of, and operation of, WMATA Reserved Areas or the WMATA Facilities; and

2.4.1.3 Shall not contain, propose, or constitute an acceptance of any restrictions or of the imposition of requirements that would or could require a change in the schedule for each Phase, or the schedules set forth in Sections 2.3.1 or 3.1.2 or 5.2 of this Agreement. Development as set forth in the Lease and This Agreement

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008495

2.4.2 No Detriment to Project and the WMATA Reserved Areas. WMATA shall have the right to approve or disapprove in its sole discretion any proposed Submission that may, in the judgment of WMATA, have a material adverse effect on any of the following: (a) the Project, (b) the WMATA Facilities, (c) the operation of the Metrorail Station, (d) the WMATA Reserved Areas, (e) the economic value to WMATA of the arrangement described in this Agreement, or (f) the ability of the Developer or the Tenants to perform their obligations anticipated pursuant to the terms of this Agreement or the Lease. In addition, Developer agrees that any infrastructure or other development proposed to be constructed by Developer on any portion of the Development Property not then subject to a Lease shall require the prior written approval of WMATA. WMATA's approval shall either be granted or denied within thirty (30) Business Days after delivery of Developer's request for approval to WMATA, and shall not be unreasonably withheld, conditioned or delayed. Moreover, unless Developer obtains the prior written approval of WMATA specifically to allow such infrastructure or other development to remain in place in the event of a termination of this Agreement or any earlier removal of the affected real estate from the Development Property, Developer may be required, at the option of WMATA, to remove any or all of said infrastructure or other development, but only if WMATA notifies Developer in writing, not later than the one hundred eightieth (180th) day following the date of termination of this Agreement or the date of any earlier removal of the affected real estate from the Development Property, that WMATA has concluded, in the good faith exercise of its reasonable judgment, that the continued presence of such infrastructure or other development could significantly impede or restrict the future development of the Development Property or WMATA's future use of the Development Property.

2.4.3 Submission Procedures. Within Thirty (30) Business Days after receipt of the proposed Submission, together with all related and supporting materials, WMATA shall review the Submission and provide either its denial with comments, or its approval, in writing to Developer.

2.5 No Assumption of Liability or Waiver of Rights. WMATA accepts no liability and waives none of its rights under this Agreement solely by reason of its approval of any Submission, nor shall its approval be construed to be a warranty thereof.

2.6 Changes to Submissions. After a Submission has been approved by WMATA, Developer may make no changes that adversely affect the criteria listed in Section 2.3.1 ~~or Section 2.3.1.1~~ or the schedule in Section 5.2, without WMATA's prior written approval. Any proposed changes shall be promptly submitted to WMATA for approval in accordance with the procedure set forth in Section 2.4.3 for Submissions.

ARTICLE 3
DEVELOPMENT

3.1 Developer Improvements.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008496

3.1.1 Proposed Uses. The Developer Improvements to be constructed on the Development Property shall be constructed in one (1) phase and shall include the uses listed in the tables set forth in Sections 3.1.2 and 2.3.1 of this Agreement subject to the ~~remainder of~~ this ~~Section~~ ARTICLE 3.~~1.1~~. Developer shall undertake Best Efforts to develop not less than such uses and densities listed in the table set forth in Section 2.3.1.

3.1.2 Development Uses. Developer shall obtain Zoning Approvals and certain other approvals from the City which allow for the following uses and densities to be developed on the Development Property, ~~subject to receipt of certain additional use and other permits and approvals~~: Connect to 2.3.1

Take out other References to 3.1.2

Uses	Densities
FAR	130,014 gross square feet
Residential	104 units
Retail/Arts	11,750 gross square feet
Parking Spaces	47 below grade spaces

3.2 Covenants, Conditions, Cross-Easements and Reservations

3.2.1 At the time of execution of the Lease, Developer and WMATA shall execute an agreement for covenants, conditions, cross-easements and reservations affecting the Development Property (including, but not limited to, the WMATA Reserved Areas), in substantially the form attached hereto as **Exhibit 3.2.1** ("**Covenants, Conditions, Cross-Easements and Reservations**") to be recorded, at Developer's expense, against the Development Property (including, but not limited to, the WMATA Reserved Areas).

3.2.2 Each Tenant shall be required by its lease or sublease to comply with the Covenants, Conditions, Cross-Easements and Reservations.

3.3 WMATA Improvements.

3.3.1 Existing WMATA Improvements. As of the date hereof, the Development Property contains _____.

3.4 Maintenance of Infrastructure.

Developer or Tenant, as the case may be, and not WMATA, shall have a continuing obligation to maintain, operate, repair and replace any infrastructure constructed on the Development Property by Developer or any Tenant, except with respect to (i) infrastructure constructed on the WMATA Reserved Areas, which WMATA shall maintain, operate, repair and replace at its cost, and (ii) infrastructure on any portions of the Development Property which becomes owned by or subject to control by any public party (including, but not limited to the City or WMATA).

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008497

ARTICLE 4
CONSIDERATION FOR PRE-STABILIZATION PERIOD

4.1 Performance Security.

Concurrent with the execution of this Agreement, Developer shall deliver a cash security deposit to WMATA, in the amount of Two Hundred Fifty Thousand Dollars ($250,000), as performance security, ("**Performance Security**").

4.2 Pre-Stabilization Rent Payments.

Leave?

Pre-stabilization rent payments shall begin upon the Effective Date, as consideration for WMATA granting the Developer the exclusive right to develop the Development Property pursuant to this Agreement (the "Pre-Stabilization Rent"). All Pre-Stabilization Rent payments shall be paid in immediately available funds and shall be non-refundable.

4.2.1 First Pre-Stabilization Rent Payment Period.

The Developer shall pay the first Pre-Stabilization Rent payment to WMATA within three (3) Days of the Effective Date. Pre-Stabilization Rent from the Effective Date through the Fifteenth month after the Effective Date (the "First Pre-Stabilization Rent Period") shall be due in the annual amount of One Hundred Thousand Dollars ($100,000.00). Payments shall be paid in equal quarterly installments. Pro Rated and First & Last

4.2.2 Second Pre-Stabilization Rent Payment Period.

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

4.2.3 Third Pre-Stabilization Rent Payment Period.

Beginning the Twenty-eighth (28th) month and continuing through the end of the Pre-Stabilization Period (the "Third Pre-Stabilization Rent Period"), Pre-Stabilization Rent 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.

~~4.3 [Intentionally Omitted]~~

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ARTICLE 5
DEVELOPMENT AND LEASES

5.1 [Intentionally Omitted]

5.2 Closing Dates.

5.2.1 Conveyance Dates. Subject to terms of this Agmt Section 5.3.1, Developer, or its assignee, and WMATA ~~shall~~ will enter into a construction and ground lease agreement for the development of the Development Property, substantially in the form attached hereto as Exhibit 5.2.1 (the "Lease"), on or before 15 mos._____.

5.2.2 Failure to Timely Close.

5.2.2.1 If Developer fails to execute a Lease which satisfies the criteria set forth in this Agreement by the relevant date required in Section 5.2.1, and such failure is not in any manner related to any delay or other act or omission on the part of WMATA, then WMATA at its sole discretion may terminate this Agreement; provided, however that WMATA may not terminate this agreement unless WMATA delivers a notice to Developer of WMATA's intent to terminate this Agreement and Developer to execute the Lease within thirty (30) days after receipt of such notice. In the event of such a termination, Section 16.1.3 shall apply.

By written Notice to Dev.

5.2.2.2 If Developer anticipates that, as a result of a moratorium on the granting of zoning approvals and permits imposed by the City, Developer will not be able to obtain any additional required approvals before the date set forth in Section 5.2.1 for the execution of a Lease, Developer shall so notify WMATA. In such event, notwithstanding anything to the contrary set forth in ~~Section 5.2.3.1 or elsewhere in~~ this Section 5.2, the dates set forth in Section 5.2.1 for conveyance of the applicable phase shall be extended one day for each day of delay in obtaining the applicable additional required approvals resulting from the moratorium.

5.3 Lease Closing Dates.

5.3.1 Developer shall give WMATA thirty (30) Days' prior written notice ("**Proposed Tenant Notice**") of Developer's intention to execute the Lease, and shall include with such notice a copy of the proposed Lease in the form attached hereto as **Exhibit** _____.

5.3.2 Construction of Developer Improvements shall not commence prior to the Lease Closing.

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5.4 Relationship of Lease to this Agreement.

5.4.1 Upon full execution and delivery of ~~a~~ the Lease and all other agreements to be executed between WMATA and ~~Tenant~~ Developer in connection with the Lease, such Lease and such other agreements executed in connection therewith shall exclusively govern the relationship between WMATA and the ~~Tenant~~ Developer with respect to the Development Property.

5.4.2 Bold WMATA's Operation of Development Property Prior to Lease. Prior to entering into ~~a~~ the Lease, WMATA shall have at all times the unrestricted right, but not the obligation, to perform any work desired by WMATA on the ~~Leased Premises~~ Development Property, including without limitation any environmental testing, studies, evaluations or remediation in, on or about the Leased Premises; but excluding the construction or installation of any improvements and the performance of any other work, which would, ~~in either case~~, otherwise affect the Leased Premises in any manner that would make its development by Developer more costly or otherwise more burdensome than would have otherwise been the case in the absence of WMATA's performance of such work. *Provided*, however, that WMATA shall be permitted to make any improvements it is or would be permitted to make under ~~any~~ the Lease and Covenants Conditions, Cross-Easements, and Reservations Agreement. In furtherance of the foregoing, and not in limitation thereof, Developer and WMATA agree that WMATA shall be permitted to construct or install improvements on the Development Property, but WMATA shall remove all such improvements, which it constructs or installs prior to execution of the Lease, that is required by Developer, in its sole and absolute judgment, in order to facilitate the development of the Project, within ninety (90) Days after receipt by WMATA of notice from Developer, which notice may be given at any time on or after the date on which Developer receives approval of the Site Plan, time being of the essence in WMATA's removal of such improvements. 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, (b) to consent to any work on or about the Development Property by any party (except to the extent necessary for compliance by Developer with the provisions of this Agreement), (c) to remove any real estate from, or otherwise reconfigure, the Development Property, or (d) to remove any improvements that WMATA is or would be permitted to make under ~~any~~ the Lease Covenants, Conditions, Cross-Easements, and Reservations Agreement, or that WMATA has made on a WMATA Reserved Area.

5.5 Conditions Precedent to Lease.

Prior to execution of the Lease, Developer shall provide to WMATA (a) written evidence of debt and equity financing commitments sufficient for completion of the Project, (b) such other information as WMATA may reasonably request concerning Developer's compliance with federal, City, or local governmental requirements, procedures, or other circumstances which were imposed or implemented after the Effective Date, (c) such other similar information as WMATA may reasonably request consistent with information which would be provided by a developer or a ground lessee in similar commercial transactions in the Washington, D.C. metropolitan area, and (d)

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proof of satisfaction of the conditions precedent to the applicable Lease Closing pursuant to Section 21.2.3.

ARTICLE 6
PROJECT COMPLETION

6.1 Development. Developer, subject to the restrictions, covenants, terms and conditions of this Agreement, and at its sole cost and expense, shall develop the Project, pursuant to the terms of this Agreement and the Lease, in a first class manner in accordance with the Zoning Approvals, as applicable.

~~**6.2 Intentionally Omitted.**~~

6.3 WMATA Improvements

Any WMATA Improvements ~~and Replacement Facilities~~ Keep shall be the exclusive property of WMATA.

6.4 Disclaimer of Liability.

WMATA accepts no liability and waives Submissions none of its rights under this Agreement solely by reason of its approval of any Construction Drawings and Specifications nor shall its approval be construed to be a warranty regarding the quality or means of construction of any ~~WMATA Improvements or Developer~~ Improvements.

~~**6.5 Intentionally Omitted.**~~

~~**6.6 Intentionally Omitted.**~~

6.7 Force Majeure Events.

6.7.1 Definition. "Force Majeure Event" [redacted] as applicable.

6.7.2 Failure to Pay Sums Not a Force Majeure Event. In no event shall the failure to pay any sums constitute a Force Majeure Event.

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6.7.3 Force Majeure Event Not A Ground for Delaying Payments; A Force Majeure Event shall not constitute a ground for delaying any payment due to WMATA pursuant to Article 4 of this Agreement when and as such amount becomes payable. If, as a result of any Force Majeure Event, Developer expects that a delay will occur in the achievement of Substantial Project Completion, then, subject to Section 6.8, the date for Substantial Project Completion shall be automatically extended for such periods of time as shall under all of the circumstances be reasonable.

6.8 Limitations on Extension of Time.

Developer agrees that:

6.8.1 Developer shall not be entitled to extension of the date for Substantial Project Completion as a result of delays which occur as a result of any cause which does not constitute a Force Majeure Event hereunder;

6.8.2 Developer is obligated to take all reasonable steps to avoid the occurrence of the delay or to minimize the impact of the delay on the progress of the Project.

6.9 ~~[Intentionally omitted.]~~

6.10 Patents, Trademarks and Royalties.

All payments for royalties and patent rights, registered designs, trademarks or names, copyright and other protected rights, and all fees which are or became payable for or in connection with any matter or thing used or required to be used in the performance of this Agreement or to be supplied under this Agreement, shall be the responsibility of Developer and shall be paid by Developer to those to whom and at the time of which they become payable.

6.11 Nature of Project.

6.11.1 Developer has fully apprised itself of the information made available to Developer by WMATA regarding the design, nature and extent of the Project and WMATA's requirements concerning the Project, and all other information it deems necessary for purposes of entering into this Agreement.

6.11.2 Developer shall produce a fully documented design of the Project in accordance with sound architectural and engineering principles and the design services shall be carried out using the level of skill, care and diligence expected of an architect and engineer providing the same or similar services with respect to the design and construction of a type and quality similar to the Project in accordance with the Construction Standard.

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6.12 Continuing Transit-Oriented Development.

In accordance with FTA requirements, Developer warrants and covenants that the planned and actual Developer Improvements to be designed and to be constructed on the Development Property shall constitute a Transit-Oriented Development Use, which warranty and covenant shall, as to all Developer Improvements which are constructed pursuant to the Zoning Approvals and other and constitute the Developer Improvements constructed on the Leased Premises, be deemed to have been satisfied upon approval by WMATA of the Zoning Approvals. In addition, Developer warrants and covenants and shall cause each Tenant and subtenant to warrant and covenant that they shall maintain the Transit-Oriented Development Use of the Development Property, ~~as set forth in the Zoning Approvals~~, throughout the term of this Agreement, which requirement shall be incorporated into each Lease and in the Covenants, Conditions, Cross-Easements and Restrictions. The Developer's or Tenant's Improvements (collectively "improvement" for this definition) must constitute a "**Transit-Oriented Development Use**", which shall mean improvements having the following characteristics: (1) the improvement for the Project as a whole provides convenient pedestrian and vehicular access to a transit station; (ii) the improvement incorporates private investment including office, commercial, or residential development; (iii) the improvement enhances the effectiveness of a mass transit project, i.e., Metrorail, and the non-transit element is physically or functionally related to the mass transit project, and (iv) it creates non-vehicular capital improvements that result in increased transit usage. These improvement characteristics are found in FTA's *Policy on Transit Joint Development*, 62 Fed. Reg. 12,266 - 12,268 (1997).

6.13 Applicable Law.

Except as expressly set forth herein, WMATA shall have no obligation to make any changes or Improvements to the Development Property, other than with respect to WMATA Facilities, including without limitation, to comply with Applicable Laws, after all storm water management and other infrastructure related to the WMATA Facilities have been completed by the applicable Tenant at its cost, and after the expiration of any applicable warranty period, and no Tenant shall have any right to make any such changes or Improvements without the prior written consent of WMATA in each instance first obtained. Any change in Applicable Law adversely affecting the use or development of the Development Property as contemplated in this Agreement shall constitute an Event Beyond Developer's Control and entitle Developer to terminate this Agreement in accordance with Section 16.1.3, subject to the right to contest such change or application thereof, and shall also constitute a Force Majeure Event. Each party reserves the right to contest the application of any law, regulation or executive order to it and to use any legal or equitable remedies available to it.

WMATA Reserved

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008503

6.14 Americans with Disabilities Act

All completed Developer Improvements constructed on the Development Property shall comply with Title II and III of the ADA, to the extent applicable.

ARTICLE 7
PAYMENT OF IMPOSITIONS; CONTESTS

7.1 WMATA's Limited Obligation to Pay Impositions.

WMATA is a tax-exempt regional body politic and shall not be responsible for the payment of any Impositions as a result of this Agreement. To the extent that WMATA is not exempt from the payment of Impositions, WMATA's sole liability and obligation shall be to pay to the taxing authority on a current basis such Impositions that WMATA has routinely paid and is legally required to pay with respect to those portions of the Development Property prior to the Lease Closing. WMATA's liability under this Section 7.1 shall terminate as to the Development Property on the date of Lease Closing with respect to Impositions thereafter accruing. Notwithstanding the foregoing, WMATA reserves the right to contest solely the amount and validity, in whole or in part, of any Imposition purported to be imposed on that portion of the Development Property constituting WMATA Improvements, by appropriate proceedings. Nothing in this agreement is intended to or shall be construed to require WMATA to make any payments to any taxing authority for any of the Development Property after an applicable Closing.

7.1.1 Developer's ~~or Tenant's~~ Obligations to Pay. Any Impositions resulting from the Developer's pre-development activities will be the responsibility of the Developer. Under ~~each~~ Lease, the ~~applicable Tenant~~ will be responsible for any and all Impositions, taxes, insurance and other operating costs of the Project.

7.2 ~~[Intentionally Omitted]~~

7.3 Evidence of Payment of Impositions.

Upon Developer's written request, WMATA shall furnish Developer with satisfactory evidence of the payment of any Imposition required hereby to be paid by WMATA, if any.

7.4 ~~[Intentionally omitted]~~

7.5 Limitations on Contests.

No contest shall be allowed to be conducted by WMATA or Developer or Tenant, as applicable, that, by reason of such contest or any non-compliance, may: (a) cause any portion of the Development Property or any interest of WMATA or Developer or Tenant,

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as applicable, therein to be in danger of being forfeited or lost; or (b) place any party to this Agreement or to a 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).

7.6 Use of WMATA Compact.

In no event shall Developer or Tenant assert for its own benefit, or attempt to 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**").

ARTICLE 8
ENVIRONMENTAL MATTERS

8.1 Covenants of Developer and WMATA

8.1.1 Developer's Studies, Reports and Notices. Developer shall deliver copies of all Phase I and Phase II Reports and all supporting information and data (including tests and studies) to WMATA, and WMATA shall have the right to confer directly with and obtain relevant information from the parties preparing such environmental site assessments or performing services in connection therewith at Developer's expense, but not to cause such consultants to perform any services for WMATA, including, without limitation, the preparation of any additional reports. Developer shall promptly deliver to WMATA copies of all notices (whether from a governmental authority or any other person, including any Tenant) received by Developer alleging that any release of a Hazardous Material(s) has occurred on or from the Development Property. Except (i) as may be required by Applicable Law, or (ii) in connection with the Leases, any infrastructure or Developer Improvements, any debt or equity financing, related to this Agreement or the Development Property or performance of any obligation of Developer hereunder, or (iii) as appropriate in connection with any participation by Developer, any Tenant, or both in the District of Columbia Department of Environment's Voluntary Cleanup Program, Developer and WMATA shall maintain the confidentiality of all environmental site assessments, Phase I Reports, and Phase II Reports.

8.1.2 WMATA's Notices to Developer. During the term of this Agreement, WMATA shall notify Developer immediately upon receiving notice (whether from a governmental authority or any other person) alleging that any release of a Hazardous Material(s) has occurred on or from the Development Property.

8.1.3 Studies to Confirm Environmental Condition and Soils Engineering Reports. Nothing contained in this Article 8 shall be deemed to constitute a limitation on the right of Developer or Tenant, pursuant to a right of entry agreement, to conduct soils engineering tests for design and construction feasibility purposes, or to conduct such additional environmental due diligence as Developer, Tenant, or any proposed source of financing may require to determine the suitability or feasibility of the applicable Development Property for development.

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8.2 Hazardous Materials.

Developer and Tenant shall not cause or permit Hazardous Materials to be used, generated, stored or disposed of, on or from the Development Property; provided, however, that the foregoing prohibition shall not apply to any materials which are used in the ordinary course of development of property and construction of improvements, or in the operation of a tenant's business, provided that the same are used, generated, stored and disposed of in accordance with all Applicable Law.

8.3 Noise and Vibrations.

No claims shall be made by Developer or any Tenant against WMATA arising from usual noise or vibration caused from WMATA's normal transportation related operations ~~of the Metro Station~~, including, but not limited to, its trains and buses.

ARTICLE 9
INSURANCE AND INDEMNIFICATION

9.1 Insurance. Required Insurance coverage shall be addressed in the Lease and any right of entry agreements.

9.2 Indemnity

9.2.1 Indemnification Obligation of Developer. Developer shall indemnify, defend (at Developer's cost), and save harmless WMATA, its officials, employees, departments, agents, and representatives from and against any and all actions, claims or demands, suits at law, in equity, or before administrative tribunals; due to the negligence, alleged negligence, or intentional wrongful acts of Developer and its respective officers, directors, members, partners, employees, agents and contractors with respect to the Development Property (except to the extent solely caused by any act or omission on the part of WMATA, its officials, directors, departments, employees, agents and representatives with respect to the Development Property).

9.2.2 Developer Indemnification Payment Obligations. Pursuant to the provisions of this Section 9.2, Developer shall promptly pay, or caused to be promptly paid, any and all damages, losses, costs, expenses and judgments of every kind and nature (except for consequential, special or punitive damages) that may be incurred by, or rendered against, WMATA, its officials, employees, agents, and representatives to whom payment is owed pursuant to this Section 9.2. To the extent that WMATA shall recover insurance payments from WMATA's, Developer's insurer for any such documented costs, expenses, and judgments paid by Developer under the preceding paragraphs of this Section 9.2 and its subsections, WMATA shall reimburse Developer therefor, net of collection costs.

9.2.3 Indemnification Obligation of WMATA. WMATA shall indemnify Developer, and save harmless Developer, and its members, shareholders, directors, officers, partners, employees and agents (all of the foregoing being hereinafter collectively referred to

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008506

as the "**Parties Eligible for Reimbursement**") for any and all damages, losses, liabilities, expenses and costs and judgments of every kind and nature (except for consequential, special or punitive damages) incurred by, or inserted or imposed against, the Parties Eligible for Reimbursement, or any of them by reason of any accident, injury (including death), or damage to any person or property, resulting from any actual or alleged negligent or intentional wrongful act of commission or omission of WMATA or any of its officials, directors, departments, employees, agents or representatives with respect to the Development Property (except to the extent solely caused by any act or omission on the part of said Parties Eligible for Reimbursement with respect to the Development Property).

9.2.4 WMATA Indemnification Payment Obligations. Pursuant to the provisions of this Section 9.2, WMATA shall promptly pay, or caused to be promptly paid, any and all damages, losses, costs, expenses and judgments of every kind and nature (except for consequential, special or punitive damages) that may be incurred by, or rendered against, developer, its officials, employees, agents, and representatives to whom payment is owed pursuant to this Section 9.2. To the extent that Developer shall recover insurance payments from WMATA's, or Developer's insurer for any such documented costs, expenses, and judgments paid by WMATA under the preceding paragraphs of this Section 9.2 and its subsections, Developer shall reimburse WMATA therefor, net of collection costs.

9.2.5 Survival. The provisions of this Section 9.2 shall survive for six (6) years after the expiration or earlier termination of this Agreement.

ARTICLE 10
COMPLETION AND PAYMENT BONDS → omit (address in Lease)

10.1 Completion and Payment Bonds for Infrastructure and for WMATA Improvements.

If any Existing WMATA Improvements are to be displaced or any infrastructure serving WMATA Facilities is to be installed in connection with this Agreement or the Lease, then, prior to the commencement of any construction on the Development Property, Developer or Tenant shall have delivered to WMATA such bonds, and upon such terms and conditions, as are required by the WMATA Improvements Construction Agreement, which, such WMATA Improvements Construction Agreement shall be substantially in the form of Exhibit 6.3.4 attached hereto.

ARTICLE 11
COOPERATION OF WMATA

11.1 Execution of Supplemental Applications, Consents, Approvals, and Acknowledgments; Execution of Easements, Licenses, Permits and Other Documents of Record.

11.1.1 If required by law, or if reasonably necessary, WMATA agrees that within ~~ten~~ thirty (30) (10) Business Days after written request from Developer and subject to any

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limitations under the WMATA Compact, Applicable Law and the provisions of this Agreement, it shall execute and deliver to Developer or any applicable Tenant, such applications, consents, approvals, licenses, permits and acknowledgments (collectively, "**Permits**") as may be requested by any governmental or other body having jurisdiction in connection with any action which Developer may undertake pursuant to this Agreement or any development to be undertaken pursuant to a future Lease, provided, that the same complies with this Agreement. The foregoing shall not operate to supplant the review and approval process contemplated by Section 2.3.2 or Section 2.3.3, but rather is intended to address supplemental and ministerial Permits only.

11.1.2 In addition, within Thirty (30) Business Days after written request from Developer, WMATA shall execute and deliver to Developer any easements and other documents of record (*e.g.*, establishing common area associations, easements for ingress and egress or public utilities, grading permits, etc.), in connection with obtaining the Zoning Approvals or approval of a Site Plan, or subdividing the Development Property, or the future development or operation of Developer Improvements; provided, that the same comply with Section 2.3.1 and Section 2.3.2 and the approvals granted by WMATA under Section 2.3.3 and do not otherwise materially adversely affect WMATA. The foregoing shall not operate to supplant the review and approval process contemplated by Section 2.3.2 or Section 2.3.3.

11.1.3 Subject to satisfaction of such conditions and requirements as may be set forth elsewhere in this Agreement, ~~any~~ the Lease or any right of entry agreement, WMATA agrees to lend all reasonable assistance and cooperation reasonably required by Developer for the Zoning Approvals, Site Plan and Subdivision approval process, including appearing and giving testimony before any governmental authority, provided that the foregoing shall not result in any out-of-pocket cost or expense to WMATA and further provided that WMATA shall not be exposed to actual or potential liability by reason of such cooperation and assistance. Subject to WMATA's performance of its obligations under this Agreement (including, but not limited to, those set forth in Articles 2 and 11 hereof), in no event, however, shall the failure of Developer to obtain any of the foregoing governmental approvals or permits be chargeable to or constitute a default on the part of WMATA hereunder, it being understood and agreed that Developer has assumed all risks of any failure to so obtain such approvals or permits.

11.1.4 In no event shall WMATA have any liability for the performance of any obligation, including payment of money, arising out of or resulting from WMATA's execution and delivery of the documents and instruments described in this Article 11, such liability shall be borne solely by Developer or by the applicable Tenant succeeding to the rights of Developer in respect of said document or instrument.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008508

11.2 [Intentionally omitted].

11.3 [Intentionally omitted].

11.4 Third Party Charges and Expenses.

All third party charges and expenses incurred by or on behalf of Developer pursuant to this Article 11 shall be borne by Developer.

ARTICLE 12
OPERATION

12.1 Interference with Pedestrian Traffic.

Except with the prior written approval of WMATA, Developer shall not interfere with the free flow of pedestrian traffic to and from WMATA Facilities and WMATA Reserved Areas. Developer's access to the WMATA Reserved Areas or WMATA Facilities shall be determined by the Covenants, Conditions, Cross-Easements and Reservations or any right of entry agreement.

12.2 Signage

12.2.1 Intentionally Omitted.

12.2.2 Developer and Phase Tenant Signs. Prior to the execution of a Lease, Developer or Tenant must obtain WMATA's written approval of Developer's or Tenant's proposed exterior signage.

12.2.3 WMATA Signs. WMATA has the right to erect suitable and reasonable directional signage to WMATA Facilities along the pedestrian ways and streets for vehicles within the Leased Premises, at WMATA's sole cost and expense.

ARTICLE 13
REPAIRS AND MAINTENANCE, ETC.

13.1 WMATA's Responsibilities

WMATA, at its sole cost and expense, shall at all times during the term of this Agreement maintain, repair and keep in good condition, and with a presentable appearance, all of the WMATA Facilities. The WMATA Facilities may be altered or removed by WMATA at any time in the sole and absolute discretion of WMATA and at WMATA's sole cost and expense. In the event a WMATA Improvement is removed, WMATA shall repair any physical damage caused to remaining portions of the Development Property other than a WMATA Reserved Area by such removal and shall restore such remaining portions of the Development Property to as nearly as reasonably possible the same condition as existed prior to such removal.

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13.2 Developer's/Phase Tenant's Responsibilities. Change to Repairs?

If any infrastructure component constructed by Developer/ Tenant is removed by Developer/Tenant, Developer/Tenant shall repair any physical damage caused to remaining portions of the Development Property by such removal and shall restore the same to as nearly as reasonably possible the same condition as existed prior to such removal. This Section shall not be construed as permitting the removal of any infrastructure component required to be constructed, rebuilt, restored or maintained under the terms of this Agreement, the Site Plan, subdivision plan or the Zoning Approvals.

ARTICLE 14
ENTRY ON DEVELOPMENT PROPERTY BY DEVELOPER

14.1 Right of Entry

Except as otherwise expressly limited under this Agreement, Developer and its authorized representatives shall have the right to enter the Development Property at all reasonable times to conduct activities as are consistent with this Agreement, subject to a right of entry agreement entered into between WMATA and Developer and all insurance and indemnity obligations of Developer contained therein and in this Agreement. With respect to entry on any WMATA Reserved Area, in addition to the execution of a right of entry agreement, WMATA may require that Developer be accompanied on its entry by a WMATA representative. the prior execution

ARTICLE 15
ASSIGNMENTS

15.1 Assignments.

15.1.1 Neither this Agreement nor any rights conferred hereunder shall be assigned or assignable by Developer, without WMATA's prior written approval, which shall either be granted or denied within Thirty (30) Business Days following Developer's written request therefore. Any purported assignment in violation of this provision shall be null and void. No assignment shall release Developer from any of its obligations under this Agreement.

15.1.2 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:

15.1.2.1 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

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15.1.2.2 That the assignee shall assume all rights and obligations of Developer under this Agreement pertaining to the then unexpired term of this Agreement. However, such assignment shall not relieve Developer of any liabilities and obligations of Developer then accrued under this Agreement or by virtue of such assignment.

15.1.2.3 Except as otherwise provided herein with respect to the Lease, the development rights created under this Agreement are not severable without the prior written consent of WMATA in each instance first had and obtained and may not be sold or transferred except pursuant to an assignment of Developer's entire interest in this Agreement in accordance with the terms of this Agreement

15.1.2.4 Each and every Change of Control of the Developer shall require the prior written approval of WMATA, which shall be based, among other things, on the skills, experience, knowledge, past experience and financial standing of the persons intending to thereafter exercise such control.

ARTICLE 16
TERMINATION AND DEFAULT PROVISIONS

16.1 Termination Events, Except as otherwise specifically stated herein, shall be forfeited to WMATA

16.1.1 If this Agreement is terminated ~~pursuant to Section 2.4.3, Section 6.13 or Section 16.13,~~ the Performance Security with respect to the Phase shall be promptly ~~returned to Developer provided, that~~ the Developer shall have (a) at its own cost and expense (i) repaired all damage done to the Development Property by Developer in conducting its studies and tests, (ii) properly closed all test pits or wells made by it, and (iii) restored the Development Property as nearly as possible to at least its former condition, appearance, and quality and (b) if the termination is pursuant to Section 16.13, provide WMATA with copies of all Developer's Materials. Upon such termination, neither party shall thereafter have any further rights, obligations or liabilities hereunder, except for those rights, obligations or liabilities that expressly survive termination.

16.1.2 [Intentionally omitted].

16.2 Zoning Approvals

If, at any time, other than during the occurrence of a Developer Event of Default, governmental acts or revisions to zoning laws detrimentally affect Developer's ability to obtain subdivision and Site Plan approvals, or other events beyond the developer's control, notwithstanding Developer's Best Efforts, prevent the Developer from obtaining subdivision and Site Plan approvals, or any application for a subdivision or Site Plan

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approvals is denied, or Developer reasonably determines in good faith that any such application is likely to be denied notwithstanding the exercise of Best Efforts and reasonably establishes the soundness of such determination, Developer at its option may terminate this Agreement by notice to WMATA. Developer shall forfeit the Performance Security. Upon such termination, neither party shall have any further rights, obligations or liabilities hereunder with respect to the applicable Phase other than those rights, obligations or liabilities that expressly survive termination.

16.3 Default and Event of Default by Developer under this Agreement.

Subject to the provisions of Section 16.4 hereof, **("Developer Event of Default"):**

16.3.1 Developer shall fail to make any payment to WMATA as and when due under this Agreement;

16.3.2 Intentionally Omitted;

16.3.3 Developer shall fail to use its Best Efforts to obtain all Site Plans, use permits and subdivision approvals and building permits as and when required hereunder, subject to Force Majeure Events;

16.3.4 Developer shall fail to cause a Tenant timely to execute a Lease;

16.3.5 Developer shall fail to perform any other obligation contained in this Agreement;

16.3.6 Intentionally omitted.

16.3.7 Any willful and material misrepresentation by Developer in this Agreement; or

16.3.8 The occurrence of a **"Bankruptcy Event"**, as defined in Section 16.11 hereof.

16.4 Developer Event of Default; Notice and Cure.

No Developer Event of Default shall be deemed to have occurred until after notice of such default is delivered to the Developer and Developer fails to cure such default within thirty (30) Days after delivery of the notice of the default. In the event of any Developer Event of Default under Section 23.2 hereof, such cure period shall be ten (10) Business Days after delivery of such notice of default.

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16.5 Cure of Developer's Default by WMATA.

Without prejudice to any other right or remedy of WMATA, if there shall be a Developer Event of Default, WMATA may cure the same at the expense of Developer (A) immediately and with simultaneous notice to Developer in the case of (1) emergency; or (2) where such Developer Event of Default unreasonably interferes with the WMATA Reserved Areas; or (3) where such Developer Event of Default shall result in a violation of Applicable Law (unless such violation does not need to be cured immediately in order to avoid incurring any fines, penalties or other sanctions) or the cancellation of any insurance policy maintained by WMATA; or (4) where the health and safety of patrons of the WMATA Facilities, WMATA employees or other persons are or may be adversely affected; or (5) where Developer, or any of its contractors, subcontractors, employees or agents interferes with WMATA activities or operations other than on a temporary basis and in a *de minimis* manner; and (B) in any other case if such default continues for thirty (30) Days from the receipt by Developer of notice of such default from WMATA. All reasonable costs incurred by WMATA in curing such Developer Events of Default, including, without limitation, reasonable attorneys' fees, shall be reimbursable by Developer within thirty (30) Days after WMATA's delivery to Developer of a written demand therefor, together with interest thereon, from the date such costs were paid by WMATA, at the Default Rate.

16.6 Late Charges; Default Rate of Interest.

In the event Developer is more than five (5) Business Days late in paying to WMATA or its designee any payment due under this Agreement, then without the need for any further notice to Developer that such payment was not made when due, Developer shall pay WMATA, within ten (10) Days of written demand therefor, a "**Late Charge**" equal to five percent (5%) of the delinquent amount. In addition, any amount due from Developer to WMATA hereunder which is not paid within thirty (30) days of the date due shall bear interest at an annual rate (the "**Default Rate**") equal to four percent (4%) in excess of the Prime Rate. For purposes of this Agreement, "Prime Rate" means the rate so named in the "Money Rates" section published in the Wall Street Journal newspaper, or any successor to that section or to that newspaper, but in default of agreement by the parties as to any such successor, such successor shall be determined by arbitration in accordance with the terms of this Agreement. The payment of such interest by Developer shall not constitute a waiver on the part of WMATA of any rights or remedies of WMATA arising out of a Developer Event of Default.

16.7 Remedies Available to WMATA.

Upon the occurrence of a Developer Event of Default hereunder, WMATA shall be entitled (i) to retain all payments made to WMATA by Developer, (ii) to recover from Developer any sums accrued but unpaid to WMATA under this Agreement, (iii) to obtain specific performance with respect to any obligation of Developer under this Agreement which Developer has failed to perform and where WMATA's remedy at law would

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otherwise be inadequate or unavailable (e.g., ejectment, trespass, etc.), (iv) to terminate this Agreement by notice to Developer, in which event copies of all reports and studies with respect to the Development Property generated by Developer or for Developer by third parties during any Right of Entry Period with respect to the environmental condition of the Developer Property, the condition of the soil of the Development Property, title to the Development Property and surveys of the Development Property (**"Developer's Materials"**) shall be delivered to WMATA, Developer shall assign to WMATA all rights of Developer in and to all of Developer's pending or denied applications for subdivision, building permits and other approvals and licenses pertaining to the Development Property, and the balance of the Performance Security, as then held by WMATA, or the applicable portion thereof, shall be retained by WMATA, and (v) to seek monetary damages, subject to the provisions of Sections 16.1 and 16.2 of this Agreement; provided, however, that in no event shall Developer be liable for any consequential, special or punitive damages in connection with this Agreement or any of its obligations hereunder. Nothing contained herein shall be deemed to limit the right of WMATA to enforce the indemnity or reimbursement obligations of Developer established under this Agreement, all of which such obligations shall survive any termination of this Agreement for the six (6) - year period specified in Section 9.2, above.

16.8 Default by WMATA.

The following shall constitute an event of default by WMATA (**"WMATA Event of Default"**):

16.8.1 Failure by WMATA to pay Impositions that WMATA is legally required to pay in accordance with Section 7.1;

16.8.2 Failure by WMATA to perform any other obligation of WMATA under this Agreement; or

16.8.3 Any willful and material misrepresentation by WMATA in this Agreement or any other material submission made by WMATA on behalf of Developer or with respect to any of the matters which are the subject of this Agreement to any governmental authority.

16.9 Notice and Cure; Remedies Available to Developer.

No WMATA Event of Default shall have been deemed to have occurred unless notice of such default is delivered to WMATA and WMATA fails to cure such default within thirty (30) Days after delivery of such notice, except that in the case of any WMATA Event of Default under Section 23 hereof such cure period shall be ten (10) Business Days after delivery of such notice of default. Upon the occurrence of a WMATA Event of Default, Developer shall be entitled either (1) to terminate this Agreement by notice to WMATA, in which event the Performance Security then held by WMATA shall be released and returned to Developer, (ii) to obtain a decree of specific performance to enforce the obligations of WMATA under this Agreement where

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Developer's remedy at law would otherwise be inadequate or unavailable, or (iii) to seek monetary damages, subject to the provisions of Sections 16.1 and 16.2 of this Agreement; provided, however, that in no event shall WMATA be liable for any consequential, special or punitive damages in connection with this Agreement or any of WMATA's obligations hereunder. Nothing contained herein shall be deemed to limit the right of Developer to enforce the indemnification obligations of WMATA established under this Agreement, as set forth in Section 9.2, above, all of which such obligations shall survive any termination of this Agreement for the six (6) - year period specified in Section 9.2, above.

16.10 [Intentionally omitted.]

16.11 Bankruptcy Related Actions

16.11.1 The exercise of any rights under this Article 16 shall be consistent with, and subject to, all Applicable Laws.

16.11.1.1 If Developer 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 seeks or consents to, or acquiesces, in the appointment of any trustee, receiver or liquidator of Developer, or of all or any substantial part of its assets, or of the interest of Developer under this Agreement, a "**Bankruptcy Event**" (herein so referred to) shall occur; or

16.11.1.2 If within one hundred twenty (120) Days after the commencement of any proceeding against Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future applicable federal or state law, such proceeding has not been stayed or dismissed, or if within 120 Days after the appointment, without the consent or acquiescence of Developer, of any trustee, receiver or liquidator of Developer, or of all or any substantial part of its assets or of the interest of Developer under this Agreement, such appointment is not vacated or stayed on appeal or otherwise canceled, and if stayed, within one hundred twenty (120) Days after the expiration of any such stay, such appointment is not vacated or canceled, a Bankruptcy Event shall occur; or

16.11.1.3 If a Bankruptcy Event occurs at any time during the term of this Agreement, and (a) within a period of one hundred twenty (120) Days following the occurrence of such

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Bankruptcy Event Developer is not reorganized or restructured (in a manner which leaves unaltered the legal, equitable and contractual rights of WMATA) as a viable entity having a high likelihood of performance of the terms of this Agreement, including, without limitation, the capability of pursuing Zoning Approval and subdivision and Site Plan approvals, Final Approvals and the other obligations of Developer under this Agreement or (b) the interest of Developer under this Agreement is not transferred (in a manner which leaves unaltered the legal, equitable and contractual rights of WMATA) to a bankruptcy remote replacement entity, which entity is an Affiliate of Banncker Ventures, LLC having a high likelihood of performance of the terms of this Agreement, including, without limitation, the capability of pursuing the Zoning Approvals and subdivision and Site Plan approvals, Final Approvals and the other obligations of Developer under this Agreement or, if not so affiliated, which entity is acceptable to WMATA, in WMATA's sole discretion (that is, such entity is capable of pursuing the Zoning Approvals and subdivision and Site Plan approvals and has a high likelihood of performance of the other terms of this Agreement), and as to such Affiliate or entity the other provisions of this Agreement are satisfied in full, then a default shall be deemed to exist and WMATA shall have its rights pursuant to Section 16.4 and Section 16.7, above.

wording for Approval

16.11.1.4 Developer: (a) shall be formed or organized solely for the purpose of developing, constructing, selling, renovating and leasing the Development Property 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 and, if applicable, that of its corporate general partner or managing member 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) otherwise satisfy usual current market criteria for constituting a single purpose entity, except for any obligation to have an "independent" director.

16.12 No Waiver of Breach.

No failure by WMATA or by Developer to insist upon the strict performance by the other of any of the terms of this Agreement, or to exercise any right or remedy

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consequent upon a breach thereof, shall constitute a waiver of any such breach or of any of the terms of this Agreement. None of the terms of this Agreement to be kept, observed or performed by WMATA or by Developer and no breach thereof, shall be waived except by a written instrument executed by WMATA or by Developer, whichever the case may be. No waiver of any default of WMATA or 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 or Developer shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition by the other.

16.13 Termination for Failure to Satisfy Financing Contingency.

[redacted]

→ Time limit? Tie to Lease Closing

16.14 Events of Default and Termination Generally.

Notwithstanding anything to the contrary herein, no Event of Default hereunder shall result in a default or event of default under any Lease.

ARTICLE 17
DAMAGE AND DESTRUCTION

17.1 Risk of Loss.

All risk of loss to the Development Property by casualty shall remain with WMATA during the term of this Agreement prior to the Lease Closing, except that Developer shall be solely responsible and shall bear all risks and obligations relating to all of the following: (1) all activities of Developer, its agents, employees and contractors; (2) damage to the Development Property caused by the negligence or intentional acts of Developer, its agents, employees and contractors, (3) Developer's indemnity under the terms of this Agreement, and (4) Developer's insurance and indemnity and other obligations under and subject to the terms and conditions of any right of entry agreement. Upon Lease Closing, risk of loss of the Development Property covered by such Lease shall be governed by the terms thereof.

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ARTICLE 18
LIENS AND CONVEYANCES

18.1 Mutual Duties

18.1.1 Except as noted herein, prior to the Lease Closing, WMATA shall keep the Development Property free and clear of all liens and encumbrances, including without limitation, liens securing debt and/or performance obligations of any kind, and mechanics', materialmens', 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 WMATA's construction, maintenance and operations and those of its employees, agents, contractors and the like. All such work or construction, by or for WMATA on the Development Property not within the scope of Developer's obligations shall be fully paid and discharged by WMATA prior to execution of a Lease, subject to WMATA's right to contest the same and bond off such mechanics, materialmen, and other liens provided that the ability of the applicable Tenant to obtain leasehold owner's and Mortgagee's title insurance, without exception for such liens and claims, is not adversely affected. WMATA represents that certain revenues derived from WMATA's Transit Facilities are subject to that certain Gross Revenue Transit Bond Resolution, 93-162, adopted by the Board of Directors of WMATA on November 18, 1993, and that this Agreement and the transactions contemplated hereby are in full compliance with such resolution. For purposes of this Section 18.1.1, the term "encumbrance" excludes non-recorded easements and agreements that exist on the date of this Agreement and that may affect title to the Development Property. → verify!

18.1.2 Developer shall keep the Development Property free and clear of all liens and encumbrances, including without limitation, liens securing debt and/or performance obligations of any kind, and mechanics', materialmens', 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 activities, construction, maintenance and operations and those of its owners, lenders, principals, agents, employees, contractors, and the like.

18.1.3 Intentionally Omitted.

18.2 Certain Negative Covenants

18.2.1 Except for the Lease, after the date of this Agreement WMATA shall not lease, or cause or permit to be leased, sell, transfer, or convey, or cause or permit to be sold, transferred, or conveyed, the Development Property or any part thereof, or take or perform or permit any act or deed to be taken or performed to the extent that such act or deed would prevent, impair, impede or delay WMATA from fully performing its obligations under this Agreement. Nothing contained in this Agreement, however, shall impair the right of WMATA to enter into agreements affecting the Development Property which shall be terminated by WMATA prior to or contemporaneously with the execution and delivery of any Lease, and which will not materially impair or impede, and which will not delay, the ability of

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WMATA to perform its obligations hereunder or materially impair or impede, and which will not delay, the rights or activities of Developer permitted hereunder, or which shall take effect only after the termination of this Agreement.

18.2.2 Developer shall not perform or permit any act or deed to be taken or performed to the extent that the foregoing would prevent Developer from fully performing its obligations under this Agreement, any Tenant from fully performing its obligations under any Lease or any right of entry agreement entered into by Developer or Tenants, or any other agreement relating to the transactions and activities contemplated thereby.

ARTICLE 19
INTENTIONALLY OMITTED

ARTICLE 20
CONDEMNATION

20.1 Total Taking.

If during the term of this Agreement, there should be a Taking of the entire Development Property not then or previously subject to a Lease (**"Total Taking"**), such Taking shall be deemed to have caused this Agreement to terminate and expire on the date of such Taking, and WMATA shall thereupon release and return to Developer the Performance Security then held by WMATA.

20.2 Partial Taking

20.2.1 If during the term of this Agreement, there should be a Taking of less than the entire Development Property not then or previously subject to a Lease (**"Partial Taking"**), and any portion of the Development Property remaining cannot reasonably be adequately restored, replaced or reconfigured so as to constitute a commercially reasonable usefulness, design, construction, and economic feasibility, then Developer shall have the right to release such portion as cannot be restored, replaced or reconfigured from the operation of this Agreement upon notice to WMATA within one hundred twenty (120) Days after the date of the Partial Taking. Said notice shall state the date of release, which shall not be earlier than the date of the Partial Taking. Upon such release, WMATA shall release and return to Developer a pro rata portion of the Performance Security then held by WMATA, and Pre-Stabilization Rent and all other payments required to be made by Developer to WMATA under this Agreement shall be adjusted in an equitable manner which takes into account the lost rentals attributable to the Development Property which was the subject of the Partial Taking and the reduction in value of the Project based upon the different uses which were contemplated by the Zoning Approvals with respect to each such portion of the Development Property which was the subject of the Partial Taking. Only with respect to the portion of the

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Development Property which is not the object of the Partial Taking, Developer shall, at its own cost and expense, (i) repair all damage done to the Development Property by Developer in conducting any studies and tests, if any, thereon, (ii) promptly close all test pits or wells, if any, made by Developer during any right of entry period, and (iii) restore the Development Property as nearly as possible to at least its former condition, appearance and quality.

20.2.2 For the purposes of this Article, the date of Taking shall be the date on which title vests in the condemnor.

20.3 Condemnation Proceeds.

The condemnation proceeds for a Total Taking or Partial Taking prior to execution of a Lease, WMATA shall be entitled to all condemnation proceeds. Developer shall not have any rights to condemnation proceeds prior to the execution of the Lease. ← grammar

ARTICLE 21
LEASE CLOSINGS

21.1 Lease Closing.

The Lease Closing Lease shall be in accordance with the process set forth in Article 5 hereof and shall be held at such location as Developer shall specify in a written notice to WMATA. Closings shall occur in Washington, D.C.; provided, that, if a lender or investor providing financing or funds to the Tenant requires Lease Closing at a different location, WMATA shall not be required to physically attend such Lease Closing, but shall effect its part of the Lease Closing by timely making its deliveries to an escrow holder at such other location. Upon the request of either party to the other, delivered at least ten (10) Business Days before the applicable Lease Closing, WMATA and Developer shall establish a pre-Lease Closing escrow with the Title Company pursuant to written escrow instructions prepared by or at the direction of WMATA and Developer; provided that the Tenant shall not be required to deposit the Lease Base Rent, nor be required to deposit any other monies into the escrow prior to Lease Closing. Counsel for WMATA and Developer are hereby authorized to execute the escrow instructions, as well as any amendments thereto, on behalf of their respective clients.

21.2 Actions at Lease Closing.

21.2.1 At each Lease Closing, WMATA shall deliver and convey to the applicable Tenant good and marketable leasehold title to the applicable Leased Premises, in marketable condition, ~~good of record and in fact, and fully~~ insurable under a leasehold title insurance policy (the "**Title Policy**") at standard rates, free and clear of all deeds of trust, mortgages, pledges, liens encumbrances, leases, tenancies and or any other matter of any nature affecting leasehold title other than the Permitted Exceptions. The Leased Premises shall also not be subject to any service contracts, management contracts, maintenance contracts, equipment leases, occupancy leases, licenses, occupancy agreements, other

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contracts or agreements, or claims or rights of occupancy (other than any created by Developer or any Tenant), and WMATA shall cause any of the foregoing (other than any created by Developer or any Tenant) which affect the Lease estate, to be terminated effective no later than the date of Lease Closing, at WMATA's sole cost and expense, ~~whether or not any of the foregoing affect the state of title or the Title Company's willingness to issue the required title policy.~~ Flea Market lease

21.2.2 At Lease Closing, as a condition precedent to Closing, WMATA shall deliver or cause to be delivered to Tenant and/or the Title Company, as the case may be, through the escrow or otherwise, the following, duly executed and acknowledged (where appropriate) by WMATA:

21.2.2.1 The Lease;

21.2.2.2 A written stipulation of the Initial Land Value and the Allocated Partial Offset for WMATA Improvements, as used to calculate Lease Base Rent; → Rose

21.2.2.3 A memorandum of Lease ("**Lease Memorandum**");

21.2.2.4 Any other documents required to be delivered by the landlord to the tenant, at Lease Closing, pursuant to the terms of the Lease;

21.2.2.5 Counterparts of any state and local transfer tax declarations;

21.2.2.6 With respect to any actions by WMATA, its employees, agents or contractors or any combination of the foregoing after the Effective Date, such affidavits and undertakings not in violation of Applicable Law, the WMATA Compact or any written standing policy of WMATA, as the Title Company may reasonably require to issue the Title Policy;

21.2.2.7 Counterparts of an agreed upon Lease Closing and proration statement (the "**Lease Closing Statement**");

21.2.2.8 The Covenants, Conditions, Cross-Easement and Restrictions Agreement (unless recorded at prior Lease Closing);

21.2.2.9 The WMATA Improvements Construction Agreement; and

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21.2.2.10 Such other documents and instruments as may be required by any other provision of this Agreement or as may be reasonably necessary to consummate the transactions contemplated hereby.

21.2.3 At Lease Closing, Developer shall deliver or cause to be delivered to WMATA or the Title Company, and paid, as the case may be, through the escrow or otherwise, the following, duly executed and acknowledged (where appropriate) by Tenant:

21.2.3.1 The Lease;

21.2.3.2 A written stipulation of the Initial Land Value and the Allocated Partial Offset for WMATA Improvements, as used to calculate Lease Base Rent;

21.2.3.3 The Lease Memorandum;

21.2.3.4 The amount of Lease Base Rent which is due and payable in accordance with the terms of the Lease; Security Deposit, Lease

21.2.3.5 Any documents required to be delivered by the tenant to the landlord, at Lease Closing, pursuant to the terms of the Lease;

21.2.3.6 Such affidavits and undertakings acceptable to the Title Company as it may reasonably require to issue the Title Policy;

21.2.3.7 Counterparts of the Lease Closing Statement;

21.2.3.8 Such other documents and instruments as may be required by any other provision of this Agreement or as may be reasonably necessary to consummate the transactions contemplated hereby;

21.2.3.9 The Covenants, Conditions, Cross-Easement and Restrictions Agreement (unless recorded at prior Lease Closing);

21.2.3.10 The WMATA Improvements Construction Agreement, if applicable; and

21.2.3.11 Funds to cover any amounts to be paid by the Tenant pursuant to the Lease Closing Statement.

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21.3 Intentionally Omitted.

21.4 Prorations.

At Closing, WMATA and Developer or Tenant, as the case may be, shall prorate Impositions with respect to the Lease Premises, as of the date of such Closing. WMATA represents that it is exempt from all federal, state and local taxation.

21.5 Recordation and Costs.

21.5.1 Tenant shall pay all (i) recordation and transfer taxes and costs, if any, required to be paid by any party pursuant to Applicable Law in connection with the recordation of the applicable Lease, (ii) all other costs of Lease Closing charged by the Title Company or any settlement agent which conducts the applicable closing, (iii) costs of Tenant's examination of title, (iv) premiums for the applicable Title Policies, and (v) or Tenant's survey costs. Each party shall pay its own counsel's fees and expenses. All other costs, charges, and expenses not provided for in the immediately preceding sentence shall be paid as provided in this Agreement or, in the absence of such provision, in accordance with Applicable Law or local customary practice, as the case may be. ← WMATA shall only pay Counsel's fees

Any other → Docs CCR

ARTICLE 22
NOTICES

22.1 Service to Developer.

All notices, demands or requests to the parties shall be deemed to have been properly served or given, if they meet the requirements of Section 22.3 below and are addressed to Developer as follows:

To Developer: Banneker Ventures, LLC

One copy to: DLA Piper

and to such other addresses and to the attention of such other parties as Developer may designate by notice to WMATA. If Developer changes its office address as herein stated, Developer promptly shall give notice to WMATA.

22.2 Service to WMATA.

All notices, demands *or* requests to WMATA by Developer shall be deemed to have been properly served or given if they meet the requirements of Section 22.3 below and are addressed to WMATA as follows:

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Original to:	Director Office of Property Development and Management Washington Metropolitan Area Transit Authority 600 Fifth Street, NW, Washington, DC 20001 Fax No: (202) 962-2396
One copy to:	General Counsel Washington Metropolitan Area Transit Authority 600 Fifth Street, NW Washington, DC 20001 Fax No: (202) 962-2550
One copy to:	Director, Engineering Support Branch Office of the Chief Engineer Washington Metropolitan Area Transit Authority 600 Fifth Street, NW , Washington, DC 20001 Phone: (202) 962-2010 Fax No. (202) 962-1105

and to such other addresses and to the attention of such other parties as WMATA may designate by notice to Developer. If WMATA changes its office address as herein stated, WMATA promptly shall give notice to Developer.

22.3 Service Procedures. All notices, demands or requests shall be in writing and shall be: (1) personally delivered; (2) sent prepaid for next business day delivery via a nationally recognized overnight courier service; or (3) sent by any telecommunication device capable of creating a written record of such notice (including e-mail and facsimile) provided a copy of such notice is also delivered by first class mail. Notices and other communications delivered pursuant to clause (3) of this Section 22.3 shall be deemed to have been given upon actual receipt. Other notices and communications shall be deemed to have been given on the earlier of actual receipt or on the first Business Day upon which delivery is attempted, even if delivery cannot be made due to refusal of, or failure by the addressee to accept, such attempted delivery.

ARTICLE 23
CERTIFICATES BY WMATA AND DEVELOPER

23.1 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, to any Tenant, ~~or to any of them~~ or all of them or their prospective assignees or Occupants or respective actual or prospective lenders, security rating agencies, auditors, purchasers, investors or as Developer or any Tenant may specify or to any governmental entity, if required by such governmental entity, which: (1) certifies that this Agreement is unmodified and in full force and effect (or if modified that this Agreement is in full force and effect as modified and states the modifications); (2) states to the best knowledge of

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WMATA whether Developer is in default in keeping, observing and performing any of the terms of this Agreement, and, if in default, specifies each such default of which WMATA has knowledge; (3) certifies to the best knowledge of WMATA as to the existence of any offsets, counterclaims or defenses to this Agreement 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 23.1 may be relied upon by any prospective assignee of Developer's interest in this Agreement; any existing or prospective securities rating agency, auditor, Tenant, or lender or investor providing financing or funds to Developer, or to any existing or prospective Tenant, 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. The provisions of this Section 23.1 shall survive any Lease Closing and/or the termination or expiration of this Agreement.

23.2 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, entity, or governmental agency (if required by such governmental agency) designated by WMATA, a written statement which: (1) certifies that this Agreement is unmodified and in full force and effect (or if modified, that this Agreement 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 Agreement and, if in default, specifies each such default of which Developer has knowledge; (3) certifies to the best knowledge of Developer as to the existence of any offsets, counterclaims or defenses to this Agreement on the part of WMATA or Developer; 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 23.2 may be relied upon by WMATA or any prospective successor to WMATA's interest in the Development Property or any part thereof, and by any governmental agency, if required by such governmental agency, but reliance on such certificate may not extend to any default of WMATA as to which Developer shall have no actual knowledge.

ARTICLE 24
INTENTIONALLY OMITTED

ARTICLE 25
CONSTRUCTION OF TERMS AND MISCELLANEOUS

25.1 Invalid or Unenforceable Terms.

If any provision of this Agreement or the application of such provision to any person or situation shall be held invalid or unenforceable, the remainder of this

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Agreement and the application of such provision to persons or situations other than those held invalid or unenforceable shall not be affected and shall continue valid and be enforced to the fullest extent permitted by law. Any such invalid or unenforceable provision shall be deemed automatically reformed to render same as close in meaning and effect as the original provision but still valid and enforceable.

25.2 Headings, Captions, Etc.

The Article headings, subheadings and captions of this Agreement and the Table of Contents contained in this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect this Agreement.

25.3 Relationship of Parties.

This Agreement does not create the relationship of landlord and tenant, principal and agent or of mortgagee and mortgagor or of partnership or of joint venture or of any association or agency between WMATA and Developer, the sole relationship between these parties being that of parties contracting as to certain rights and obligations with respect to the Development Property.

25.4 Recordation of Agreement.

This Agreement shall not be recorded without the prior written consent of WMATA in its sole discretion.

25.5 Gender, Number and Persons.

Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders. Unless the context shall otherwise indicate, the word "person" or any word having a similar meaning shall include any individual, corporation, partnership, joint venture, association, trust or government or any agency or political subdivision thereof.

25.6 Accounting Terms.

Accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in effect in the United States from time to time.

25.7 Consent or Approval.

Whenever this Agreement requires WMATA's or Developer's consent or approval, such consent or approval shall: (1) not be effective unless in writing (except to the extent that such consent or approval is deemed to have been given pursuant to the terms of this Agreement), and (2) apply only to the specific act or transaction so approved

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or consented to and shall not relieve one party of the obligation of obtaining the other party's prior written consent or approval to any future similar act or transaction when so required by the terms of this Agreement.

25.8 Entire Agreement; Amendment.

This Agreement and the Exhibits hereto contain the entire agreement between the parties with respect to the subject hereof, and all other prior communications and agreements, written or oral, are superseded hereby. This Agreement may be amended or modified only by an instrument in writing executed by the parties.

25.9 Successors and Assigns.

The terms herein contained shall bind and inure to the benefit of the parties and their successors and permitted assigns, except as otherwise provided herein.

25.10 Duplicates.

This Agreement may be executed in one or more duplicates, each of which shall be deemed an original.

25.11 Construction of Agreement.

In no event shall this Agreement be construed more strongly against any one person solely because such person or its representative acted as draftsman hereof, it being acknowledged by the parties hereto that both have been represented by competent legal counsel, that this Agreement has been subject to substantial negotiation, and that all parties have contributed substantially to the preparation of this Agreement.

25.12 Exhibits.

Each Exhibit to this Agreement is incorporated into this Agreement by reference and forms an essential part of this Agreement. Any Exhibit which is not physically attached to this Agreement shall be treated as if it were part of the typed language of this Agreement.

25.13 No Commissions.

Each party represents to the other that no real estate broker or other person is entitled to claim a commission as a result of the execution and delivery of this Agreement by such ply, and each party agrees to indemnify, defend, and hold harmless the other with respect to such representation and warranty.

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25.14 Governing Law.

This Agreement shall be governed by the laws of the District of Columbia without regard to principles of conflicts of law.

25.15 Officials Not to Benefit.

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

25.16 Public Body Members.

No director, officer or employee of WMATA during his/her tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

25.17 Gratuities.

The parties acknowledge that, in connection with the performance of this Agreement, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by Developer, or any agent, representative or other person acting on behalf of Developer or by any supplier or subcontractor furnishing material to or performing work for Developer under this Agreement, or any agent, representative or other person 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 determination with respect to performance under this Agreement, is expressly forbidden by law. The parties acknowledge that the terms of this Section shall be strictly construed and enforced against the offending person or entity in the event of violation of law.

25.18 Computation of Time; Effect of Force Majeure Event.

In the computation of any period of time provided for by this Agreement or by law, the day of the act or event from which such period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until the end of the next Business Day. Except as otherwise specifically provided in this Agreement, any Force Majeure Event shall extend the time, on a day for day basis, for performance and/or completion of any action or matter under this Agreement; provided that the party seeking to extend such time shall have notified the other of the occurrence and duration of such Force Majeure Event within a reasonable time, considering the circumstances and extent of such Force Majeure Event and the nature of and time requirement for such performance or completion.

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25.19 WMATA's Approvals and Consents To Be By Contracting Officer.

Except as otherwise specified in this Agreement, wherever an approval or consent is required by WMATA under this Agreement, such approval or consent shall be deemed to have been validly given only if given by WMATA's Contracting Officer or such Contracting Officer's designee.

25.20 Survival.

The terms and conditions of this Agreement survive the termination of this Agreement.

the organic document under which WMATA exists, 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; and any amendments thereto thereafter or hereafter made.

25.21 Sovereign Immunity; Anti-Deficiency Clause.

In accordance with Section 80 of the Washington Metropolitan Area Transit Authority Compact (Resolution of D.C. Board of Commissioners adopted November 15, 1966) (the "Compact"), WMATA shall be liable for its contractual obligations set forth in this Agreement, and breaches thereof, in accordance with the laws of the District of Columbia (including, but not limited to, rules on conflicts of laws and execution upon judgments and arbitration awards). Developer and WMATA acknowledge and agree that the "proprietary/governmental" distinction set forth in Section 80 of the Compact is not applicable to WMATA's liability for its contracts. All obligations of WMATA under this Agreement that directly or indirectly require the expenditure by WMATA of any of its funds are subject to the appropriation and availability of funding through WMATA's budgetary procedures. Notwithstanding the foregoing, if Developer, Tenant or both become entitled to receive from WMATA any reimbursement or other payment, and whether accruing under this Agreement, a Lease, a WMATA Improvements Construction Agreement, or any combination thereof, and funds for such reimbursement or other payment have not been appropriated and made available through WMATA's budgetary procedures, then Developer, Tenant or both, as the case may be, shall have the right to deduct from the installments of rent of any nature next coming due from Developer under this Agreement or from a Tenant to WMATA under a Lease any reimbursement or other payment to which Developer, Tenant, or both, as applicable are entitled; provided, that no deduction from rent shall be allowed to Developer or a Tenant, or both, as applicable, unless Developer, a Tenant, or both, as applicable, shall have first obtained a final, nonappealable judgment against WMATA that Developer, such Tenant, or both, as applicable, is or are entitled to such unpaid reimbursement or other payment from WMATA. The rights of a Tenant to obtain a reimbursement or other payment to which such Tenant is entitled by making a deduction from rent shall be governed by such

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Tenant's Lease (or, if applicable, a WMATA Improvements Construction Agreement to which such Tenant is a party).

25.22 Time of the Essence. Time is of the essence with respect to all provisions of this Agreement.

25.23 Intentionally Omitted. → Recitals incorporated

ARTICLE 26
REPRESENTATIONS AND WARRANTIES

26.1 WMATA's Representations and Warranties.

WMATA, to the best of its knowledge, hereby represents and warrants that:

26.1.1 WMATA legally exists, is in good standing under Federal and local laws, and is authorized to conduct the business in which it is engaged.

26.1.2 WMATA has power and authority to enter into this Agreement and Leases with Developer/Tenants.

26.1.3 The Metrorail Station is not presently a Key Station.

26.1.4 WMATA's entering into this Agreement and/or Lease will not violate any laws or breach any contract or provision of any WMATA organizing document.

26.1.5 There are no actions, suits, arbitrations, governmental investigations or pending proceedings to which WMATA is a party which might adversely affect WMATA's right to enter into or perform under this Agreement or Lease.

26.1.6 Neither the Development Property nor the use, condition, maintenance or operation thereof violates any Applicable Law, with the exception of possible environmental site contamination, *provided,* that nothing in this Section 26.1.6 shall be deemed to lessen the effect of any portion of this Agreement by which Developer or a Tenant has accepted, or waived any right to object to, or WMATA has made no representation as to, the environmental condition of the Development Property, Leased Premises, or any part of any of them.

26.1.7 There are no condemnation proceedings pending or threatened with respect to the Development Property.

26.1.8 There are no special taxes or assessments to be levied against the Development Property.

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26.1.9 WMATA has good and marketable fee simple title to the Development Property, free of any unrecorded easements or agreements to which WMATA is a party, other than the Permitted Exceptions, *provided*, that any of the Permitted Exceptions relating to [redacted], or, to the extent that any such noted utility easements are not so dedicated, they shall be deemed to be Existing WMATA Improvements. WMATA agrees: [redacted] *Include FM Lease here?*

26.2 Developer's Representations and Warranties.

Developer, to the best of its knowledge, represents and warrants that:

26.2.1 Developer is a limited liability company, organized under the laws the District of Columbia, authorized to conduct the business in which it is engaged.

26.2.2 Developer is authorized to execute, deliver and perform under this Agreement, and when appropriate, the Tenant will represent and warrant in the Lease that it is authorized to execute and perform under the Lease.

26.2.3 Developer will not violate the order of any court or Governmental Authority or breach any contract by entering into this Agreement and Lease.

26.2.4 There are no actions, suits, arbitrations, government investigations or pending proceedings to which Developer is a party which might adversely affect Developer's right to enter into or perform under this Agreement and any Lease.

26.2.5 There will be Transit-Oriented Development Use of the Development Property as set forth in Section 6.12 of this Agreement.

26.2.6 No officer, Board member, or employee or agent of WMATA who deals in any way with management, real estate, construction, procurement, planning, or joint development, or any member of any such person's immediate family (which term "immediate family" shall, for the purposes of this Section 26.2.6, mean the parent, spouse, sibling, child, grandparent or grandchild of any of the foregoing persons), has or will have, directly or through any third party, any financial or other interest in, or in common with, Developer or any of its Affiliates. Developer will comply, and Developer will contractually obligate each of its third-party contractors at any tier to comply with or contractually obligate its

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subcontractor(s) to comply, with the provisions of Executive Orders 12549 and 12689, *Debarment and Suspension*, 31 USC §6101 note, and U.S. DOT regulations on Debarment and Suspension at 49 CFR Part 29. Developer shall include the requirements of the preceding sentence in each first-tier subcontract, and shall require each second- and lower-tier contractor to include them in any lower tier subcontract.

~~**26.2.7 Intentionally Omitted:**~~

26.3 Intentionally Omitted.

26.4 Notices of Changes in Representations and Warranties.

Each party shall give the other prompt notice of the occurrence of any event or the receipt of any notice or knowledge the effect of which would be to make any representation or warranty of the first party untrue or misleading in any material respect.

26.5 Survival.

The representations and warranties of the parties, whether contained in this Article or elsewhere in this Agreement, shall survive, with respect to each applicable Phase, the execution and delivery of each Lease for a period of two (2) years after the date of such delivery.

ARTICLE 27
DEFINITIONS

27.1 Defined Terms:

27.1.1 The following terms, when used in this Agreement with initial capital letters, shall have the meanings given them below or at the applicable place of reference:

27.1.1.1 **Intentionally Omitted**

27.1.1.2 **Intentionally Omitted**

27.1.1.3 **ADA** means the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq., as amended, and any regulations promulgated thereunder.

27.1.1.4 **Additional Required Permits** - See **Section 2.1.**

27.1.1.5 **Affiliate** means with respect to any person, a person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified person. The term **"control"** (including

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correlative terms **"controlled by"** and **"under common control with"**) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through ownership of voting securities, ability to elect directors to such person's board of directors or similar governing body, by contract or otherwise. For example, and without limitation, Metropolis Development Company, LLC is an Affiliate of Developer and any entity controlled by Metropolis Development Company, LLC would be an Affiliate of Developer.

27.1.1.6 **Agreement** means this ~~Amended and Restated~~ Joint Development Agreement between WMATA and Developer.

27.1.1.7 **Intentionally Omitted.**

27.1.1.8 **Intentionally Omitted.**

27.1.1.9 **Intentionally Omitted.**

27.1.1.10 **Intentionally Omitted.**

27.1.1.11 **Intentionally Omitted.**

27.1.1.12 **Applicable Law** means the following (including, without limitation, any Environmental Law), as the same may be in effect from time to time: any and all judicial decisions, statutes, rulings, rules, regulations, permits, or ordinances of any federal, state or local governmental or quasi-governmental authority (excluding, however, any of the foregoing promulgated or attempted to be applied by WMATA selectively or discriminatorily with respect to Developer any Tenant, the Development Property, or any Lease, rather than generally and non-discriminatorily to all applicable persons, places and properties) that relate in any way or are applicable to the Development Property or the ownership, use, or occupancy thereof.

27.1.1.13 **Assignment** - See **Section 21.3.2.3.**

27.1.1.14 **Bankruptcy Event** - See **Section 16.11.1.1.**

27.1.1.15 **Best Efforts** means that, as and when required hereunder, Developer is timely and diligently taking all steps usually and customarily taken by an experienced real estate

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developer seeking with all due diligence to lawfully achieve the objective to which the particular effort pertains including, by way of example, that Developer is (i) filing all applications and making all appearances, and is providing documents, studies and other materials and satisfying such other requirements (including requirements linked to zoning and development approval) required by Applicable Laws or otherwise reasonably requested by applicable governmental authorities in connection with the Project, (ii) timely responding to inquiries of public officials and other interested parties, as may be appropriate in Developer's discretion, and meeting deadlines, (iii) procuring such competent professional support as is commercially reasonable to achieve the objective, (iv) overseeing and managing the timely and proper completion of the applicable activities, and (v) timely making all payments required in connection with said work.

27.1.1.16 **Business Day** means a workday from Monday through Friday that is not a Federal or District of Columbia holiday.

27.1.1.17 **Calendar Year** means each period January 1 through December 31 during the Term.

27.1.1.18 **Intentionally Omitted.**

27.1.1.19 **Change of Control** means (a) the sale or transfer (other than to Bannker Ventures, LLC, an Affiliate of Bannker Ventures, LLC or an Affiliate of Developer), in a single transaction or a series of related or unrelated transactions, of beneficial ownership of fifty percent (50%) or more of either (i) the membership interests in Developer or (ii) 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 (other than an Affiliate of Developer or of Bannker Ventures, LLC), or (c) any one or series of related sales or conveyances to any person or entity (other than an Affiliate of Developer or of Bannker Ventures, LLC) of all or substantially all of Developer's assets.

27.1.1.20 **City** means the District of Columbia.

27.1.1.21 **Closing** means a Lease Closing.

27.1.1.22 **Closing Statement** means a lease settlement statement as more particularly described in Article 21.

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27.1.1.23 **Construction Drawings and Specifications** means the complete set of work drawings and specifications for the work to be designed and constructed under the conditions of this Agreement. The drawings and specifications shall include the Developer improvements to be constructed on the Development Property, the temporary or permanent Parking Improvements, if any, and the temporary or permanent Replacement Facilities, if any.

27.1.1.24 **Construction-Related Obligations** - See **Section 5.4.1**.

27.1.1.25 **[Intentionally Omitted].**

27.1.1.26 **Construction Standard** means a first-rate quality of construction as generally prevailing in new construction of the type and quality similar to the applicable Developer Improvement, subject to any modification specified in Zoning Approvals.

27.1.1.27 **[Intentionally Omitted].**

27.1.1.28 **Covenants, Conditions, Cross-Easements and Reservations** - See **Section 3.2.1**.

27.1.1.29 **Intentionally Omitted.**

27.1.1.30 **Intentionally Omitted.**

27.1.1.31 **Day or day** means a **"calendar day"** except when stated to be a **"Business Day."**

27.1.1.32 **Default Rate** - See **Section 16.6**.

27.1.1.33 **Developer means** [redacted].

27.1.1.34 **Developer Event of Default** - See **Section 16.3**.

27.1.1.35 **Developer Improvements** - See **Section 6.2.1**.

27.1.1.36 **Developer's Materials** - See **Section 16.7**.

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27.1.1.37 ~~**Development Approval Period** - See Section 1.2.3~~

27.1.1.38 **Development Property** - See **Recitals.**

27.1.1.39 **Intentionally Omitted.**

27.1.1.40 **Effective Date** means the date of execution and delivery of this Agreement, as evidenced by the date completed on the cover page and in the Preamble.

27.1.1.41 **Environmental Law** means any law referred to in the definition of Hazardous Material, as such law may be amended from time to time, and all rules and regulations of governmental authorities having jurisdiction, published pursuant thereto or promulgated thereunder.

27.1.1.42 **Existing Parking** - See **Section 3.3.2.**

27.1.1.43 **Existing** [redacted].

27.1.1.44 **FAR** means floor area ratio; used to denote density entitlements with respect to development of real property.

27.1.1.45 **Final Approval** means the last of all land use approvals, which such approvals are final, non-appealable and irrevocable.

27.1.1.46 **Force Majeure Event** - See **Section 6.7.1.**

27.1.1.47 **FTA** - See **Section 1.2.5.**

27.1.1.48 **Governmental Moratorium** means any action by a governmental agency or instrumentality having jurisdiction over the Development Property which delays, defers or impedes the performance of Developer's obligation, such as a moratorium or jurisdictional determination of inadequate offsite

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public facilities, that extends not only within the Shaw-Howard University Area but also to the Greater Shaw / U Street Area, as those areas are generally understood as of the date hereof. The burden shall be on Developer to establish the existence of a Governmental Moratorium.

27.1.1.49 **Hazardous Materials** means 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 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).

27.1.1.50 **Impositions** mean all real estate taxes and assessments, fees and other charges, which are required to be paid with respect to the Development Property.

27.1.1.51 **Improvements** means all infrastructure, buildings, portions of buildings amenities, decks, parking, and other structures of whatever kind, and all equipment and fixtures therein and any replacements, additions and substitutes of, to and for the same.

27.1.1.52 **Initial Equity Contribution** means the cost of acquiring the applicable Development Property plus the cost to construct the Developer Improvements, ~~WMATA Improvements, including any temporary and/or permanent Parking Improvements and any temporary or permanent Replacement Facilities~~ associated with the ~~purchase~~ (including all hard and soft costs and all costs of acquiring and implementing the financing for such improvements, less the construction loan used for such Developer Improvements ~~and less the Allocated Partial Offset for WMATA Improvements~~).

27.1.1.53 **Intentionally Omitted.**

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27.1.1.54 **Key Station** means pursuant to the ADA, any station that WMATA so designated in the Key Station Plan it submitted to the FTA in 1992.

27.1.1.55 **Intentionally Omitted.**

27.1.1.56 **Late Charge** - See **Section 16.6**

27.1.1.57 **Lease Closing** --See **Section 5.3.1.**

27.1.1.58 **Lease Closing Statement** - See **Section 21.2.2.7.**

27.1.1.59 **[Intentionally Omitted].**

27.1.1.60 **[Intentionally Omitted].**

27.1.1.61 **Leased Premises** means each portion of real property to be leased by WMATA pursuant to the Lease and consistent with any subdivision requirements herein, excluding the WMATA Reserved Areas.

27.1.1.62 **Market Rate** means a real estate transaction in which the price is one which a seller, under no obligation or duress to sell, is willing to accept and a buyer, under no obligation or duress to buy, is willing to pay in an arms-length transaction, without application of any affordable housing laws or regulations.

27.1.1.63 **Metro** means the Washington Metropolitan Area Transit Authority's transit system, which includes a rapid rail train system, buses, structures and all associated facilities required in the operation of the transit system.

27.1.1.64 **Metro Station** means the Metrorail tracks and station located in WMATA Reserved Areas that are part of the Development Property.

27.1.1.65 **Intentionally Omitted.**

27.1.1.66 **Mortgage** means a mortgage, deed of trust (whether securing a direct obligation or a guaranty of obligations encumbering a portion of the Development Property), deed to secure debt, security deed, indenture, sale-leaseback documents, lease-leaseback documents, or any other instrument

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securing payment of a debt that encumbers Tenant's leasehold or subleasehold interest in the Leased Premises (or an interest therein). Mortgage shall not include a mortgage, deed of trust, deed to secure debt, security deed, indenture, sale-leaseback documents, lease-leaseback documents, fixture filings, or any other instruments securing payment of a debt of a Tenant which is (a) on other than arm's-length terms or (b) not incurred in connection with the Development Property or any portion thereof.

27.1.1.67 **Mortgagee** means (a) the holder of, or beneficiary under, a Mortgage, (b) in the case of a sale-leaseback transaction, the owner of the reversionary estate, or (c) otherwise, the person to which all or any portion of Developer's or Tenant's interest in the Leased Premises (or an interest therein) is transferred as security under a Mortgage.

27.1.1.68 **Intentionally Omitted.**

27.1.1.69 **[Intentionally Omitted].**

27.1.1.70 **Intentionally Omitted.**

27.1.1.71 **Intentionally Omitted.**

27.1.1.72 **Intentionally Omitted.**

27.1.1.73 **Occupant** means any person occupying or proposing to occupy any part of the Developer Improvements under any lease, license or other occupancy agreement with Developer or Tenant, as the case may be.

27.1.1.74 **Occupant's Improvements** means those works which are proposed to be constructed by any Occupant to complete and fit-out to such Occupant's own occupancy requirements. Occupant's Improvements are not the obligation of Developer under this Agreement.

27.1.1.75 **Intentionally Omitted.**

27.1.1.76 **Intentionally Omitted.**

27.1.1.77 **Intentionally Omitted.**

27.1.1.78 **[Intentionally Omitted].**

27.1.1.79 **[Intentionally Omitted].**

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27.1.1.80 **Parking Improvements** - See **Section 3.3.2**.

27.1.1.81 **Partial Taking** - See **Section 20.2.1.**

27.1.1.82 **Parties Eligible for Reimbursement** - See **Section 9.2.3.**

27.1.1.83 **Intentionally Omitted**

27.1.1.84 **Intentionally Omitted.**

27.1.1.85 **Performance Security** - See **Section 4.1.**

27.1.1.86 **Permits** - See **Section 11.1.1**

27.1.1.87 **Permitted Exceptions** - See **Section 1.1.2.1.**

27.1.1.88 **[Intentionally Omitted].**

27.1.1.89 **[Intentionally Omitted].**

27.1.1.90 **[Intentionally Omitted].**

27.1.1.91 **Intentionally Omitted.**

27.1.1.92 **Lease Memorandum** - See **Section 21.2.2.3.**

27.1.1.93 **[Intentionally Omitted].**

27.1.1.94 **[Intentionally Omitted].**

27.1.1.95 **[Intentionally Omitted].**

27.1.1.96 **[Intentionally Omitted].**

27.1.1.97 **[Intentionally Omitted].**

27.1.1.98 **[Intentionally Omitted].**

27.1.1.99 **[Intentionally Omitted].**

27.1.1.100 **[Intentionally Omitted].**

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27.1.1.101 **[Intentionally Omitted].**

27.1.1.102 **[Intentionally Omitted].**

27.1.1.103 **Tenant** - See **Section 5.3.1.**

27.1.1.104 **Title Policy** - See **Section 21.2.1.**

27.1.1.105 **Project** means the Developer Improvements, ~~the Parking Improvements and Replacement Facilities~~ and any other work necessary to develop the foregoing.

27.1.1.106 **Proposed Tenant Notice-** See **Section 5.3.1.**

27.1.1.107 **Rent** means the amount of rent and all other amounts that are payable by Developer or Tenant, as the case may be, to WMATA or its designees pursuant to any Lease, including but not limited to Lease Base Rent and all adjustments and escalations thereto such as the Annual Base Rent Escalation.

~~27.1.1.108 **Replacement Facilities** - See **Section 3.3.3.**~~

27.1.1.109 **[Intentionally Omitted].**

27.1.1.110 **[Intentionally Omitted].**

27.1.1.111 **[Intentionally Omitted].**

27.1.1.112 **[Intentionally Omitted].**

27.1.1.113 **Sign or signage** means and includes any placard, awning, poster, light, graphic or other advertising symbol or object, irrespective of whether temporary or permanent.

27.1.1.114 **Site Plan** - See **Section 2.3.2.**

27.1.1.115 **Submission** - See **Section 2.4.1.**

27.1.1.116 **[Intentionally Omitted].**

Intentionally Omitted.

27.1.1.117 **Substantial Project Completion** means the stage when Developer Improvements in all material

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and the Lease

respects complete in accordance with this Agreement, and is ready for occupancy and fit for use for its intended purposes, or with respect to leasable areas, is ready to be turned over to the Occupants for the construction of the Occupant's Improvements (it being acknowledged that Substantial Project Completion shall be determined to have been achieved notwithstanding that any Occupants' Improvements have not been completed), subject in any case to the completion of punch list items (it being acknowledged that Substantial Project Completion shall be determined to have been achieved notwithstanding that any punch list items have not been completed) and a temporary certificate of occupancy has been issued by the appropriate governmental authorities for all applicable portions of the Development Property, other than areas leasable to third parties, as may be required by Applicable Law.

27.1.1.118 **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 zoning, land use approvals and the like.

27.1.1.119 **[Intentionally Omitted].** Tenant

27.1.1.120 **Title Company** means _____ _____ or such other title company as Developer elects.

27.1.1.121 **Total Taking** - See **Section 20.1.**

27.1.1.122 **Transfer** -- See **Section 4.3.4.**

27.1.1.123 **Transit Facilities** means and includes all rail stations, trains, buses, structures, bus transfer areas, taxi stands, supervisor kiosks, employee bathrooms, parking, electric substations, pedestrian areas, facilities for the disabled, cooling towers, chiller plants, vent shafts and fan shafts, bicycle racks, bicycle lockers, and all other associated facilities regardless of who constructed them and whether they are temporary Replacement Facilities constructed by any Tenant.

27.1.1.124 **Transit-Oriented Development Use** - See **Section 6.12**.

27.1.1.125 **Intentionally Omitted**

27.1.1.126 **Intentionally Omitted**

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008542

27.1.1.127 **WMATA** – Washington Metropolitan Area Transit Authority.

27.1.1.128 **WMATA Compact** - See **Section 7.6.**

27.1.1.129 **WMATA Event of Default** - See **Section 16.8.**

Sharper

27.1.1.130 **WMATA Facilities** means collectively, the WMATA Improvements and the WMATA Reserved Areas, including both Replacement Facilities and Parking Improvements which have been turned over to, and accepted by WMATA, and including "**Transit Facilities**".

27.1.1.131 **WMATA Improvements** means those Improvements, which are owned or used by WMATA, including Existing WMATA Improvements, Parking Improvements and Replacement Facilities, in all cases whether temporary or permanent.

27.1.1.132 [redacted].

27.1.1.133 **WMATA Project Representative** - See **Section 2.3.3.1.**

27.1.1.134 **WMATA Reserved Areas** - See **Section 1.1.2.2.**

27.1.1.135 [redacted]

27.1.1.136 **Zoning Approvals** - See **Section 2.1.**

FOIA CONFIDENTIAL TREATMENT REQUESTED

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to he executed under seal as of the date first above written.

DEVELOPER:

DEVELOPER, L.L.C.

By: BANNEKER VENTURES, L.L.C., its Managing Member

By: Company Manager II, L.L.C., its Managing Member

By:_____
Name:_____
Managing Member

WITNESS:

_____

OWNER:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

By: _____(SEAL)
Contracting Officer

ATTEST:

_____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008544

ACKNOWLEDGEMENTS

District of Columbia)
) ss:
_____)

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 _____, _____.

_____
Notary Public

My commission expires: _____.

District of Columbia)
) ss:
_____)

I, _____, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____, who is the managing member of Twinbrook Commons, LLC, Developer herein, 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 Twinbrook Commons, LLC, for the uses and purposes therein set forth.

GIVEN under my hand and seal this ____ day of _____, _____.

_____
Notary Public

My commission expires: _____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008545

Exhibits

Exhibit 1.1.1A	Survey
Exhibit 1.1.1B	Phasing Plan and WMATA Reserved Areas
Exhibit 1.2.4	Location of Parking Improvements
Exhibit 1.2.5	FTA Approval dated 3/8/01
Exhibit 2.1	Zoning Approvals
Exhibit 3.2.1	Form of Covenants, Conditions, Cross-Easements and Reservations
Exhibit 3.3.2	Existing Parking
Exhibit 3.3.3.2	Preliminary Design Criteria (Twinbrook) - WMATA Parking and Access Facilities
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Exhibit 5.2.1	Form of Phase Lease
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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008546

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Do not distribute as sample agreement for negotiation.

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Design

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  - Approvals (20 m)
  - Extended (45 m total)
- Project Concept plan
  - WMATA Submission (10 D)
  - WMATA Approval (60 D)
  - WMATA Compact Hearing
- Proposed Development Plan
  - WMATA Submission (30 D after Concept Approval)
- Design & Construction Docs → Separate from above?
  - 11.3 → OK
  - WMATA Submission (10 D after Approvals Achievement)
  - WMATA Approval (30 D)

- Submission Requirements
- Project Schedule
  - WMATA Submit (30 D after Approvals Achv.)

JD Meeting 8/19/08

- Anacostia
  - Street Cars program
  - Acting only as agent for the District
  - SAAM has called

- Shaw - Howard
  - Copies to Bruce/Carol first.

- Georgia Avenue & Minnesota Ave.
  - include purpose in documents
  - Especially in sales to Retain Some manner of control

Mabel: ✱
- PGP
- Takoma
- Huntington

- JD guidelines
  - providing property at no Cost to govts for transit purposes

wkly Report ✱

- Shaw - Howard
  - Site Visit w/ Rosalyn
  - Mabel U St → Tunnel Easement
  - Pre-stabilization → Through lease up of the building (may Span JDA + Lease)
    - Discuss w/ Roz → When does it End?
    - ✱✱ - look to Term Sheet ✱✱ → SAAM will explain meaning of TS
    - use Same names
  - indemnification - Never give; Can't give w/o BOD Approval

✱ FTA - Raj Chopra or Don Laffert → PRMT website (WMATA)

Compact Hearing Notes:

- Saunders v. WMATA, 359 F. Supp. 457 (DC 1973):
    - Only major elements of a plan, or major changes or revisions to the plan are subject to the hearing process.
    - What is "major"?
        - Fact-specific interpretation;
        - Court suggested that the displacement of people, taking of property, or changes in the environment that altered the character of the neighborhood in which the facility was located would be considered major;
    - Timing
        - If the public hearing comes too early in the development process, court could deem the initial public hearing to be inadequate;
        - Only when development plan is sufficiently final, so that all changes to major transit elements have been incorporated into a construction plan or design should a hearing be held.

Binding Effect of WMATA Term Sheet on JDA:

- Term sheet is only binding if both:
    - The circumstances indicate that the parties intend the term sheet to be a binding legal agreement; and
    - The term sheet reflects agreement of the parties on all essential/material terms;
- Even if term sheet is not binding, case law has held that these preliminary agreements may create a binding obligation to negotiate in good faith – which includes an obligation to be bound by those terms that are incorporated in the preliminary agreement during future negotiations.
- Florida Avenue Term Sheet paraphrases the WMATA recommended "non-binding" language from memo dated 8/7/98;

From: Bruce P. Heppen
To: Montague, Joshua W.; O'Keeffe, Carol B.
Date: 2/11/2009 9:34:20 AM
Subject: Re: Releasing Names of Bidders Not Selected- FL Ave Properties

Josh: as a follow up to our discussion of this yesterday, did you find out whether the names of the other bidders appeared in the materials which went to the Board on this?

>>> Carol B. O'Keeffe 2/10/2009 12:25 PM >>>
I agree, but am asking Bruce tohave reiewed.

>>> Rosalyn Doggett 2/10/2009 11:58 AM >>>
Steve Taubenkibel phoned to say that the Washington Bus. Journal has asked for the two FL Ave bidders not selected. I am not aware of any policy one way or the other on releasing such information. I see no reason not to release it but wanted to check with you first.

Rosalyn P. Doggett
Washington Metropolitan Area Transit Authority
600 Fifth St, NW
Washington, DC 20001
Phone: 202 962 2208
Fax: 202 962 2396
rdoggett@wmata.com

M E M O R A N D U M

DATE: May 7, 2009

SUBJECT: Florida Avenue Affordable Housing

FROM: COUN – Josh Montague

TO: COUN – Carol B. O'Keeffe
COUN – Bruce P. Heppen
PLJD – Nat Bottigheimer
SAAM – Rosalyn Doggett

I. Issues:

A. When did WMATA impose the Affordable Housing requirement upon the developer in the Florida Avenue project?

B. What is the Affordable Housing requirement imposed by the District of Columbia?

C. How did the proposals of Moddie Turay / Clark or Banneker consider affordable housing?

II. Affordable Housing Imposed by WMATA in the Florida Avenue Project. Affordable Housing was not mentioned in WMATA's Proposal Submission Requirements or the Term Sheet negotiated with the Developer. The first sign of WMATA imposing an affordable housing requirement on the selected developer appears to come from the Committee and Board meeting minutes, as follows:

A. In the Planning, Development, and Real Estate Committee meeting, the Committee unanimously voted to amend the resolution to direct "staff to negotiate an affordable housing set aside in this proposal and the Board to receive a report on Staff recommendations regarding this issue."

B. In the subsequent Board Meeting, the Board approved the Banneker Term Sheet, and directed that "the final agreement shall reflect the inclusion of an affordable housing component."

III. Affordable Housing in the District of Columbia. The District of Columbia may impose Affordable Housing on this project either through its impending inclusionary zoning statute or the Duke Plan.

A. *Inclusionary Zoning*: According to the DC Office of Planning, the District's Inclusionary Zoning requirement will be a final law "any day now." Inclusionary Zoning will require that the Developer make at least 8% of its units or 50% of its bonus density as affordable housing.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

B. *The Duke Plan*: The Duke Plan does not have an affordable housing requirement, but rather provides guidance for Developers and District agencies. But, according to the DC Office of Planning, this *guidance* is basically a *requirement* when the Developer is seeking to get a PUD approved. The Duke Plan's guidance/requirement states the following:

1) The Duke Plan's Planning Goals are to "develop 20 to 30 percent affordable housing in residential development, particularly on publicly owned land."
2) The Duke Plan's Howard Theatre Sub-District Plan specifically mentions Florida Avenue's Lot 2 (*8,621 square feet, Square 393, Lot 45*), and recommends 20-30% Affordable Housing Target

IV. **Affordable Housing in the Final Bids.** The following were the only discussions of Affordable Housing in WMATA's negotiation and proposal records:

A. *Moddie Turay / Clark*:

1) In the "Zoning" section of their Technical Proposal, developer states that their proposal includes the "Arts/Overlay Zone incentive bonus for development of below market rate housing."
2) In an 11/15/07 memo from the DC Office of Planning, the DC Office of Planning cited that the Moddie Turay proposal did not discuss the income mix of units.

B. Banneker:

1) In a 12/13/07 letter to Banneker, the DC Housing Financing Agency expressed its interest in participating in the financing of the project. According to DCHFA's letter, Banneker's proposal included 20% affordable units at 50% AMI. DCHFA anticipated that the project would qualify for allocation of tax exempt and/or taxable bonds and 4% LIHTCs.
2) In a 3/4/08 internal email, Rosalyn Doggett stated, "[Banneker] proposed 20% affordable housing, at half the rent of market rate ($1.50 vs. $3.00/sf). Malcolm Marshall asked WMATA's 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 affordable by households making less than 60% of the area median income (or something to that effect). However, the appraiser 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."
3) In the executed operating agreement between Banneker and its original partners, the agreement states that the project will include 20% affordable units.

Minutes
Planning, Development and Real Estate Committee
June 26, 2008

The meeting was called to order at 9:08 a.m. Present were:

Committee Members:

Mrs. Catherine Hudgins, Chair
Mr. Emeka Moneme, Vice Chair
Mr. Chris Zimmerman
Mr. Jim Graham
Mr. Peter Benjamin
Ms. Elizabeth Hewlett
Mr. Marion Barry
Mr. Gordon Linton
Mr. Jeff McKay
Mr. Anthony Giancola

Mrs. Hudgins moved, seconded by Mr. Benjamin, that the Committee convene to Executive Session at 9:09 a.m. The Committee voted unanimously in favor of the motion.

The Committee meeting reconvened at 10:05 a.m.

Certification

Mrs. Hudgins moved that the Committee certify that only such matters authorized for discussion and only those matters identified in the motion by which the Executive Session was convened were heard, discussed or considered by the Committee. The motion was seconded by Mr. Moneme. The Committee unanimously voted in favor of the motion.

Action Item

A. Florida Avenue Developer Selection

Staff sought Committee concurrence and forwarding to the Board approval to: 1) select Banneker Ventures team as developer of Shaw-Howard U./Florida Avenue joint development site, 2) approve term sheet and 3) authorize negotiation of development agreement.

Mr. Moneme moved, seconded by Mr. Benjamin, to forward this item to the Board for further discussion. The Committee voted in favor of the motion. Mr. Graham abstained.

Mr. Graham moved, seconded by Mr. Benjamin, that General Counsel provide the Committee with policy guidelines on business ethics and integrity and application of the same. The Committee voted unanimously in favor of the motion.

Mr. Graham moved, second by Mr. Zimmerman, that staff amend the resolution that directs staff to negotiate an affordable housing set aside in this proposal and the Board receive a report on Staff recommendations regarding this issue. The Committee voted unanimously in favor of the motion.

Mr. Graham moved, second by Mrs. Hudgins, that the staff provide clarity on the roles and responsibilities of members of the development team and their construction experience relative to construction responsibilities.

The meeting adjourned at 10:30 a.m.

Washington Metropolitan Area Transit Authority

Agenda
Planning, Development and Real Estate Committee
June 26, 2008
9 am

I. Call to Order

II. Motion for Executive Session
- **A.** Florida Avenue Developer Selection (N. Bottigheimer)

III. Reconvene in the Meeting Room

IV. Certification

V. Approval of Agenda

VI. Action Item
- **A.** Action on Items that Arise from Executive Session

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008560

VI. Action Item

A. Action on Matters Arising from Executive Session

A1. Florida Avenue Developer Selection

- Approval to: 1) select Banneker Ventures team as developer of Shaw-Howard U./Florida Avenue joint development site, 2) approve term sheet and 3) authorize negotiation of development agreement.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Agenda
Planning, Development and Real Estate Committee
June 26, 2008

Executive Session

I. Information Item

A. Florida Avenue Developer Selection (N. Bottigheimer)

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008562

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

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008563

Report by Riders' Advisory Council (RAC):

Ms. Iacomini referred to the report submitted to ~~by~~ the Board. The report included RAC comments on the Capital Improvement Plan, the Blue Line Realignment, bus priority corridors and planning, the expansion of SmarTrip® usage, and service and communications issues.

Report by Chair:

Mr. Zimmerman's report included remarks on the continuing rise in ridership in the Metro system, and the need for both improvements in WMATA's capital facilities and dedicated funding.

Report by General Manager:

Mr. Catoe's report included an acknowledgment of the difficult service disruptions in June 2008 along with the efforts of WMATA personnel in returning the Metro system to service after the disruptions. He also stated that the FTA is proposing to tighten its interpretation of existing regulations on school bus operations, which could impact a number of Metrobus routes, particularly in the District of Columbia, and that if the FTA does not allow a special exemption for the District, WMATA has requested that the final policy statement permit that any changes to existing bus routes not be required until the beginning of the 2009-2010 school year. In addition, WMATA staff is available to work with appropriate jurisdictional offices on a contingency plan for school bus operations for the next school year. Mr. Catoe further reported on the implementation of the restructured 30s Line.

Discussion ensued regarding the new FTA regulations, during which Mr. Catoe was encouraged to bring this issue before the United States Conference of Mayors ~~Mayors' Council~~ and Mr. Zimmerman stated he would sign letters expressing concern over this issue and ~~issues~~ with ~~other~~ changing FTA charter bus regulations discussed during the previous Board meeting.

Mr. Francis recognized General Equipment Mechanic Stefan Petrowski for identifying the Orange Line derailment on June 9, 2008 and then assisting with the evacuation; Rail Operator Donnell Morina for spotting the heat kink on the Orange Line on June 11, 2008; and Bus Operator Christopher Depetris for transporting a gunshot-wounded passenger to rendevous with an emergency medical vehicle for assistance.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008564

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008565

DUKE: Framework for a Cultural Destination for Greater Shaw/U Street

The Duke plan concludes of an extensive community planning process which outlines specific development and use targets between the Shaw-Howard University and U Street/African-American Civil War Memorial/Cardozo metro stations. About 500 community, business and institutional stakeholders provided input during the series of community meetings which led to this document.

Duke specifically addresses the redevelopment of key public-owned buildings and land. Key sites include the District's historic Howard Theatre and Grimke School on Vermont Avenue, National Capital Revitalization Corporation (NCRC) Parcels 33 & 42, Metro's Shaw Parcels, the Housing Finance Agency (HFA) site, and select private parcels in the 7th Street/Georgia Avenue and U Street/Florida Avenue commercial corridors. The plan is to be implemented over a five to ten year horizon, but puts forth an emphasis on achieving visible progress sooner than later.

The District submitted Duke 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.

View the framework plan below.

Section Names	Pages
Cover, Contents, Overview, Neighborhood & Historical Context	1-7*
Process, Market Analysis, Public Sites, Public Policy, Principles	8-13*
Sub-district: Howard Theatre	14-21*
Sub-districts: 9th Street, Rhode Island Avenue	22-27*
Sub-districts: African-American Civil War Memorial, Howard Town Center	28-30*
Sub-district: Lincoln Common; Design Guidelines (incl. Preservation & Zoning)	31-37*
Design Guidelines (cont.) (incl. Transportation, Parking, Built Form and Public Realm)	38-48*

* This document is presented in Portable Document Format (PDF). A PDF reader is required for viewing.
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LM for Deborah

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008566

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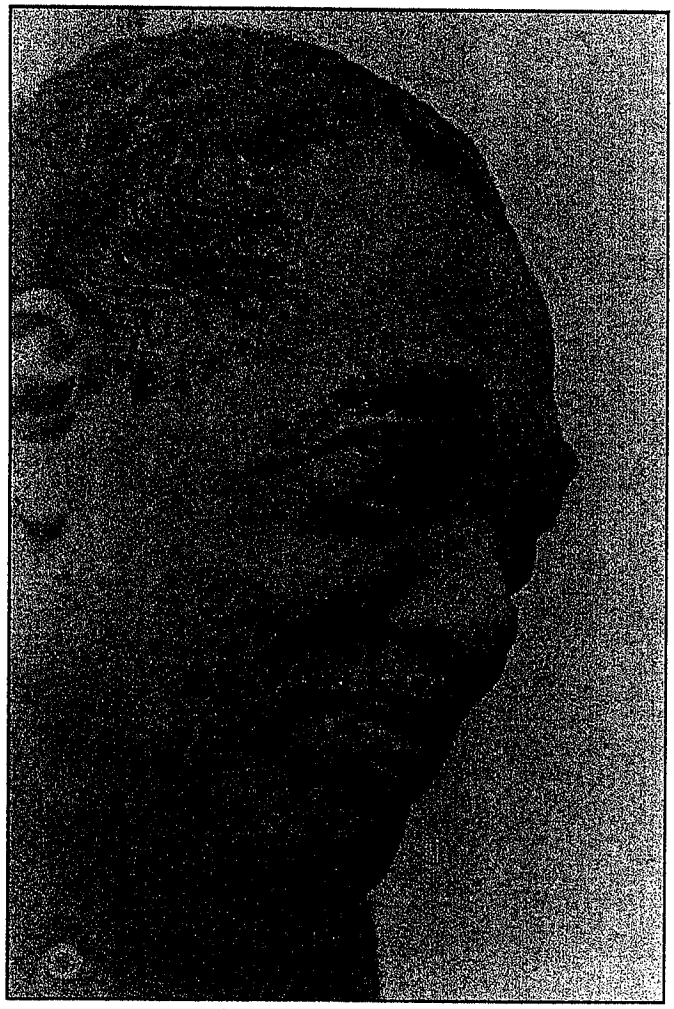
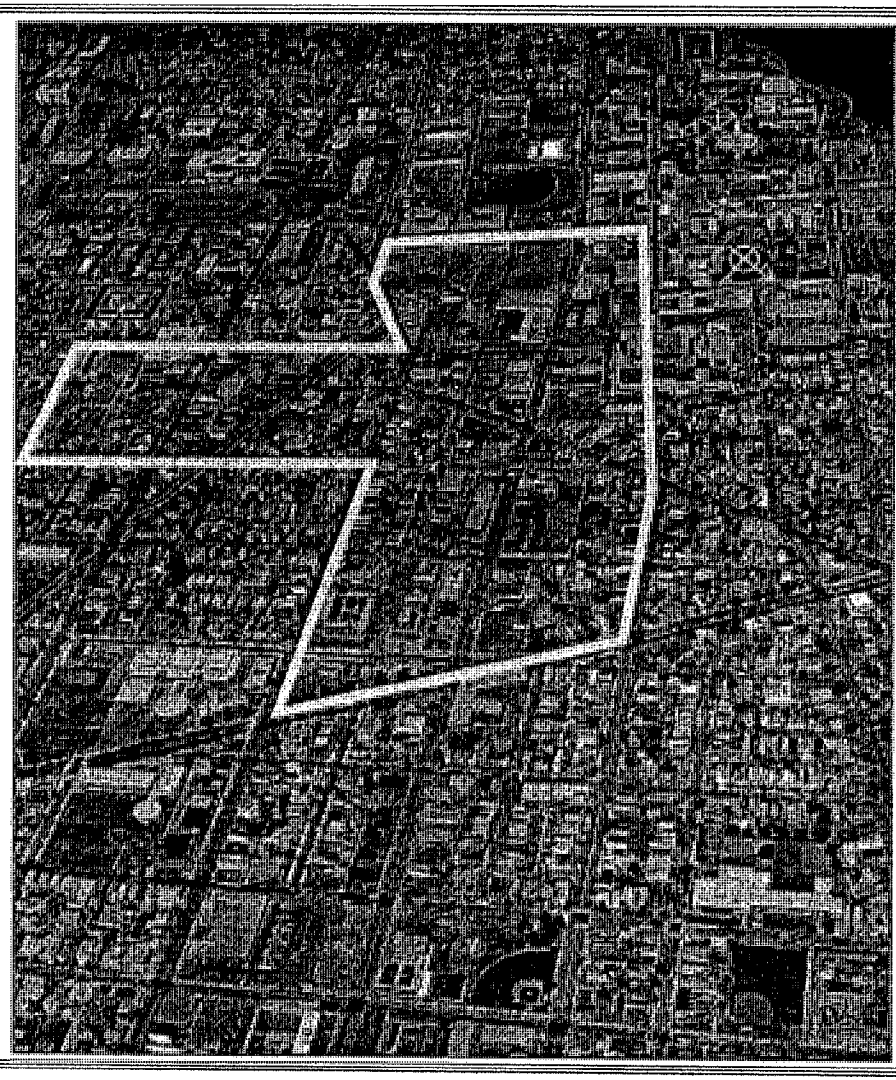


"Music is my mistress,
and she plays second fiddle to no one."

Edward Kennedy "Duke" Ellington
Washington, DC's Native Son &
World Legend
(1899 - 1974)

WMATA-INV 008567



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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008568

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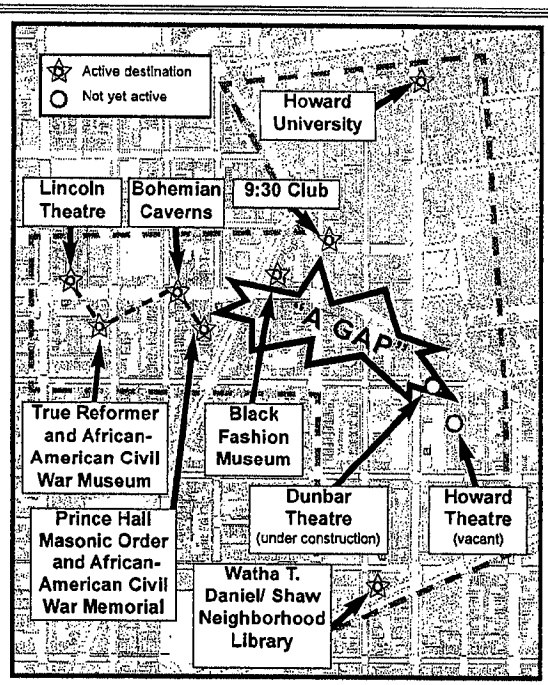
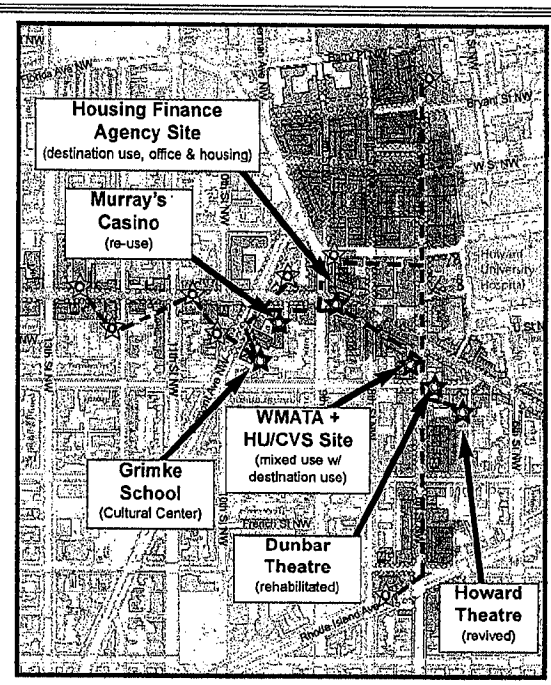


Existing Figure Ground



Illustrative Site Plan

I. Overview

The District of Columbia, other partner agencies, and private landholders have a unique opportunity to use public and private owned assets to leverage considerable community and citywide benefits within the Shaw-Howard University and U Street/African-American Civil War Memorial/Cardozo Metro station areas. In its "heyday," this area was the heart of an important economic, cultural, social and institutional center of a proud and accomplished African-American community, many of which were affiliated with Howard University and Hospital. This was the neighborhood that introduced to the global community the talents and intelligence of numerous African-American pioneers, including Edward Kennedy "Duke" Ellington, perhaps its most recognized. Many of the building assets, which formed the backdrop for this community and the transformative contributions and events they pioneered, remain, and many are in active use. Significant sites like the vacant Howard and Dunbar Theatres represent a monumental opportunity to re-knit and enhance the fabric of this history and to create a more complete destination neighborhood where cultural landmarks are as "pearls on a string" of supporting mixed-use development. "DUKE" seeks to guide future development strategically by capitalizing upon this historic context to restore this contemporary uptown neighborhood with 18-hour destinations.

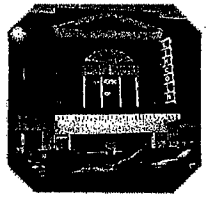
Current neighborhood needs can be addressed while building upon the area's extensive history in order to attract local and visiting guests from the National Mall and new Convention Center, located one Metro station away. Many public owned sites are within "the gap" which links vibrant U Street along Florida Avenue to 7th Street NW. Based upon technical land development analysis, considerable community input and the area's locational advantages, this development framework provides direction to the community, private sec-

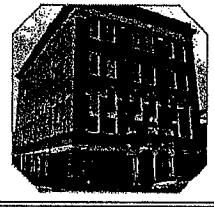
contemporary uptown neighborhood with 18-hour destinations

tor and public agencies in revitalizing this transit oriented neighborhood to achieve a cohesive and inclusive district which meets the community and District government development goals. Specific sites are used to illustrate development potential and programmatic targets. Recommendations are provided for others.

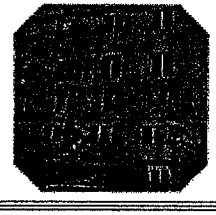
Project Boundaries. The Project Area is primarily focused upon the commercially zoned properties bound by Barry Place NW to the north; 6th Street NW to the east; Rhode Island Avenue to the south; and 13th Street to the west. The area is served by both the Shaw Howard University Metro and U Street/African American Civil War Memorial/Cardozo metro stations. Howard Theatre and the Lincoln Theatre serve as bookends to the many cultural heritage assets of the Project Area. Additionally, both theaters are owned by the District of Columbia government.

cultural landmarks are as "pearls on a string" of supporting mixed use development

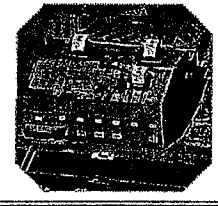

Lincoln Theatre

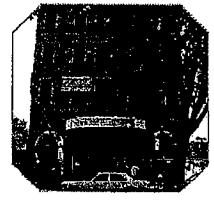

True Reformer Building

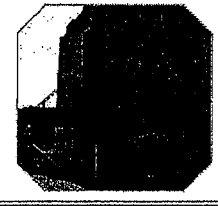
Bohemian Caverns


Prince Hall Grand Lodge

African-American Civil War Memorial


9:30 Club


Dunbar Theatre


Howard Theatre

WMATA-INV 008569

FOIA CONFIDENTIAL TREATMENT REQUESTED

II. Existing Neighborhood Context

The District of Columbia's investment in the Shaw-Howard University and U Street / African American Civil War Memorial / Cardozo Metro stations has helped to increase access between the metropolitan region to this historic district and intersection of historic neighborhoods. The District's investment has not been realized fully, as epitomized by the underutilization of key land and buildings abutting and within close proximity to these stations. Like other commercial districts within the city, 7th and Florida Avenue experienced considerable disinvestment due in part to economic downturns linked to middle class flight, urban riots and general market shifts. However, the momentum has changed as there is now the confluence of an increasingly strong market, renewed interest in mixed use transit oriented development by private sector developers and investors, and a desire on the part of local government to use its assets and resources catalytically.

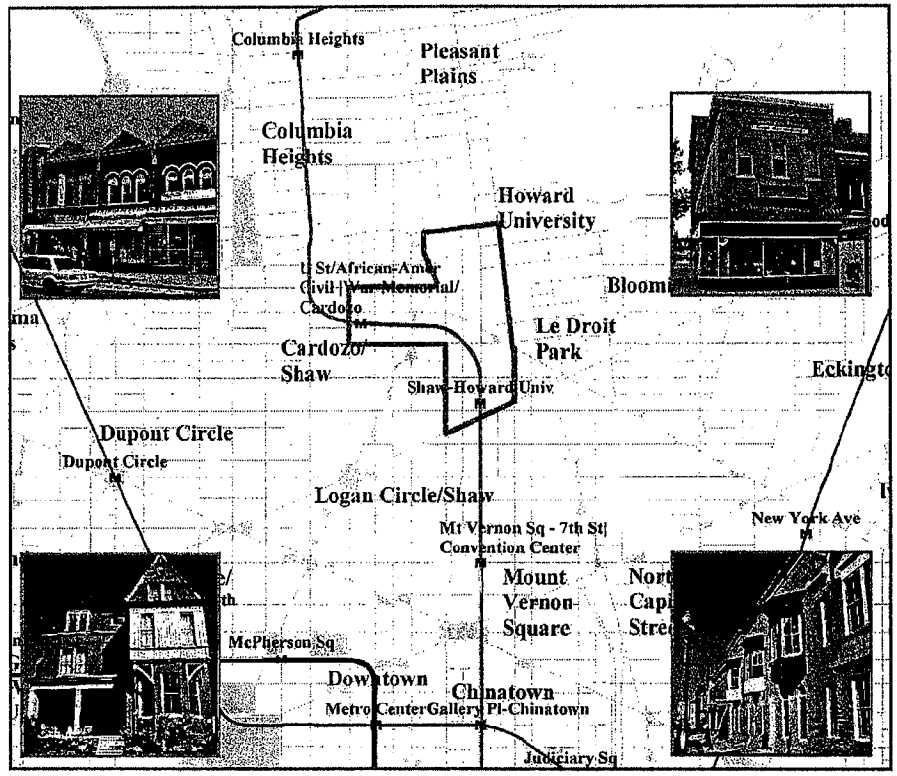
THE NEIGHBORHOODS. 7th Street and Florida Avenue converge at the center of several distinct neighborhoods: U Street/Cardozo, Shaw, LeDroit Park and Howard University. These historic neighborhoods were and are the center of a very rich and catalytic African-American and jazz history.

To the north of the Project Area, Howard University with its affiliated hospital is an anchor institution. Approximately 12,000 undergraduate and graduate students attend this historic university. To the south, the new $850 million Washington Convention Center opened in 2003. The Center attracts millions of visitors annually and is expected to generate nearly $1.5 billion in revenue.

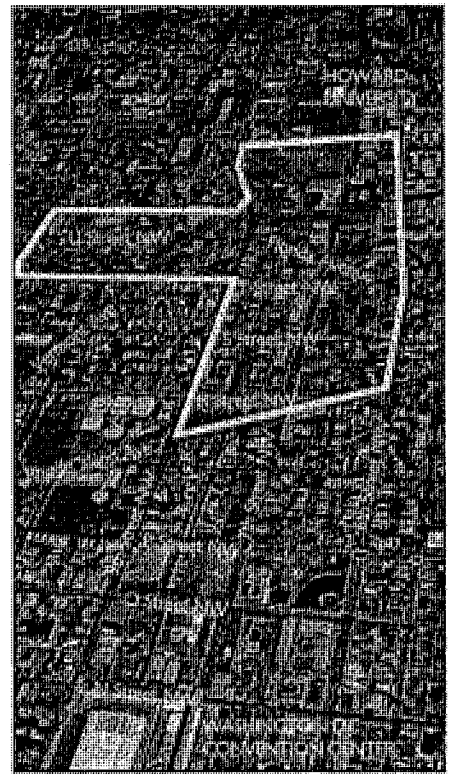
The neighborhoods are mixed socially, economically and culturally. The neighborhoods include a growing number of homeowners, but the needs of renters are a rapidly growing concern. Incomes vary across a wide spectrum. Area households are a mix of families, singles, and seniors. Residents and merchants are organized through several active organizations--Advisory Neighborhood Commissions, 14th & U and Shaw Main Street districts, civic associations, and faith-based organizations among others.

Given this area's strategic location, only minutes north of the Central Business District and new Convention Center, and the historic architectural character, neighborhoods in this area are very attractive. Many residents, however, are concerned about gentrification and affordability in both housing and retail services.

RETAIL. Whether established or new, resident demand for quality retail services, goods, and innovative entertainment is strong. Economic studies of similar areas in the District have confirmed that there is considerable sales leakage to surrounding jurisdictions. The retail mix in the Project Area and to the north is primarily comprised of a drugstore, fast food restaurants, hair salons, liquor stores, nail shops, and church operated retail. Currently, there are no distinguishing retail anchors within the area. The nearest grocery store is a few blocks away at 7th and O Streets NW. Howard University hopes to attract a new grocery store next to its campus as a part of its proposed HU Town Center project, at the north end of the Project Area. Development activity on U Street NW west of the Project Area continues with the addition of new mixed-use projects which include street-level retail, sit down restaurants and boutiques.



The Project Area is within close proximity to Downtown DC, the National Mall and the new Washington, DC Convention Center. The area is surrounded by thriving neighborhoods with significant historic housing and commercial stock.



The Project Area is anchored by the Washington Convention Center and Downtown to the south and Howard University & Hospital to the north.

HOUSING. Home sales and property values are increasing throughout all surrounding neighborhoods. Displacement and affordability are ongoing concerns. Recent new and rehab residential developments near the Project Area include a number of single-family rowhouse dwellings in the historic LeDroit Park neighborhood. Howard University entered a partnership with Fannie Mae to develop these properties for its employees and the general public. The sale of those homes yielded impressive results. Market rate townhomes and condos continue to be developed on historic U Street and throughout the neighborhoods. Howard University purchased a 125-bed extended care facility between S and T Streets on 7th Street NW and seeks guidance about long-term use of this temporary university offices site.

TRANSPORTATION, TRAFFIC & PARKING. The District has embarked on a public policy agenda that stresses the need to concentrate and maximize new development at or near Metro stations to increase Metro ridership while reducing the need for personal vehicles. The area is accessible from a variety of transportation methods including via Shaw-Howard University and U Street-Cardozo Metro stations. Up to 4600 metrorail entries and exits at each station occur each day. The 66, 68, 70, 71, 90, 92, 93, 96, G8 and X3 bus lines stop within the Project Area. Bus ridership varies from line to line, but the Georgia Avenue/7th St (70/71) bus carries over 20,000 riders daily; U St-Garfield (90/92/93), over 17,000. Over 27,000 personal vehicles pass through daily. Much of the area was built before cars were popular. Therefore, parking is limited and area residents are concerned about the impact of new development on current parking supply. In Winter 2005, DDOT's U Street/Shaw Transportation and Parking Study should provide recommendations about managing current and projected growth, transit, traffic and parking within the area.

WMATA-INV 008570

FOIA CONFIDENTIAL TREATMENT REQUESTED

III. Historical / Cultural Context

The following background information is printed in Greater U Street Historic District guide, published by DC Office of Planning - Historic Preservation Division. The text was written by Kimberly Prothro Williams.

RISE OF A CITY WITHIN THE CITY

Beginning in the 1890s, Washington experienced an increased sense of racial hostility. Many of the city's laws, passed during Reconstruction and aimed at the civil rights of African Americans, were ignored during the 1880s and 1890s, and then in 1901, were officially dropped from the city's legal code. Imposed segregation followed, and out of necessity, the city's African American population of all socio-economic levels coalesced into those areas of the city open to them, including, most notably, Greater U Street and the adjoining Strivers' Section. The influx of African Americans into these neighborhoods hastened the exodus of many whites. Between 1900 and 1920 the racially mixed neighborhood progressively changed to a more homogenous African American one.

While the Greater U Street area represented all socio-economic levels within the African American community, the presence of Howard University continued to attract students and educators that contributed to the area's cultural and literary life. To name a few, Greater U Street area was home to Francis Cardozo, the first principal of M Street High School; Francis Grimke, a writer and orator who championed constitutional rights for African Americans; Robert and Mary Church Terrell, lawyer and civil rights activist, respectively; William L. Houston, dean of the law school at Howard University; Georgia Douglas Johnson, poet and host of an influential weekly literary salon at her house on S Street; John Lankford, architect; Edward "Duke" Ellington, jazz musician; and Lillian Evans Tibbs (Madame Evanti), opera singer.

Duke Ellington and one of his early bands, circa 1919. Courtesy: Archives Centers, National Museum of American History.

Native son Edward Kennedy "Duke" Ellington (1899-1974), the internationally renowned composer and musician, spent his teenage years at 1805 13th Street (1910-1914) and then at 1816 13th Street (1915-1917). Ellington was born on April 29, 1899, at 2129 Ward Place NW, the home of his maternal grandparents. Ellington's musical interest first began at home. His mother Daisy Ellington, a native Washingtonian, played the family piano. His father James Edward Ellington of North Carolina played popular songs and arias. He began playing around age seven. He later attributed his professional success to his parents, his music teachers, local musicians, and the patrons of Frank Holliday's poolroom at 624 T Street NW. (Courtesy Cultural Tourism DC)

Dr. Charles Drew. (Scurlock Studio Records; Courtesy National Museum of American History, Smithsonian Institution)

The overall racial climate in Washington inspired a new ideology among African Americans that transformed U Street into a self-sufficient community and the center of African American life. A group of rising middle-class black entrepreneurs rejected the traditional approach of gaining racial equality through civil rights advocacy, and proposed instead the idea of racial solidarity and self-sufficiency. Influential leaders such as Calvin Chase, editor of the *Washington Bee*, Washington's preeminent African American newspaper; John Cromwell of the *People's Advocate*; Andrew Hilyer, founder of the Union League of the District of Columbia; and organizations such as the NAACP, led by W. E. B. DuBois, preached the benefits of racial unity and working together to achieve advancement. Most importantly, though, these men pushed for self-sufficiency through economic development. To spread the word, these leaders spoke out at churches and schools, through newspapers and on the street. In 1892, 1894, and 1895, the Union League of the District of Columbia published business directories that urged the African American community to patronize only their own businesses, and in particular those listed in the directories.

The Greater U Street neighborhood heeded the call of its leaders. Between 1886 and 1920, the number of African American owned businesses in the area rose from fifteen to 300, with the bulk of new businesses coming between 1910 and 1920. Entrepreneurs, like John Lewis; local businesses, such as the Murray Brothers Printing Company which published Washington's most influential African American newspaper, the *Washington Afro-American and Tribune*; and national benevolent organizations, such as the United Order of True Reformers, together built the infrastructure necessary to help the African American community gain its independence from white Washington.

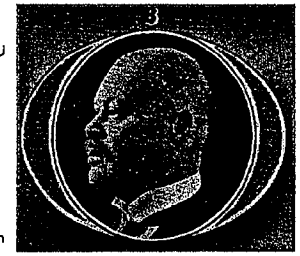
The Dozen Club at the True Reformer in 1917. (Adelaide Robinson)

While the rows of Victorian-era dwellings behind the major corridors of Greater U Street remained intact, U Street itself gained new and varied businesses in existing buildings and on its remaining vacant lots. Churches, hotels, restaurants, banks, fraternal organizations and self-help groups, theaters, jazz clubs and other entertainment and commercial facilities that catered to the African American community joined already existing commercial enterprises. New businesses such as printers, druggists, undertakers and more emerged in the area and fulfilled the community's need for services. As the variety of businesses increased in the U Street area, African Americans became even less dependent upon white Washington for services and became increasingly self-sufficient. At the same time, African Americans broke away from traditional employment roles and moved in to fields that required higher levels of education, and thereby gained affluence and prestige.

John Whitelaw Lewis. (Courtesy Cultural Tourism DC)

AFRICAN AMERICAN BUILDERS & ARCHITECTS

Many of the commercial and institutional buildings that helped U Street achieve its success were designed, constructed, and financed by African Americans. John Whitelaw Lewis, an African American entrepreneur and financial pioneer, devoted to the growth of an independent black Washington, constructed two major institutions in the area—the Industrial Savings Bank at 11th and U Streets (1917)—the only African American bank in the city, and the eponymous Whitelaw Hotel at 1839 13th Street NW (1919)—the only lodging facility in the city dedicated to African American patronage. A former hod carrier, Lewis saw the need to provide financial opportunities to his own people, and formed the Laborers Building and Loan Association. The association helped the working class "save a part of their small earnings" by providing homes for them, and assisted them in purchasing their own houses. The group's first purchase was the row of nine newly completed row houses on 13th Street between U and V Streets.



John Lankford. (Courtesy Cultural Tourism DC)

The Industrial Savings Bank, designed by African American architect Isaiah T. Hatton offered banking services to African Americans for the first time. At first a small enterprise, the bank benefited from a devoted clientele, and continued to grow until it failed during the national banking crisis in 1932. Two years later, it was reorganized and is still doing business at 11th and U Streets.

The institutions established by John Lewis were later followed by others along U Street, including the 1902 True Reformer Building; the 1908-1912 12th Street YMCA (now the Thurgood Marshall Center for Service and Heritage); the 1919-1920 Southern Aid Society building; and the 1922-1930 Prince Hall Masonic Temple.

The True Reformer Building at 12th and U Streets was one of the first institutional buildings erected by and for the African American community along U Street. The United Order of True Reformers, based in Richmond, Virginia, was founded as a fraternal and benevolent organization that served the economic and social needs of African Americans.

The Prince Hall Masonic Temple at 1000 U Street, designed by prominent black architect Albert I. Cassell and constructed between 1922 and 1930, was built to house a chapter of the first African American Masonic order. The temple has been continuously associated with the lodge, and continues to provide services for African Americans, such as social gatherings and commercial office space.

The 12th Street YMCA was constructed between 1908 and 1912 to designs prepared by African American architect William Sydney Pittman. Housed in an impressive Italian Renaissance-style building at 1816 12th Street N, it is the first purpose-built African American YMCA in the United States, a movement founded in 1853 by former slave and abolitionist Anthony Bowen. The building's construction attracted financial support from Julius Rosenwald, president of Sears, Roebuck and Company, who also contributed one-third of the costs for the construction of over 5,000 African American schools throughout the South.

Anthony Bowen. (Kautz Family Archives, YMCA of the USA)

WMATA-INV 008571

FOIA CONFIDENTIAL TREATMENT REQUESTED

Madame Lillian Evanti (Lillian Evans Tibbs). (Moorland Spingarn Research Center, Howard University)

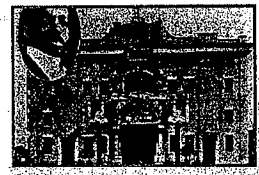
Lillian Evans Tibbs (1890-1967), professionally known as Madame Lillian Evanti, was a lyric soprano who received international acclaim. She was the first black woman to sing opera with an organized company in Europe.

A native Washingtonian, Anne Wilson Lillian Evans was the daughter of teachers Anne Brooks and Dr. Bruce Evans. She sang in her first public concert, a charity event, at age four. Evanti attended Armstrong Manual Training School and Miners Teachers College, and graduated from Howard University School of Music in 1917. In 1924 she left for Paris for further training and for better professional opportunities at a time when American opera and classical music companies refused to admit African Americans. (Courtesy Cultural Tourism DC)

The 12th Street YMCA, currently the Thurgood Marshall Center, provided the locale for social and civic activities, as well as dormitories for extended stays. Poet Langston Hughes lived here in the early 1920s, and Dr. Charles Drew, who pioneered the preservation of blood plasma, was an active member. Thurgood Marshall, the first African American Supreme Court Justice, held early meetings for civil rights legislation in the building.

The Southern Aid Society Building, located at 7th and T Streets, was constructed in 1919-1920 by the Society as a mixed-use building with commercial space, hotel rooms, and a first-run movie theater, the Dunbar Theater. The Society, founded in 1893 in Richmond, Virginia, was one of the first African American owned and operated insurance companies in the country. Designed by African American architect, Isaiah T. Hatton, the Southern Aid Society building is currently under renovation.

The development of these major institutions along U Street, and the growth of African American businesses provided the community economic security and stability that ultimately inspired the corridor's growth as an unrivaled entertainment center. By 1930, U Street had become the community's main boulevard, known nationally as "Black Broadway." Several first-run movie theaters, a multitude of nightclubs and ballrooms, pool halls and stores operated alongside the offices of African American doctors, dentists, and lawyers.



Howard Theatre.

During its heyday, U Street was home to a rich variety of theaters that extended from 7th to 14th Street. The Minnehaha Theatre (Ben's Chili Bowl) opened as a nickelodeon theater in 1909 at 1213 U Street NW. This was followed by the Hiawatha Theatre at 11th and U Streets and the Howard Theatre at 620 T Street NW, both in 1910; the Dunbar Theatre in the Southern Aid Society Building in 1919-1920; the Lincoln Theatre at 1215 U Street, in 1921-23, and the Republic and Booker T. theaters, mid-1920s, in the 1300 and 1400 blocks of U Street, (both demolished). The Howard was the first theater building in the nation erected specifically for African Americans. The Lincoln Theatre, built as a first-run movie house, was praised as "the largest and finest theater for colored people exclusively anywhere in the U.S."

Louis Armstrong at Club Bali. (Courtesy Historical Society of Washington)

Other entertainment facilities, such as restaurants, nightclubs, dance halls, and billiard halls grew up along U Street, extending the same length of the corridor. When it opened in 1926 in the basement of the drugstore at 2001 11th Street NW, Bohemian Caverns was considered the "doyenne" of U Street. The club, which catered to Washington's African American elite featured cave-like interior finishes (now recreated in the original basement space). Other popular clubs included the Republic Gardens in the 1400 block of U Street; the Bali at the northeast corner of 14th and T Streets; the Lincoln Colonnade behind the Lincoln Theatre; the Turf Club at 1228 U Street NW; Club Louisiana in the 2000 block of 14th Street; the Casbah at 1211 U Street NW; and the Brass Rail at 14th and T Streets. During its heyday, U Street literally reverberated with the sounds of Nat "King" Cole, Cab Calloway, Pearl Bailey, Sarah Vaughn, "Jelly Roll" Morton, Louis Armstrong, Edward "Duke" Ellington, and Ray Charles.

Archibald Grimke. (Moorland-Spingarn Research Center, Howard University)

CHURCHES & SCHOOLS

Prior to the Civil War, African Americans and whites, although segregated during the services, attended the same churches. After the war and as an expression of their freedom, many African Americans established their own churches. In Washington, at least four such black churches began in the U Street area: Berean Baptist Church; Saint Augustine's Catholic Church; Freedom Baptist Church; and the Lincoln Congregational Temple United Church of Christ.

Like churches, schools provided an important foundation for African American society. Originally racially mixed, segregated schools were imposed after Reconstruction. The first African American school in the U Street area was erected in 1880 at 10th and U Streets. The school was named the Garnet School in honor of prominent abolitionist Henry Highland Garnet. In 1893, Patterson School was built adjacent to Garnet School, and in 1929, a larger school, Garnet-Patterson Junior High School, was built to replace the earlier two. Although originally built in the 1880s and 1890s as white schools, Phelps School (renamed Grimke School in 1934) and Harrison School were transferred into the black school system.

THE "NEW U"

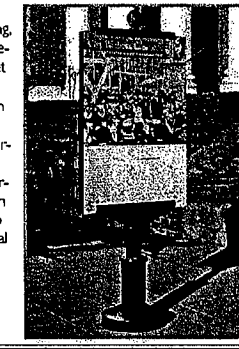
When the Supreme Court overturned restrictive covenants in 1948, and African Americans were legally free to move anywhere they desired, DC began to desegregate. Many of the African Americans who chose to leave the U Street area were the most affluent and were drawn to, and could afford, newer houses in the expanding suburbs. The departure of the professional class from the U Street area altered its socio-economic make-up. The formerly owner-occupied, single-family dwellings were converted into multi-family rental units and rooming houses that catered to a more transient population. Increased density, overcrowding, and poverty began to plague the once middle-class area.

Thurgood Marshall. (Courtesy Cultural Tourism DC)

Throughout the 1950s, other Supreme Court decisions continued the desegregation of Washington, and ironically further contributed to the economic decline of the neighborhood. In 1953, the Supreme Court ruled that the "lost laws" of Reconstruction, guaranteeing equal access, were valid. Stores, restaurants and other establishments that served only whites were now prohibited from doing so. The *Washington Post* described the Supreme Court decision as a victory that would destroy "all enforced segregation and discrimination." The unintended result of the desegregation of public facilities was that businesses in the U Street area had now to compete with those downtown. With the dissemination of the African American population across the metropolitan area, the shops and businesses along U Street became less convenient. Following their customers, many existing and new businesses went elsewhere and the number of commercial enterprises that once thrived along U Street began to decline.

Pearl Bailey at Bohemian Caverns in the 1940s. (Moorland-Spingarn Research Center, Howard University)

In April 1968, the riots that followed the assassination of [Reverend Dr.] Martin Luther King, Jr. devastated much of the social and economic infrastructure of the neighborhood, with the area around 14th and U Streets particularly hard hit by the looting and burning of buildings. Federally funded urban renewal efforts in the 1960s and 1970s began to rebuild the neighborhood, with new housing units and social service initiatives. In more recent years, the opening of Metro's Green Line, the distinctive building stock, and the pedestrian-oriented commercial development have encouraged economic growth and vitality of the area. The erection of new buildings on vacant lots and the restorations of historic buildings such as the Lincoln Theatre, the Whitelaw Hotel, the 12th Street YMCA, and the True Reformer Building, have contributed to the rejuvenation of the Greater U Street neighborhood. Community efforts, such as the recognition of the area as a National Register Historic District, spearheaded by Cardozo Shaw Neighborhood Association, further promote the revitalization of the neighborhood and help maintain the area's rich cultural and architectural heritage.



U Street trail sign created by Cultural Tourism DC.

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IV. Planning Process

Process Goals. This plan should help to realize several key goals:

"FILLING THE GAP"
Establish a mixed-use, destination-oriented development program and strategy (consistent with transit oriented development guidelines) for key vacant and existing historic sites between the historic Lincoln and Howard Theatres.

"FITTING IN"
Create a site plan and massing scenario that defines a new neighborhood and regional center of mixed use development along 7th Street/Georgia Avenue and Florida Avenue that meets the needs of the local community but also attracts residents from the surrounding area and visitors;

"MAKING IT DOABLE"
Determine a detailed implementation strategy that outlines the roles and responsibilities of stakeholders and includes specific recommendations for future development; and

"DEMONSTRATING BENEFITS"
Outline the fiscal and economic impact of new investment on zoning; total area projected for retail development; estimated production of full-time jobs and temporary construction jobs; estimated sales tax revenues (where possible); and number of potential market rate and affordable rental and ownership opportunities.

Community Involvement. The process involved an Advisory Committee of neighborhood associations, Advisory Neighborhood Commissioners, Main Street directors, institutional leaders, community development corporations and Councilmember representatives. The Office of Planning met with Advisory Committee members prior to each community meeting to solicit their input about project findings. Advisory Committee members were also helpful in getting the approximately 500 stakeholders to attend the five (5) community meetings that were a part of this process. During those community meetings, area residents, property and business owners, institutional stakeholders and others had an opportunity to review and provide input on technical analysis and the direction of the planning effort.

Primary Community Directives to the District and others. Community interest in this planning process grew from meeting to meeting as many organized outside OP sponsored meetings to make clear statements about issues facing them. Primary community directives were:

1. To produce more affordable and adequate housing;
2. To provide affordable opportunities for local business development and assistance for existing merchants;
3. To restore the Howard Theatre to long-term use;
4. To create diverse apprenticeships & living wage job opportunities for the area's residents.

Development Goals. The previous directives were not the only input provided by the community. The Office of Planning began the planning process engaging stakeholders in a discussion about development goals. The Development Goals are organized into seven (7) broad categories:

Land Development, Design and Preservation
Public Realm
Transportation, Transit and Parking
Cultural Heritage
Retail Environment
Community Development
Fiscal Feasibility

Each category has specific development goals under each heading. These Development Goals were used to shape the framework for development recommendations for the Project Area:

Land Development, Design and Preservation

1. Develop Square 0441 as an anchor for the Destination District and for the 7th Street / Georgia Avenue Corridor;
2. Enhance and respect the character and quality of life of the existing neighborhoods and their historic resources.
3. Take advantage of transit-oriented development (TOD) in this dual Metro station area by maximizing density and intensity of land development.
4. Be forward-thinking and progressive in the design of new and infill projects and the public realm by integrating innovative design solutions with historically significant structures.
5. Reinforce the sustainability of retail and destination uses with complementary development.
6. Develop 20 to 30 percent affordable housing in residential development, particularly on publicly owned land.
7. Encourage more commercial development to strengthen daytime activities and customer base.

Public Realm

8. Create a safe, interesting and attractive streetscape environment with outdoor leisure and entertainment options.
9. Develop ground floor retail/entertainment uses that actively enliven the public realm.
10. Optimize pedestrian access to and among attractions in the destination district with appropriate signage.
11. Maintain an aggressive clean and safe campaign in conjunction with the area's DC Main Street districts.

Transportation, Transit and Parking

12. Maximize the use of transit resources and expand the range of transportation modes (i.e. shuttles, bicycles, light rail, etc.)
13. Right-size parking to give priority to transit while accommodating project generated parking demands.
14. Seek opportunities to develop a shared or joint parking strategy for the area, maximizing off-street parking as possible.
15. Manage off street service, loading and tour buses to reduce impact on surrounding neighborhoods.
16. Incorporate public parking for vehicles and bicycles within the destination district.

Cultural Heritage

17. Restore the Howard Theatre as a cultural destination, building upon its historic significance.
18. Provide physical locations for cultural heritage interpretation.
19. Incorporate cultural heritage in public art, plazas and other elements to create a cohesive and dynamic streetscape, especially at "Ellington Plaza" (T Street between 7th and Florida Avenue.)
20. Build upon and promote the area's African-American heritage and attractions, i.e. African-American Civil War Memorial, Black Fashion Museum, etc.

Retail Environment

21. Encourage a mix of national and unique, locally-owned retail establishments on 7th Street, 9th Street, U Street and Florida Avenue.

Community Development

22. Involve the community.
23. Involve youth in all aspects of redevelopment, including at the Howard Theatre.
24. Maximize economic opportunities for businesses and landowners.
25. Create training and employment opportunities for area residents with particular focus on jobs that pay living wage rates.
26. Consider strategies to proportionately enhance the use of private commercial properties.

Fiscal Feasibility

27. Promote dense, compact development through zoning and historic preservation regulations.
28. Balance District-wide and community use needs, benefits and interests with economic value on public owned land.
29. Partner with qualified and accomplished private, not-for-profit and/or other public sector investors to achieve exemplary mixed-use projects.
30. Maximize, to the fullest extent possible, revenue producing opportunities.

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V. Market Analysis - Overview

The Project Area's strong cultural history as "Black Broadway" offers many opportunities for revitalization as a neighborhood destination district. The area's development potential will combine demand from existing residents and businesses with that generated by new residents moving into the area--attracted by the district's location, Metro access and historic housing resources. Market analysis was prepared to examine trends and quantify the potential for entertainment, arts, housing, office, retail and hotel development.

Entertainment and Arts Potentials

PETR Productions evaluated a number of alternative uses for restoring the Howard Theatre to a vital cultural use, including a 1,300-seat theater; a smaller theater of less than 500 seats; a larger theater of more than 2,000 seats; a community and visitor center; a museum; a movie cineplex; and a mixed-use entertainment center. The evaluation considered the extent and performance of other arts and entertainment facilities in the city and focused on the following criteria:

A. Capitalizes and focuses on the theater's historical significance as a major venue for African American entertainers;

B. Conforms to the building's structural constraints and its designation as a National Historic Landmark that is located within an historic district;

C. Is economically feasible (required investment and financing is met by operating cash flows);

D. Anchors proposed destination district, thereby creating enhanced neighborhood activity and development;

E. Attracts a diverse non-resident audience and plays a prominent role in the community's art and cultural life;

F. Lives in harmony with the Lincoln Theatre; and

G. Minimizes environmental impact on the surrounding neighborhoods.

Given these objectives and weighted evaluation, the best option for sustainable reuse of the Howard Theatre is as a music performance venue for 500 to 600 persons with fine dining and beverage service. This approach has worked very successfully at Green Dolphin Street in Chicago and Storyville in New Orleans. The Theatre's exterior should be restored to approximate its 1910 appearance and the interior reconfigured to support these functions and to include a museum about the Theatre's history.

Though the Project Area has a number of destination uses (e.g., Lincoln Theatre, Howard Theatre, African American Civil War Memorial, Bohemian Caverns), it lacks the critical mass essential to a successful destination district. The area needs other major entertainment anchors, preferably two, to reinforce the district as a destination for tourists and regional residents. The ideal locations for such anchors would be the Housing Finance Agency site at 9th Street and Florida Avenue and the WMATA/Howard University CVS site.

Other entertainment opportunities include:

A. More dining, entertainment, and retail uses, such as niche food and beverage outlets (e.g., ethnic restaurant, single product – smoothies); live performance music clubs (e.g., jazz, hip hop); a large live entertainment venue (approx. 5,000 seats); and lifestyle retail (e.g., parenting, arts and crafts, do it yourself-oriented).

B. Facilities to support annual neighborhood interaction and socialization, such as outdoor performance/gathering areas (e.g., amphitheater, bandstand, plaza, etc.); an open market (e.g., farmer's, flea, etc.) facility; and a community visitor/cultural center for residents and visitors.

C. Other complementary uses such as a rental facility with catering capabilities, a music heritage museum, and adult/continuing education facilities in the fine and performing arts.

To achieve its full potential as an entertainment destination, the Project Area needs physical and visual links to other district "magnets", improved vehicular access and improved safety and cleanliness.

Housing

Currently, the strongest market demand in the Project Area is for new housing. Many singles and childless couples are being attracted by the availability of historic rowhouses and newly constructed condominiums and apartments in the area. Coupled with low interest rates, this heightened demand has led to rapid price increases. New condos built at Metro stations could achieve prices of $375,000 to $475,000 ($450 to $500 per square foot). Demand could support a total of 815 units in the next five years.

The current economics of developing rental housing do not favor new construction of market-rate apartments at this time. Low mortgage interest rates and rapid housing appreciation have encouraged many renters to buy homes at the same time that several new apartment developments have opened in and near downtown. The Project Area could support an estimated 160 to 320 units over the next 10 years once mortgage interest rates increase again, leading more households to seek rental housing.

Affordable Housing

The same high housing values that will support and encourage reinvestment and development in the Project Area are making it more and more difficult for long-time residents to stay in the area, particularly low-income renters. Preserving the community's people as well as its houses and structures demands significant new development of affordable housing units and preservation of existing subsidized units. The Convention Center Area Strategic Development Plan provides more detailed information about affordable housing issues in Shaw. Public and private sites within this Project Area should be developed to accommodate a percentage of very affordable units.

Retail

The Project Area currently includes two distinct retail areas: U Street from 15th to 10th Streets NW and 7th Street from W to T Streets. In the future, retail from 13th to 10th Streets should build on the retail successes further west on U Street and 14th Street. This portion of the study area could support 38,000 to 50,000 square feet of retail space with about one-half in general merchandise, apparel, furnishings and other "shoppers goods." Rents of $25 to $35 per square foot are likely, which could force some current businesses to move or close unless they can receive assistance and resources to achieve higher sales or preferred rents.

Future retail development in the 7th Street corridor will depend on resolving the street's safety and maintenance issues. With renovation of the Howard Theatre and/or addition of an arts event use(s), the area could flourish as a restaurant district. T Street from 7th Street to Florida Avenue is particularly suited for sidewalk cafes and other restaurants. The 7th Street/Georgia Avenue retail should emphasize restaurants, cafes and take away food (30,000 to 35,000 square feet) with smaller components of personal service and convenience goods (3,000 to 7,000 square feet) and shoppers goods (12,000 to 23,000 square feet).

The Howard Town Center project is proposed to include a major grocery store, a relocated CVS drugstore and other neighborhood-serving retailers. If this development does not proceed, these anchors should be located elsewhere in the neighborhood near Howard University north of Florida Avenue.

To support this retail demand and strengthen the market position of existing and future retailers in this area, the following actions should be taken:

A. Establish recognizable, consolidated retail districts associated with a shopping or dining task;

B. Seek a comprehensive parking solution with well-maintained and well-lit parking available to the public;

C. Restore realism to the retail real estate market by educating landlords about supportable rents and discouraging them from holding their properties vacant and off the market in anticipation of high rents in the future; and

D. Quickly establish a safe, maintained, and possibly managed environment.

Office

The Project Area is a secondary office market, which will attract primarily institutional tenants, non-profit organizations, professional offices and other neighborhood-serving businesses. As in many parts of the city and region, the market will not justify speculative office space. Any major new office development will need to have signed leases before beginning construction. Leases from the District Government and Howard University could potentially support construction of office buildings with additional space for other businesses or organizations. Current rents range from $28 to $34 per square foot for newly developed or renovated office space.

Hotel

The Project Area offers proximity to Howard University & Hospital, the new Convention Center and Downtown, but currently it does not offer the range of amenities that tourists and other guests seek when they choose a hotel. The failure of hotel ventures, such as the Howard Inn, illustrate the need to merge business and institutional hotel demand with significant tourist and visitor demand tied to the surrounding residential neighborhood. In the longer term, when the area develops as an enhanced entertainment district with new amenities, a new hotel of 100 to 200 rooms could be supported.

Find both market analyses for the "Uptown Destination District" and "Convention Center Area Strategic Development Plan" on the Office of Planning website: planning.dc.gov. Look under Project Summaries.

VI. Public Sites Overview

Several public sites can be used in achieving the area's development potential. Development potential of select sites are illustrated within this Framework. Private sites should be challenged to adhere to similar development targets, objectives and guidelines. Public sites are:

<u>District Government - Buildings (B) and Land (L)</u>
Howard Theatre, 620 T Street NW, 15,000 SF (B)
Bond Bread, 2114 Georgia Ave NW, 39,072 SF (L)
SSL 2877 0062 and 0972, 8th St NW, 11,673 SF (L)
SSL 2877 0977, Georgia Avenue NW, 2,733 SF (L)
Grimke School, 1925 Vermont Ave NW - 46,100 SF (B)
Lincoln Theatre, 1215 U St NW - 14,544L SF (B)
Parking Lot, 900 Block U St NW - 5,872 SF (L)

<u>National Capital Revitalization Corporation (NCRC)- Land</u>
RLA Parcel 33, Square 0441, 7th & S Streets - 35,189 SF
RLA Parcel 26, Square 0419, 1744 7th St NW - 2,375 SF
RLA Parcel 42, Square 0442, 1705-7 7th St NW and 637 Rhode Island Avenue NW - 17,008 SF

<u>Washington Metropolitan Area Transit Authority (WMATA)</u>
Air Rights - Shaw Metro - Square 0441 - 4,200 SF (L)
8th/Florida - SE corner - 8,621 SF (L)
8th/Florida - SW corner - 15,956 SF (L)
9th/Florida - SE corner - 3,799 SF (L)

<u>DC Housing Finance Agency - Land</u>
815 Florida Avenue - 29,372 SF

TOTAL PUBLIC OWNED: approx. 6 acres (251,514 SF)

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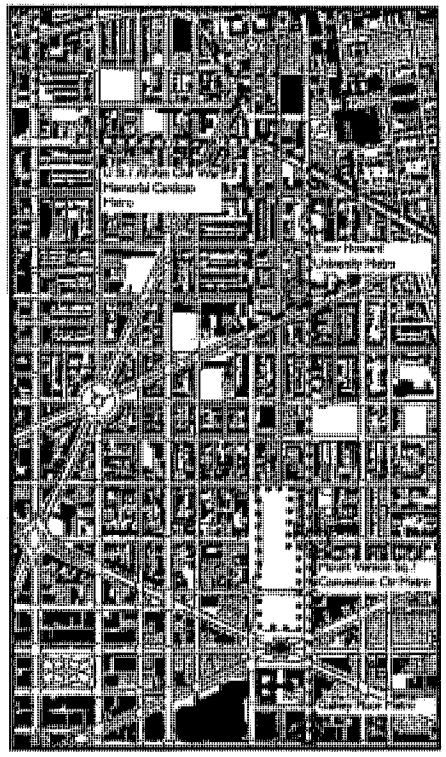

Proximity to Convention Center & Downtown Washington, DC.

II. Public Policy & Placemaking

Several District-wide policies and initiatives have been or are important to this planning process. Those policies and initiatives include:

Public Land Disposition Requirements. The Executive and the Legislative Branches of District Government maintain an agreement that public amenities are created as public lands are let for private or not-for-profit development. Public amenities on any one site may include some combination of the following: a minimum of 20-30% of total residential units at "affordable" rents or sale prices, local business development opportunities, cultural use set asides, public parking and jobs/apprenticeships for local residents.

CHALLENGE: Public amenities are typically subsidized by various District agencies. Achieving a common set of public amenities applicable to each site will be difficult. Public amenity subsidies will likely need to be weighted on a case by case basis in the context of the overall Project Area and on both public and private sites.

Private Sites. Because of their location or adjacency, there are non-public sites that are of-interest in achieving implementation of this plan to meet the development goals. Those non-public sites are:

Howard University - Land
CVS Site, 7th and Florida--20,646 SF
Assisted Living Site, 7th and S St NW--41,351 SF
SSL 2877 0933, Georgia Ave. and V St--58,607 SF
HU Commercial Land North of Florida Ave.,--+462,757 SF

TOTAL HU Ownership = over 13 acres (over 583,361 SF)

OTHER PRIVATE OWNERS - Land
Jemal's Wonder Bread, 641 S St NW--23,881 SF
Atlantic Plumbing, Squares 2873 and 2875--70,567 SF
United House of Prayer Site, 1709 7th St NW--15,925 SF
Others north of Florida Avenue (aggregate)--166,865 SF

TOTAL OTHERS = over 6 acres (277,238 SF)

TOTAL NON-PUBLIC SITES: approx. 20 acres

The ratio of public to private assets is 1:3.33. Given this, many of the development goals for this area should be shared by both public and private sector asset holders. The District should consider providing zoning and/or other incentives for private owners' adherence to this plan and its goals for affordable housing and local business development.

Transit Oriented Development. A smart growth management initiative wherein the District actively seeks simultaneously to capitalize upon its transit and high-volume traffic corridors to enhance existing neighborhood centers by creating active, compact and dense neighborhood development opportunities. The Project Area is served by both the Shaw-Howard University and U Street / African-American Civil War Memorial / Cardozo Metro stations on the Green Line as well as significant bus service.

CHALLENGE: TOD initiative seek to maximize densities around Metro stations, and area stakeholders largely endorsed higher densities at both Project Area stations, particularly to produce more affordable housing. The TOD initiative should be adopted as public policy. The current zoning makes achieving the density needed to make more affordable housing with limited public subsidies challenging. Both the Columbia Heights and Petworth Metro stations have more favorable zoning and will produce desired mixed use results. This Project Area should be rezoned as needed to achieve the height, bulk and use recommendations of this Framework.

Transit Enhancements. A preliminary and ongoing assessment of potential corridors and routes for expansion of the District's mass transit network. The Georgia Avenue / 7th Street corridor is one of several priority transit enhancement corridors being assessed now to determine capacity and preferred transit mode. Expanded mass transit options are strongly encouraged. Some stakeholders attending planning meetings have requested that existing Yellow Line service be extended along the same path as the Green Line within the District. WMATA officials believe this would not be cost effective.

CHALLENGE: Retail or commercial property owners are likely to request that the maximum amount of on-street parking is maintained.

Parking Demand Management. A policy that focuses on creating livable neighborhoods while supporting successful retail through efficient management of parking demand and resources that may include creative pricing strategies, shared parking, municipal parking, shuttle and transit programs, and flexible design.

CHALLENGE: The District should assess how much structured or surface parking is needed at its urban, transit centers. On the one hand, stakeholders want walkable environments geared toward pedestrians and bicyclists, as they were historically and as encouraged by the TOD initiative, but they also want as much parking as possible so that current residential parking supply is not negatively impacted by new development. Retailers and housing developers also claims difficulty reaching the targeted market without it. A shared parking system is needed although many of the sites within the Project Area are private and will likely require new public policy or an agreement wherein private property owners are provided incentives to accommodate some degree of public parking on their sites, but there are significant cost implications. Building public parking should be decisively considered. DDOT's U Street / Shaw Transportation & Parking Study should seek to provide technical information and recommendations in response to the transportation, parking and transit concerns for the Area.

reSTORE DC / DC Main Streets. A partnership between the District government and local community organizers to revitalize the District's neighborhood business districts through a preservation-based, comprehensive and systemic strategy for retention and attraction of preferred neighborhood uses. The 14th & U Street Main Street was designated in 2002. Shaw Main Streets was designated in 2003. Both organizations play a vital role in fielding local business development concerns and seeking responses from District agencies. The service areas for the two Main Streets overlap within the Project Area.

CHALLENGE: The two Main Street districts are different from each other in terms of age, development patterns, and market, but both are willing to work together to achieve mutual goals. The Project Area is sufficiently different from both existing districts, however, that a management entity might be considered to focus on destination oriented business develop-

This plan challenges public and private asset holders to develop mixed used, mixed-income developments wherein affordable housing units are created at not less than a minimum of 20% of total units, but preferably at the community's preference of 30% and at rates that reach the very low income (0 - 30% of AMI).

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ment within the Framework of this Plan. That entity should be a joint effort of both Main Street districts. Simultaneously, reSTORE DC will need to think strategically and fiscally about how it can or will begin to address rent affordability within neighborhood commercial districts where rental rates and the price of commercial real estate are climbing.

Strategic Neighborhood Investment Program (SNIP). A targeted investment policy wherein priority District neighborhoods or locations receive a series of comprehensive public actions or funds to complement and/or catalyze private sector investment. Greater Shaw / U Street neighborhood is a targeted neighborhood. The actions by public agencies are tracked by the Office of the Deputy Mayor for Planning and Economic Development.

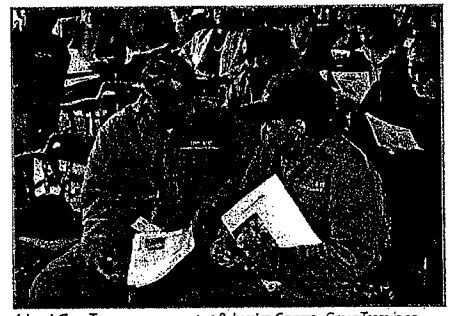
CHALLENGE: Development in the District typically takes around four (4) years for construction to start. The market conditions are currently favorable but can change. Change might also happen with those who are tracking or working with District agencies to make sure that development targets are met. Completion of this plan marks a significant opportunity for District asset holders to move toward disposition as soon as possible after this planning process ends to achieve results. This plan should serve as an official guide for physical development for five (5) years and should help to determine successes and shortcomings. Additional work will need to be done in outlying years to ensure plan success.

Housing and Re-population. A Mayoral initiative to recapture a portion of the 300,000 citizens lost over the last three decades and to enhance the District's human capital by creating and rehabilitating housing for a wide spectrum of individuals and families.

CHALLENGE: This Plan includes both housing development and cultural / destination development recommendations. These two use groups of residents and destination patrons are sometimes in conflict, even within the heart of the city. Both can and should be accommodated within this neighborhood district.

Apprenticeships / Jobs Opportunities. The District government has a mandatory apprenticeship law that requires all prime contractors and subcontractors, who perform new construction and renovation work on District government assistance projects in excess of $500,000 in a single contract let, or cumulative contracts within a twelve month period are required to register apprenticeship programs with the D.C. Apprenticeship Council. The First Source Agreement Program assures city residents priority for new jobs created by municipal financing and development programs. It mandates that all projects funded in whole or in part with District of Columbia funds, or other funds which the District administers, shall provide for increased employment opportunities for District residents. Each employer in the program must sign an agreement ensuring that all job openings created are listed with the Department of Employment Services and 51% of new hires are District residents.

CHALLENGE: Area residents want priority for opportunities. Main Street programs are also a source for targeting local residents for retail jobs.



(above) GreenTeam announcement at Bohemian Caverns. GreenTeam is an innovative program developed by 14th & U Main Street, Cultural Tourism DC, and community partners. The program provides living wage jobs to homeless residents who provide clean, safe and hospitality services in the 14th & U Main Street district.

Crime and Safety. Implementation of this plan will require the active and proactive participation of many public agencies, including and especially the Metropolitan Police Department (MPD). The area has a strong market for development, but successful implementation depends upon the ability of the area to demonstrate reduced crime and to put forth an environment that is safe and inviting.

CHALLENGE: MPD has shown a willingness to work proactively in many parts of the city. Likewise, the MPD should assign sufficient staff to work cooperatively with Main Street, business and resident stakeholders to develop a crime prevention strategy to foster a real and perceived safe environment in the short term for long term benefits. Also, MPD should coordinate with DDOT as it plans for transportation, parking and streetscape improvements. Principles of Crime Prevention Through Environmental Design (CPTED) should be incorporated as possible.

MEETING PROGRAMMATIC OBJECTIVES

Market Summary and Conditions. Technical market analysis for this planning effort supplemented a related analysis for the Convention Center Strategic Development Planning process. Analysis revealed a trend toward higher cost housing and commercial development. This trend underscores the need to produce more affordable housing in sizes adequate for families. The analysis revealed the following demand for the next five (5) years (2004-2009):

Rental housing	160-320 units
For sale housing	815 units
Retail	
Restaurants/carry out	45-55,000 SF
Selected shoppers goods	32-40,000 SF
Personal & convenience	6-10,000 SF
Office	Pre-leasing required
Hotel (long term demand)	100-200 rooms

Currently, trends indicate that rents and for sale condominium prices are as follow:

Rents	
One bedroom apartment	$1,460 to $1,660
Two bedroom apartment	$1,790 to $1,940
Retail	$18 to $45 per SF
Office	$22 to 32 per SF
Condominiums	$375,000-$475,000

The average household income of $85,400 for a family of four (as of January 2004) within the metropolitan region. However, in the context of the immediate neighborhood, the median household income is under $45,000 within one-mile of the Project Area. Additionally, several existing multifamily affordable housing sites have affordability contracts which are soon to expire.

This Framework challenges public and private asset holders to develop mixed used, mixed-income developments wherein affordable housing units are created at not less than 20% of total units, but preferably at the community's preference of 30% and at rates that reach the extremely low income (0 - 30% of AMI). Similar results should be achieved for local business development, attraction and retention as well to ensure economic and retail diversity.

The Howard Theatre and Cultural Heritage. This plan recommends that the physical shell of the Howard is maintained and restored while the interior is retrofit to accommodate a 500-600 person live entertainment venue which supplements its operating revenue with dining and beverage sales. Additionally, the theatre should include a small museum and gift shop to serve as a daytime destination and revenue generating source. The Howard Theatre should be developed in conjunction with NCRC's RLA Parcel 33 so that a parking solution for the Howard Theatre can be achieved.

Between the Howard and Lincoln are a number of cultural heritage sites, which are in varied states of readiness to accommodate visitors. Those sites include the True Reformer, African-American Civil War Museum and Memorial, Ben's Chili Bowl (former Minnehana Theatre), Bohemian Caverns, Industrial Bank, and the Black Fashion Museum. Other sites are within close proximity to the commercial corridors. ***At least one, preferably two, new and additional destination sites are needed to complete the destination district. This plan recommends that those two are preferably located at high visibility points along the commercial corridor: the Housing Finance Agency site at 9th and Florida Avenue; and Howard University's CVS site at 7th and Florida Avenue.***

In the context of shifting availability of public funds, each destination district site should grow to become or be expected to be self-sufficient, competitive within the local, regional and/or national markets, and extremely well managed. Public resources should be used strategically to support worthwhile uses which complement this Development Framework and as supplement to revenues produced or raised by those organizations.

Howard Theatre ad.

Completion of this plan marks a significant opportunity for District asset holders to move toward disposition as soon as possible after this planning process ends to achieve results.

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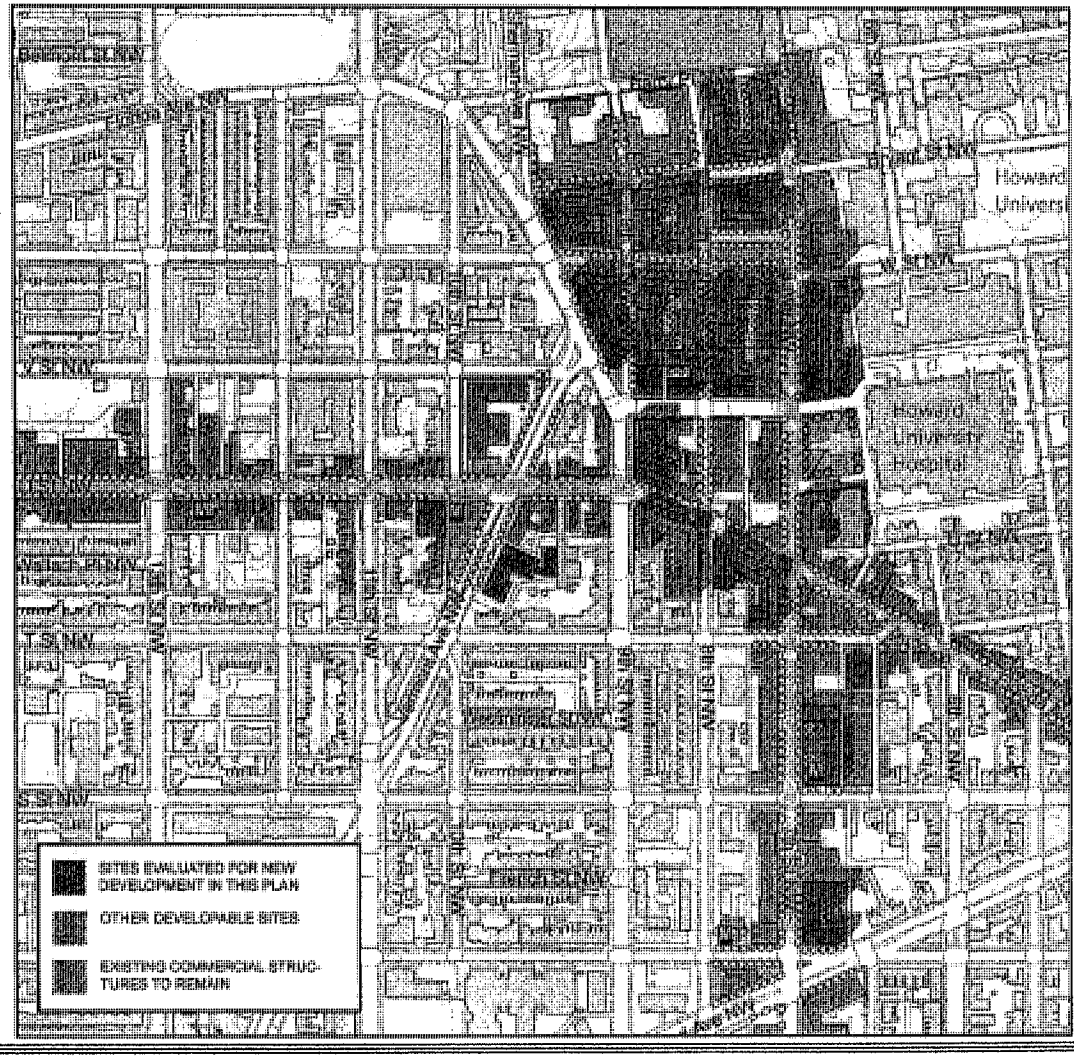

VII. Planning & Implementation Principles

A - Placemaking

Create a cohesive and memorable place with diverse sub-areas whose primary functions and/or focus may be somewhat different.

B - Design Guides

Knit new development with surrounding neighborhoods and the Howard University campus to respect their character and to honor the pedestrian in this transit oriented environment.

C - African American Cultural Heritage

Promote cultural tourism initiatives based on the rich African American historical and cultural assets of the area that will bring economic development opportunities for local residents and businesses.

D - Destination Venues

Allow for the active expression and appreciation of music with particular emphasis upon the area's jazz heritage.

E - Retail Development

Foster a spirited environment of local entrepreneurship in which local businesses are provided enhanced services and opportunities and the best in new retail ideas are supported.

F - Local Access & Participation

Ensure that existing residents receive opportunities and a voice in shaping how the destination district develops.

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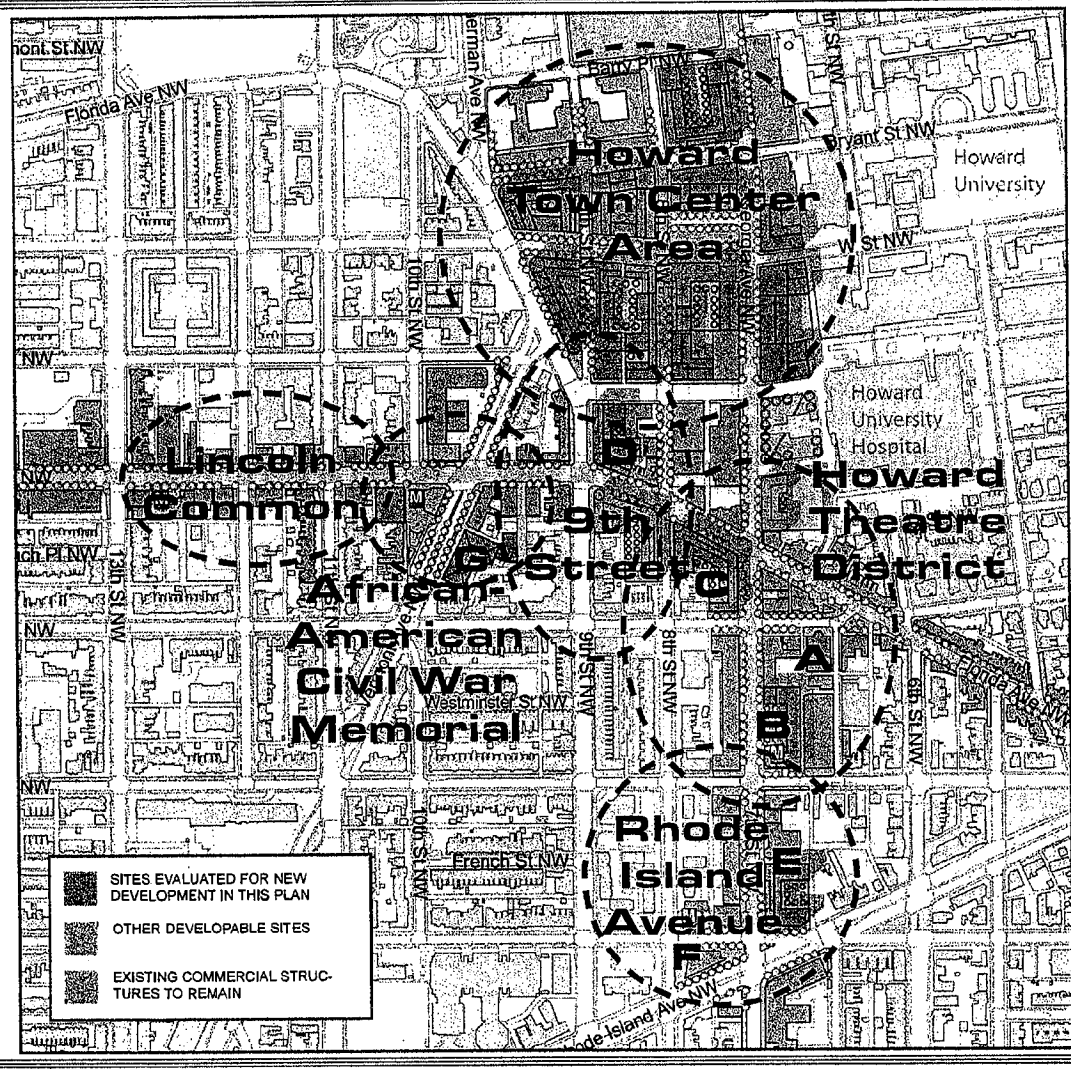
FOIA CONFIDENTIAL TREATMENT REQUESTED



A. Placemaking

Create a cohesive and memorable place with diverse sub-areas whose primary functions and/or focus may be somewhat different.

1 **Howard Theatre District** *"Performing Arts Anchor"*

Public Assets: A. Howard Theatre (Ellington Plaza)
B. NCRC + WMATA Parcels
C. WMATA + Howard CVS

2 **9th Street** *"Eclectic Shops / Dining / Entertainment"*

Public Assets: D. Housing Finance Agency Site

Also, WMATA parcels

3 **Rhode Island Avenue** *"The Residences"*

Public Assets: E. NCRC + UHOP Parcels

F. Watha T. Daniel/Shaw Neighborhood Library

Also, WMATA Parcels at Shaw Howard University Metro South Entrance

4 **African-American Civil War Memorial** *"Cultural Arts Center"*

Public Assets: G. Grimke School (Memorial Plaza)

Also, Garnet-Patterson School

5 **Howard Town Center Area** *"University District"*

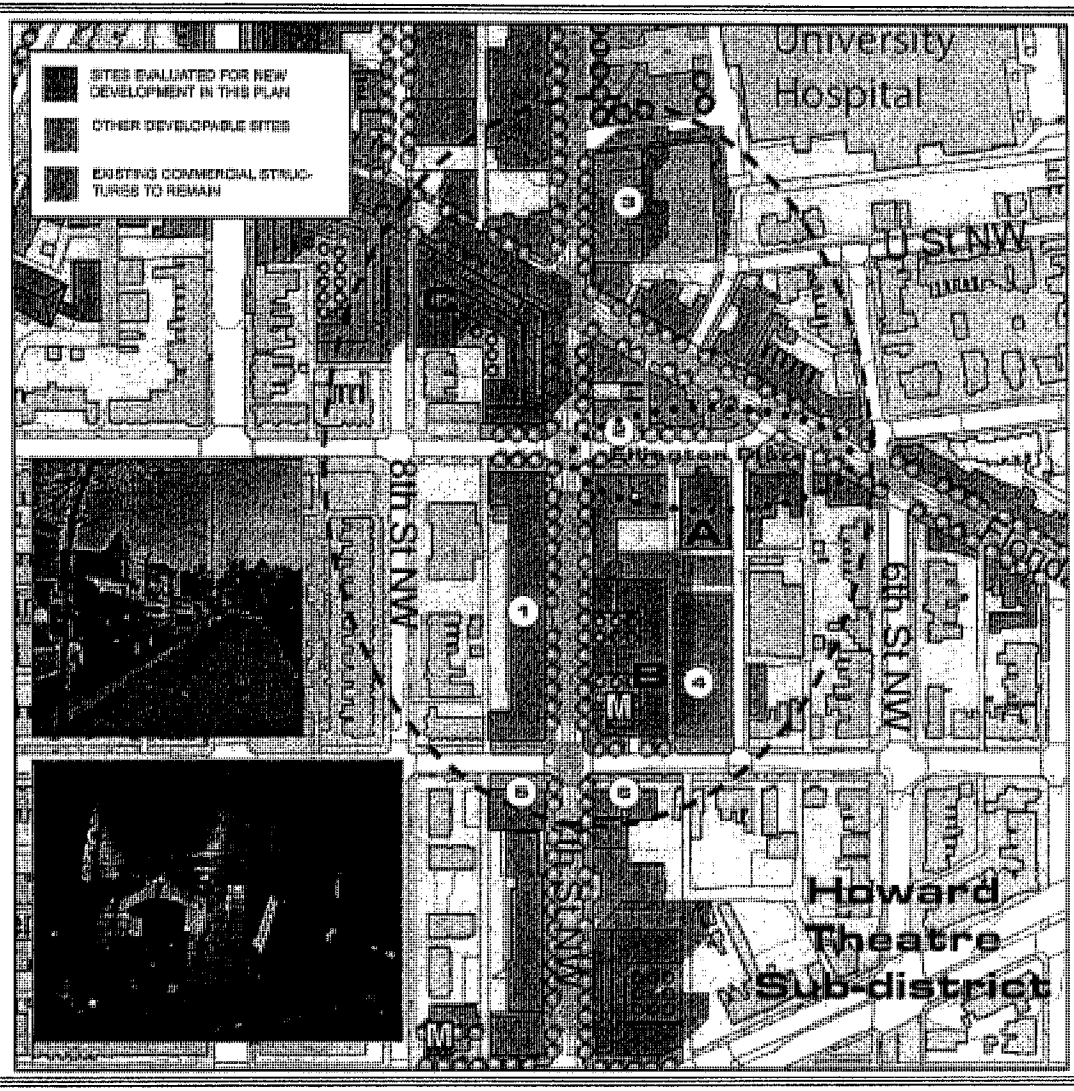
Public Assets include Bond Bread Building

6 **Lincoln Common**

Public Assets include Lincoln Theatre

create a cohesive and memorable place with diverse sub-areas

WMATA-INV 008578



A. Placemaking

Howard Theatre Sub-district

"Performing Arts Anchor"

Assets:	A. Howard Theatre (Ellington Plaza), 620 T Street NW	18,000 SF	Building
	B. NCRC RLA Parcel 33, Sq. 0441, 7th and S Streets NW	35,189 SF	Land
	+ WMATA Air Rights - Shaw Metro	4,200 SF	Air Rights
	C. WMATA 8th/FLorida Ave. - SE Corner	8,621 SF	Land
	+ Howard CVS Site - 7th and Florida	20,646 SF	Land

QUALITY OF ENVIRONMENT / PUBLIC REALM

The "Howard Theatre Sub-district" will be a vibrant center focused upon a revived Howard Theatre. The Theatre will be restored to approximate its original and historic facade and will be well-programmed with local and national performers who attract day and night time patrons. Performances recall the time when, in the Theatre's heyday, legendary greats like Duke Ellington, Ella Fitzgerald, Count Basie and many more honed their artistic craft and set a standard for excellence in the performing arts. Performances will be affordable to patrons who will be a range of local residents, visitors and tourists.

Sub-district properties will be programmed to complement and support a "complete" destination with restaurants, outdoor cafes/dining, intimate music clubs, bars, bookstores, art galleries, modest priced retail and other destination uses,. "Ellington Plaza," T Street between 7th and Florida, will become a small restaurant /entertainment zone celebrating the legacy of the Howard and the surrounding neighborhoods.

The streetscape will be dynamic with clean and well-lit sidewalks that are ample in size for outdoor cafes and special events. New trees will be healthy and well-maintained. Storefronts will be architectually exciting. Individual storefront signs will be appropriately scaled yet a highly-creative expression of business type and local history. "Ellington Plaza" facades are preserved and restored

SMALL BUSINESS DEVELOPMENT

Existing property owners are targeted with technical assistance to move them actively toward meeting a variety of local and visitor needs, both current and into the future. Technical assistance should focus upon interior, retail space planning, merchandising, storefront improvements, marketing, and promotions.

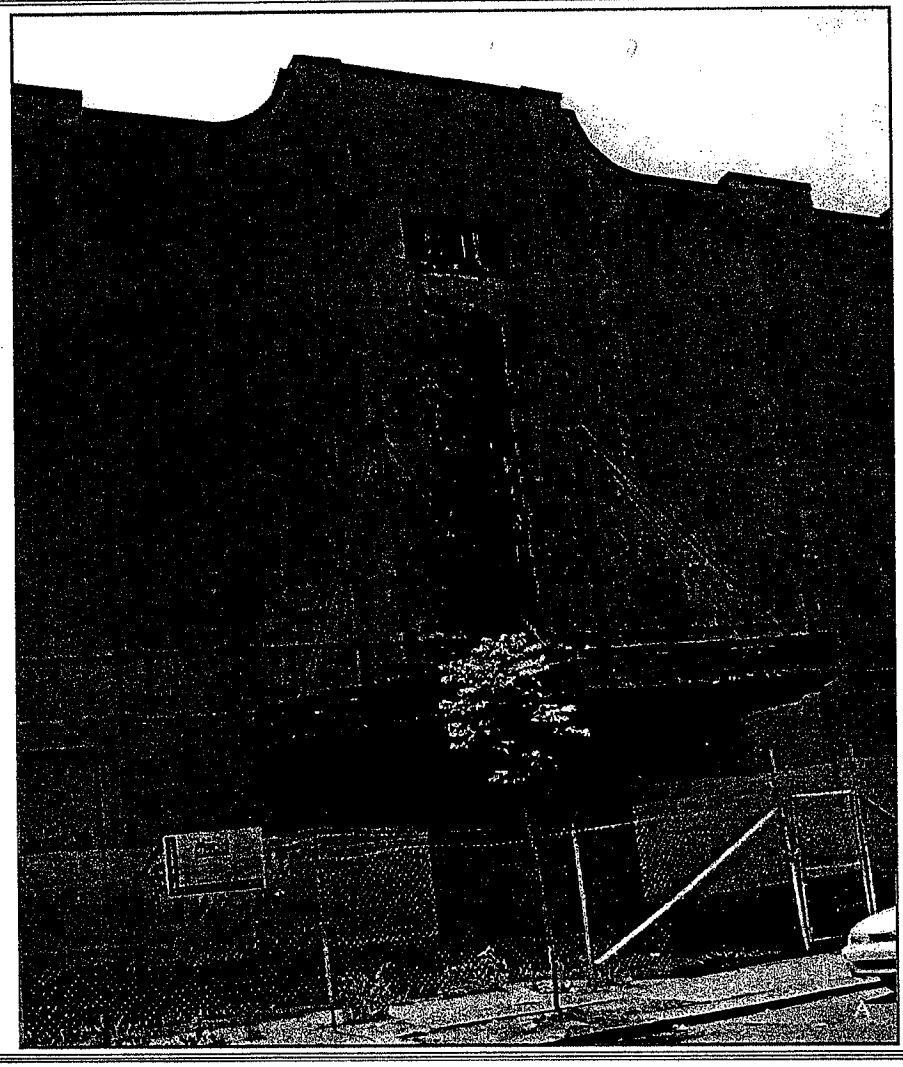
RECOMMENDATIONS FOR OTHER SITES OF INTEREST

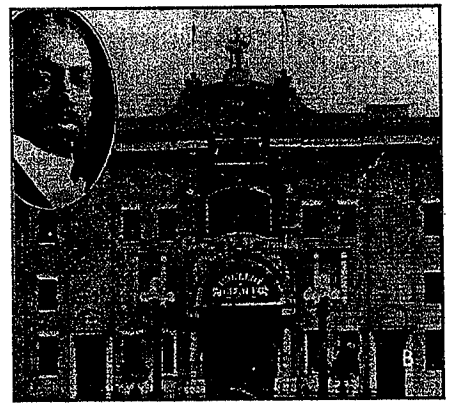
1. Demolish HU's 125 bed site and allow mixed use redevelopment, including active, ground floor retail, which complement other proposed destination uses and optimizes density.
2. Complete renovation of Dunbar Theatre. Locate signature, destination retail tenant.
3. Develop mixed use project near Howard University Hospital. Include structured parking for shared use with Howard Theatre.
4. Redevelop the Wonder Bread building and site with offices in addition to an art gallery and/or intimately scaled live music venue. Preserve the architecturally and historically significant facade.
5. Assemble and redevelop NCR C RLA Parcel 26 and the private properties at the southwest corner of the intersection of 7th and S Streets with mixed uses.
6. Locate retail tenant for the United House of Prayer property on the southeast corner of 7th and S Streets. Relocate HU Welcome Center.

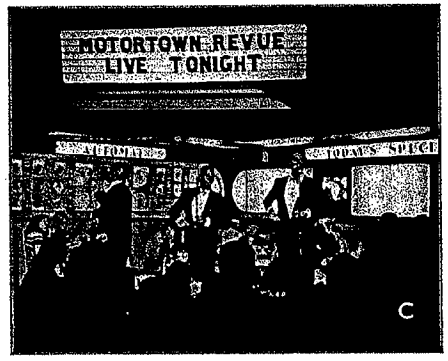
create a cohesive and memorable place with diverse sub-areas

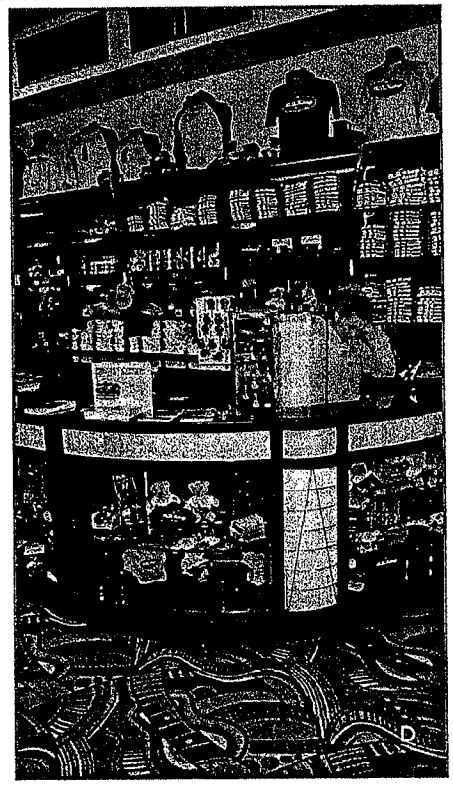
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008579









PHOTOS

A. Howard Theatre - T Street facade (2004).
B. Howard Theatre Facade circa 1910. The facade should be restored to approximate the original facade.
C. Motown Cafe (NYC). The Howard should host live performances by a range of local and national artists.
D. Gift shop - B. B. Kings (NYC). The Howard should include a small museum about the Theatre's history and a gift shop.
E. Advertisement. There should be daily and nightly events at the Howard Theatre including performances by local and national talent.

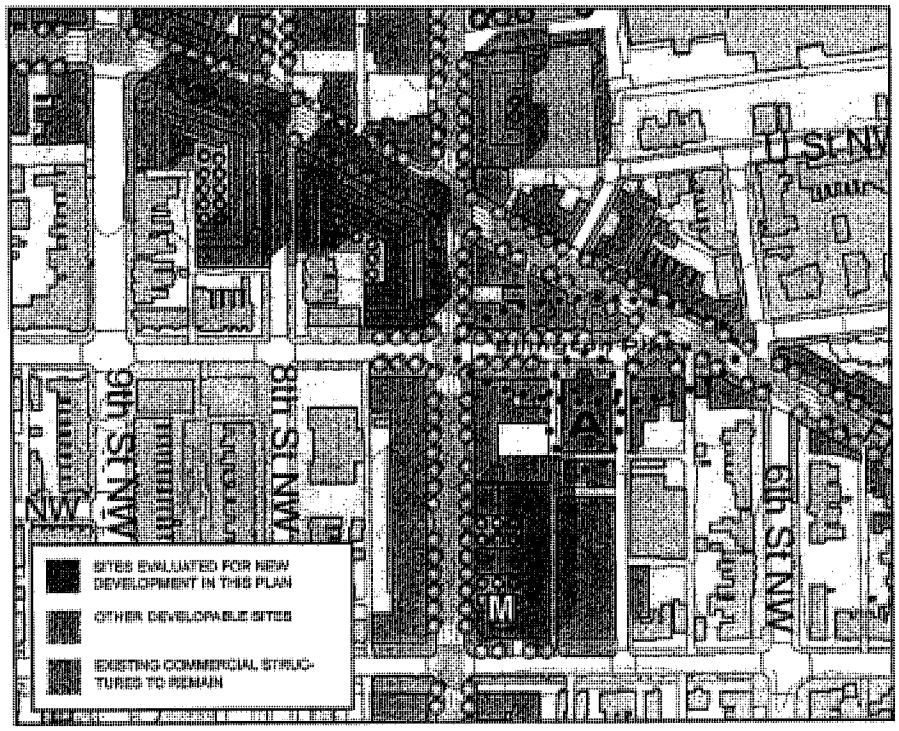
FOIA CONFIDENTIAL TREATMENT REQUESTED

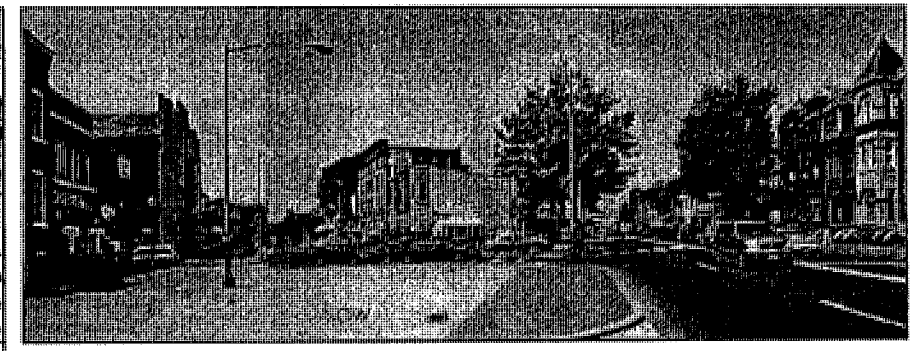
WMATA-INV 008580

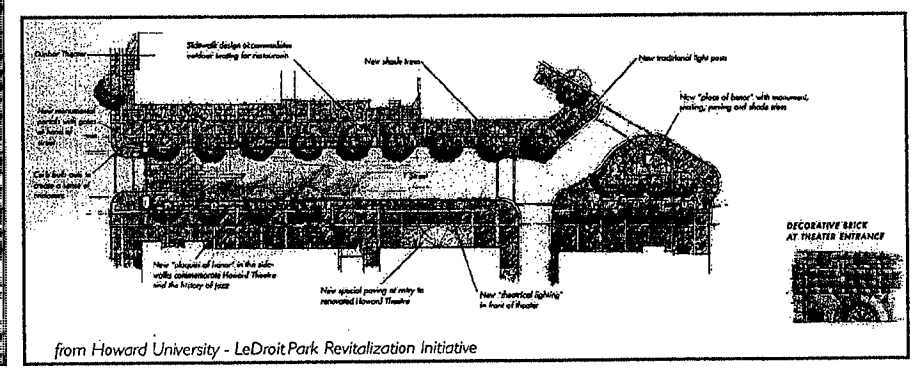
A. Placemaking

Howard Theatre Sub-district

Site: HOWARD THEATRE / Ellington Plaza







from Howard University - LeDroit Park Revitalization Initiative

RECOMMENDATIONS

HOWARD THEATRE (A) +/-18,000 square feet
(12,000 square feet at grade and a 6,000 square-foot mezzanine)

DEVELOPMENT PROGRAM

HOWARD THEATRE
- Live entertainment Venue with 500 - 600 person capacity
- Restaurant/dining with beverages to support operating cost
- Gift shop
- Small museum
- Local and national performances

Restore the T Street facade to its approximate 1910 appearance.

Develop Theatre parking on the WMATA/NCRC RLA Parcel 33 site when it is developed. Seek other parking sites as well.

Coordinate disposition/restoration/reopening schedules with redevelopment of NCRC/WMATA site and streetscape/public art improvements on Ellington Plaza.

Embrace Ellington Plaza as front foyer of the Theatre and program with active calendar of special and community events.

Require daytime use of the Howard Theatre, i.e. museum and gift shop.

Maintain Wiltberger Street as a functioning right-of-way, providing for service/loading functions and access for the Theatre and nearby properties.

Explore closing portion of west side alley adjacent to the Theatre to vehicular use and reuse as café and post-performance pedestrian egress to parking on the NCRC/WMATA site to mitigate impact on surrounding residential properties.

Install distinctive streetscape and specialty paving along the 600 block of T Street from 7th Street to Florida Avenue to create a public space that respects and celebrates the heritage of the Howard Theatre and the surrounding neighborhoods.

Design Ellington Plaza to accommodate public gatherings.

Actively program the public space with regular community and arts/cultural events.

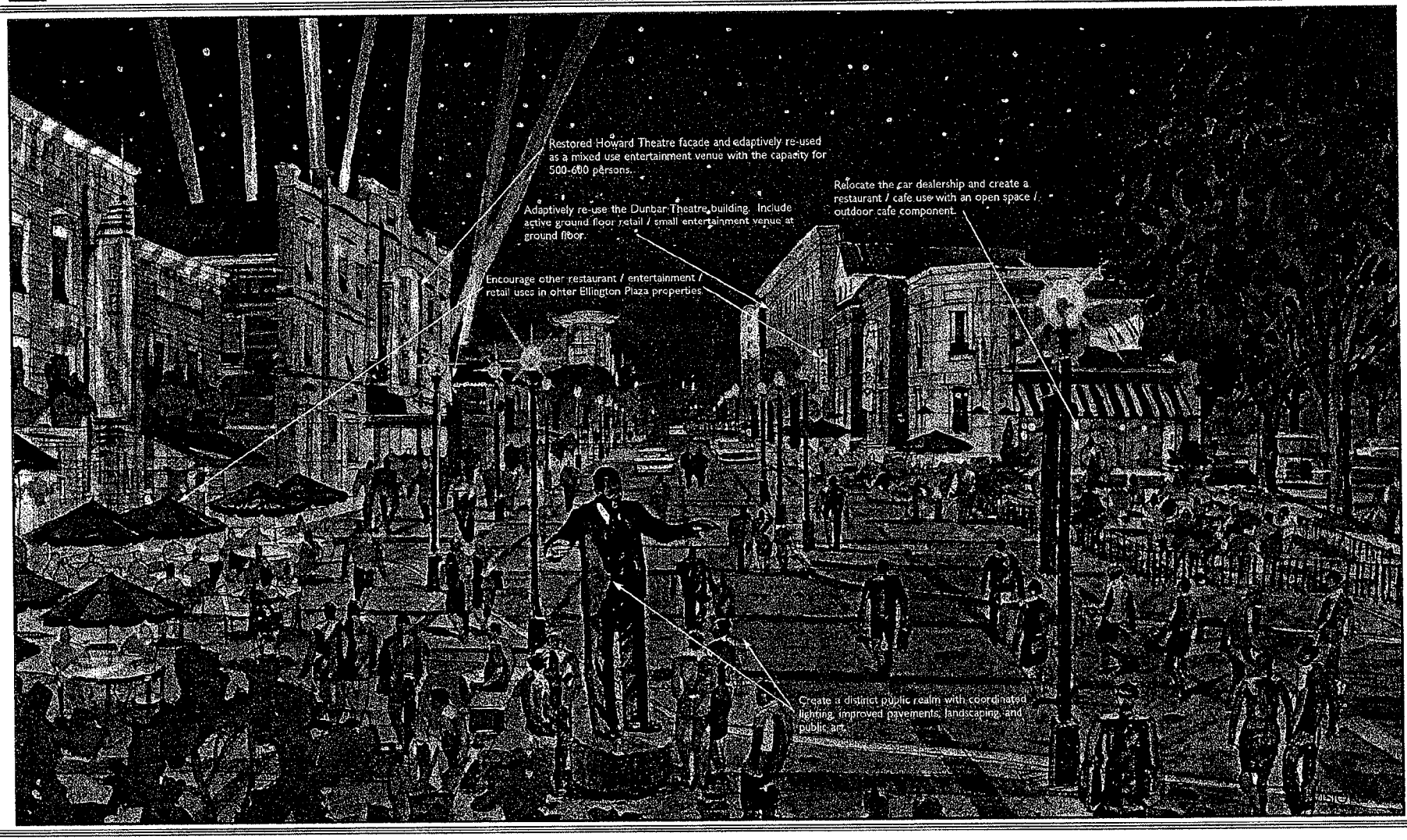
Public art should be installed in the Ellington Plaza gateway at Florida Avenue.

Encourage sidewalk cafes along T Street in preserved buildings.

Incorporation of film into Howard Theatre programming is not recommended due to significant competition from other cinemas and to avoid competing with the Lincoln Theatre's presentation of special run films.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008581



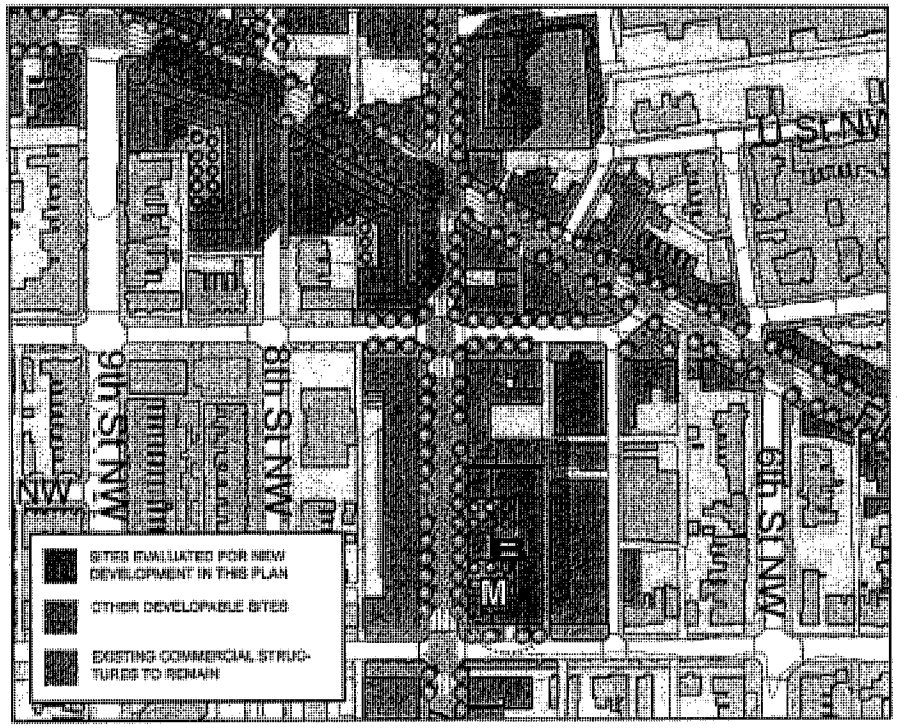
FOIA CONFIDENTIAL TREATMENT REQUESTED

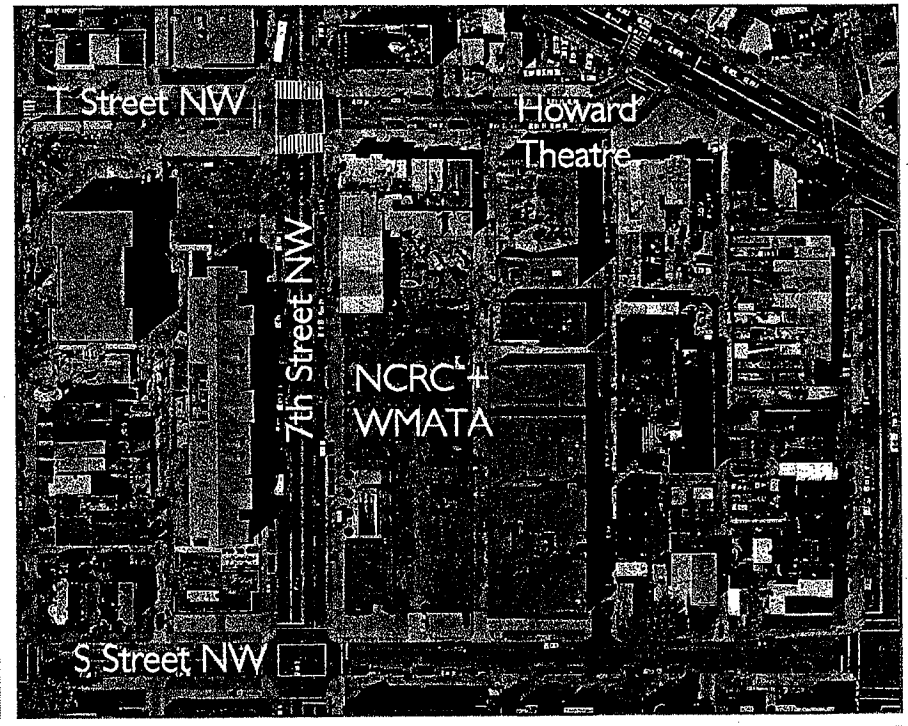
WMATA-INV 008582

A. Placemaking

Howard Theatre Sub-district

Site: NCRC + WMATA Parcels





RECOMMENDATIONS

WMATA + NCRC RLA PARCEL 33 (B) 35,189 sf

DEVELOPMENT PROGRAM

- Primary use: Office (maximum 170,000 SF)
- Ground floor retail/restaurants (approx. 18,000 SF)
- Secondary use: Residential (up to 176 units)
- 379 permanent jobs with office uses created
- 240 +/- parking spaces below grade and on two levels behind retail (shared with T Street uses)
- 20-30% Affordable Housing Target
- 35 % Local Small Disadvantaged Business Enterprise

Coordinate disposition/redevelopment schedules with restoration of the Howard Theatre and streetscape/public art improvements on Ellington Plaza.

Allow building height of 65 feet to cornice, rising to 90 feet with a one-to-one setback from cornice; optimize density, with target of approximately 6.0 Floor Area Ratio (FAR).

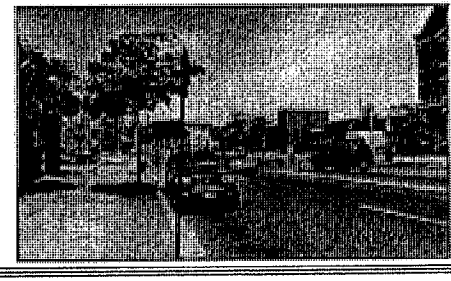
Provide parking, consistent with strong transit use, to accommodate demand for on-site uses, retail/restaurant uses ion T Street, and joint use with the Howard Theatre; parking management to provide for joint and shared use and extended operating hours.

Consider joint venture/acquisition of properties facing 7th Street to north of site to improve efficiencies of parking design.

Require access to parking structure and service functions off of S Street and alley; explore joint and shared loading and service arrangements with retail properties to north of site to enhance their revitalization/adaptive reuse potential.

Build over the Metro entrance and elevator.

PHOTO - Right. 7th & S Streets facing north. Existing conditions.
Opposite page. 7th & S Streets facing north. Proposed conditions.



FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008583

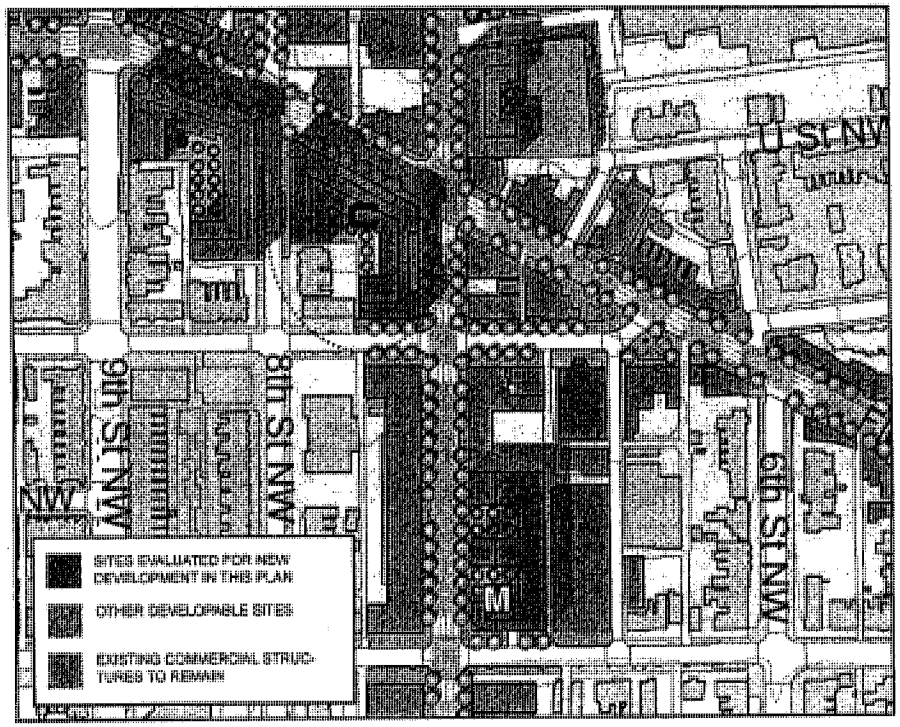
FOIA CONFIDENTIAL TREATMENT REQUESTED

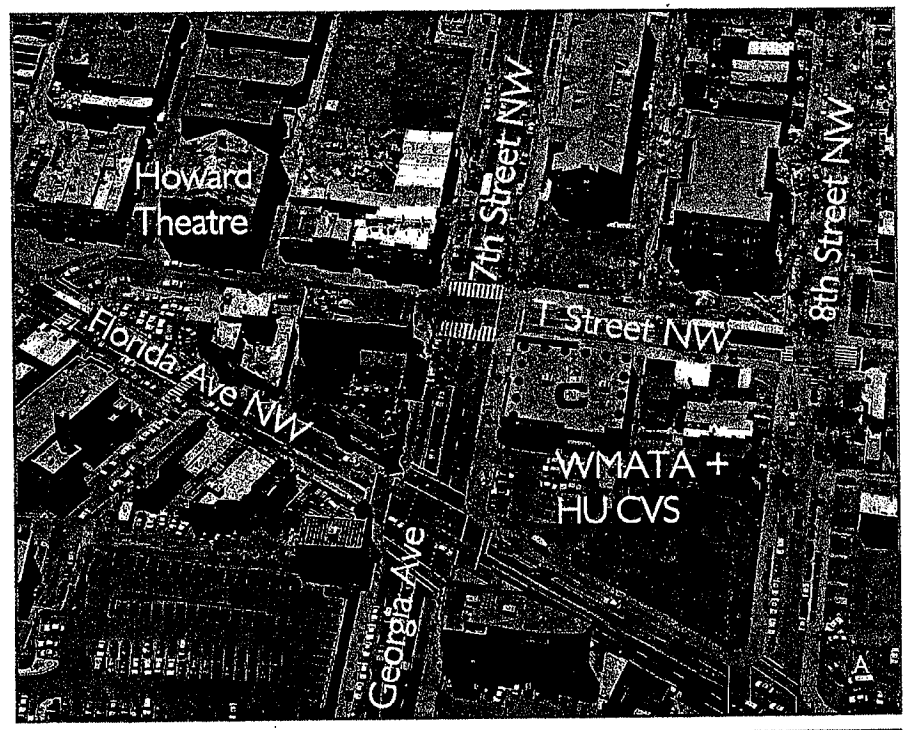
WMATA-INV 008584

A. Placemaking

Howard Theatre Sub-district

Site: WMATA + Howard CVS





RECOMMENDATIONS

WMATA + Howard University - CVS Site (C) 29,267 sf
(WMATA = 8,621 SF; HU CVS = 20,646 SF)

DEVELOPMENT PROGRAM

- 33,000 +/- minimum cultural destination with retail
- 125 +/- housing units on upper stories (150,000 +/- feet)
- 160 +/- parking spaces below grade on two levels
- 306 construction and 95 permanent jobs created
- 20-30% Affordable Housing Target (25-38 units)
- 35 % Local Small Disadvantaged Business Enterprise (LSDBE) participation

Develop retail/arts space to include specialty restaurants, a small-format anchor (8,000 to 15,000 square feet) and/or a cluster of retail shops, small clubs, and/or museum uses themed to the African American culture and experience of the district.

Allow building height of 65 feet to cornice, rising to 90 feet with a one-to-one setback from cornice; optimize density within constraint of parking potential (limited to two levels down by Metro tunnels).

Achieve significant architectural expression at corner of Florida Avenue and 7th Street.

Locate residential entries along 7th and 8th Streets.

Locate the service entry along T Street.

PHOTOS

A. 7th Street and Florida Avenue facing south. Existing conditions.
B. Florida Avenue and 7th Street/Georgia Avenue facing west toward Housing Finance Agency site - existing conditions.
C. Florida Avenue and 7th Street/Georgia Avenue (opposite page) - proposed conditions.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008585

FOIA CONFIDENTIAL TREATMENT REQUESTED

- Moddie Turay Proposal
- Technical Information

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.

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

From: Rosalyn Doggett
To: eric.smart@bolansmart.com; Marc E. Biondi
Date: 3/4/2008 12:04:54 PM
Subject: Florida Avenue Term Sheet

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 affordable 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 in this case.

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

get contr. dwgs if a problem....

Eric

Stabilization - 28 months

~~[illegible]~~

Quarterly installments in advance of $25,000

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).

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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.

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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.

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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.

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All long form documents associated with the Operating Agreement of the Company shall be satisfactory to the Members.

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SIGNATURE PAGES BELOW

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

M E M O R A N D U M

DATE: May 7, 2009

SUBJECT: Florida Avenue Affordable Housing

FROM: COUN – Josh Montague

TO: COUN – Carol B. O'Keeffe
COUN – Bruce P. Heppen
PLJD – Nat Bottigheimer
SAAM – Rosalyn Doggett

I. **Issues:**

A. When did WMATA impose the Affordable Housing requirement upon the developer in the Florida Avenue project?

B. What is the Affordable Housing requirement imposed by the District of Columbia?

C. How did the proposals of Moddie Turay / Clark or Banneker consider affordable housing?

II. **Affordable Housing Imposed by WMATA in the Florida Avenue Project.** Affordable Housing was not mentioned in WMATA's Proposal Submission Requirements or the Term Sheet negotiated with the Developer. The first sign of WMATA imposing an affordable housing requirement on the selected developer appears to come from the Committee and Board meeting minutes, as follows:

A. In the Planning, Development, and Real Estate Committee meeting, the Committee unanimously voted to amend the resolution to direct "staff to negotiate an affordable housing set aside in this proposal and the Board to receive a report on Staff recommendations regarding this issue."

B. In the subsequent Board Meeting, the Board approved the Banneker Term Sheet, and directed that "the final agreement shall reflect the inclusion of an affordable housing component."

III. **Affordable Housing in the District of Columbia.** The District of Columbia may impose Affordable Housing on this project either through its impending inclusionary zoning statute or the Duke Plan.

A. *Inclusionary Zoning*: According to the DC Office of Planning, the District's Inclusionary Zoning requirement will be a final law "any day now." Inclusionary Zoning will require that the Developer make at least 8% of its units or 50% of its bonus density as affordable housing.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

B. *The Duke Plan*: The Duke Plan does not have an affordable housing requirement, but rather provides guidance for Developers and District agencies. But, according to the DC Office of Planning, this *guidance* is basically a *requirement* when the Developer is seeking to get a PUD approved. The Duke Plan's guidance/requirement states the following:

1) The Duke Plan's Planning Goals are to "develop 20 to 30 percent affordable housing in residential development, particularly on publicly owned land."
2) The Duke Plan's Howard Theatre Sub-District Plan specifically mentions Florida Avenue's Lot 2 (*8,621 square feet, Square 393, Lot 45*), and recommends 20-30% Affordable Housing Target

IV. **Affordable Housing in the Final Bids.** The following were the only discussions of Affordable Housing in WMATA's negotiation and proposal records:

A. *Moddie Turay / Clark*:

1) In the "Zoning" section of their Technical Proposal, developer states that their proposal includes the "Arts/Overlay Zone incentive bonus for development of below market rate housing."
2) In an 11/15/07 memo from the DC Office of Planning, the DC Office of Planning cited that the Moddie Turay proposal did not discuss the income mix of units.

B. Banneker:

1) In a 12/13/07 letter to Banneker, the DC Housing Financing Agency expressed its interest in participating in the financing of the project. According to DCHFA's letter, Banneker's proposal included 20% affordable units at 50% AMI. DCHFA anticipated that the project would qualify for allocation of tax exempt and/or taxable bonds and 4% LIHTCs.
2) In a 3/4/08 internal email, Rosalyn Doggett stated, "[Banneker] proposed 20% affordable housing, at half the rent of market rate ($1.50 vs. $3.00/sf). Malcolm Marshall asked WMATA's 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 affordable by households making less than 60% of the area median income (or something to that effect). However, the appraiser 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."
3) In the executed operating agreement between Banneker and its original partners, the agreement states that the project will include 20% affordable units.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

Montague, Joshua W.

From: Heppen, Bruce P.
Sent: Tuesday, May 05, 2009 5:58 PM
To: Montague, Joshua W.
Cc: Bottigheimer, Nat; O'Keeffe, Carol B.; Doggett, Rosalyn
Subject: Jazz @ Florida project

Josh: Nat would like some confirmation from you regarding issues relating to the affordable housing requirement in this project. The most important question is when was this requirement first imposed upon the developer and what document reflects this action. Second, do you know whether the affordable housing requirement was contained in the Duke plan. Third, can you confirm that neither the original Banneker nor the Clark proposal reflected any diminution in value attributable to an affordable housing requirement or otherwise took cognizance of such a requirement.

This is a priority as Nat is crafting a response to the developer's latest proposal

5/7/09: DC office of Planning:

Development Review

- Travis Parker → will meet w/ Developer
- Duke Plan is just planning guideline
  - Just gives guidelines
  - Nothing Required
  - PUD → Strict guideline is "voluntary"
- IZ
  - any Day will be enacted
  - 8% of project or 50% of Bonus Density

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008601

Montague, Joshua W.

From: Bottigheimer, Nat
Sent: Thursday, May 07, 2009 6:58 PM
To: Moneme, Emeka
Cc: Montague, Joshua W.; Meister, Mark K.; Doggett, Rosalyn; Heppen, Bruce P.; O'Keeffe, Carol B.
Subject: Talked with Omar

Omar wants to be on the June agenda. I told him I thought that would be tough if staff initiated at this point. That said, if we have completed our analysis of Banneker's proposal to us, there's no reason that a DC Board member couldn't introduce the item himself.

My biggest issue currently is the reduction in land value due to affordable housing and financing. The NPV of the current proposal is about $5 million. This compares to a threshold appraised value of about $7 million that we'd set based on development comparables that included affordable housing in them. This appraisal may need to be updated to get a current estimate of the land value write-down for affordable housing.

From what I understand, there really hasn't been any change in the affordable housing requirements pre- and post-award. The Duke Plan has always had a 20-30% affordable housing requirement. We asked proposers – as I understand it – not to include affordable housing in their proposals to us so we'd have a level playing field for evaluating proposals. Asking proposers to negotiate terms that included affordable housing requirements could possibly be interpreted as a change in conditions, but might not in reality really be a change in conditions. Likewise, Mr. Graham has evidently proposed very significant AH requirements on Banneker, but I don't believe their current proposal to us reflects those.

The two biggest housing affordability components of the Banneker offer to us are the 20% Duke Plan requirement at 50% AMI, and lease terms that allegedly reflect the requirements of HUD financing. According to Omar, their original terms with us stipulated that the final JDA reflect such requirements.

Unless I'm missing something – which I certainly may be – the important issue is the affordable housing policy issue, i.e., how much of a reduction in land value is the Board willing to accept to support a JD project's affordable housing element. To determine this, I think we'd need an updated appraisal. We'd also have to be satisfied that the value of Banneker's offer to us would reflect the affordable housing requirements ultimately applied.

Thanks,

Nat

FOIA CONFIDENTIAL 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

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.

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SIGNATURE PAGES BELOW

AGREED TO BY THE PARTIES BELOW:

BANNEKER VENTURES, LLC

By: _____
Name: Omar Karlin
Title: Principal

DISTRICT DEVELOPMENT GROUP, INC.

By: _____
Name:
Title:

METROPOLIS DEVELOPMENT COMPANY, LLC

By: _____
Name: MERRICK T. MALONE
Title: Principal and Executive Vice President

DUKE: Framework for a Cultural Destination for Greater Shaw/U Street

The Duke plan concludes of an extensive community planning process which outlines specific development and use targets between the Shaw-Howard University and U Street/African-American Civil War Memorial/Cardozo metro stations. About 500 community, business and institutional stakeholders provided input during the series of community meetings which led to this document.

Duke specifically addresses the redevelopment of key public-owned buildings and land. Key sites include the District's historic Howard Theatre and Grimke School on Vermont Avenue, National Capital Revitalization Corporation (NCRC) Parcels 33 & 42, Metro's Shaw Parcels, the Housing Finance Agency (HFA) site, and select private parcels in the 7th Street/Georgia Avenue and U Street/Florida Avenue commercial corridors. The plan is to be implemented over a five to ten year horizon, but puts forth an emphasis on achieving visible progress sooner than later.

The District submitted Duke 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.

View the framework plan below.

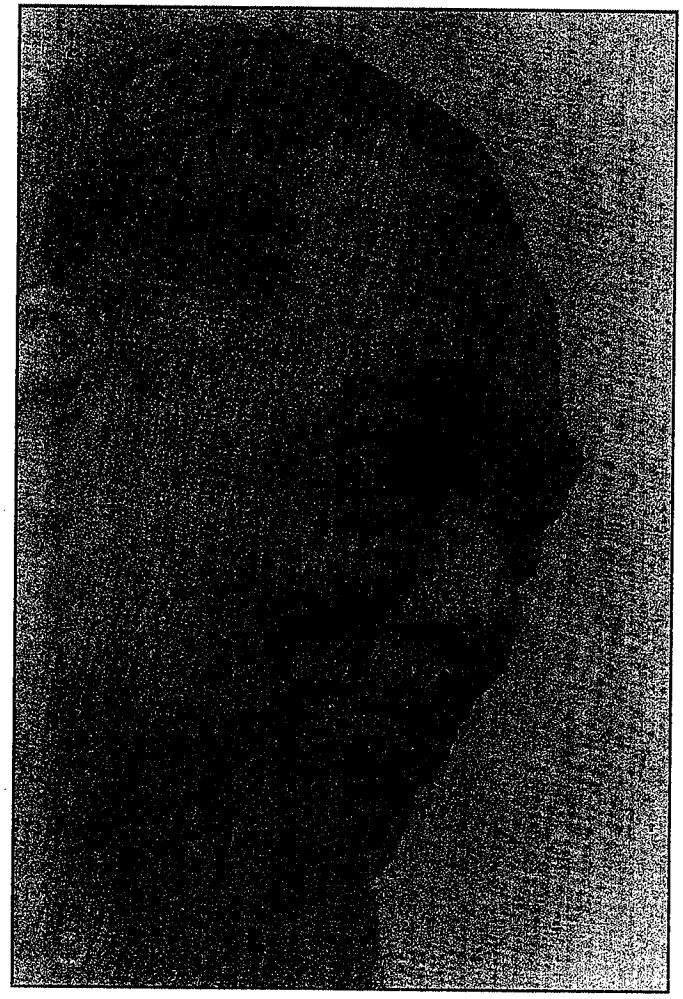
Section Names	Pages
Cover, Contents, Overview, Neighborhood & Historical Context	1-7*
Process, Market Analysis, Public Sites, Public Policy, Principles	8-13*
Sub-district: Howard Theatre	14-21*
Sub-districts: 9th Street, Rhode Island Avenue	22-27*
Sub-districts: African-American Civil War Memorial, Howard Town Center	28-30*
Sub-district: Lincoln Common; Design Guidelines (incl. Preservation & Zoning)	31-37*
Design Guidelines (cont.) (incl. Transportation, Parking, Built Form and Public Realm)	38-48*

* This document is presented in Portable Document Format (PDF). A PDF reader is required for viewing. Download a PDF Reader or Learn More About PDFs.

- Office of planning:
LM for Deborah

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008613

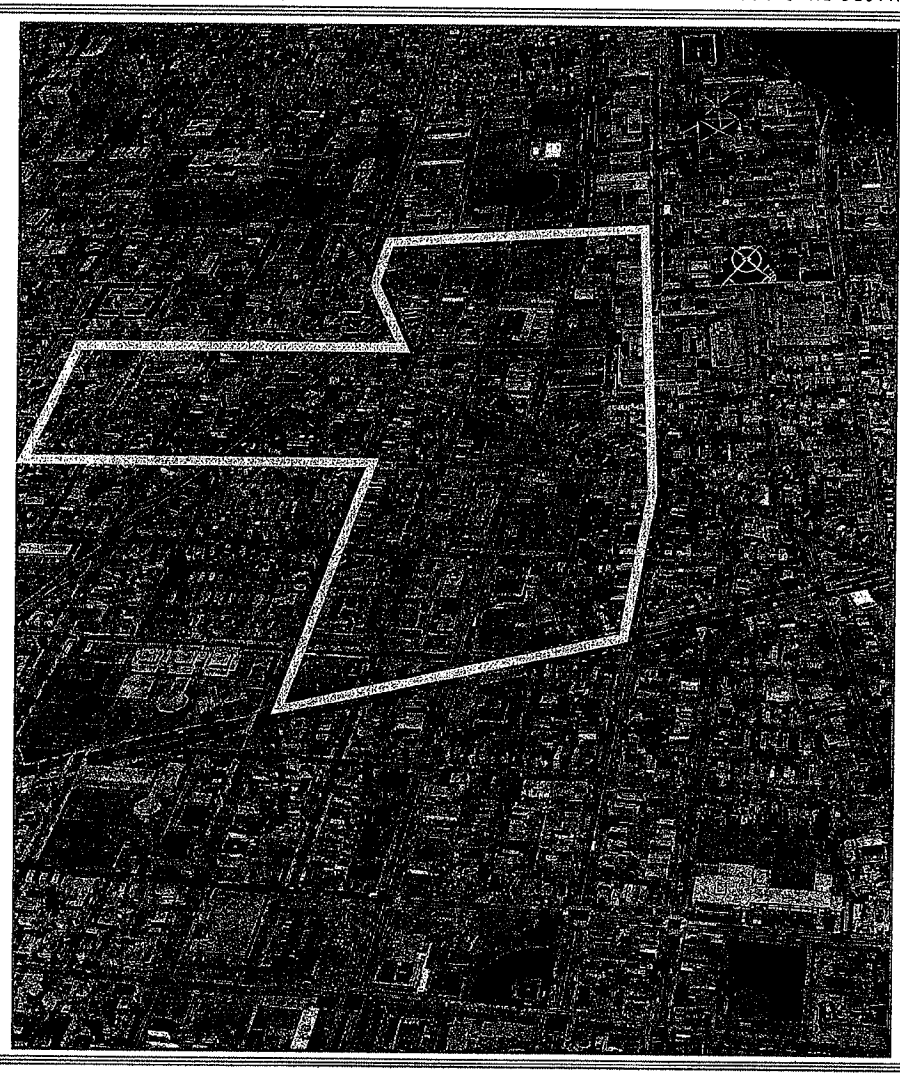


"Music is my mistress,
and she plays second fiddle to no one."

Edward Kennedy "Duke" Ellington
Washington, DC's Native Son &
World Legend
(1899 - 1974)

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008614



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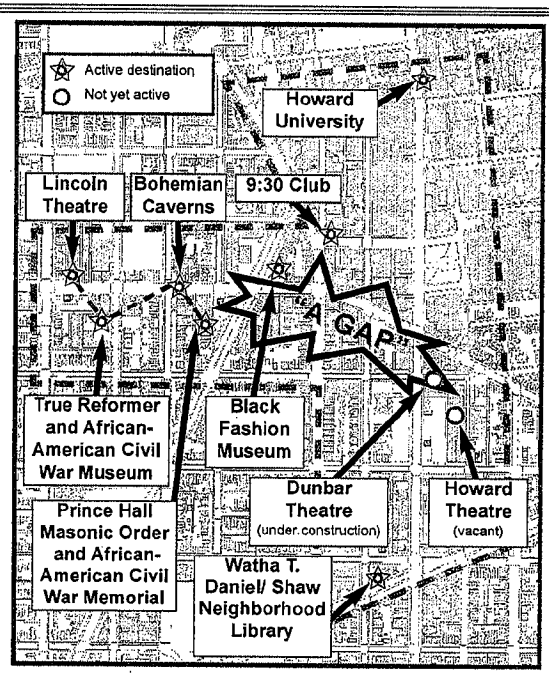
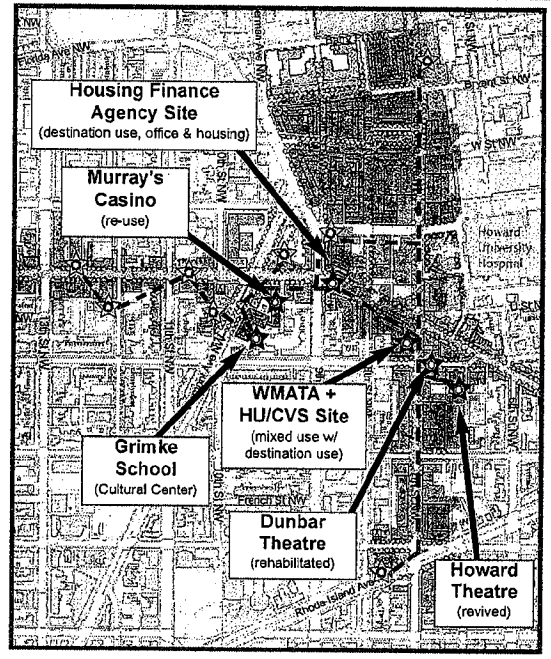
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008615

FOIA CONFIDENTIAL TREATMENT REQUESTED



Existing Figure Ground



Illustrative Site Plan

I. Overview

The District of Columbia, other partner agencies, and private landholders have a unique opportunity to use public and private owned assets to leverage considerable community and citywide benefits within the Shaw-Howard University and U Street/African-American Civil War Memorial/Cardozo Metro station areas. In its "heyday," this area was the heart of an important economic, cultural, social and institutional center of a proud and accomplished African-American community, many of which were affiliated with Howard University and Hospital. This was the neighborhood that introduced to the global community the talents and intelligence of numerous African-American pioneers, including Edward Kennedy "Duke" Ellington, perhaps its most recognized. Many of the building assets, which formed the backdrop for this community and the transformative contributions and events they pioneered, remain, and many are in active use. Significant sites like the vacant Howard and Dunbar Theatres represent a monumental opportunity to re-knit and enhance the fabric of this history and to create a more complete destination neighborhood where cultural landmarks are as "pearls on a string" of supporting mixed-use development. "DUKE" seeks to guide future development strategically by capitalizing upon this historic context to restore this contemporary uptown neighborhood with 18-hour destinations.

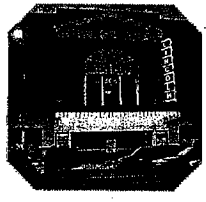
Current neighborhood needs can be addressed while building upon the area's extensive history in order to attract local and visiting guests from the National Mall and new Convention Center, located one Metro station away. Many public owned sites are within "the gap" which links vibrant U Street along Florida Avenue to 7th Street NW. Based upon technical land development analysis, considerable community input and the area's locational advantages, this development framework provides direction to the community, private sec-

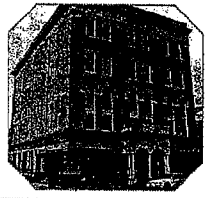
contemporary uptown neighborhood with 18-hour destinations

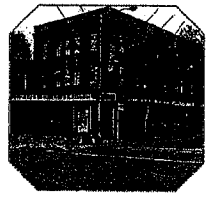
tor and public agencies in revitalizing this transit oriented neighborhood to achieve a cohesive and inclusive district which meets the community and District government development goals. Specific sites are used to illustrate development potential and programmatic targets. Recommendations are provided for others.

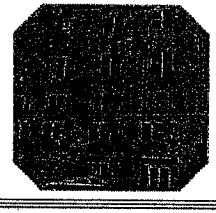
Project Boundaries. The Project Area is primarily focused upon the commercially zoned properties bound by Barry Place NW to the north; 6th Street NW to the east; Rhode Island Avenue to the south; and 13th Street to the west. The area is served by both the Shaw Howard University Metro and U Street/African American Civil War Memorial/Cardozo metro stations. Howard Theatre and the Lincoln Theatre serve as bookends to the many cultural heritage assets of the Project Area. Additionally, both theaters are owned by the District of Columbia government.

cultural landmarks are as "pearls on a string" of supporting mixed use development

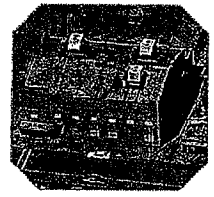

Lincoln Theatre

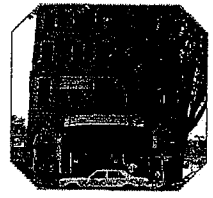

True Reformer Building

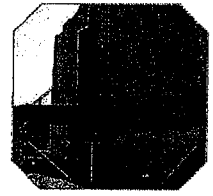

Bohemian Caverns


Prince Hall Grand Lodge

African-American Civil War Memorial


9:30 Club


Dunbar Theatre


Howard Theatre

WMATA-INV 008616

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II. Existing Neighborhood Context

The District of Columbia's investment in the Shaw-Howard University and U Street / African American Civil War Memorial / Cardozo Metro stations has helped to increase access between the metropolitan region to this historic district and intersection of historic neighborhoods. The District's investment has not been realized fully, as epitomized by the underutilization of key land and buildings abutting and within close proximity to these stations. Like other commercial districts within the city, 7th and Florida Avenue experienced considerable disinvestment due in part to economic downturns linked to middle class flight, urban riots and general market shifts. However, the momentum has changed as there is now the confluence of an increasingly strong market, renewed interest in mixed use transit oriented development by private sector developers and investors, and a desire on the part of local government to use its assets and resources catalytically.

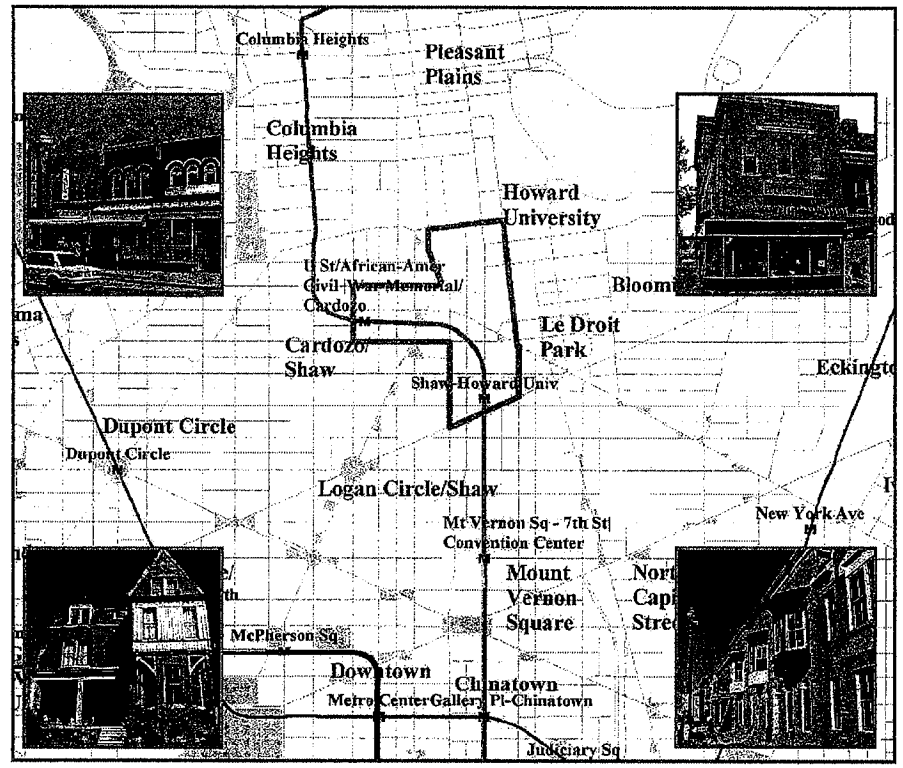
THE NEIGHBORHOODS. 7th Street and Florida Avenue converge at the center of several distinct neighborhoods: U Street/Cardozo, Shaw, LeDroit Park and Howard University. These historic neighborhoods were and are the center of a very rich and catalytic African-American and jazz history.

To the north of the Project Area, Howard University with its affiliated hospital is an anchor institution. Approximately 12,000 undergraduate and graduate students attend this historic university. To the south, the new $850 million Washington Convention Center opened in 2003. The Center attracts millions of visitors annually and is expected to generate nearly $1.5 billion in revenue.

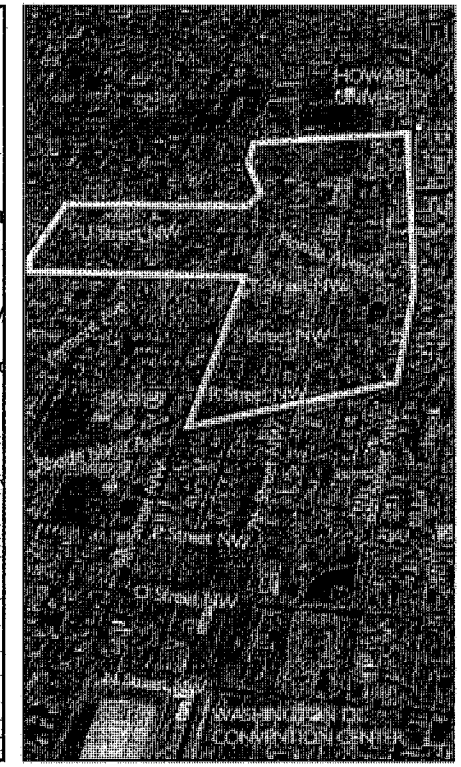
The neighborhoods are mixed socially, economically and culturally. The neighborhoods include a growing number of homeowners, but the needs of renters are a rapidly growing concern. Incomes vary across a wide spectrum. Area households are a mix of families, singles, and seniors. Residents and merchants are organized through several active organizations--Advisory Neighborhood Commissions, 14th & U and Shaw Main Street districts, civic associations, and faith-based organizations among others.

Given this area's strategic location, only minutes north of the Central Business District and new Convention Center, and the historic architectural character, neighborhoods in this area are very attractive. Many residents, however, are concerned about gentrification and affordability in both housing and retail services.

RETAIL. Whether established or new, resident demand for quality retail services, goods, and innovative entertainment is strong. Economic studies of similar areas in the District have confirmed that there is considerable sales leakage to surrounding jurisdictions. The retail mix in the Project Area and to the north is primarily comprised of a drugstore, fast food restaurants, hair salons, liquor stores, nail shops, and church operated retail. Currently, there are no distinguishing retail anchors within the area. The nearest grocery store is a few blocks away at 7th and O Streets NW. Howard University hopes to attract a new grocery store next to its campus as a part of its proposed HU Town Center project, at the north end of the Project Area. Development activity on U Street NW west of the Project Area continues with the addition of new mixed-use projects which include street-level retail, sit down restaurants and boutiques.



The Project Area is within close proximity to Downtown DC, the National Mall and the new Washington, DC Convention Center. The area is surrounded by thriving neighborhoods with significant historic housing and commercial stock.



The Project Area is anchored by the Washington Convention Center and Downtown to the south and Howard University & Hospital to the north.

HOUSING. Home sales and property values are increasing throughout all surrounding neighborhoods. Displacement and affordability are ongoing concerns. Recent new and rehab residential developments near the Project Area include a number of single-family rowhouse dwellings in the historic LeDroit Park neighborhood. Howard University entered a partnership with Fannie Mae to develop these properties for its employees and the general public. The sale of those homes yielded impressive results. Market rate townhomes and condos continue to be developed on historic U Street and throughout the neighborhoods. Howard University purchased a 125-bed extended care facility between S and T Streets on 7th Street NW and seeks guidance about long-term use of this temporary university offices site.

TRANSPORTATION, TRAFFIC & PARKING. The District has embarked on a public policy agenda that stresses the need to concentrate and maximize new development at or near Metro stations to increase Metro ridership while reducing the need for personal vehicles. The area is accessible from a variety of transportation methods including via Shaw-Howard University and U Street-Cardozo Metro stations. Up to 4600 metrorail entries and exits at each station occur each day. The 66, 68, 70, 71, 90, 92, 93, 96, G8 and X3 bus lines stop within the Project Area. Bus ridership varies from line to line, but the Georgia Avenue/7th St (70/71) bus carries over 20,000 riders daily; U St-Garfield (90/92/93), over 17,000. Over 27,000 personal vehicles pass through daily. Much of the area was built before cars were popular. Therefore, parking is limited and area residents are concerned about the impact of new development on current parking supply. In Winter 2005, DDOT's U Street/Shaw Transportation and Parking Study should provide recommendations about managing current and projected growth, transit, traffic and parking within the area.

WMATA-INV 008617

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III. Historical / Cultural Context

The following background information is printed in Greater U Street Historic District guide, published by DC Office of Planning - Historic Preservation Division. The text was written by: Kimberly Prothro Williams.

RISE OF A CITY WITHIN THE CITY

Beginning in the 1890s, Washington experienced an increased sense of racial hostility. Many of the city's laws, passed during Reconstruction and aimed at the civil rights of African Americans, were ignored during the 1880s and 1890s, and then in 1901, were officially dropped from the city's legal code. Imposed segregation followed, and out of necessity, the city's African American population of all socio-economic levels coalesced into those areas of the city open to them, including, most notably, Greater U Street and the adjoining Strivers' Section. The influx of African Americans into these neighborhoods hastened the exodus of many whites. Between 1900 and 1920 the racially mixed neighborhood progressively changed to a more homogenous African American one.

While the Greater U Street area represented all socio-economic levels within the African American community, the presence of Howard University continued to attract students and educators that contributed to the area's cultural and literary life. To name a few, Greater U Street area was home to Francis Cardozo, the first principal of M Street High School; Francis Grimke, a writer and orator who championed constitutional rights for African Americans; Robert and Mary Church Terrell, lawyer and civil rights activist, respectively; William L. Houston, dean of the law school at Howard University; Georgia Douglas Johnson, poet and host of an influential weekly literary salon at her house on S Street; John Lankford, architect; Edward "Duke" Ellington, jazz musician; and Lillian Evans Tibbs (Madame Evanti), opera singer.

Dr. Charles Drew. (Scurlock Studio Records; Courtesy National Museum of American History, Smithsonian Institution)

The overall racial climate in Washington inspired a new ideology among African Americans that transformed U Street into a self-sufficient community and the center of African American life. A group of rising middle-class black entrepreneurs rejected the traditional approach of gaining racial equality through civil rights advocacy, and proposed instead the idea of racial solidarity and self-sufficiency. Influential leaders such as Calvin Chase, editor of the *Washington Bee*, Washington's preeminent African American newspaper; John Cromwell of the *People's Advocate*; Andrew Hilyer, founder of the Union League of the District of Columbia; and organizations such as the NAACP, led by W. E. B. DuBois, preached the benefits of racial unity and working together to achieve advancement. Most importantly, though, these men pushed for self-sufficiency through economic development. To spread the word, these leaders spoke out at churches and schools, through newspapers and on the street. In 1892, 1894, and 1895, the Union League of the District of Columbia published business directories that urged the African American community to patronize only their own businesses, and in particular those listed in the directories.

The Greater U Street neighborhood heeded the call of its leaders. Between 1886 and 1920, the number of African American owned businesses in the area rose from fifteen to 300, with the bulk of new businesses coming between 1910 and 1920. Entrepreneurs, like John Lewis; local businesses, such as the Murray Brothers Printing Company, which published Washington's most influential African American newspaper, the *Washington Afro-American and Tribune*; and national benevolent organizations, such as the United Order of True Reformers, together built the infrastructure necessary to help the African American community gain its independence from white Washington.

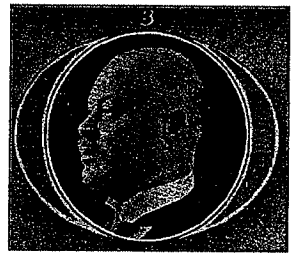
The Dozen Club at the True Reformer, in 1917. (Adelaide Robinson)

While the rows of Victorian-era dwellings behind the major corridors of Greater U Street remained intact, U Street itself gained new and varied businesses in existing buildings and on its remaining vacant lots. Churches, hotels, restaurants, banks, fraternal organizations and self-help groups, theaters, jazz clubs and other entertainment and commercial facilities that catered to the African American community joined already existing commercial enterprises. New businesses such as printers, druggists, undertakers and more emerged in the area and fulfilled the community's need for services. As the variety of businesses increased in the U Street area, African Americans became even less dependent upon white Washington for services and became increasingly self-sufficient. At the same time, African Americans broke away from traditional employment roles and moved in to fields that required higher levels of education, and thereby gained affluence and prestige.

John Whitelaw Lewis. (Courtesy Cultural Tourism DC)

AFRICAN AMERICAN BUILDERS & ARCHITECTS

Many of the commercial and institutional buildings that helped U Street achieve its success were designed, constructed, and financed by African Americans. John Whitelaw Lewis, an African American entrepreneur and financial pioneer, devoted to the growth of an independent black Washington, constructed two major institutions in the area--the Industrial Savings Bank at 11th and U Streets (1917)--the only African American bank in the city, and the eponymous Whitelaw Hotel at 1839 13th Street NW (1919)--the only lodging facility in the city dedicated to African American patronage. A former hod carrier, Lewis saw the need to provide financial opportunities to his own people, and formed the Laborers Building and Loan Association. The association helped the working class "save a part of their small earnings" by providing homes for them, and assisted them in purchasing their own houses. The group's first purchase was the row of nine newly completed row houses on 13th Street between U and V Streets.



John Lankford. (Courtesy Cultural Tourism DC)

The Industrial Savings Bank, designed by African American architect Isaiah T. Hatton offered banking services to African Americans for the first time. At first a small enterprise, the bank benefited from a devoted clientele, and continued to grow until it failed during the national banking crisis in 1932. Two years later it was reorganized and is still doing business at 11th and U Streets.

The institutions established by John Lewis were later followed by others along U Street, including the 1902 True Reformer Building; the 1908-1912 12th Street YMCA (now the Thurgood Marshall Center for Service and Heritage); the 1919-1920 Southern Aid Society building; and the 1922-1930 Prince Hall Masonic Temple.

The True Reformer Building at 12th and U Streets was one of the first institutional buildings erected by and for the African American community along U Street. The United Order of True Reformers, based in Richmond, Virginia, was founded as a fraternal and benevolent organization that served the economic and social needs of African Americans.

The Prince Hall Masonic Temple at 1000 U Street, designed by prominent black architect Albert I. Cassell and constructed between 1922 and 1930, was built to house a chapter of the first African American Masonic order. The temple has been continuously associated with the lodge, and continues to provide services for African Americans, such as social gatherings and commercial office space.

The 12th Street YMCA was constructed between 1908 and 1912 to designs prepared by African American architect William Sydney Pittman. Housed in an impressive Italian Renaissance-style building at 1816 12th Street N, it is the first purpose-built African American YMCA in the United States, a movement founded in 1853 by former slave and abolitionist Anthony Bowen. The building's construction attracted financial support from Julius Rosenwald, president of Sears, Roebuck and Company, who also contributed one-third of the costs for the construction of over 5,000 African American schools throughout the South.

Anthony Bowen. (Kautz Family Archives, YMCA of the USA)

Duke Ellington and one of his early bands, circa 1919. Courtesy: Archives Centers, National Museum of American History.

Native son Edward Kennedy "Duke" Ellington (1899-1974), the internationally renowned composer and musician, spent his teenage years at 1805 13th Street (1910-1914) and then at 1816 13th Street (1915-1917). Ellington was born on April 29, 1899, at 2129 Ward Place NW, the home of his maternal grandparents. Ellington's musical interest first began at home. His mother Daisy Ellington, a native Washingtonian, played the family piano. His father James Edward Ellington of North Carolina played popular songs and arias. He began playing around age seven. He later attributed his professional success to his parents, his music teachers, local musicians, and the patrons of Frank Holliday's poolroom at 624 T Street NW. (Courtesy Cultural Tourism DC)

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Madame Lillian Evanti (Lilian Evans Tibbs). (Moorland Spingarn Research Center, Howard University)

Lillian Evans Tibbs (1890-1967), professionally known as Madame Lillian Evanti, was a lyric soprano who received international acclaim. She was the first black woman to sing opera with an organized company in Europe.

A native Washingtonian, Anne Wilson Lilian Evans was the daughter of teachers Anne Brooks and Dr. Bruce Evans. She sang in her first public concert, a charity event, at age four. Evanti attended Armstrong Manual Training School and Miners Teachers College, and graduated from Howard University School of Music in 1917. In 1924 she left for Paris for further training and for better professional opportunities at a time when American opera and classical music companies refused to admit African Americans. (Courtesy Cultural Tourism DC)

The 12th Street YMCA, currently the Thurgood Marshall Center, provided the locale for social and civic activities, as well as dormitories for extended stays. Poet Langston Hughes lived here in the early 1920s, and Dr. Charles Drew, who pioneered the preservation of blood plasma, was an active member. Thurgood Marshall, the first African American Supreme Court Justice, held early meetings for civil rights legislation in the building.

The Southern Aid Society Building, located at 7th and T Streets, was constructed in 1919-1920 by the Society as a mixed-use building with commercial space, hotel rooms, and a first-run movie theater, the Dunbar Theater. The Society, founded in 1893 in Richmond, Virginia, was one of the first African American owned and operated insurance companies in the country. Designed by African American architect Isaiah T. Hatton, the Southern Aid Society building is currently under renovation.

The development of these major institutions along U Street, and the growth of African American businesses provided the community economic security and stability that ultimately inspired the corridor's growth as an unrivaled entertainment center. By 1930, U Street had become the community's main boulevard, known nationally as "Black Broadway." Several first-run movie theaters, a multitude of nightclubs and ballrooms, pool halls and stores operated alongside the offices of African American doctors, dentists, and lawyers.

Howard Theatre

During its heyday, U Street was home to a rich variety of theaters that extended from 7th to 14th Street. The Minnehaha Theatre (Ben's Chili Bowl) opened as a nickelodeon theater in 1909 at 1213 U Street NW. This was followed by the Hiawatha Theatre at 11th and U Streets and the Howard Theatre at 620 T Street NW, both in 1910; the Dunbar Theatre in the Southern Aid Society Building in 1919-1920; the Lincoln Theatre at 1215 U Street, in 1921-23, and the Republic and Booker T. theaters mid-1920s, in the 1300 and 1400 blocks of U Street, (both demolished). The Howard was the first theater building in the nation erected specifically for African Americans. The Lincoln Theatre, built as a first-run movie house, was praised as "the largest and finest theater for colored people exclusively anywhere in the U.S."

Louis Armstrong at Club Bali. (Courtesy Historical Society of Washington)

Other entertainment facilities, such as restaurants, nightclubs, dance halls, and billiard halls grew up along U Street, extending the same length of the corridor. When it opened in 1926 in the basement of the drugstore at 2001 11th Street NW, Bohemian Caverns was considered the "doyenne" of U Street. The club, which catered to Washington's African American elite, featured cave-like interior finishes (now recreated in the original basement space). Other popular clubs included the Republic Gardens in the 1400 block of U Street; the Bali at the northeast corner of 14th and T Streets; the Lincoln Colonnade behind the Lincoln Theatre; the Turf Club at 1228 U Street NW; Club Louisiana in the 2000 block of 14th Street; the Casbah at 1211 U Street NW; and the Brass Rail at 14th and T Streets. During its heyday, U Street literally reverberated with the sounds of Nat "King" Cole, Cab Calloway, Pearl Bailey, Sarah Vaughn, "Jelly Roll" Morton, Louis Armstrong, Edward "Duke" Ellington, and Ray Charles.

Archibald Grimke. (Moorland-Spingarn Research Center, Howard University)

CHURCHES & SCHOOLS

Prior to the Civil War, African Americans and whites, although segregated during the services, attended the same churches. After the war, and as an expression of their freedom, many African Americans established their own churches. In Washington, at least four such black churches began in the U Street area: Berean Baptist Church; Saint Augustine's Catholic Church; Freedom Baptist Church; and the Lincoln Congregational Temple United Church of Christ.

Like churches, schools provided an important foundation for African American society. Originally racially mixed, segregated schools were imposed after Reconstruction. The first African American school in the U Street area was erected in 1880 at 10th and U Streets. The school was named the Garnet School in honor of prominent abolitionist Henry Highland Garnet. In 1893, Patterson School was built adjacent to Garnet School, and in 1929, a larger school, Garnet-Patterson Junior High School, was built to replace the earlier two. Although originally built in the 1880s and 1890s as white schools, Phelps School (renamed Grimke School in 1934) and Harrison School were transferred into the black school system.

THE "NEW U"

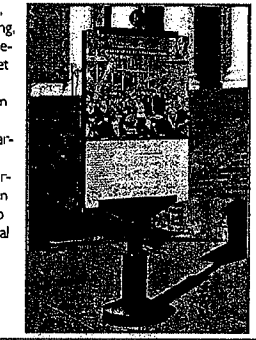
When the Supreme Court overturned restrictive covenants in 1948, and African Americans were legally free to move anywhere they desired, DC began to desegregate. Many of the African Americans who chose to leave the U Street area were the most affluent and were drawn to, and could afford, newer houses in the expanding suburbs. The departure of the professional class from the U Street area altered its socio-economic make-up. The formerly owner-occupied, single-family dwellings were converted into multi-family rental units and rooming houses that catered to a more transient population. Increased density, overcrowding, and poverty began to plague the once middle-class area.

Thurgood Marshall. (Courtesy Cultural Tourism DC)

Throughout the 1950s, other Supreme Court decisions continued the desegregation of Washington, and ironically further contributed to the economic decline of the neighborhood. In 1953, the Supreme Court ruled that the "lost laws" of Reconstruction guaranteeing equal access were valid. Stores, restaurants and other establishments that served only whites were now prohibited from doing so. The *Washington Post* described the Supreme Court decision as a victory that would destroy "all enforced segregation and discrimination." The unintended result of the desegregation of public facilities was that businesses in the U Street area had now to compete with those downtown. With the dissemination of the African American population across the metropolitan area, the shops and businesses along U Street became less convenient. Following their customers, many existing and new businesses went elsewhere and the number of commercial enterprises that once thrived along U Street began to decline.

Pearl Bailey at Bohemian Caverns in the 1940s. (Moorland-Spingarn Research Center, Howard University)

In April 1968 the riots that followed the assassination of Reverend Dr. Martin Luther King, Jr. devastated much of the social and economic infrastructure of the neighborhood, with the area around 14th and U Streets particularly hard hit by the looting and burning of buildings. Federally funded urban renewal efforts in the 1960s and 1970s began to rebuild the neighborhood, with new housing units and social service initiatives. In more recent years, the opening of Metro's Green Line, the distinctive building stock, and the pedestrian-oriented commercial development have encouraged economic growth and vitality of the area. The erection of new buildings on vacant lots and the restorations of historic buildings such as the Lincoln Theatre, the Whitelaw Hotel, the 12th Street YMCA, and the True Reformer Building, have contributed to the rejuvenation of the Greater U Street neighborhood. Community efforts, such as the recognition of the area as a National Register Historic District, spearheaded by Cardozo Shaw Neighborhood Association, further promote the revitalization of the neighborhood and help maintain the area's rich cultural and architectural heritage.



U Street trail sign created by Cultural Tourism DC.

WMATA-INV 008619

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IV. Planning Process

Process Goals. This plan should help to realize several key goals:

"FILLING THE GAP"
Establish a mixed-use, destination-oriented development program and strategy (consistent with transit oriented development guidelines) for key vacant and existing historic sites between the historic Lincoln and Howard Theatres.

"FITTING IN"
Create a site plan and massing scenario that defines a new neighborhood and regional center of mixed use development along 7th Street/Georgia Avenue and Florida Avenue that meets the needs of the local community but also attracts residents from the surrounding area and visitors;

"MAKING IT DOABLE"
Determine a detailed implementation strategy that outlines the roles and responsibilities of stakeholders and includes specific recommendations for future development; and

"DEMONSTRATING BENEFITS"
Outline the fiscal and economic impact of new investment on zoning; total area projected for retail development; estimated production of full-time jobs and temporary construction jobs; estimated sales tax revenues (where possible); and number of potential market rate and affordable rental and ownership opportunities.

Community Involvement. The process involved an Advisory Committee of neighborhood associations, Advisory Neighborhood Commissioners, Main Street directors, institutional leaders, community development corporations and Councilmember representatives. The Office of Planning met with Advisory Committee members prior to each community meeting to solicit their input about project findings. Advisory Committee members were also helpful in getting the approximately 500 stakeholders to attend the five (5) community meetings that were a part of this process. During those community meetings, area residents, property and business owners, institutional stakeholders and others had an opportunity to review and provide input on technical analysis and the direction of the planning effort.

Primary Community Directives to the District and others. Community interest in this planning process grew from meeting to meeting as many organized outside OP sponsored meetings to make clear statements about issues facing them. Primary community directives were:

1. To produce more affordable and adequate housing;
2. To provide affordable opportunities for local business development and assistance for existing merchants;
3. To restore the Howard Theatre to long-term use;
4. To create diverse apprenticeships & living wage job opportunities for the area's residents.

Development Goals. The previous directives were not the only input provided by the community. The Office of Planning began the planning process engaging stakeholders in a discussion about development goals. The Development Goals are organized into seven (7) broad categories:

Land Development, Design and Preservation
Public Realm
Transportation, Transit and Parking
Cultural Heritage
Retail Environment
Community Development
Fiscal Feasibility

Each category has specific development goals under each heading. These Development Goals were used to shape the framework for development recommendations for the Project Area:

Land Development, Design and Preservation

1. Develop Square 0441 as an anchor for the Destination District and for the 7th Street / Georgia Avenue Corridor;
2. Enhance and respect the character and quality of life of the existing neighborhoods and their historic resources.
3. Take advantage of transit-oriented development (TOD) in this dual Metro station area by maximizing density and intensity of land development.
4. Be forward-thinking and progressive in the design of new and infill projects and the public realm by integrating innovative design solutions with historically significant structures.
5. Reinforce the sustainability of retail and destination uses with complementary development.
6. Develop 20 to 30 percent affordable housing in residential development, particularly on publicly owned land.
7. Encourage more commercial development to strengthen daytime activities and customer base.

Public Realm

8. Create a safe, interesting and attractive streetscape environment with outdoor leisure and entertainment options.
9. Develop ground floor retail/entertainment uses that actively enliven the public realm.
10. Optimize pedestrian access to and among attractions in the destination district with appropriate signage.
11. Maintain an aggressive clean and safe campaign in conjunction with the area's DC Main Street districts.

Transportation, Transit and Parking

12. Maximize the use of transit resources and expand the range of transportation modes (i.e. shuttles, bicycles, light rail, etc.)
13. Right-size parking to give priority to transit while accommodating project generated parking demands.
14. Seek opportunities to develop a shared or joint parking strategy for the area, maximizing off-street parking as possible.
15. Manage off street service, loading and tour buses to reduce impact on surrounding neighborhoods.
16. Incorporate public parking for vehicles and bicycles within the destination district.

Cultural Heritage

17. Restore the Howard Theatre as a cultural destination, building upon its historic significance.
18. Provide physical locations for cultural heritage interpretation.
19. Incorporate cultural heritage in public art, plazas and other elements to create a cohesive and dynamic streetscape, especially at 'Ellington Plaza' (T Street between 7th and Florida Avenue.)
20. Build upon and promote the area's African-American heritage and attractions, i.e. African-American Civil War Memorial, Black Fashion Museum, etc.

Retail Environment

21. Encourage a mix of national and unique, locally-owned retail establishments on 7th Street, 9th Street, U Street and Florida Avenue.

Community Development

22. Involve the community.
23. Involve youth in all aspects of redevelopment, including at the Howard Theatre.
24. Maximize economic opportunities for businesses and landowners.
25. Create training and employment opportunities for area residents with particular focus on jobs that pay living wage rates.
26. Consider strategies to proportionately enhance the use of private commercial properties.

Fiscal Feasibility

27. Promote dense, compact development through zoning and historic preservation regulations.
28. Balance District-wide and community use needs, benefits and interests with economic value on public owned land.
29. Partner with qualified and accomplished private, not-for-profit and/or other public sector investors to achieve exemplary mixed-use projects.
30. Maximize, to the fullest extent possible, revenue producing opportunities.

WMATA-INV 008620

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V. Market Analysis - Overview

The Project Area's strong cultural history as "Black Broadway" offers many opportunities for revitalization as a neighborhood destination district. The area's development potential will combine demand from existing residents and businesses with that generated by new residents moving into the area--attracted by the district's location, Metro access and historic housing resources. Market analysis was prepared to examine trends and quantify the potential for entertainment, arts, housing, office, retail and hotel development.

Entertainment and Arts Potentials

PETR Productions evaluated a number of alternative uses for restoring the Howard Theatre to a vital cultural use, including a 1,300-seat theater; a smaller theater of less than 500 seats; a larger theater of more than 2,000 seats; a community and visitor center; a museum; a movie cineplex; and a mixed-use entertainment center. The evaluation considered the extent and performance of other arts and entertainment facilities in the city and focused on the following criteria:

A. Capitalizes and focuses on the theater's historical significance as a major venue for African American entertainers;

B. Conforms to the building's structural constraints and its designation as a National Historic Landmark that is located within an historic district;

C. Is economically feasible (required investment and financing is met by operating cash flows);

D. Anchors proposed destination district, thereby creating enhanced neighborhood activity and development;

E. Attracts a diverse non-resident audience and plays a prominent role in the community's art and cultural life;

F. Lives in harmony with the Lincoln Theatre; and

G. Minimizes environmental impact on the surrounding neighborhoods.

Given these objectives and weighted evaluation, the best option for sustainable reuse of the Howard Theatre is as a music performance venue for 500 to 600 persons with fine dining and beverage service. This approach has worked very successfully at Green Dolphin Street in Chicago and Storyville in New Orleans. The Theatre's exterior should be restored to approximate its 1910 appearance and the interior reconfigured to support these functions and to include a museum about the Theatre's history.

Though the Project Area has a number of destination uses (e.g., Lincoln Theatre, Howard Theatre, African American Civil War Memorial, Bohemian Caverns), it lacks the critical mass essential to a successful destination district. **The area needs other major entertainment anchors, preferably two, to reinforce the district as a destination for tourists and regional residents. The ideal locations for such anchors would be the Housing Finance Agency site at 9th Street and Florida Avenue and the WMATA/Howard University CVS site.**

Other entertainment opportunities include:

A. More dining, entertainment, and retail uses, such as niche food and beverage outlets (e.g., ethnic restaurant, single product – smoothies); live performance music clubs (e.g., jazz, hip hop); a large live entertainment venue (approx. 5,000 seats); and lifestyle retail (e.g., parenting, arts and crafts, do it yourself-oriented).

B. Facilities to support annual neighborhood interaction and socialization, such as outdoor performance/gathering areas (e.g., amphitheater, bandstand, plaza, etc.); an open market (e.g., farmer's, flea, etc.) facility; and a community visitor/cultural center for residents and visitors.

C. Other complementary uses such as a rental facility with catering capabilities, a music heritage museum, and adult/continuing education facilities in the fine and performing arts.

To achieve its full potential as an entertainment destination, the Project Area needs physical and visual links to other district "magnets", improved vehicular access and improved safety and cleanliness.

Housing

Currently, the strongest market demand in the Project Area is for new housing. Many singles and childless couples are being attracted by the availability of historic rowhouses and newly constructed condominiums and apartments in the area. Coupled with low interest rates, this heightened demand has led to rapid price increases. New condos built at Metro stations could achieve prices of $375,000 to $475,000 ($450 to $500 per square foot). Demand could support a total of 815 units in the next five years.

The current economics of developing rental housing do not favor new construction of market-rate apartments at this time. Low mortgage interest rates and rapid housing appreciation have encouraged many renters to buy homes at the same time that several new apartment developments have opened in and near downtown. The Project Area could support an estimated 160 to 320 units over the next 10 years once mortgage interest rates increase again, leading more households to seek rental housing.

Affordable Housing

The same high housing values that will support and encourage reinvestment and development in the Project Area are making it more and more difficult for long-time residents to stay in the area, particularly low-income renters. Preserving the community's people as well as its houses and structures demands significant new development of affordable housing units and preservation of existing subsidized units. The Convention Center Area Strategic Development Plan provides more detailed information about affordable housing issues in Shaw. Public and private sites within this Project Area should be developed to accommodate a percentage of very affordable units.

Retail

The Project Area currently includes two distinct retail areas: U Street from 15th to 10th Streets NW and 7th Street from W to T Streets. In the future, retail from 13th to 10th Streets should build on the retail successes further west on U Street and 14th Street. This portion of the study area could support 38,000 to 50,000 square feet of retail space with about one-half in general merchandise, apparel, furnishings and other "shoppers goods." Rents of $25 to $35 per square foot are likely, which could force some current businesses to move or close unless they can receive assistance and resources to achieve higher sales or preferred rents.

Future retail development in the 7th Street corridor will depend on resolving the street's safety and maintenance issues. With renovation of the Howard Theatre and/or addition of an arts event use(s), the area could flourish as a restaurant district. T Street from 7th Street to Florida Avenue is particularly suited for sidewalk cafes and other restaurants. The 7th Street/Georgia Avenue retail should emphasize restaurants, cafes and take away food (30,000 to 35,000 square feet) with smaller components of personal service and convenience goods (3,000 to 7,000 square feet) and shoppers goods (12,000 to 23,000 square feet).

The Howard Town Center project is proposed to include a major grocery store, a relocated CVS drugstore and other neighborhood-serving retailers. If this development does not proceed, these anchors should be located elsewhere in the neighborhood near Howard University north of Florida Avenue.

To support this retail demand and strengthen the market position of existing and future retailers in this area, the following actions should be taken:

A. Establish recognizable, consolidated retail districts associated with a shopping or dining task;

B. Seek a comprehensive parking solution with well-maintained and well-lit parking available to the public;

C. Restore realism to the retail real estate market by educating landlords about supportable rents and discouraging them from holding their properties vacant and off the market in anticipation of high rents in the future; and

D. Quickly establish a safe, maintained, and possibly managed environment.

Office

The Project Area is a secondary office market, which will attract primarily institutional tenants, non-profit organizations, professional offices and other neighborhood-serving businesses. As in many parts of the city and region, the market will not justify speculative office space. Any major new office development will need to have signed leases before beginning construction. Leases from the District Government and Howard University could potentially support construction of office buildings with additional space for other businesses or organizations. Current rents range from $28 to $34 per square foot for newly developed or renovated office space.

Hotel

The Project Area offers proximity to Howard University & Hospital, the new Convention Center and Downtown, but currently it does not offer the range of amenities that tourists and other guests seek when they choose a hotel. The failure of hotel ventures, such as the Howard Inn, illustrate the need to merge business and institutional hotel demand with significant tourist and visitor demand tied to the surrounding residential neighborhood. In the longer term, when the area develops as an enhanced entertainment district with new amenities, a new hotel of 100 to 200 rooms could be supported.

Find both market analyses for the "Uptown Destination District" and "Convention Center Area Strategic Development Plan" on the Office of Planning website: planning.dc.gov. Look under Project Summaries.

VI. Public Sites Overview

Several public sites can be used in achieving the area's development potential. Development potential of select sites are illustrated within this Framework. Private sites should be challenged to adhere to similar development targets, objectives and guidelines. Public sites are:

<u>District Government - Buildings (B) and Land (L)</u>
Howard Theatre, 620 T Street NW, 15,000 SF (B)
Bond Bread, 2114 Georgia Ave NW, 39,072 SF (L)
SSL 2877 0062 and 0972, 8th St NW, 11,673 SF (L)
SSL 2877 0977, Georgia Avenue NW, 2,733 SF (L)
Grimke School, 1925 Vermont Ave NW - 46,100 SF (B)
Lincoln Theatre, 1215 U St NW - 14,544L SF (B)
Parking Lot, 900 Block U St NW - 5,872 SF (L)

<u>National Capital Revitalization Corporation (NCRC)- Land</u>
RLA Parcel 33, Square 0441, 7th & S Streets - 35,189 SF
RLA Parcel 26, Square 0419, 1744 7th St NW - 2,375 SF
RLA Parcel 42, Square 0442, 1705-7 7th St NW and 637 Rhode Island Avenue NW - 17,008 SF

<u>Washington Metropolitan Area Transit Authority (WMATA)</u>
Air Rights - Shaw Metro - Square 0441 - 4,200 SF (L)
8th/Florida - SE corner - 8,621 SF (L)
8th/Florida - SW corner - 15,956 SF (L)
9th/Florida - SE corner - 3,799 SF (L)

<u>DC Housing Finance Agency - Land</u>
815 Florida Avenue - 29,372 SF

TOTAL PUBLIC OWNED : approx. 6 acres (251,514 SF)

WMATA-INV 008621

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Proximity to Convention Center & Downtown Washington, DC.

II. Public Policy & Placemaking

Several District-wide policies and initiatives have been or are important to this planning process. Those policies and initiatives include:

Public Land Disposition Requirements. The Executive and the Legislative Branches of District Government maintain an agreement that public amenities are created as public lands are let for private or not-for-profit development. Public amenities on any one site may include some combination of the following: a minimum of 20-30% of total residential units at "affordable" rents or sale prices, local business development opportunities, cultural use set asides, public parking and jobs/apprenticeships for local residents.

CHALLENGE: Public amenities are typically subsidized by various District agencies. Achieving a common set of public amenities applicable to each site will be difficult. Public amenity subsidies will likely need to be weighted on a case by case basis in the context of the overall Project Area and on both public and private sites.

Private Sites. Because of their location or adjacency, there are non-public sites that are of-interest in achieving implementation of this plan to meet the development goals. Those non-public sites are:

Howard University - Land
CVS Site, 7th and Florida--20,646 SF
Assisted Living Site, 7th and S St NW--41,351 SF
SSL 2877 0933, Georgia Ave, and V St--58,607 SF
HU Commercial Land North of Florida Ave,--+462,757 SF

TOTAL HU Ownership = over 13 acres (over 583,361 SF)

OTHER PRIVATE OWNERS - Land
Jemal's Wonder Bread, 641 S St NW--23,881 SF
Atlantic Plumbing, Squares 2873 and 2875--70,567 SF
United House of Prayer Site, 1709 7th St NW--15,925 SF
Others north of Florida Avenue (aggregate)--166,865 SF

TOTAL OTHERS = over 6 acres (277,238 SF)

TOTAL NON-PUBLIC SITES: approx. 20 acres

The ratio of public to private assets is 1:3.33. Given this, many of the development goals for this area should be shared by both public and private sector asset holders. The District should consider providing zoning and/or other incentives for private owners' adherence to this plan and its goals for affordable housing and local business development.

Transit Oriented Development. A smart growth management initiative wherein the District actively seeks simultaneously to capitalize upon its transit and high-volume traffic corridors to enhance existing neighborhood centers by creating active, compact and dense neighborhood development opportunities. The Project Area is served by both the Shaw-Howard University and U Street / African-American Civil War Memorial / Cardozo Metro stations on the Green Line as well as significant bus service.

CHALLENGE: TOD initiative seek to maximize densities around Metro stations, and area stakeholders largely endorsed higher densities at both Project Area stations, particularly to produce more affordable housing. The TOD initiative should be adopted as public policy. The current zoning makes achieving the density needed to make more affordable housing with limited public subsidies challenging. Both the Columbia Heights and Petworth Metro stations have more favorable zoning and will produce desired mixed use results. This Project Area should be rezoned as needed to achieve the height, bulk and use recommendations of this Framework.

Transit Enhancements. A preliminary and ongoing assessment of potential corridors and routes for expansion of the District's mass transit network. The Georgia Avenue / 7th Street corridor is one of several priority transit enhancement corridors being assessed now to determine capacity and preferred transit mode. Expanded mass transit options are strongly encouraged. Some stakeholders attending planning meetings have requested that existing Yellow Line service be extended along the same path as the Green Line within the District. WMATA officials believe this would not be cost effective.

CHALLENGE: Retail or commercial property owners are likely to request that the maximum amount of on-street parking is maintained.

Parking Demand Management. A policy that focuses on creating livable neighborhoods while supporting successful retail through efficient management of parking demand and resources that may include creative pricing strategies, shared parking, municipal parking, shuttle and transit programs, and flexible design.

CHALLENGE: The District should assess how much structured or surface parking is needed at its urban, transit centers. On the one hand, stakeholders want walkable environments geared toward pedestrians and bicyclists, as they were historically and as encouraged by the TOD initiative, but they also want as much parking as possible so that current residential parking supply is not negatively impacted by new development. Retailers and housing developers also claims difficulty reaching the targeted market without it. A shared parking system is needed although many of the sites within the Project Area are private and will likely require new public policy or an agreement wherein private property owners are provided incentives to accommodate some degree of public parking on their sites, but there are significant cost implications. Building public parking should be decisively considered. DDOT's U Street / Show Transportation & Parking Study should seek to provide technical information and recommendations in response to the transportation, parking and transit concerns for the Area.

reSTORE DC / DC Main Streets. A partnership between the District government and local community organizers to revitalize the District's neighborhood business districts through a preservation-based, comprehensive and systemic strategy for retention and attraction of preferred neighborhood uses. The 14th & U Street Main Street was designated in 2002. Shaw Main Streets was designated in 2003. Both organizations play a vital role in fielding local business development concerns and seeking responses from District agencies. The service areas for the two Main Streets overlap within the Project Area.

CHALLENGE: The two Main Street districts are different from each other in terms of age, development patterns, and market, but both are willing to work together to achieve mutual goals. The Project Area is sufficiently different from both existing districts, however, that a management entity might be considered to focus on destination oriented business develop-

This plan challenges public and private asset holders to develop mixed used, mixed-income developments wherein affordable housing units are created at not less than a minimum of 20% of total units, but preferably at the community's preference of 30% and at rates that reach the very low income (0 - 30% of AMI).

WMATA-INV 008622

FOIA CONFIDENTIAL TREATMENT REQUESTED

ment within the Framework of this Plan. That entity should be a joint effort of both Main Street districts. Simultaneously, reSTORE DC will need to think strategically and fiscally about how it can or will begin to address rent affordability within neighborhood commercial districts where rental rates and the price of commercial real estate are climbing.

Strategic Neighborhood Investment Program (SNIP). A targeted investment policy wherein priority District neighborhoods or locations receive a series of comprehensive public actions or funds to complement and/or catalyze private sector investment. Greater Shaw / U Street neighborhood is a targeted neighborhood. The actions by public agencies are tracked by the Office of the Deputy Mayor for Planning and Economic Development.

CHALLENGE: Development in the District typically takes around four (4) years for construction to start. The market conditions are currently favorable but can change. Change might also happen with those who are tracking or working with District agencies to make sure that development targets are met. Completion of this plan marks a significant opportunity for District asset holders to move toward disposition as soon as possible after this planning process ends to achieve results. This plan should serve as an official guide for physical development for five (5) years and should help to determine successes and shortcomings. Additional work will need to be done in outlying years to ensure plan success.

Housing and Re-population. A Mayoral initiative to recapture a portion of the 300,000 citizens lost over the last three decades and to enhance the District's human capital by creating and rehabilitating housing for a wide spectrum of individuals and families.

CHALLENGE: This Plan includes both housing development and cultural / destination development recommendations. These two use groups of residents and destination patrons are sometimes in conflict, even within the heart of the city. Both can and should be accommodated within this neighborhood district.

Apprenticeships / Jobs Opportunities. The District government has a mandatory apprenticeship law that requires all prime contractors and subcontractors, who perform new construction and renovation work on District government assistance projects in excess of $500,000 in a single contract let, or cumulative contracts within a twelve month period are required to register apprenticeship programs with the D.C. Apprenticeship Council. The First Source Agreement Program assures city residents priority for new jobs created by municipal financing and development programs. It mandates that all projects funded in whole or in part with District of Columbia funds, or other funds which the District administers, shall provide for increased employment opportunities for District residents. Each employer in the program must sign an agreement ensuring that all job openings created are listed with the Department of Employment Services and 51% of new hires are District residents.

CHALLENGE: Area residents want priority for opportunities. Main Street programs are also a source for targeting local residents for retail jobs.

(above) GreenTeam announcement at Bohemian Caverns. GreenTeam is an innovative program developed by 14th & U Main Street, Cultural Tourism DC, and community partners. The program provides living wage jobs to homeless residents who provide clean, safe and hospitality services in the 14th & U Main Street district.

Crime and Safety. Implementation of this plan will require the active and proactive participation of many public agencies, including and especially the Metropolitan Police Department (MPD). The area has a strong market for development, but successful implementation depends upon the ability of the area to demonstrate reduced crime and to put forth an environment that is safe and inviting.

CHALLENGE: MPD has shown a willingness to work proactively in many parts of the city. Likewise, the MPD should assign sufficient staff to work cooperatively with Main Street, business and resident stakeholders to develop a crime prevention strategy to foster a real and perceived safe environment in the short term for long term benefits. Also, MPD should coordinate with DDOT as it plans for transportation, parking and streetscape improvements. Principles of Crime Prevention Through Environmental Design (CPTED) should be incorporated as possible.

MEETING PROGRAMMATIC OBJECTIVES

Market Summary and Conditions. Technical market analysis for this planning effort supplemented a related analysis for the Convention Center Strategic Development Planning process. Analysis revealed a trend toward higher cost housing and commercial development. This trend underscores the need to produce more affordable housing in sizes adequate for families. The analysis revealed the following demand for the next five (5) years (2004-2009):

Rental housing	160-320 units
For sale housing	815 units
Retail	
Restaurants/carry out	45-55,000 SF
Selected shoppers goods	32-40,000 SF
Personal & convenience	6-10,000 SF
Office	Pre-leasing required
Hotel (long term demand)	100-200 rooms

Currently, trends indicate that rents and for sale condominium prices are as follow:

Rents	
One bedroom apartment	$1,460 to $1,660
Two bedroom apartment	$1,790 to $1,940
Retail	$18 to $45 per SF
Office	$22 to 32 per SF
Condominiums	$375,000-$475,000

The average household income of $85,400 for a family of four (as of January 2004) within the metropolitan region. However, in the context of the immediate neighborhood, the median household income is under $45,000 within one-mile of the Project Area. Additionally, several existing multifamily affordable housing sites have affordability contracts which are soon to expire.

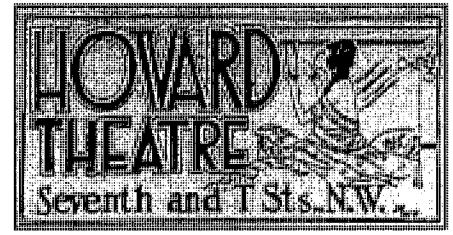
This Framework challenges public and private asset holders to develop mixed used, mixed-income developments wherein affordable housing units are created at not less than 20% of total units, but preferably at the community's preference of 30% and at rates that reach the extremely low income (0 - 30% of AMI). Similar results should be achieved for local business development, attraction and retention as well to ensure economic and retail diversity.

The Howard Theatre and Cultural Heritage. This plan recommends that the physical shell of the Howard is maintained and restored while the interior is retrofit to accommodate a 500-600 person live entertainment venue which supplements its operating revenue with dining and beverage sales. Additionally, the theatre should include a small museum and gift shop to serve as a daytime destination and revenue generating source. The Howard Theatre should be developed in conjunction with NCRC's RLA Parcel 33 so that a parking solution for the Howard Theatre can be achieved.

Between the Howard and Lincoln are a number of cultural heritage sites, which are in varied states of readiness to accommodate visitors. Those sites include the True Reformer, African-American Civil War Museum and Memorial, Ben's Chili Bowl (former Minnehana Theatre), Bohemian Caverns, Industrial Bank, and the Black Fashion Museum. Other sites are within close proximity to the commercial corridors. ***At least one, preferably two, new and additional destination sites are needed to complete the destination district. This plan recommends that those two are preferably located at high visibility points along the commercial corridor: the Housing Finance Agency site at 9th and Florida Avenue; and Howard University's CVS site at 7th and Florida Avenue.***

In the context of shifting availability of public funds, each destination district site should grow to become or be expected to be self-sufficient, competitive within the local, regional and/or national markets, and extremely well managed. Public resources should be used strategically to support worthwhile uses which complement this Development Framework and as supplement to revenues produced or raised by those organizations.

Howard Theatre ad.



Completion of this plan marks a significant opportunity for District asset holders to move toward disposition as soon as possible after this planning process ends to achieve results.

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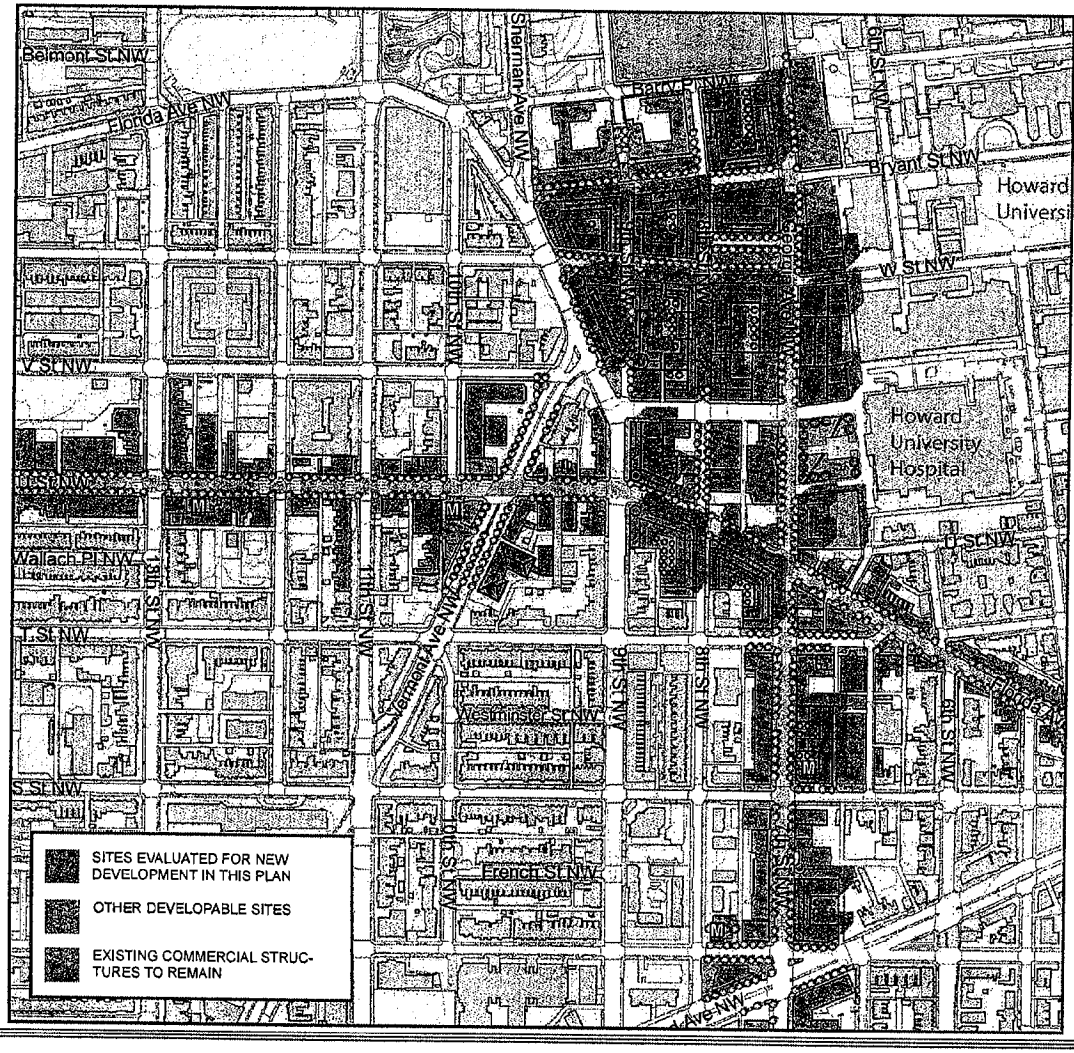

VII. Planning & Implementation Principles

A - Placemaking

Create a cohesive and memorable place with diverse sub-areas whose primary functions and/or focus may be somewhat different.

B - Design Guides

Knit new development with surrounding neighborhoods and the Howard University campus to respect their character and to honor the pedestrian in this transit oriented environment.

C - African American Cultural Heritage

Promote cultural tourism initiatives based on the rich African American historical and cultural assets of the area that will bring economic development opportunities for local residents and businesses.

D - Destination Venues

Allow for the active expression and appreciation of music with particular emphasis upon the area's jazz heritage.

E - Retail Development

Foster a spirited environment of local entrepreneurship in which local businesses are provided enhanced services and opportunities and the best in new retail ideas are supported.

F - Local Access & Participation

Ensure that existing residents receive opportunities and a voice in shaping how the destination district develops.

FOIA CONFIDENTIAL TREATMENT REQUESTED

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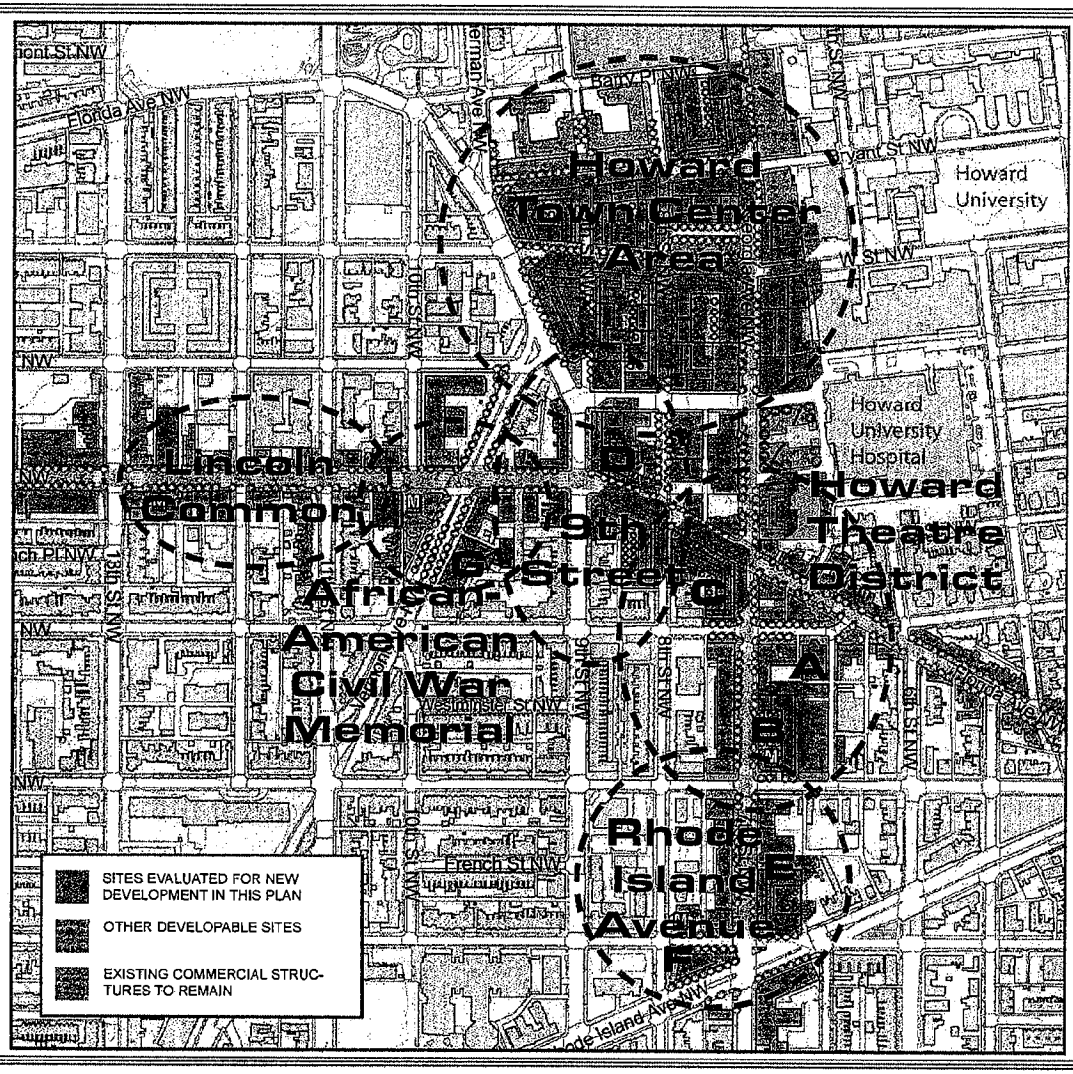

A. Placemaking

Create a cohesive and memorable place with diverse sub-areas whose primary functions and/or focus may be somewhat different.

1 **Howard Theatre District** *"Performing Arts Anchor"*

Public Assets:
- A. Howard Theatre (Ellington Plaza)
- B. NCRC + WMATA Parcels
- C. WMATA + Howard CVS

2 **9th Street** *"Eclectic Shops / Dining / Entertainment"*

Public Assets:
- D. Housing Finance Agency Site
- Also, WMATA parcels

3 **Rhode Island Avenue** *"The Residences"*

Public Assets:
- E. NCRC + UHOP Parcels
- F. Watha T. Daniel/Shaw Neighborhood Library
- Also, WMATA Parcels at Shaw Howard University Metro South Entrance

4 **African-American Civil War Memorial** *"Cultural Arts Center"*

Public Assets:
- G. Grimke School (Memorial Plaza)
- Also, Garnet-Patterson School

5 **Howard Town Center Area** *"University District"*

Public Assets include Bond Bread Building

6 **Lincoln Common**

Public Assets include Lincoln Theatre

create a cohesive and memorable place with diverse sub-areas

FOIA CONFIDENTIAL TREATMENT REQUESTED

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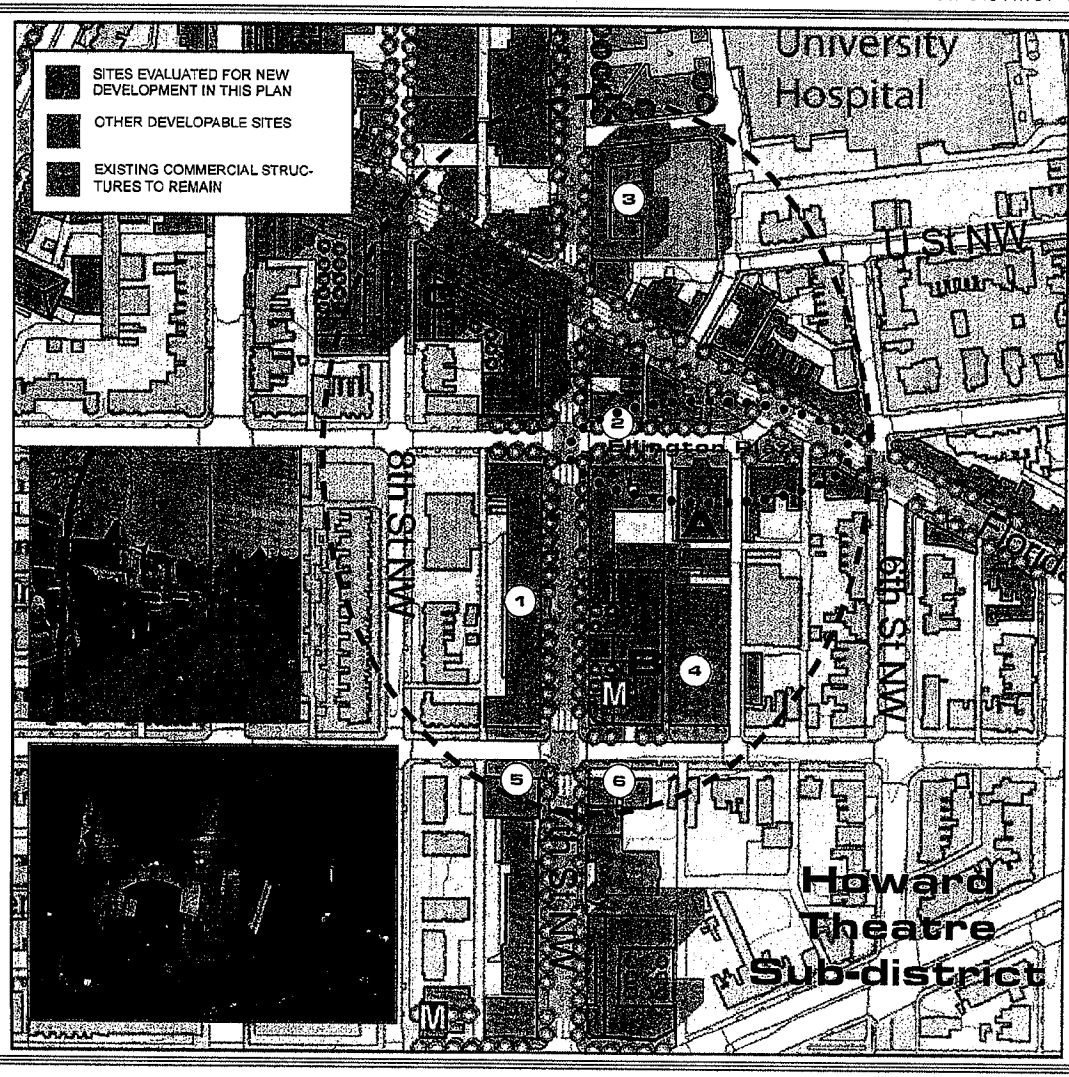


A. Placemaking

Howard Theatre Sub-district

"Performing Arts Anchor"

Assets:	A. Howard Theatre (Ellington Plaza), 620 T Street NW	18,000 SF	Building
	B. NCRC RLA Parcel 33, Sq. 0441, 7th and S Streets NW	35,189 SF	Land
	+ WMATA Air Rights - Shaw Metro	4,200 SF	Air Rights
	C. WMATA 8th/FLorida Ave. - SE Corner	8,621 SF	Land
	+ Howard CVS Site - 7th and Florida	20,646 SF	Land

QUALITY OF ENVIRONMENT / PUBLIC REALM

The "Howard Theatre Sub-district" will be a vibrant center focused upon a revived Howard Theatre. The Theatre will be restored to approximate its original and historic facade and will be well-programmed with local and national performers who attract day and night time patrons. Performances recall the time when, in the Theatre's heyday, legendary greats like Duke Ellington, Ella Fitzgerald, Count Basie and many more honed their artistic craft and set a standard for excellence in the performing arts. Performances will be affordable to patrons who will be a range of local residents, visitors and tourists.

Sub-district properties will be programmed to complement and support a "complete" destination with restaurants, outdoor cafes/dining, intimate music clubs, bars, bookstores, art galleries, modest priced retail and other destination uses. "Ellington Plaza," T Street between 7th and Florida, will become a small restaurant /entertainment zone celebrating the legacy of the Howard and the surrounding neighborhoods.

The streetscape will be dynamic with clean and well-lit sidewalks that are ample in size for outdoor cafes and special events. New trees will be healthy and well-maintained. Storefronts will be architectually exciting. Individual storefront signs will be appropriately scaled yet a highly-creative expression of business type and local history. "Ellington Plaza" facades are preserved and restored

SMALL BUSINESS DEVELOPMENT

Existing property owners are targeted with technical assistance to move them actively toward meeting a variety of local and visitor needs, both current and into the future. Technical assistance should focus upon interior, retail space planning, merchandising, storefront improvements, marketing, and promotions.

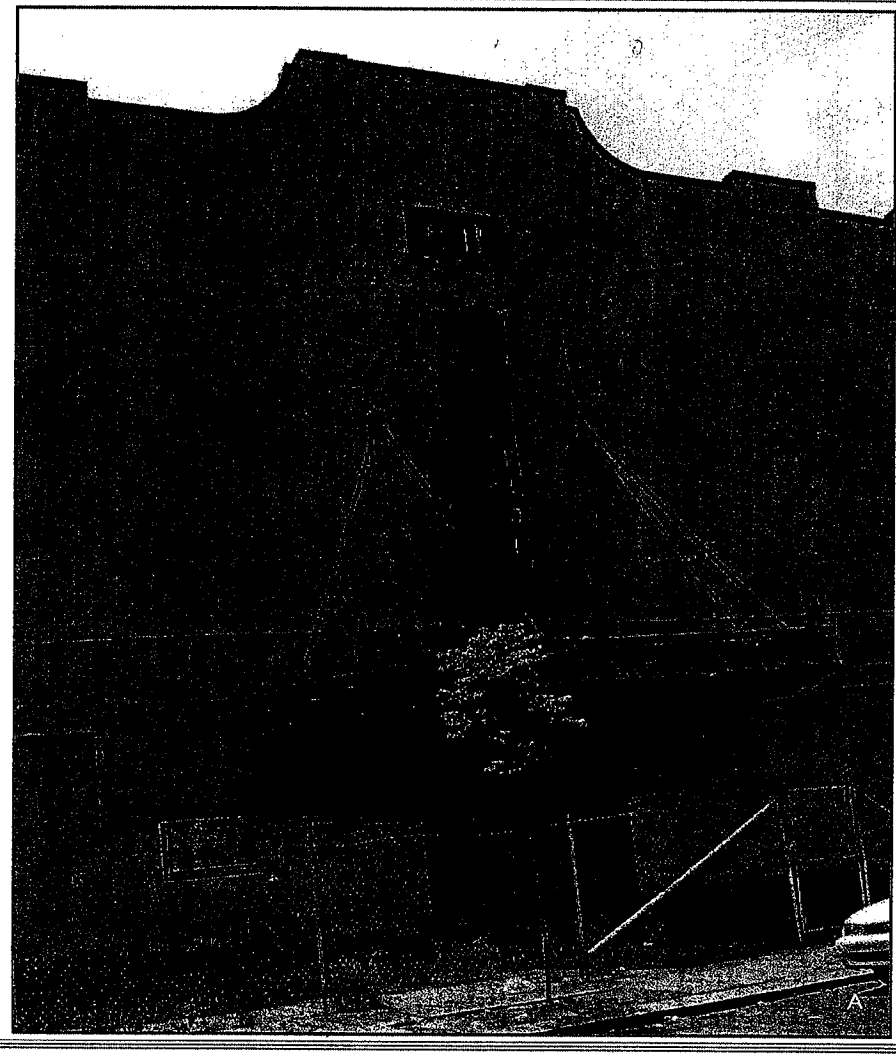
RECOMMENDATIONS FOR OTHER SITES OF INTEREST

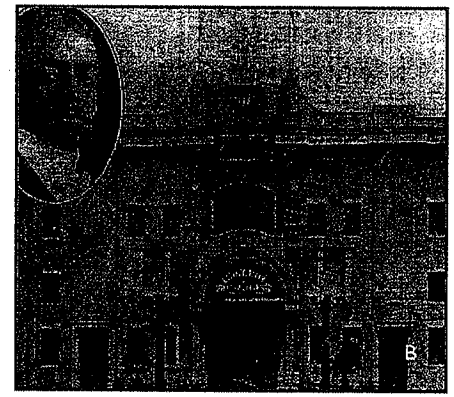
1. Demolish HU's 125 bed site and allow mixed use redevelopment including active, ground floor retail, which complement other proposed destination uses and optimizes density.
2. Complete renovation of Dunbar Theatre. Locate signature, destination retail tenant.
3. Develop mixed use project near Howard University Hospital. Include structured parking for shared use with Howard Theatre.
4. Redevelop the Wonder Bread building and site with offices in addition to an art gallery and/or intimately scaled live music venue. Preserve the architecturally and historically significant facade.
5. Assemble and redevelop NCR C RLA Parcel 26 and the private properties at the southwest corner of the intersection of 7th and S Streets with mixed uses.
6. Locate retail tenant for the United House of Prayer property on the southeast corner of 7th and S Streets. Relocate HU Welcome Center.

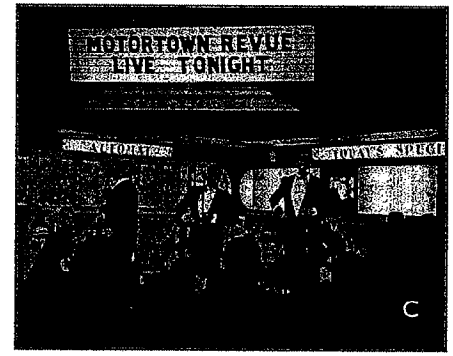
create a cohesive and memorable place with diverse sub-areas

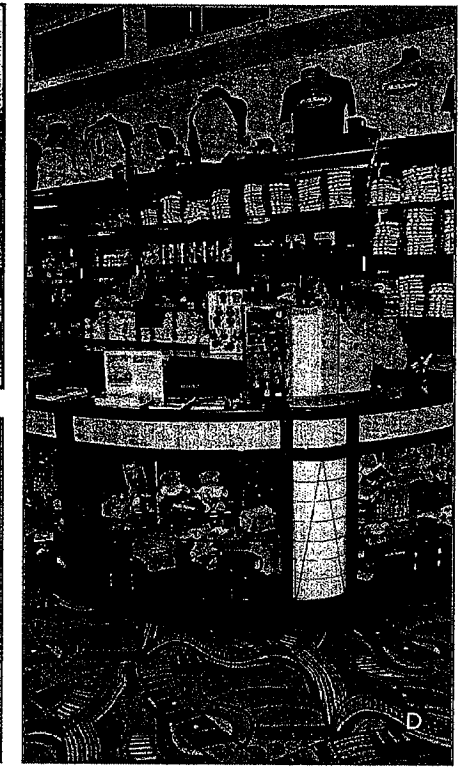
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008626









PHOTOS

A. Howard Theatre - T Street facade (2004).
B. Howard Theatre Facade circa 1910. The facade should be restored to approximate the original facade.
C. Motown Cafe (NYC). The Howard should host live performances by a range of local and national artists.
D. Gift shop - B. B. Kings (NYC). The Howard should include a small museum about the Theatre's history and a gift shop.
E. Advertisement. There should be daily and nightly events at the Howard Theatre including performances by local and national talent.

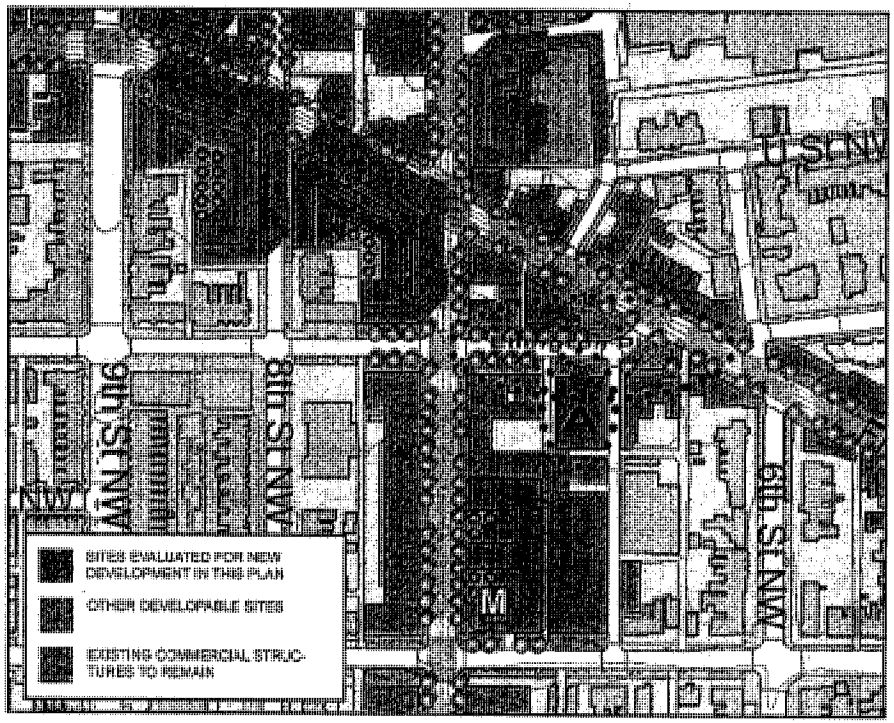
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008627

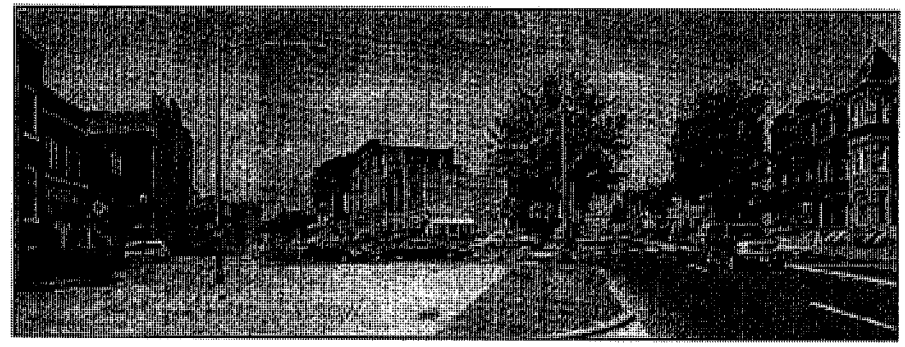
FOIA CONFIDENTIAL TREATMENT REQUESTED

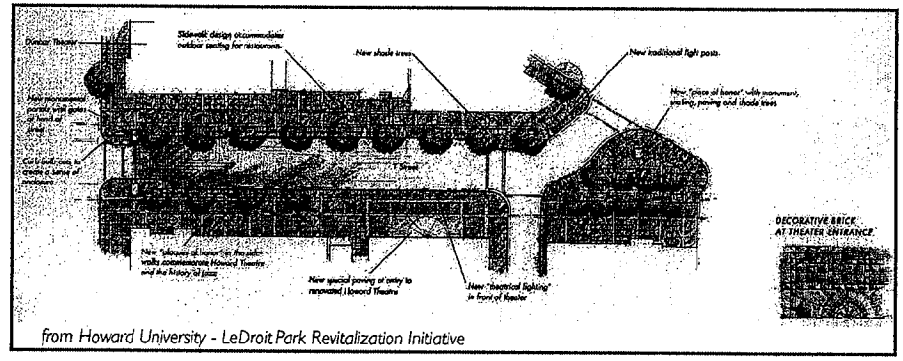
A. Placemaking

Howard Theatre Sub-district



Site: HOWARD THEATRE / Ellington Plaza





from Howard University - LeDroit Park Revitalization Initiative

RECOMMENDATIONS

HOWARD THEATRE (A) +/-18,000 square feet
(12,000 square feet at grade and a 6,000 square-foot mezzanine)

DEVELOPMENT PROGRAM

HOWARD THEATRE

- Live entertainment Venue with 500 - 600 person capacity
- Restaurant/dining with beverages to support operating cost
- Gift shop
- Small museum
- Local and national performances

Restore the T Street facade to its approximate 1910 appearance.

Develop Theatre parking on the WMATA/NCRC RLA Parcel 33 site when it is developed. Seek other parking sites as well.

Coordinate disposition/restoration/reopening schedules with redevelopment of NCRC/WMATA site and streetscape/public art improvements on Ellington Plaza.

Embrace Ellington Plaza as front foyer of the Theatre and program with active calendar of special and community events.

Require daytime use of the Howard Theatre, i.e. museum and gift shop.

Maintain Wiltberger Street as a functioning right-of-way, providing for service/loading functions and access for the Theatre and nearby properties.

Explore closing portion of west side alley adjacent to the Theatre to vehicular use and reuse as café and post-performance pedestrian egress to parking on the NCRC/WMATA site to mitigate impact on surrounding residential properties.

Install distinctive streetscape and specialty paving along the 600 block of T Street from 7th Street to Florida Avenue to create a public space that respects and celebrates the heritage of the Howard Theatre and the surrounding neighborhoods.

Design Ellington Plaza to accommodate public gatherings.

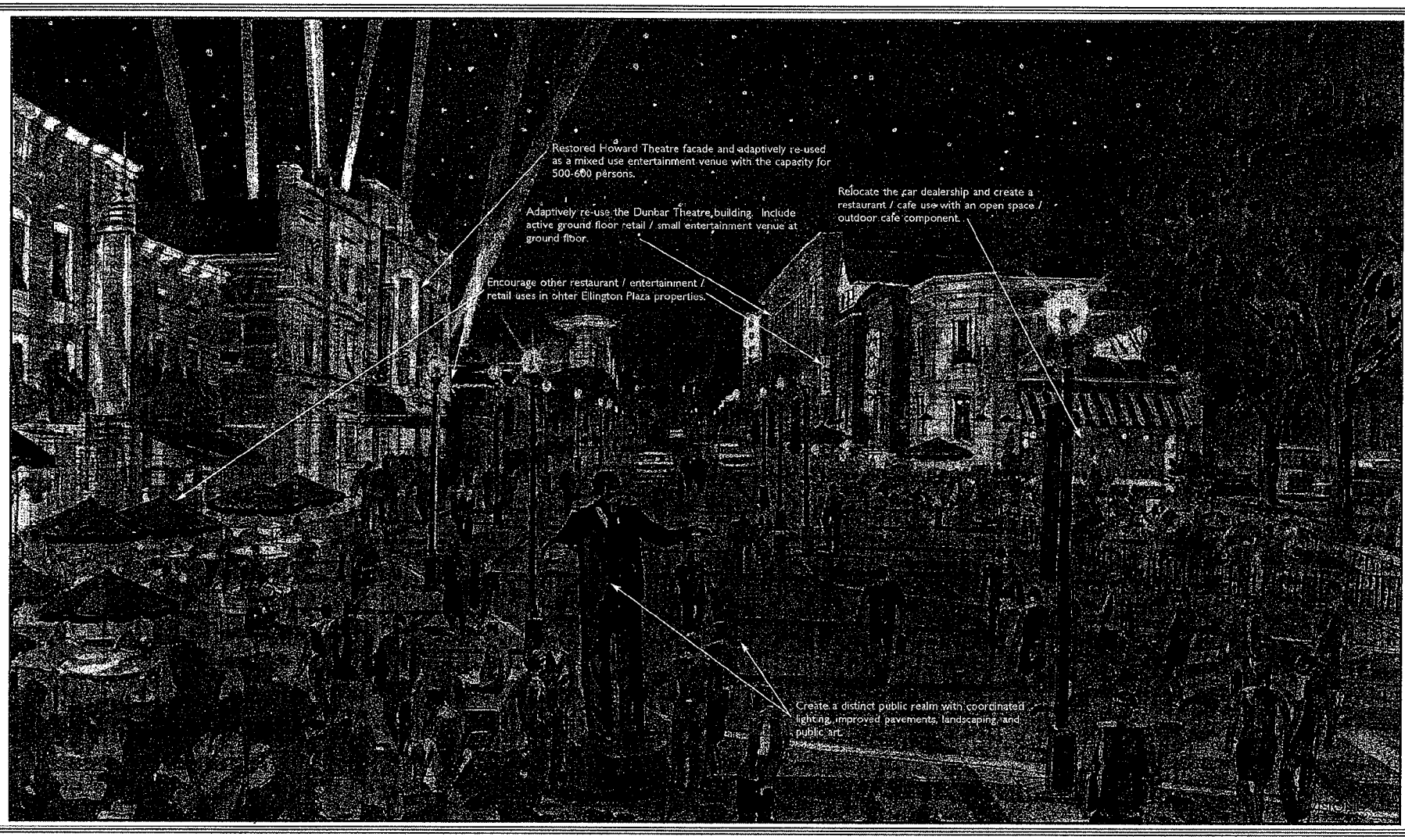
Actively program the public space with regular community and arts/cultural events.

Public art should be installed in the Ellington Plaza gateway at Florida Avenue.

Encourage sidewalk cafes along T Street in preserved buildings.

Incorporation of film into Howard Theatre programming is not recommended due to significant competition from other cinemas and to avoid competing with the Lincoln Theatre's presentation of special run films.

WMATA-INV 008628



FOIA CONFIDENTIAL TREATMENT REQUESTED

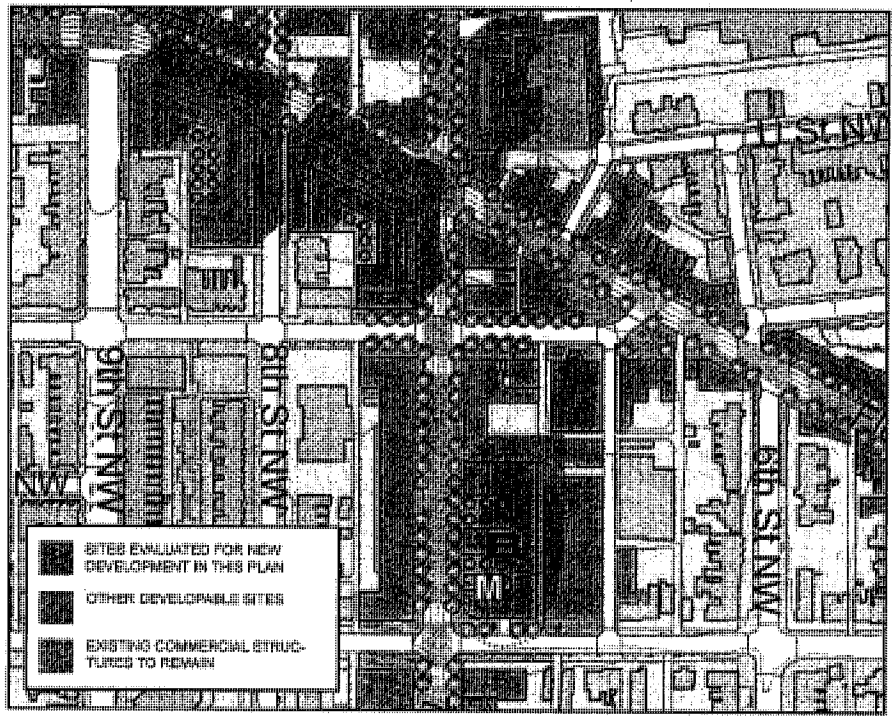
WMATA-INV 008629

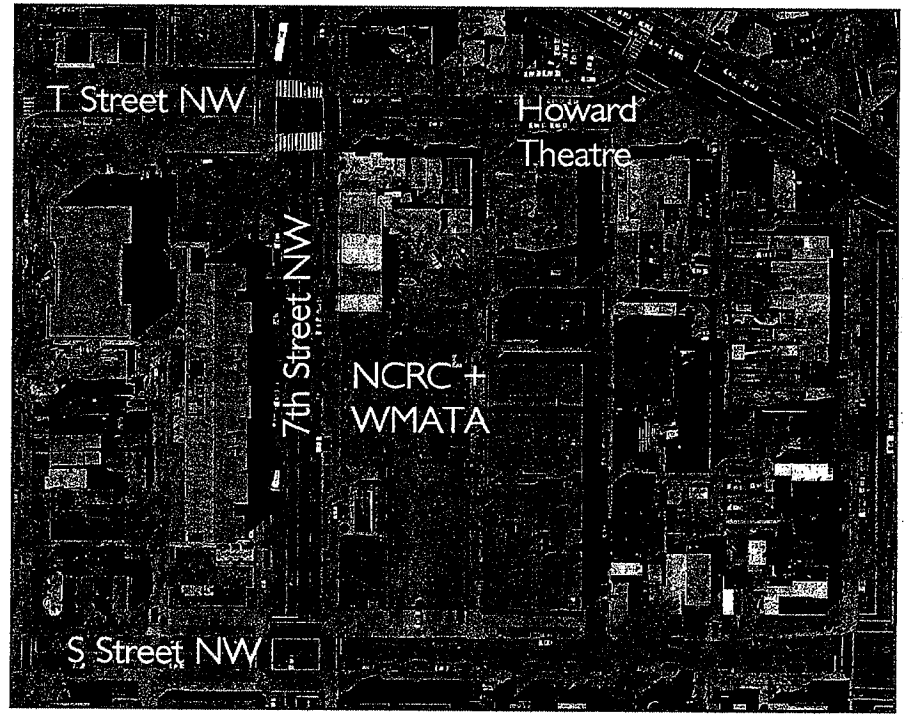
FOIA CONFIDENTIAL TREATMENT REQUESTED

A. Placemaking

Howard Theatre Sub-district

Site: NCRC + WMATA Parcels





RECOMMENDATIONS

WMATA + NCRC RLA PARCEL 33 (B) 35,189 sf

DEVELOPMENT PROGRAM

- Primary use: Office (maximum 170,000 SF)
- Ground floor retail/restaurants (approx. 18,000 SF)
- Secondary use: Residential (up to 176 units)
- 379 permanent jobs with office uses created
- 240 +/- parking spaces below grade and on two levels behind retail (shared with T Street uses)
- 20-30% Affordable Housing Target
- 35 % Local Small Disadvantaged Business Enterprise

Coordinate disposition/redevelopment schedules with restoration of the Howard Theatre and streetscape/public art improvements on Ellington Plaza.

Allow building height of 65 feet to cornice, rising to 90 feet with a one-to-one setback from cornice; optimize density, with target of approximately 6.0 Floor Area Ratio (FAR).

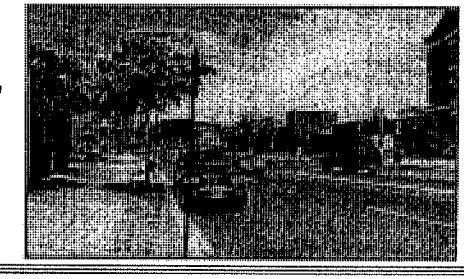
Provide parking, consistent with strong transit use, to accommodate demand for on-site uses, retail/restaurant uses ion T Street, and joint use with the Howard Theatre; parking management to provide for joint and shared use and extended operating hours.

Consider joint venture/acquisition of properties facing 7th Street to north of site to improve efficiencies of parking design.

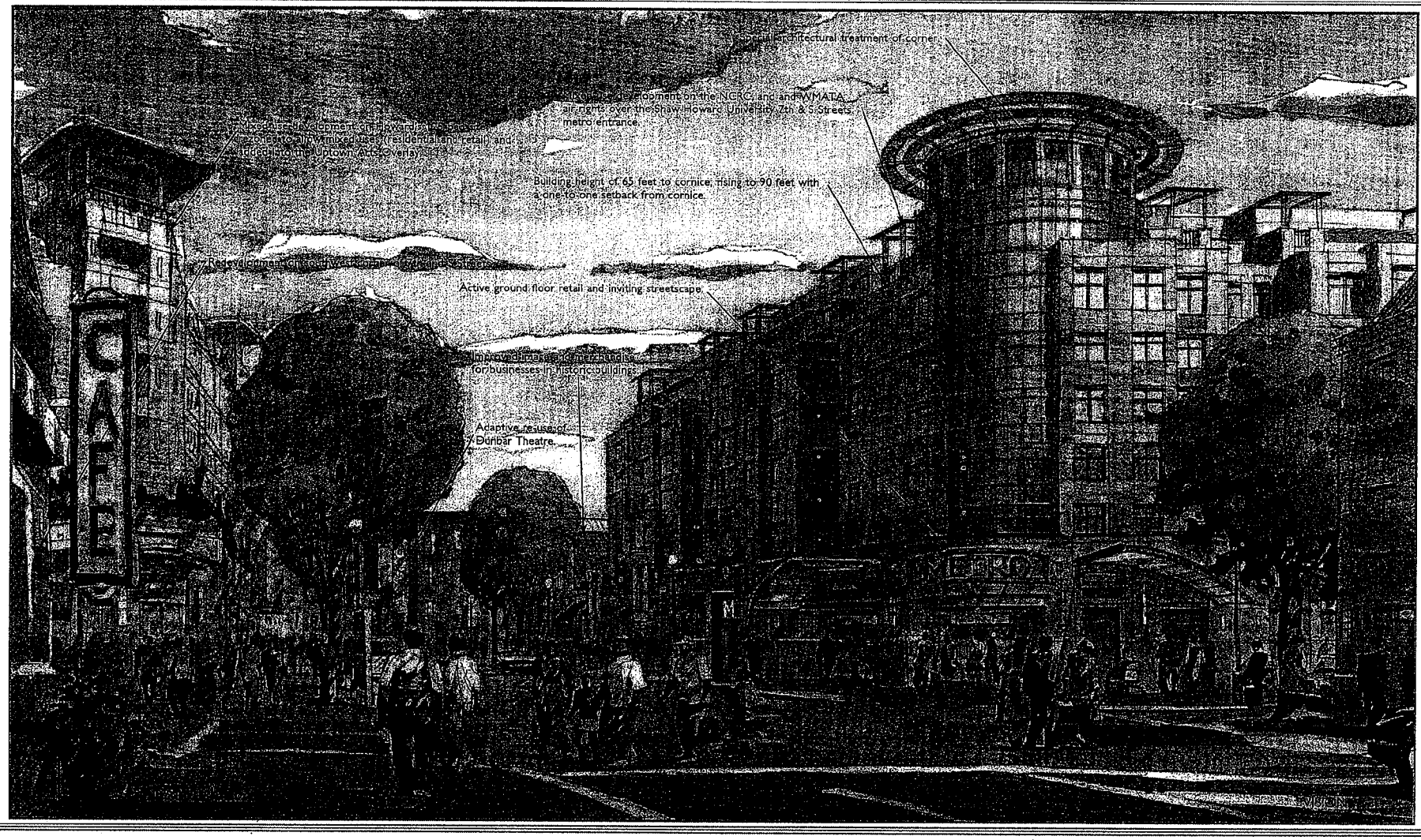
Require access to parking structure and service functions off of S Street and alley; explore joint and shared loading and service arrangements with retail properties to north of site to enhance their revitalization/adaptive reuse potential.

Build over the Metro entrance and elevator.

PHOTO - Right. 7th & S Streets facing north. Existing conditions.
Opposite page. 7th & S Streets facing north. Proposed conditions.



WMATA-INV 008630



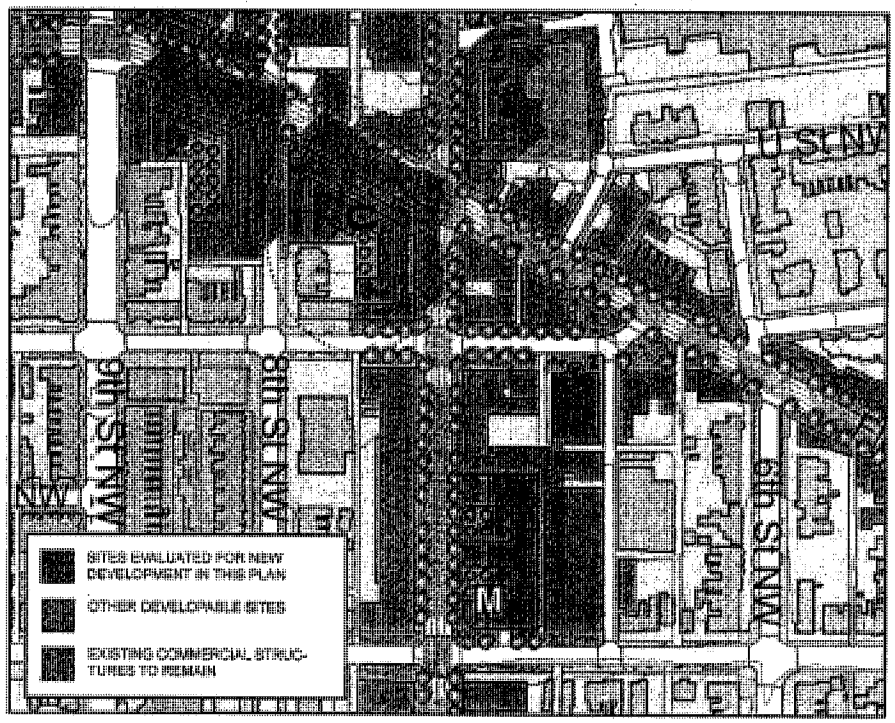
FOIA CONFIDENTIAL TREATMENT REQUESTED

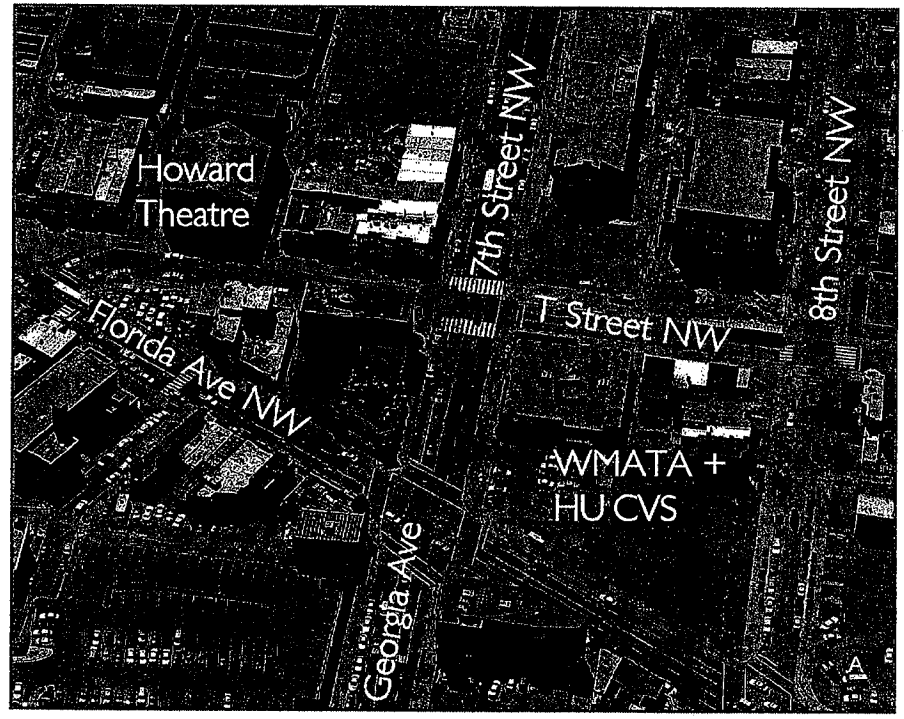
WMATA-INV 008631

A. Placemaking

Howard Theatre Sub-district

Site: WMATA + Howard CVS





RECOMMENDATIONS

WMATA + Howard University - CVS Site (C) 29,267 sf
(WMATA = 8,621 SF; HU CVS = 20,646 SF)

DEVELOPMENT PROGRAM

- 33,000 +/- minimum cultural destination with retail
- 125 +/- housing units on upper stories (150,000 +/- feet)
- 160 +/- parking spaces below grade on two levels
- 306 construction and 95 permanent jobs created
- 20-30% Affordable Housing Target (25-38 units)
- 35 % Local Small Disadvantaged Business Enterprise (LSDBE) participation

Develop retail/arts space to include specialty restaurants, a small-format anchor (8,000 to 15,000 square feet) and/or a cluster of retail shops, small clubs, and/or museum uses themed to the African American culture and experience of the district.

Allow building height of 65 feet to cornice, rising to 90 feet with a one-to-one setback from cornice; optimize density within constraint of parking potential (limited to two levels down by Metro tunnels).

Achieve significant architectural expression at corner of Florida Avenue and 7th Street.

Locate residential entries along 7th and 8th Streets.

Locate the service entry along T Street.

PHOTOS

A. 7th Street and Florida Avenue facing south. Existing conditions.
B. Florida Avenue and 7th Street/Georgia Avenue facing west toward Housing Finance Agency site - existing conditions.
C. Florida Avenue and 7th Street/Georgia Avenue (opposite page) - proposed conditions.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008632

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008633

Minutes
Planning, Development and Real Estate Committee
June 26, 2008

The meeting was called to order at 9:08 a.m. Present were:

Committee Members:

Mrs. Catherine Hudgins, Chair
Mr. Emeka Moneme, Vice Chair
Mr. Chris Zimmerman
Mr. Jim Graham
Mr. Peter Benjamin
Ms. Elizabeth Hewlett
Mr. Marion Barry
Mr. Gordon Linton
Mr. Jeff McKay
Mr. Anthony Giancola

Mrs. Hudgins moved, seconded by Mr. Benjamin, that the Committee convene to Executive Session at 9:09 a.m. The Committee voted unanimously in favor of the motion.

The Committee meeting reconvened at 10:05 a.m.

Certification

Mrs. Hudgins moved that the Committee certify that only such matters authorized for discussion and only those matters identified in the motion by which the Executive Session was convened were heard, discussed or considered by the Committee. The motion was seconded by Mr. Moneme. The Committee unanimously voted in favor of the motion.

Action Item

A. Florida Avenue Developer Selection

Staff sought Committee concurrence and forwarding to the Board approval to: 1) select Banneker Ventures team as developer of Shaw-Howard U./Florida Avenue joint development site, 2) approve term sheet and 3) authorize negotiation of development agreement.

Mr. Moneme moved, seconded by Mr. Benjamin, to forward this item to the Board for further discussion. The Committee voted in favor of the motion. Mr. Graham abstained.

Mr. Graham moved, seconded by Mr. Benjamin, that General Counsel provide the Committee with policy guidelines on business ethics and integrity and application of the same. The Committee voted unanimously in favor of the motion.

Mr. Graham moved, second by Mr. Zimmerman, that staff amend the resolution that directs staff to negotiate an affordable housing set aside in this proposal and the Board receive a report on Staff recommendations regarding this issue. The Committee voted unanimously in favor of the motion.

Mr. Graham moved, second by Mrs. Hudgins, that the staff provide clarity on the roles and responsibilities of members of the development team and their construction experience relative to construction responsibilities.

The meeting adjourned at 10:30 a.m.

Agenda
Planning, Development and Real Estate Committee
June 26, 2008
9 am

I. Call to Order

II. Motion for Executive Session
- **A.** Florida Avenue Developer Selection (N. Bottigheimer)

III. Reconvene in the Meeting Room

IV. Certification

V. Approval of Agenda

VI. Action Item
- **A.** Action on Items that Arise from Executive Session

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008636

Planning, Development and Real Estate Committee

Board Action Item I-A

June 26, 2008

Action on Items that Arise from Executive Session

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008637

VI. Action Item

A. Action on Matters Arising from Executive Session

A1. Florida Avenue Developer Selection

- Approval to: 1) select Banneker Ventures team as developer of Shaw-Howard U./Florida Avenue joint development site, 2) approve term sheet and 3) authorize negotiation of development agreement.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority

Agenda
Planning, Development and Real Estate Committee
June 26, 2008

Executive Session

I. Information Item

A. Florida Avenue Developer Selection (N. Bottigheimer)

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008639

Planning, Development and Real Estate Committee

Board Action Item I-A

June 26, 2008

Florida Avenue Developer Selection

FOIA CONFIDENTIAL 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

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.

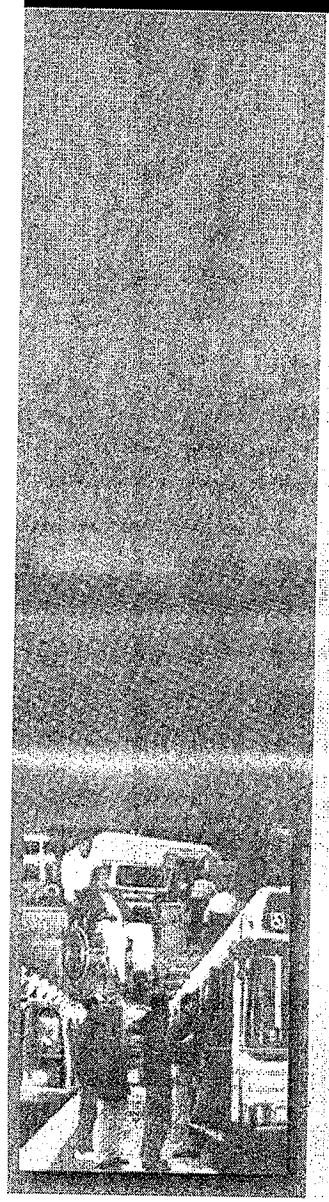
FUNDING IMPACT:

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
Executive Session

June 26, 2008

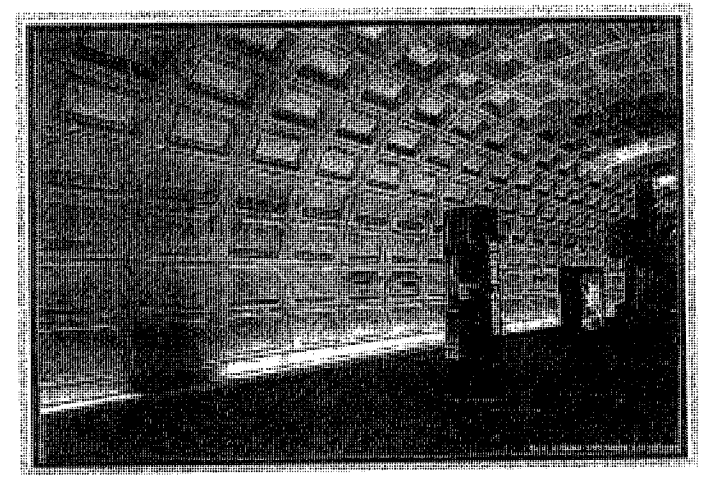
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008643

FOIA CONFIDENTIAL 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

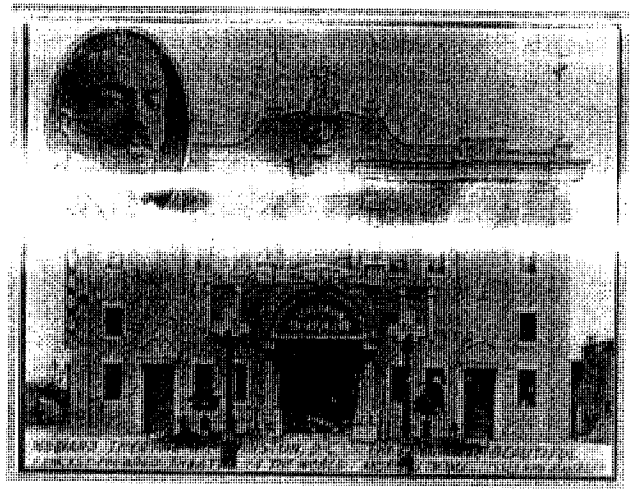


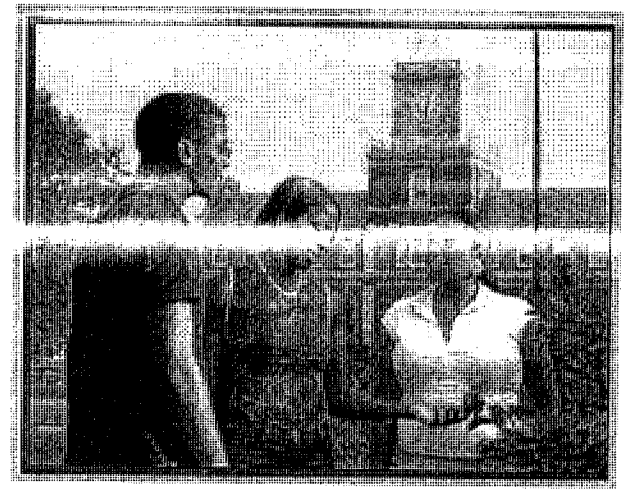
WMATA-INV 008644

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



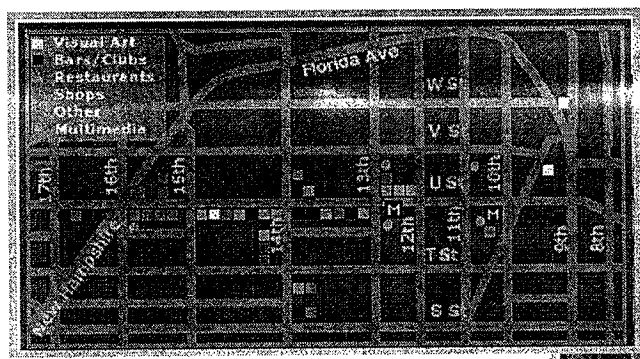


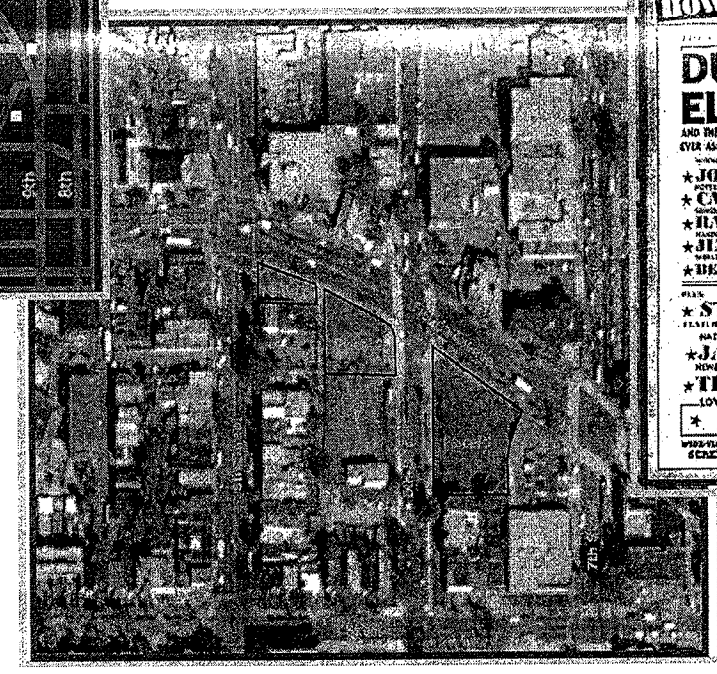
WMATA-INV 008645

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 008646

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

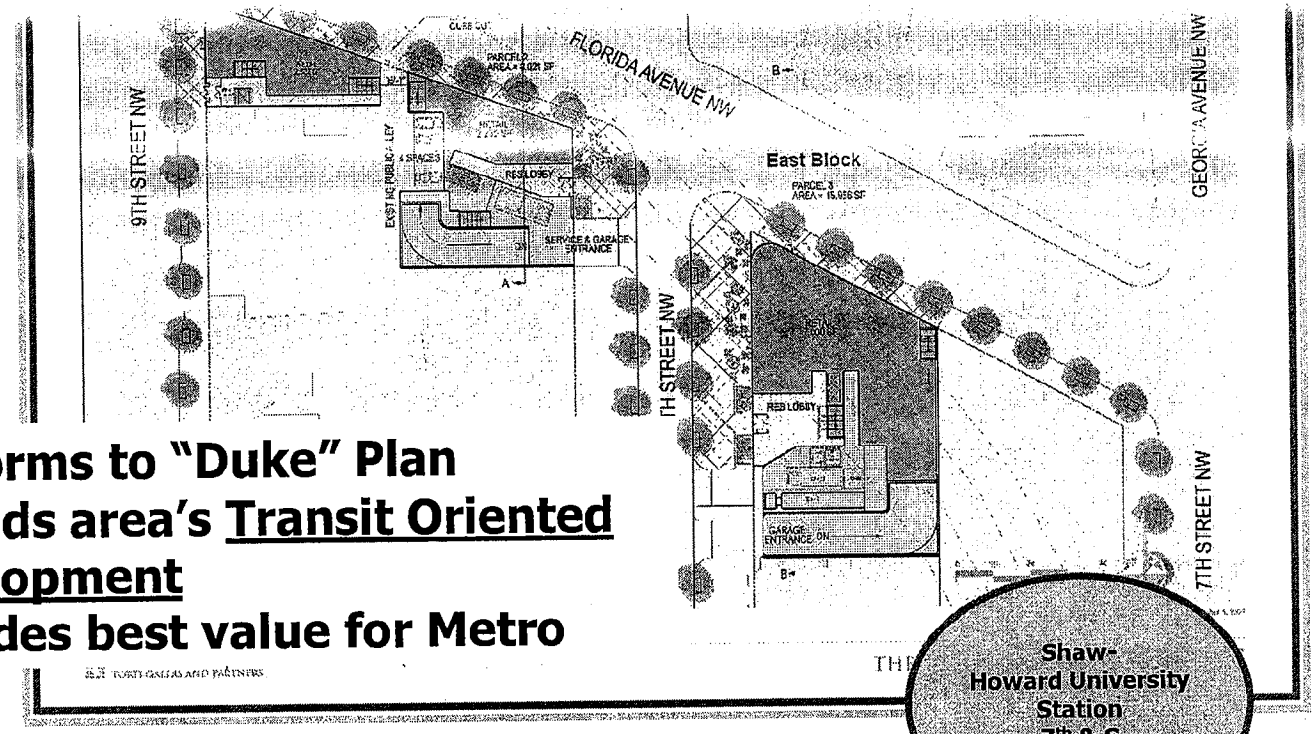
- Developers made presentations to Advisory Neighborhood Commission (ANC) 1B prior to proposal submission

WMATA-INV 008647

FOIA CONFIDENTIAL TREATMENT REQUESTED

Site Plan

U Street/
African-American
Civil War



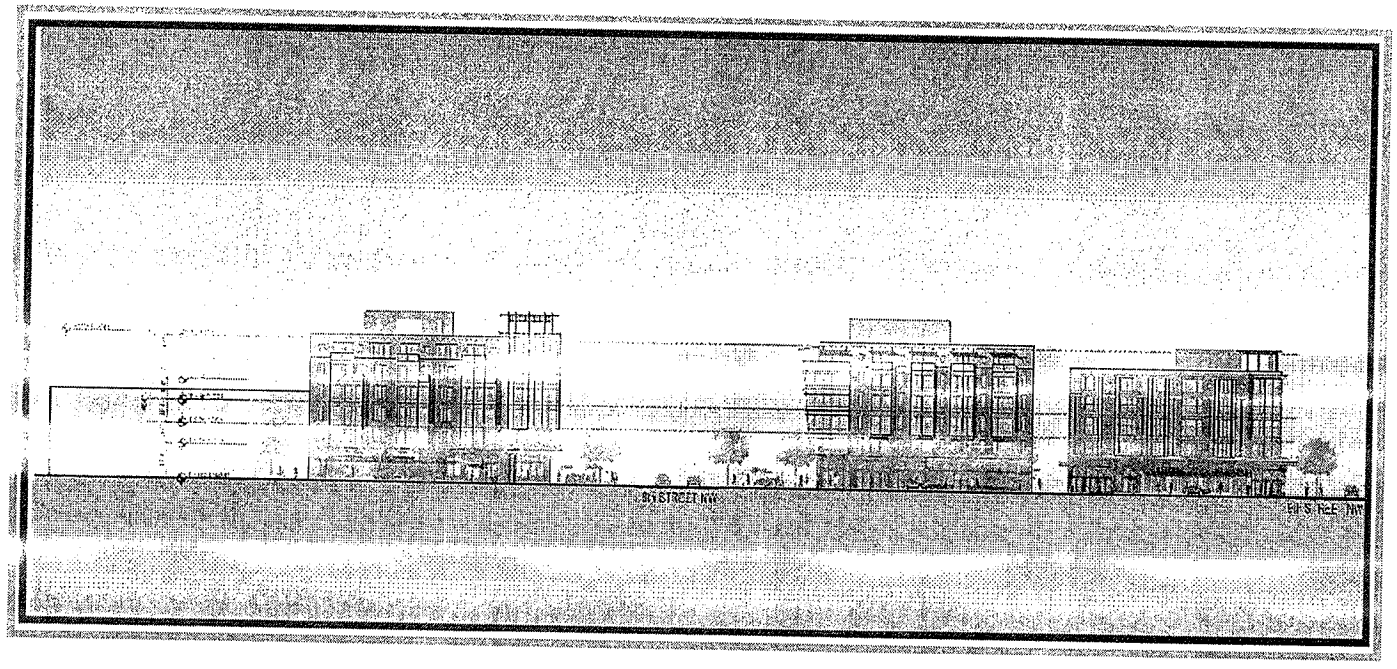
- **Conforms to "Duke" Plan**
- **Extends area's <u>Transit Oriented Development</u>**
- **Provides best value for Metro**

Shaw-
Howard University
Station
7th & S

WMATA-INV 008648

FOIA CONFIDENTIAL TREATMENT REQUESTED

Elevation



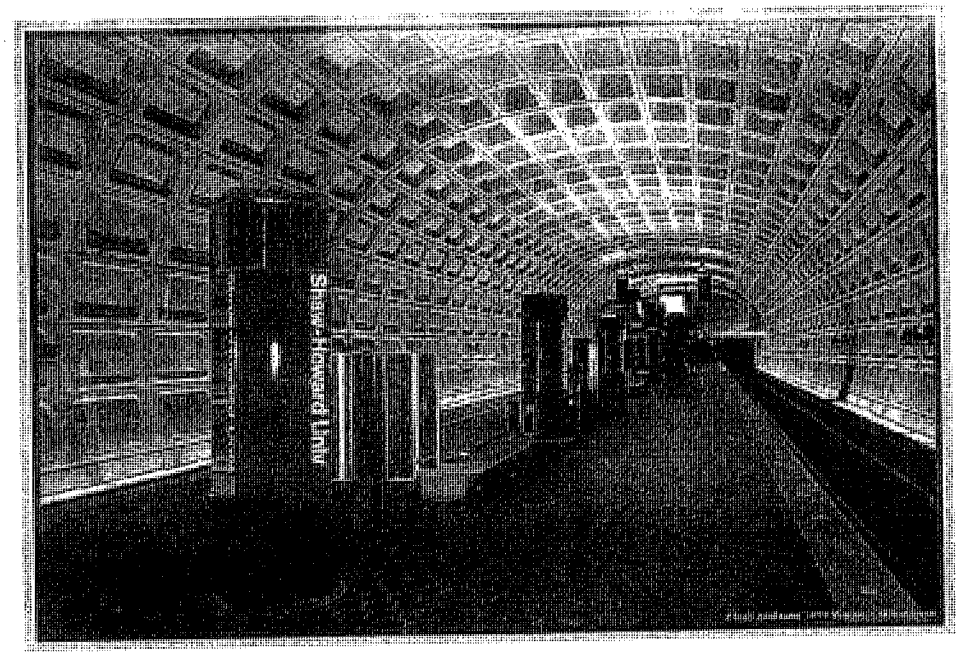
- **Provides 104 apartments**
- **Allocates 11,750 sf for retail/arts uses**

WMATA-INV 008649

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 008650

Agenda
Planning, Development and Real Estate Committee
July 24, 2008

The meeting was called to order at 9:05 a.m. Present were:

Committee members:

Mrs. Catherine Hudgins, Chair
Mr. Emeka Moneme, Vice Chair
Mr. Christopher Zimmerman
Mr. Peter Benjamin
Mr. William D. Euille
Mr. Jeff McKay
Mr. Anthony Giancola
Mr. Marcell Solomon

The Committee meeting was called to order at 9:05 a.m. Mrs. Hudgins moved, seconded by Mr. Solomon, that the Committee convene in Executive Session at 9:07 a.m. The Committee voted unanimously in favor of the motion.

The Committee meeting reconvened at 9:58 a.m.

Certification

Mrs. Hudgins moved that the Board certify that only such matters authorized for discussion 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. Zimmerman. The Committee unanimously voted in favor of the motion.

Approval of Agenda

The agenda was approved.

Approval of Minutes

Mr. Benjamin moved, seconded by Mr. Giancola, to approve the June 12, 2008 minutes as modified and to approve the June 26, 2008 minutes as submitted. The Committee voted unanimously in favor of the motion.

Action Items

A1. Term Sheet on Navy Yard Chiller Site

Staff sought Committee concurrence and Board approval to select Donatelli & Klein Inc. as developer of Navy Yard station chiller joint development site, approve term sheet and authorize negotiation of development agreement.

Mr. Moneme motioned, seconded by Mr. McKay, the selection of Donatelli & Klein Inc. as developer of Navy Yard station chiller joint development site, approve term sheet and authorize negotiation of development agreement. The Committee voted unanimously in favor of this motion.

Mr. Moneme amended the motion, seconded by Mr. McKay, that the LEED certification requirements and affordable housing requirements of the District of Columbia be incorporated in the development agreement. The Committee voted unanimously in favor of this motion.

A2. Amendment to Morgan Boulevard Agreement

Mr. Solomon moved, seconded by Mr. Moneme, that the Board of Directors approve a 90-day extension of the Master Development Agreement negotiation period for the Morgan Boulevard Joint Development project and authorization for staff to continue negotiations with Garrett Morgan Boulevard Joint Venture, the selected developer. The Committee voted in favor of this motion. Mr. Benjamin abstained.

B. Lease with Prince George Center I, Inc.

In preparation for the lease termination on September 20, 2009, and in recognition of space limitations and the growth of the MetroAccess Services (MACS) program, the Office of Station Area Planning and Asset Management issued a Request for Expressions of Interest to lease 40,000 square feet of office space. The option of relocating MACS/Customer Services (CSVC) to the Carmen Turner Facility was also considered but rejected after consideration of the relocation costs ($11.8 million+) and the accessibility problem for MACS/CSVC customers.

Mr. Solomon moved, seconded by Mr. McKay, that the Committee forward to the Board for approval the negotiation and execution of a lease agreement with Prince George Center I, Inc. for approximately 40,000 square feet of space at 6505 Belcrest Road in Hyattsville, Maryland in support of MACS and CSVC. The Committee voted in favor of this motion. Mr. Zimmerman abstained.

C. Policy on LEED Certification

Staff sought Board approval to establish a policy that all new and substantially-rehabilitated Metro facilities be designed and built with the goal of receiving LEED Certification.

Mr. Zimmerman moved, seconded by Mr. McKay, that WMATA seek LEED Silver rating as a minimum for all buildings that WMATA will construct, own and operate and that WMATA encourage developers to meet the same requirement in Joint Development Projects. The Committee voted unanimously in favor of this motion.

D. System Infrastructure Rehabilitation Program, Initiation and Award of Red Line Rehabilitation Project

The new System Rehabilitation Concept was envisioned to enhance the Authority's ability to keep the system in a state of good repair, with minimal disruption and increased productivity. It includes Rail Station and Line facilities, including elevators and escalators, Rail Yard Facilities and Bus Facilities.

The first contract from Dupont Circle (interlocking outbound) to Silver Spring Station (interlocking outbound) will include standard Design – Bid – Build construction contract work where designs currently exist, Design – Build Construction where designs need to be prepared and a Job Order Contract approach where a standardized unit price schedule can be applied to the work required.

Mr. Benjamin moved, seconded by Mr. Giancola, that the Committee approve the initiation of the first contract from Dupont Circle to Silver Spring. The Committee voted unanimously in favor of the motion.

The meeting adjourned at 11:11 a.m.

Mare - 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.

CC: Joel R. Washington, Marc Boomer

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

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>>> 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

~~[illegible]~~

quarterly installments in advance 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.

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

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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

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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

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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

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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

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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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008663

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 CONFIDENTIAL TREATMENT REQUESTED

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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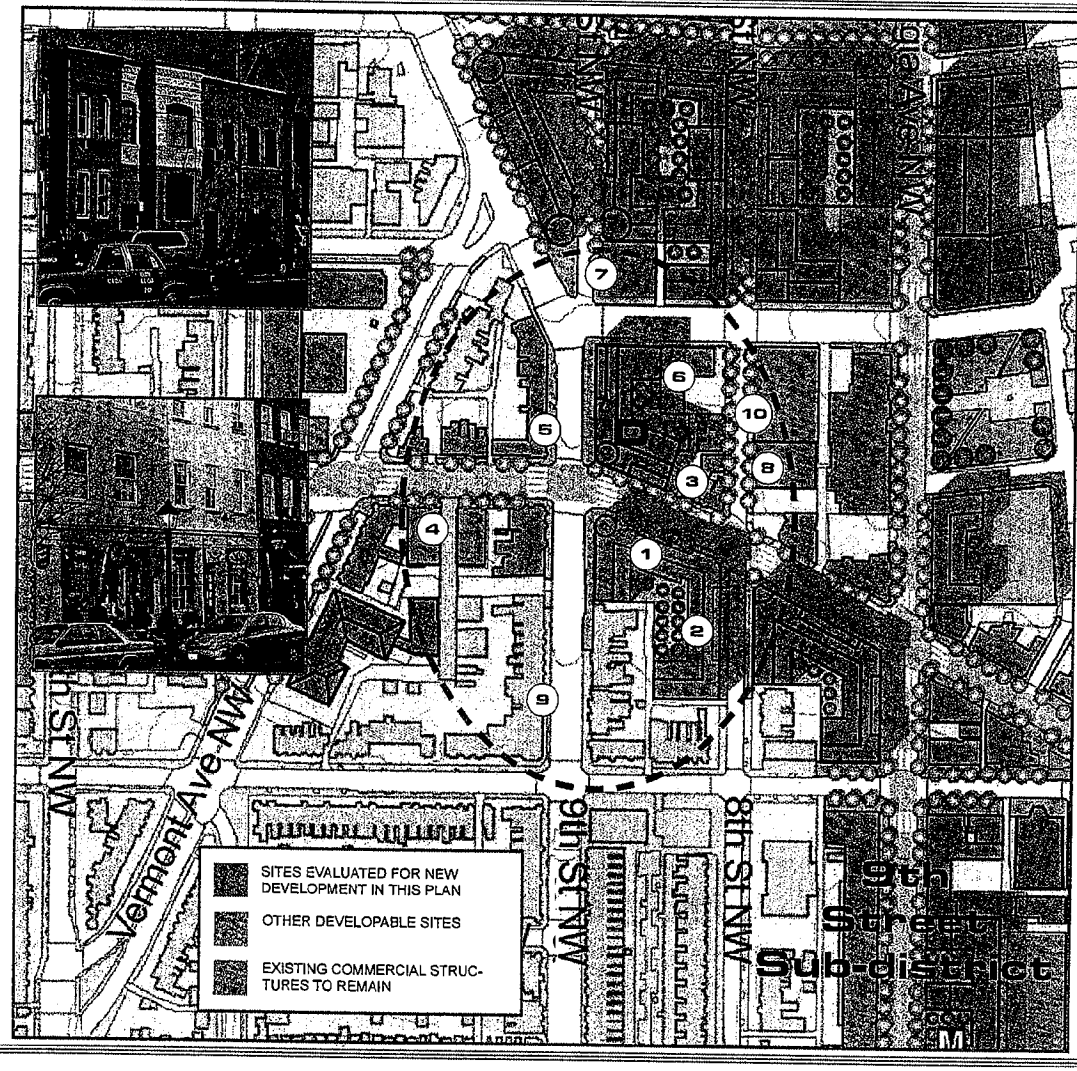
FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008665



A. Placemaking

9th Street Sub-district

"Eclectic Shops / Dining / Entertainment"

Assets: D. DC Housing Finance Agency, 815 Florida Avenue 29,372 SF Land

QUALITY OF ENVIRONMENT / PUBLIC REALM

The "9th Street Sub-district" will be a neighborhood serving commercial district with a mix of cutting edge, locally-owned boutique shops, offices, eateries and restaurants. The sub-district will be anchored by a redeveloped Housing Finance Agency site and the existing 9:30 Club at Florida Avenue and V Street NW. The Housing Finance Agency site should include a destination anchor as a part of its redevelopment.

The streetscape is welcoming with clean and well-lit sidewalks. Where possible, given the width of the sidewalks, new trees should be planted and existing trees maintained. Individual storefront signs will be appropriately scaled yet a highly-creative expression of business type.

SMALL BUSINESS DEVELOPMENT

As needed, technical assistance should be provided to both 9th Street property and business owners about retention, attraction and development of unique, small businesses within the historic buildings around the intersection of Florida/U Street/9th Street. The small floorplates within the historic buildings are ideal for local businesses. Upper floors should be used for offices or residential uses. Facade improvements are recommended for qualified properties through the Main Street organizations. Technical assistance might also focus upon interior, retail space planning; merchandising; marketing; and promotions.

RECOMMENDATIONS FOR OTHER SITES OF INTEREST

1. WMATA has awarded two parcels between 8th and 9th Street to Howard University. Those parcels should be developed to include a similar program as proposed by Howard University--with active, ground floor retail and offices and residential above.
2. 1920 8th Street NW should be developed as a residential building which maximizes zoning.
3. Existing properties on the 800 block north side should be preserved and rehabilitated with retail uses which support and/or compliment daytime office and nighttime theater uses.
4. Murray's Casino should be restored to its original architectural facade and re-used with a small live music venue and/or destination supporting retail. District owned land east of the alley should be developed with mixed uses.
5. Target a balanced mix of restaurant / eateries, small bars and eclectic shops for 9th Street properties north of Florida Avenue. Uses should complement destination uses at HFA site and the 9:30 Club.
6. Consider redeveloping the Atlantic Plumbing site with offices, retail and parking.
7. Maintain and actively promote entertainment venues at the 9:30 Club to attract diverse patrons into the neighborhood.
8. Support and increase the attendance at Kylie's. Make Kylie's more of a destination with diverse entertainment programming.
9. Rezone 9th Street properties south of Florida to be consistent with existing uses.
10. Consider developing these sites with a mix of uses to include neighborhood retail and public access parking.

create a cohesive and memorable place with diverse sub-areas

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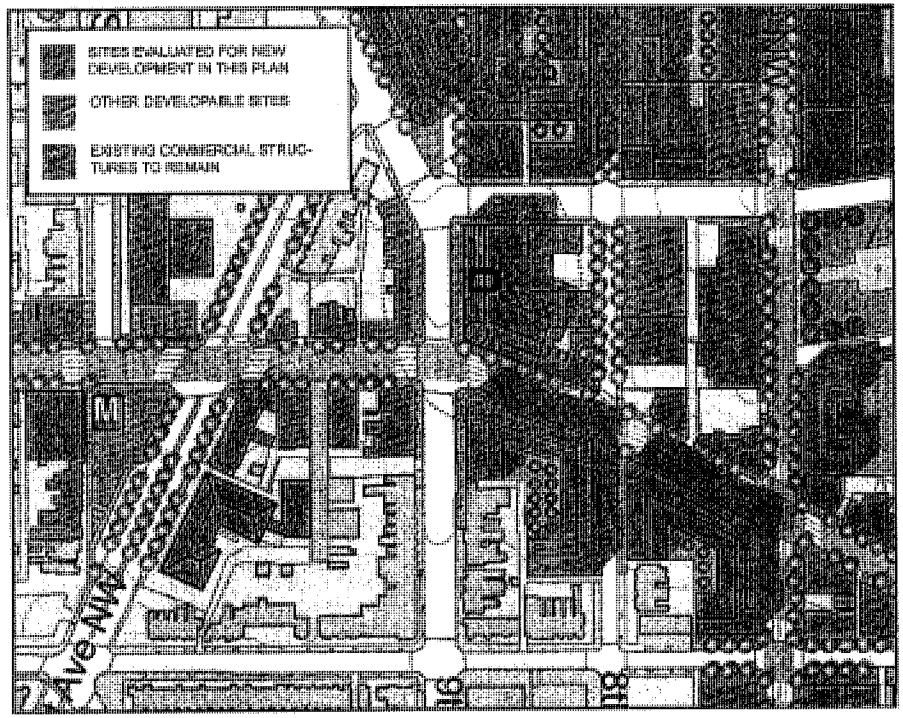
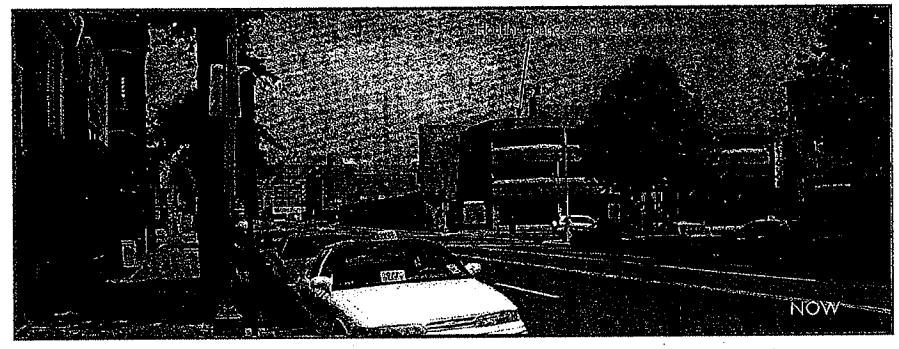
WMATA-INV 008666

A. Placemaking

9th Street Sub-district

Site: Housing Finance Agency (HFA)





RECOMMENDATIONS

Housing Finance Agency (D) 29,372 sf

DEVELOPMENT PROGRAM

- Destination/activity generator on first floor with +/-23,000 SF of active retail/arts/entertainment space
- Office on upper stories
- 96 +/- housing units on upper stories
- Potential jobs created
- 20-30% Affordable Housing Target (25-38 units)
- 35% Local Small Disadvantaged Business Enterprise (LSDBE) participation

PREFERRED: Redevelop the HFA site as a mixed-use project with a new destination anchor (large club or museum) and required retail space at grade and office and/or hotel use on upper floors.

ALTERNATE & SECONDARY: Redevelop the HFA site as a mixed-use project with a new required retail space at grade, HFA offices and mixed income housing on upper floors.

Allow building height of 65 feet to cornice, rising to 90 feet with a one-to-one setback from cornice; optimize density.

Provide space for other office uses in a redeveloped Housing Finance Agency site to increase daytime users and provide shared parking with destination uses onsite and in surrounding area.

Explore joint venture/acquisition of properties on block to east to facilitate larger mixed use development.
Maximize amount of on-site parking consistent with physical needs for below grade area of the destination use; size parking reflecting strong transit use and joint use between the anchor and commercial uses.
Include active, extended hour retail and active lobbies with no blank walls at grade.

Achieve signature architecture, with special emphasis/feature at corner of 9th Street and Florida Avenue.

PHOTOS

A. **9th Street at Florida Avenue** - facing north toward HFA - existing conditions.

B. **9th Street at Florida Avenue** - facing north toward HFA - proposed conditions. Note that HFA has retail ground floor which includes a destination use at the corner. HFA, other offices and residential are above. Also, WMATA site to the right is also developed with mixed uses.

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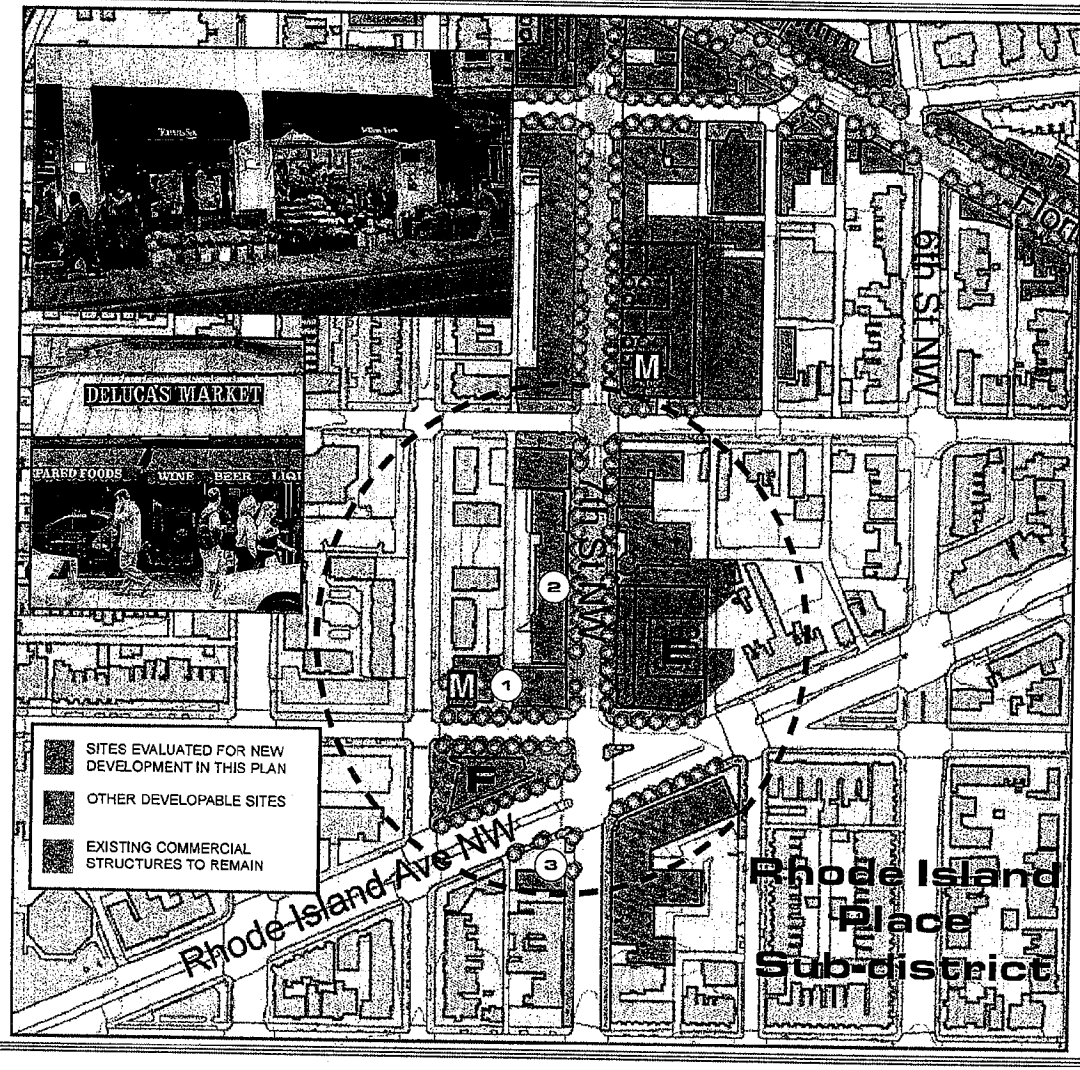
WMATA-INV 008667

FOIA CONFIDENTIAL TREATMENT REQUESTED



A. Placemaking

Rhode Island Avenue Sub-district

"Residences"

Assets:	E. NCRC RLA Parcel 42, Square 0442, 1		
	705-7 7th St NW and 637 Rhode Island Ave NW	17,008 SF	Land
	+ United House of Prayer Site, 1709 7th St NW	15,925 SF	Land
	F. Watha T. Daniel/Shaw Neighborhood Library Site		

QUALITY OF ENVIRONMENT / PUBLIC REALM

The "Rhode Island Avenue Sub-district" will be an architecturally distinct gateway to the Shaw community and this neighborhood destination district. The primary use within this section of the overall plan will be high density residential above neighborhood retail uses.

The streetscape is coordinated with the remainder of the overall project area, but includes public art work which reinforces this location as a "gateway" to the district.

SMALL BUSINESS DEVELOPMENT

All new construction should include ground floor retail uses to include predominately locally owned neighborhood serving businesses, i.e. dry cleaners, florists, convenience stores, etc. Main Street organizations work cooperatively with property owners and residents to attract the appropriate mix of local businesses.

RECOMMENDATIONS FOR OTHER SITES OF INTEREST

1. Parcels near the south entrance of the Shaw Howard University Metro station should be developed as active retail uses such as a restaurant or cafe. As possible, consider transit oriented development and densities with affordable housing.
2. The first floor of the Lincoln Westmoreland Apartment building should be retrofit to accommodate predominantly retail with limited offices fronting onto 7th Street.
3. Redevelop 7-11 site with a mix of uses.

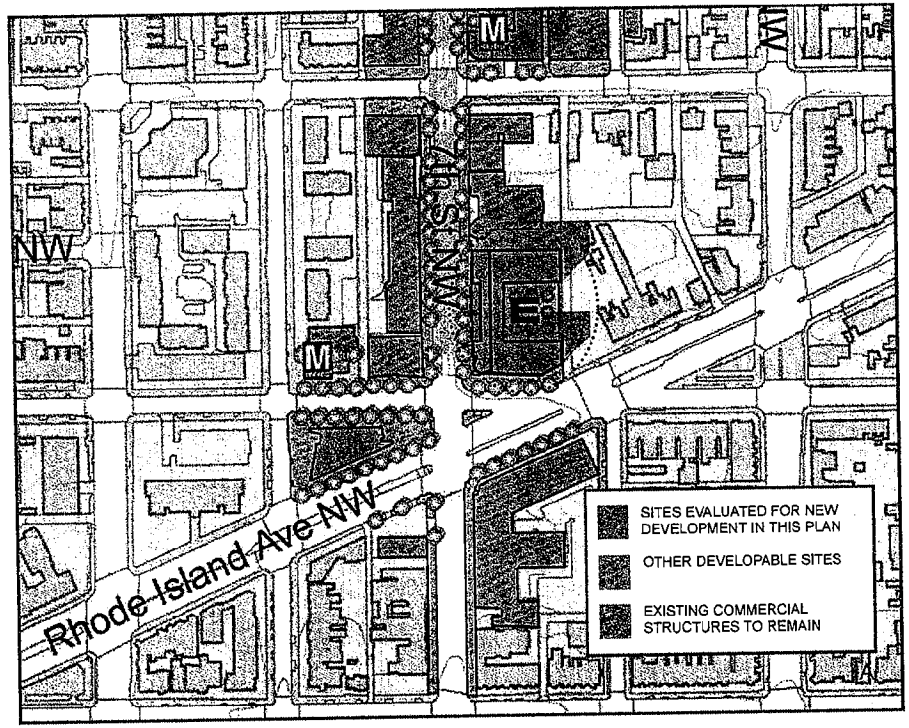
create a cohesive and memorable place with diverse sub-areas

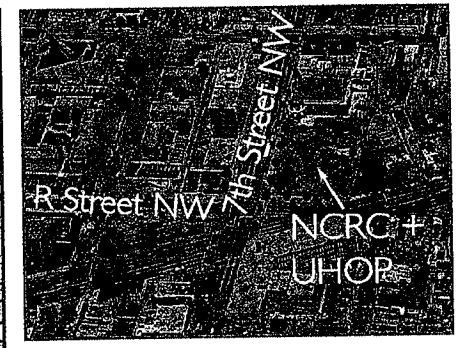
WMATA-INV 008668

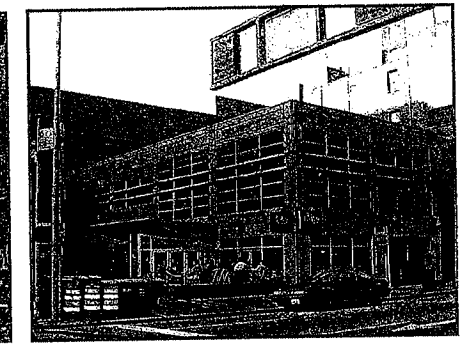
A. Placemaking

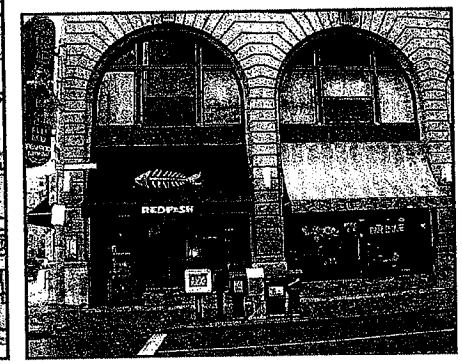
Rhode Island Avenue Sub-district

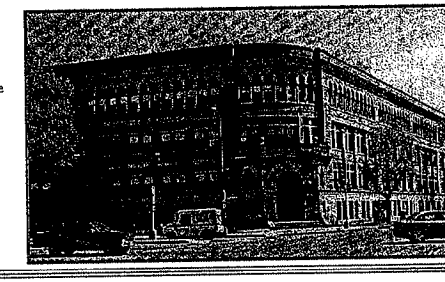
Site: NCRC + UHOP Parcels











RECOMMENDATIONS

United House of Prayer + NCRC RLA Parcel 42

DEVELOPMENT PROGRAM

- +/-12,500 SF First floor retail
- +/-130 housing units on upper stories (+/-184,000 SF)
- +/- 170 parking spaces below grade on three levels
- 20-30% Affordable Housing Target (26-39 units)
- 96 permanent jobs

GUIDELINES

Building(s) to be height of 65 feet to cornice, rising to 90 feet with a one-to-one setback from cornice and with design review and possible additional setbacks to ensure sensitivity to lower existing structures.

Retail space targeted for neighborhood service needs.

Explore whether a portion of the residential envelope should be dedicated for elderly housing, which would likely increase the number of units and reduce the required parking.

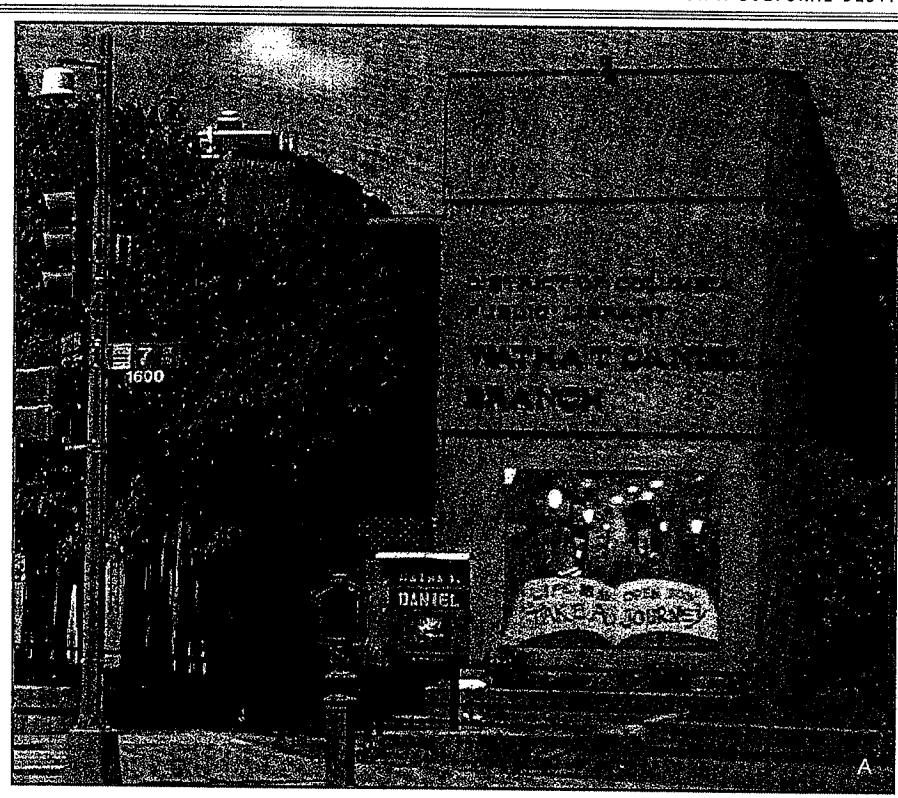
Design to reflect gateway location with a significant architectural expression at the corner of 7th Street and Rhode Island Avenue.

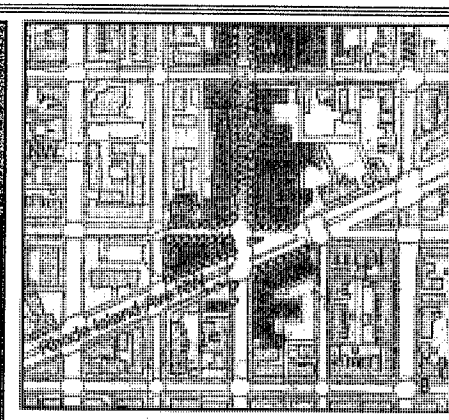
PHOTOS

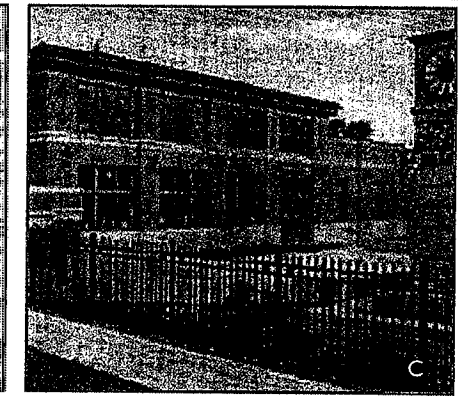
A. Plan view of United House of Prayer + NCRC Parcel 42.
B. Aerial photo of Rhode Island Place Sub-district - existing
C. Restaurant and Plaza in Cincinnati. Note compatibility with size parcels near Shaw HU metro southern entrance
D. Red Fish Restaurant in Cincinnati. Note coordinated retail business image and signage.
E. Sonsie in Boston's Back Bay. Note folding doors which allow indoor activity to enliven street environment. Also, potential for Lincoln Westmoreland ground floor retrofit.
F. Historic Asbury Dwellings (former Shaw Junior High School). Southeast corner of 7th Street and Rhode Island Avenue. This corner entrance should be an active location with residents and visitors coming and going, creating more street life.

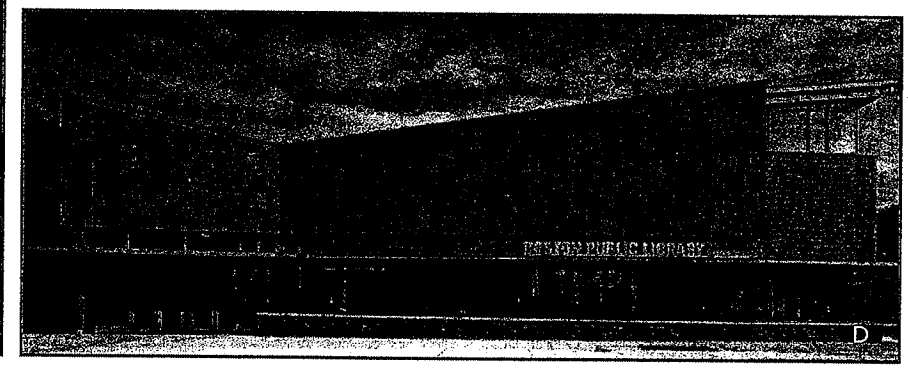
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008669









WATHA T. DANIEL/SHAW NEIGHBORHOOD LIBRARY SITE

BACKGROUND

Watha T. Daniel (1911-1973) was a very active and committed resident and businessman of Shaw. Along with a group of distinguished men, he worked to improve the circumstances for District residents, particularly in Shaw. He served as the first chairman of the DC Model Cities Commission and vice-president of the Model Inner City Community Organization (MICCO) which believed in the need for public housing as a method by which neighborhood change would occur. Daniel was particularly interested in education so it is befitting that this library was named in his honor.

ASSESSMENT

The library use is a neighborhood need that should continue to be preserved. As the Shaw community continues to grow, the demand for modern library space is likely to increase as well. This is, however, dependent upon the quality and timeliness of services and resources offered to the area's wide range of current and future residents.

Currently, the library is architecturally unattractive and does not contribute to creating a distinct presence at this gateway location into the Shaw neighborhood. The main entrance to the library faces 8th Street and not 7th Street and Rhode Island Avenue, a highly important intersection of one of the District's "special streets" and one of its important commercial corridors. The building's concrete walls and lack of windows project an image of a bunker or prison and fails to inspire excellence in education. Open space around the building is poorly maintained and is often littered. Lighting of the building should be significantly improved.

The interior of the building is outdated, poorly lit and poorly organized. Meeting rooms lack proper sound-proofing and meeting equipment. Mechanical systems need updating and access for the disabled and seniors needs to be improved and brought to full compliance with Americans with Disability Act standards.

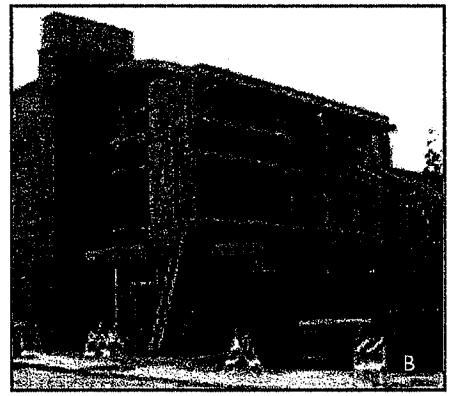
Funds are currently budgeted to construct a new library.

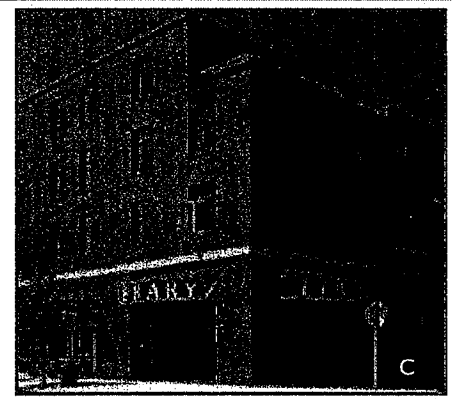
PHOTOS

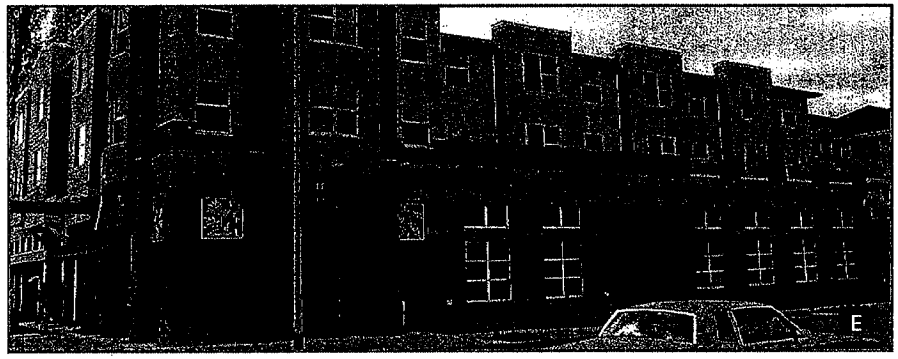
A. Watha T. Daniel Library - existing. (Chris Shaheen)
B. Plan view of Watha T. Daniel site.
C. Chicago's Brainerd Branch Library. Note quality of architecture, lighting and windows.
D. Boston Public Library - Allston Neighborhood. Note the distinctive architecture and use of transparency.

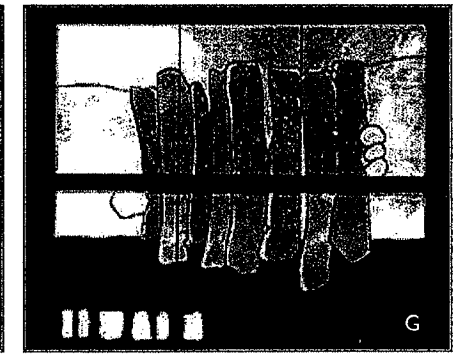
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008670









RECOMMENDATIONS

Demolish the existing structure after a temporary location is found for the library holdings during the construction period. That location should ideally be along the 7th Street NW corridor.

Make the library a vibrant center of neighborhood information, activity and technology.

Rezone the site to accommodate a mix of uses.

Provide a range of spaces in the newly constructed library to attract all age ranges and community organizations.
Re-orient the library to have its primary entrance facing 7th Street.

Create a very welcoming and open entryway into the library.

Design the library to be architecturally distinct—as if it were a jewel.

Maximize the amount of direct, natural light into the library.

Incorporate a privately managed retail use.

Install and maintain a well-designed landscape and streetscape around the facility.

Incorporate public art and landmark lighting.

Consider the changes within the Greater Shaw community now and the growth envisioned for the neighborhood over the next ten (10) years as the appropriate size of the library is determined.

Consider mixed use operations for community meeting rooms to allow local, not for profits and government agencies free space usage while private individuals or corporations are charged a rental fee that helps to offset operating costs.

Evaluate the feasibility of developing the library air-rights with affordable, residential uses to take advantage of the site's immediacy to the Shaw HU metro station. (Given the area's need for affordable housing and Watha T. Daniel's interest in public housing, there is context.)

PHOTOS

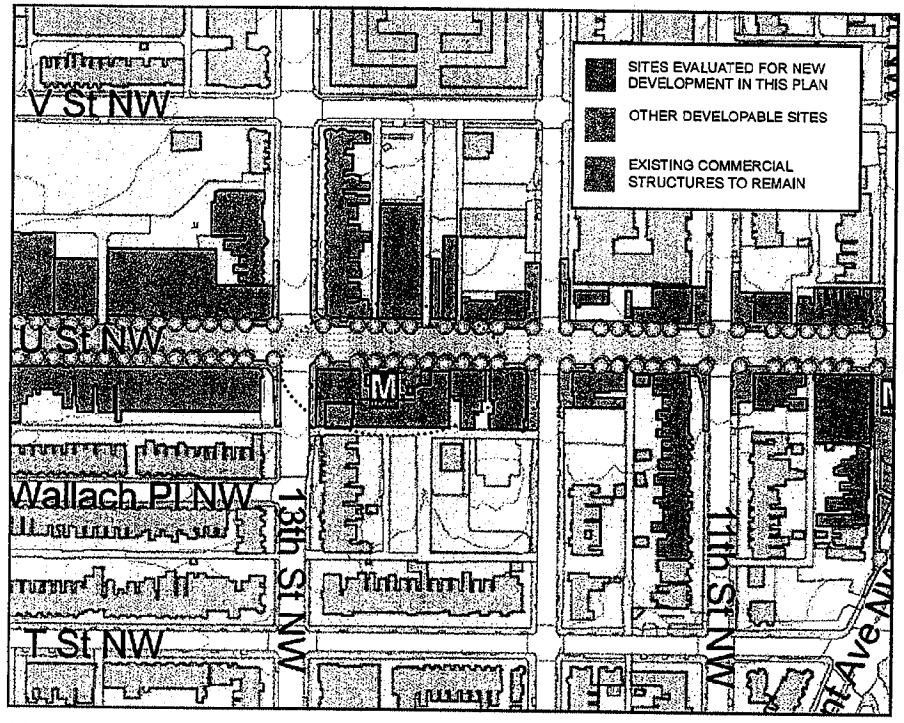
A. **Chicago's Brainerd Branch Library - interior.** Note lighting and windows.
B. **Chicago's Edgebrook Library.** Note the distinctive architecture and entryway.
C. **Portland's Hollywood Library Branch.** Note housing above and entryway.
D. **Portland's Hollywood Library.** Note access to technology and diverse age ranges.
E. **Portland's Delridge Library.** Note housing above.
F. **Portland's Hollywood Library - interior.** Note welcoming entry and access to technology.
G. **Portland's Hollywood Library - public art.**

FOIA CONFIDENTIAL TREATMENT REQUESTED

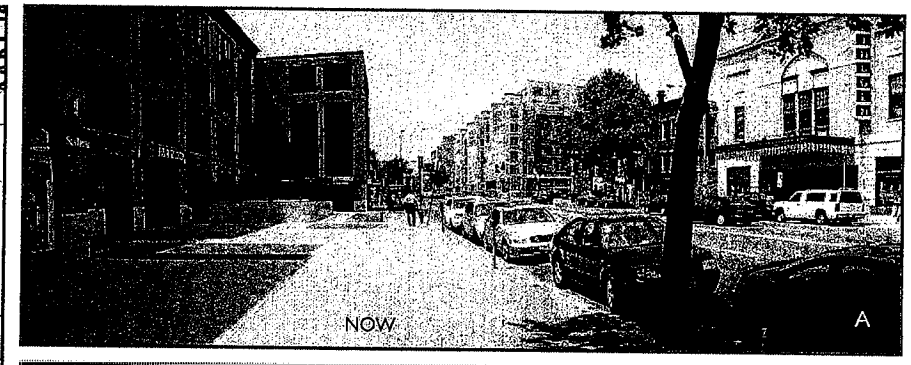
WMATA-INV 008671

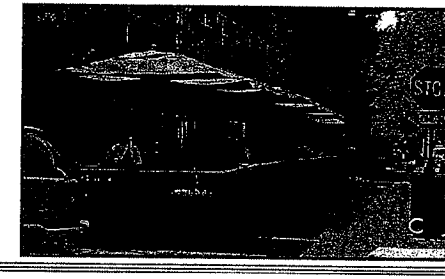
A. Placemaking

Lincoln Common Sub-district



Site: U Street Metro Plaza





RECOMMENDATIONS

U Street / African-American Civil War Memorial / Cardozo Metro Plaza

Make the plaza more pedestrian friendly and safe.

Use public art and a distinctive Metro escalator canopy to enhance the public space in front of the Metro station and new office building.

Encourage use of the public space for a farmers market, pushcarts or other activity to enliven the area.

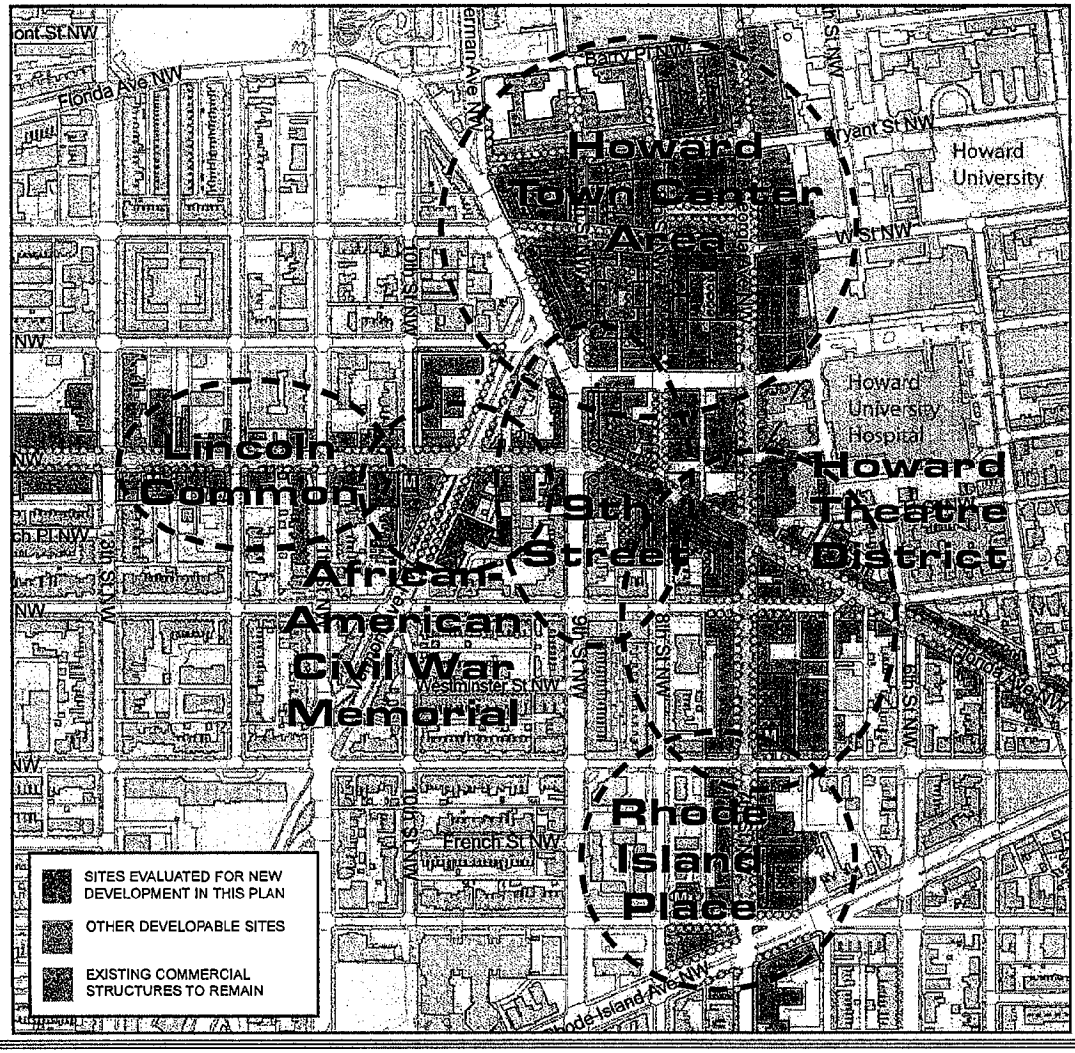
In the longer term, seek active ground floor retail and restaurant uses to enliven the ground floor and to animate the plaza.

PHOTOS

A. U Street Metro Plaza - existing conditions.
B. U Street Metro Plaza - proposed conditions.
C. Lauriol Plaza - Washington, DC. Note active use of sizable sidewalk area.
D. Public Market and Artwork, Columbia Heights, DC.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008672



B. Design Guides

Knit new development with surrounding neighborhoods and the Howard University campus to respect their character in this transit oriented environment.

The quality of life within the Project Area should be enhanced as new development happens. Area residents seek a dynamic public realm in which land uses that make the area vibrant 18 hours of the day contribute to improved access to resources and services. Those new uses should be within architecturally interesting structures which are contemporary while sympathetic to the area's historic context.

Several public regulatory elements influence land uses and the architectural character within the Project Area. The following pages seek to illustrate what the existing conditions are and, as needed, make recommendations about those regulations. Additional guidance is provided to reinforce the desire to make this transit oriented area a unique and vibrant neighborhood destination district. The public regulations are:

1. Comprehensive Plan - Generalized Land Use
2. Shaw Urban Renewal Plan
3. Historic Preservation
4. Zoning

Additional guidance is provided about the preferred land uses and architectural character. More specifically recommendations are provided for:

5. Character of Built Environment
   - A Building Form
   - B Ground Floor / Pedestrian Level
   - C Public Realm Improvements

knit new development with surrounding neighborhoods and Howard University

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008673

1. Comprehensive Plan - Land Use

The District's Comprehensive Plan ("Comp Plan") was last amended in 1999 and is currently being updated and/or revised to reflect more current public policy and neighborhood development opportunities. The Comp Plan guides how and where land is developed to meet a variety of land use needs within the entire city and provides the context within which land is zoned. Generally, the Comp Plan outlines the following ten (10) major themes or objectives:

(a) Stabilizing and improving neighborhoods;
(b) Increasing the quantity and quality of employment opportunities;
(c) Developing a living downtown;
(d) Preserving and promoting cultural and natural amenities;
(e) Respecting and improving physical character;
(f) Preserving and ensuring community input;
(g) Preserving the historic character;
(h) Reaffirming and strengthening the economic hub of the Region;
(i) Promoting enhanced public safety; and
(j) Providing for diversity and overall social responsibilities.

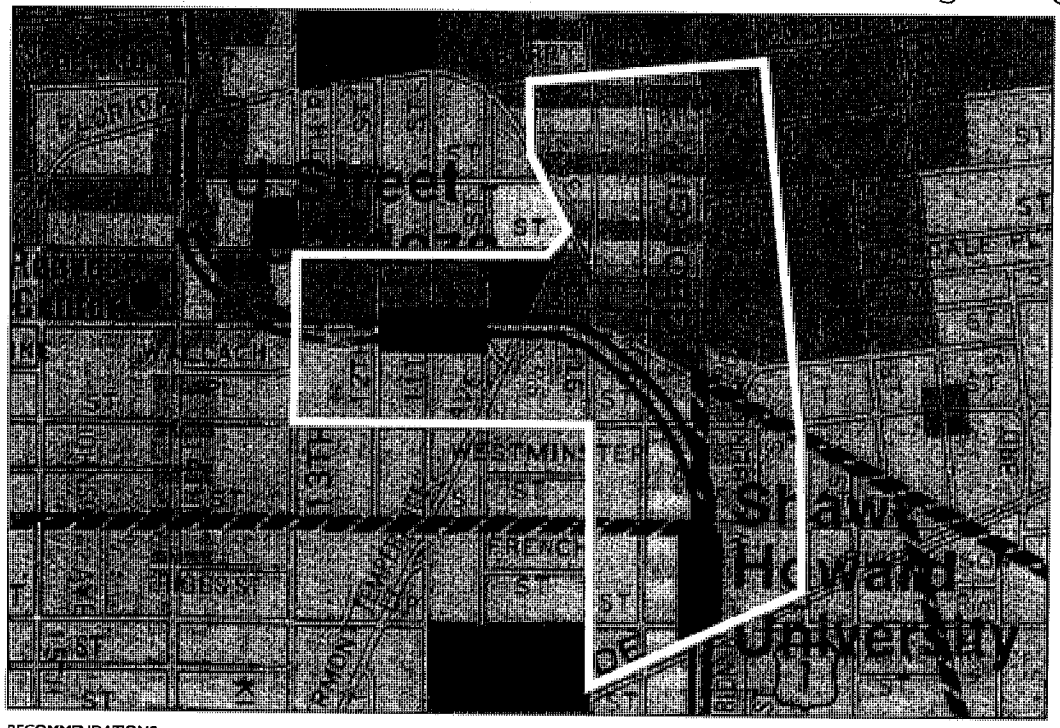
Most of these objectives are relevant within the Project Area. However, to account for more recent public policy changes and the extensive community involvement in establishing these recommendations, this Development Framework may be advanced to become a component of the revised Comp Plan, authorizing guidance to public agencies, commissions and others to implement the recommendations outlined within this document. This could require changes to the Comp Plan map, pictured here, or edits to the text of the Comp Plan document.

Within the Project Area, the bulk of the commercial corridors subject to this Framework is within the "Mixed Use" Comprehensive Plan category. This categorization allows development that may include retail on ground floors and either residential, office and/or institutional uses above.

The Project Area also includes guidance for development of "Institutional", "Moderate Density" residential, and "Moderate Density" commercial uses. Institutional uses include local and federal government facilities, university uses, hospitals, and religious facilities. Moderate density residential is generally defined as row houses and garden apartments while moderate density commercial provides for a broad range of goods and services like chain drug and grocery stores.

Since adoption of the last Comp Plan amendment in 1999, there has been added guidance about public land disposition, affordable housing development, retail enhancement and transit oriented development which is not yet reflected in the Comp Plan. The recommendations which follow seek to provide current direction about how the Comp Plan Map might be changed within the Project Area in order to implement this Framework Plan. Additional changes to the Plan text should be considered to incorporate the policy initiatives set forth by "DUKE."

knit new development with surrounding neighborhoods



RECOMMENDATIONS

Change the mixed-use designation for the properties abutting and west of 7th Street, between Florida Avenue on the north and R Street on the south, from Moderate Density Residential/Low Density Commercial to Medium Density Residential/Low Density Commercial, with notation for increased densities for achieving preferred uses.

Change the mixed-use designation for properties adjacent to and east of 7th Street (and south of the properties abutting T Street) on the north to Rhode Island Avenue on the south from Moderate Density Residential/Moderate Density Commercial to Medium Density Residential/Medium Density Commercial, with notation for increased densities for achieving preferred uses.

Change the mixed-use designation for properties bordered by Barry Place on the north, Florida Avenue on the west, V Street on the south and Georgia Avenue on the east from Institutional/Moderate Density Residential/Moderate Density Commercial to Institutional/Medium Density Residential/Medium Density Commercial, with a notation for increasing densities for achieving preferred uses.

Change the use designation for Square 358 (bound by Florida Avenue, V Street, W Street and 10th Street) from low density commercial to mixed-use of Moderate Density Residential/Low Density Commercial.

Designate the portions of Squares 2873, 2875 and 2877 north of V Street and south of a line established by connecting W Street across the squares as the location for a neighborhood retail and service center.

Target the Housing Finance Agency site and block as a location for an arts/cultural anchor.

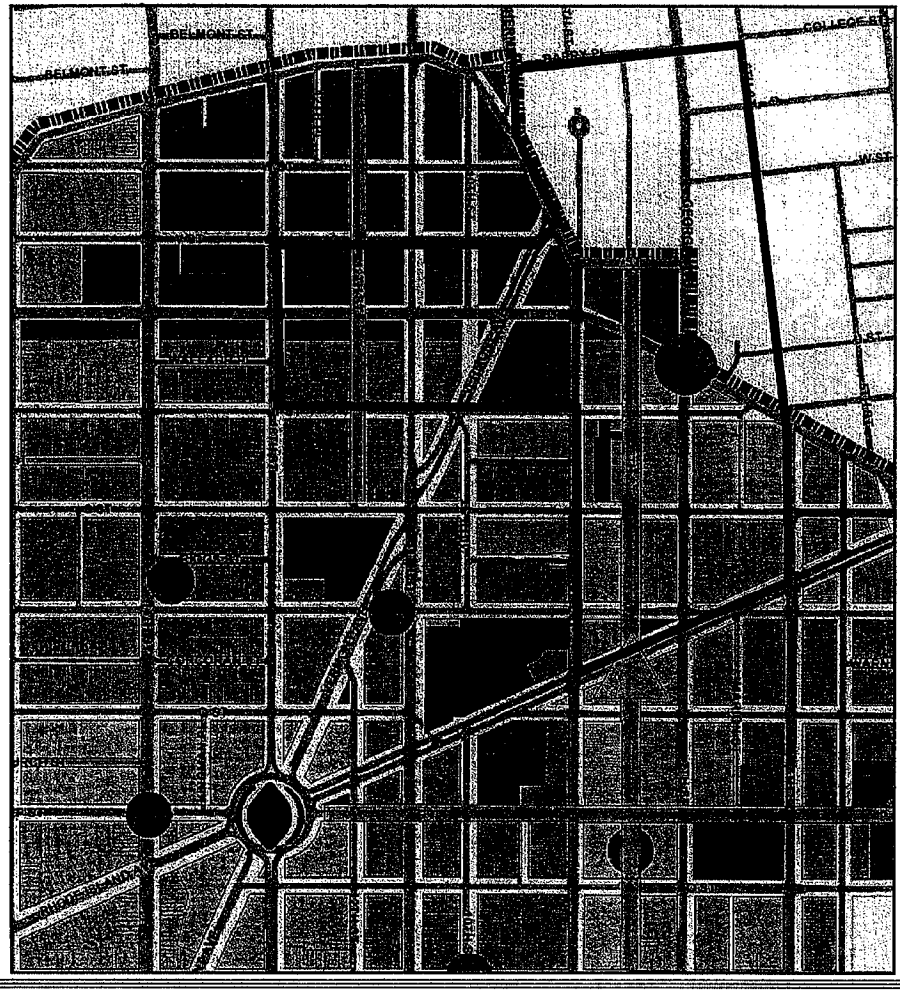
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008674

FOIA CONFIDENTIAL TREATMENT REQUESTED

2. Shaw School Urban Renewal Plan

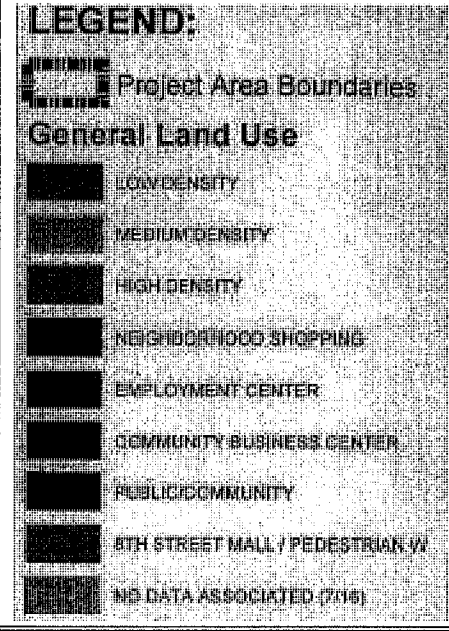
knit new development with surrounding neighborhoods



The Shaw School Urban Renewal Plan was initially adopted in 1969 and modified 24 times between 1969 and 1998. In 2000, the National Capital Planning Commission (NCPC) and the DC Council extended the expiration date of the Urban Renewal Plan to December 3, 2028.

The Urban Renewal Plan was intended to "guide the rehabilitation and renewal of the [Shaw neighborhood] in a manner consistent with (1) comprehensive planning objectives and policies for the Nation's Capital, and (2) the special character and development potential of the Project Area by providing for predominantly residential uses with supporting private and public facilities." Specifically, the Urban Renewal Plan seeks:

A. To preserve and rehabilitate existing houses;
B. To create housing for a range of household size, including public housing for low and moderate income citizens;
C. To encourage "distinct" neighborhoods in close proximity to a variety of supporting uses; and
D. To prevent over-concentration of "community and public facilities and services."



The recommendations contained within "DUKE" largely complement and update these more general objectives of the Shaw Urban Renewal Plan, and "DUKE" recommendations account for current public policy objectives for affordable housing, retail and transit oriented development. Additionally, "DUKE" strongly encourages the enhancement of existing cultural / destination facilities and recommends that two additional destination anchors are added at key locations.

The Renewal Plan's detailed definitions of "medium" and "high" density residential uses and their location on the 7th Street commercial corridor are inconsistent with current zoning definitions and transit oriented development guidelines. For example, the Renewal Plan does not clearly allow commercial uses on the 7th Street corridor (north of Rhode Island Avenue NW), with the exception of at the intersection of Florida Avenue and 7th Street NW. The Renewal Plan defines Residential - Medium Density as not exceeding "60 dwelling units per net residential acre or 120 bedrooms per net residential acre." Continuing, buildings are allowed up to 90 feet in height, but with a maximum floor area ratio (FAR) of only 1.8. A 90 feet tall building is not achieveable with an 1.8 maximum FAR. Other zoning related recommendations within the Renewal Plan exist. The height and bulk recommendations from this Framework should guide allowable height and FAR limits to encourage the preferred development recommended by this Framework Plan.

RECOMMENDATIONS

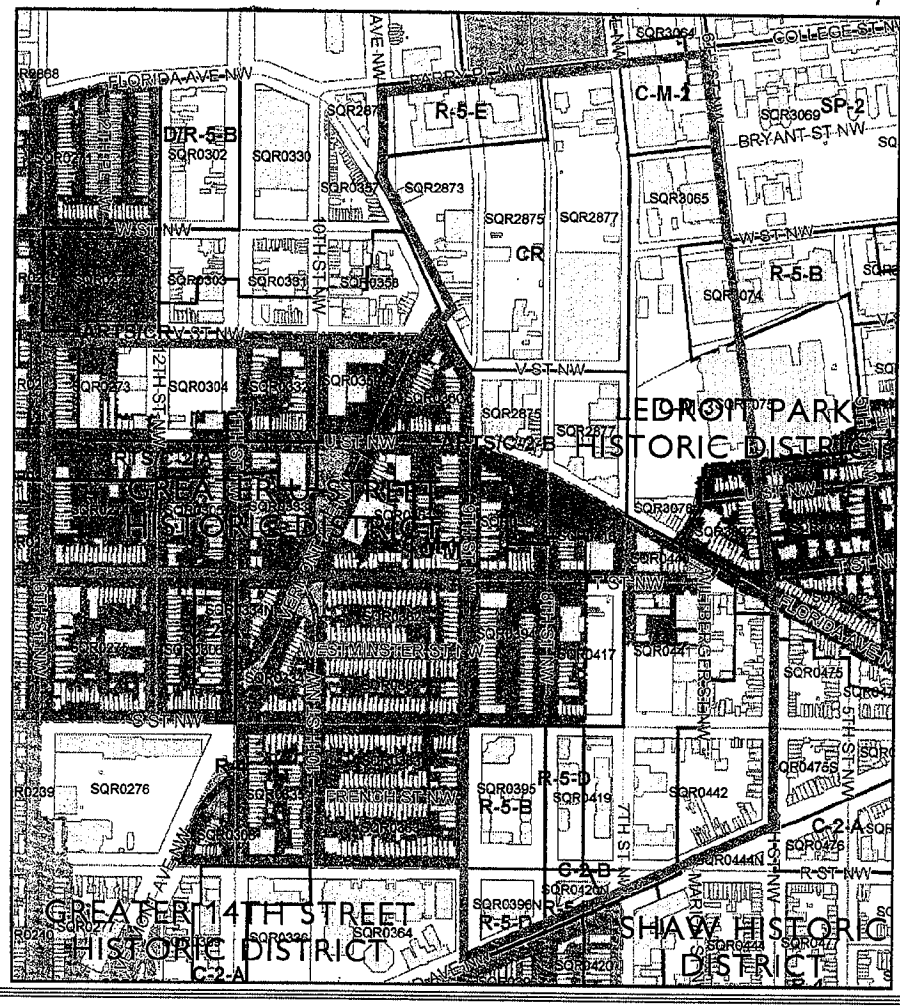
Government agencies should conclusively make a decision about the utility of the Renewal Plan as it relates to current development issues and opportunities within the Project Area of this Framework Plan and within the Renewal Plan's overall area. The Convention Center Area Strategic Development Plan combined with this Framework include more current and detailed recommendations which will lead to public and private actions based on the current policy and market direction. Ideally, the Shaw School Urban Renewal Plan should be repealed and replaced by this plan and the Convention Center Area Strategic Development Plan.

If it is to be maintained as a document guiding public policy, the Renewal Plan should be thoroughly updated as the Comprehensive Plan is being revised to reflect current trends. Rather than supplement the Comprehensive Plan, the updated version should be incorporated into the Comprehensive Plan. As the most current analysis and vision for the Project Area, the recommendations from this Framework Plan should also be incorporated into the body of the Comprehensive Plan.

WMATA-INV 008675

3. Historic Districts

knit new development with surrounding neighborhoods



The Project Area's significant history as "Black Broadway" and the area's collection of 19th and 20th century architecture was officially recognized in 1998 when the Greater U Street Historic District was added to the District of Columbia's Inventory of Historic Sites and the National Register of Historic Places. This historic district, as with others, was established to protect the architectural and cultural landmarks that make up the physical and social fabric of the city. The local and federal designations confer different protections, benefits, and constraints on historic properties. Many of the public assets that are analyzed as a part of this Framework plan are within the Greater U Street Historic District.

Buildings and sites that are either individually listed on the DC Inventory, like the Howard Theatre, or located within a historic district are subject to the DC Preservation Law (Title 10, Chapter 26 of the District of Columbia Municipal Regulations). This law requires that the Historic Preservation Review Board (HPRB) review demolition, new construction, and exterior alterations. The HPRB approves or denies applications for alterations by determining whether proposed changes are compatible with the historic character of the property and the historic district.

The National Register of Historic Places is the official federal list of historic districts, sites, buildings, structures, and objects that are significant in American history, architecture, archaeology, engineering, and culture. The list is administered by the National Park Service (NPS). Listing on the National Register does not restrict the activities or rights of the private property owners. Since land use regulation is traditionally carried out by local governments in accordance with state laws, the federal designation of a historic property does not regulate the actions of private property owners.

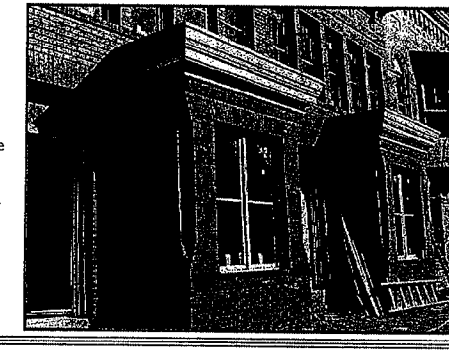
Owners of income-producing properties that are listed on the National Register can apply for tax credits that equal 20% of the certified total construction costs paid to rehabilitate their properties. These credits can be used to offset federal income tax obligations. Donations of a conservation or facade easement on a National Register listed property is eligible as a charitable contribution, deductible for federal income and estate tax purposes.

The Historic Preservation Office (HPO), located within the Office of Planning (OP), administers the DC Preservation Law and serves as staff to the HPRB, providing procedural, technical, and design guidance to property owners contemplating projects affecting historic properties. The HPO also serves as the city's liaison to the NPS regarding listing of properties on the National Register and the review and certification of projects seeking the federal rehabilitation tax credit and donation of conservation easements.

For properties within the historic district, existing zoning may need to be better balanced with the goals of historic district designation. For example, some U Street properties are within the C-2-A or C-2-B zoning categories, allowing maximum heights of up to 50 and 65 feet respectively, with additional height and density possible in the Arts Overlay District for preferred uses. Many of those same properties, currently only 30 feet in height, are protected as part of the historic district. While some property owners have expressed a desire to maximize the full zoning potential on their sites, protection of the historic neighborhood scale and character may not enable them to realize all the allowances permitted under the current zoning, as proposed plans for additions to these buildings maximizing the full height are not likely to be determined by the HPRB to be consistent with their charge to protect the character of the historic district. Adjustments to the existing zoning should be evaluated that reconcile perceived discrepancies between maximum zoning allowances and historic preservation goals, and provide additional flexibility for the redevelopment of historic buildings.

Additionally, both the U Street/African American Civil War Memorial/Cardozo and the Shaw-Howard University metro stations service the Project Area. City policy currently seeks to maximize density and growth around transit centers like these. **The goals of historic preservation also need to be balanced with transit oriented development policies to more directly highlight where growth is possible and at what reasonable level of density. (A recommendation for transferred development rights is proposed on page 37 as a potential solution to this issue.)**

(below) Homes being constructed within LeDroit Park Historic District.

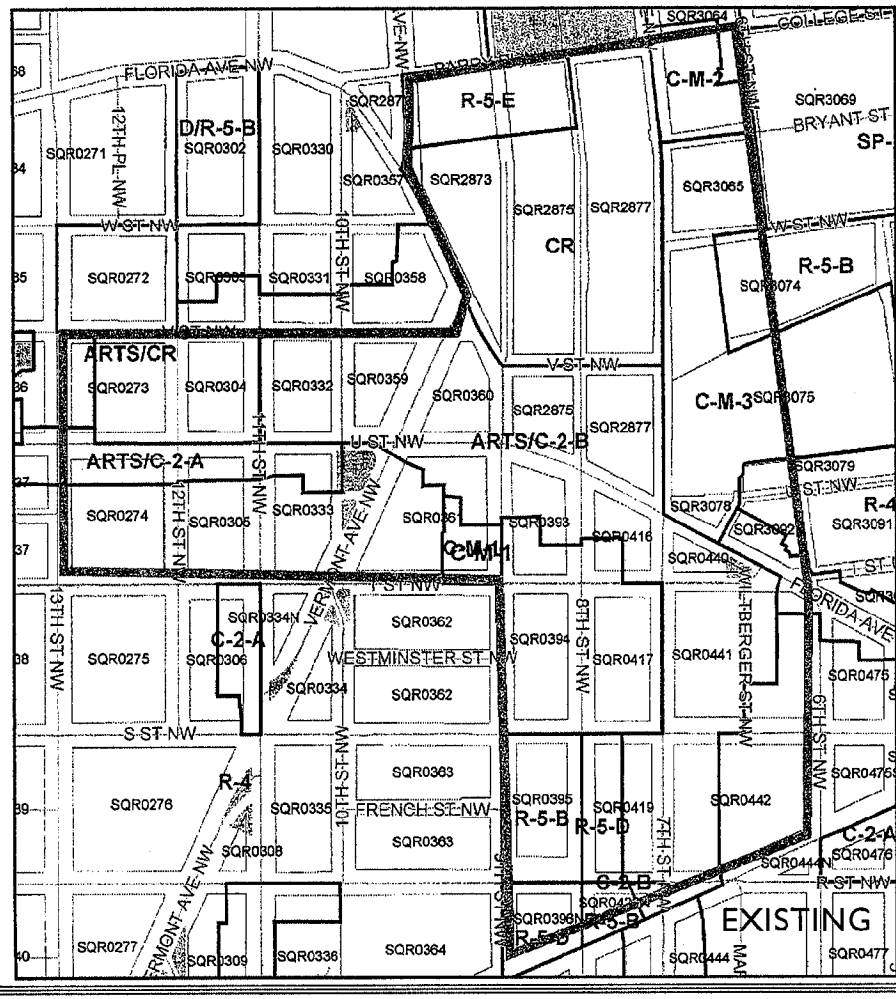


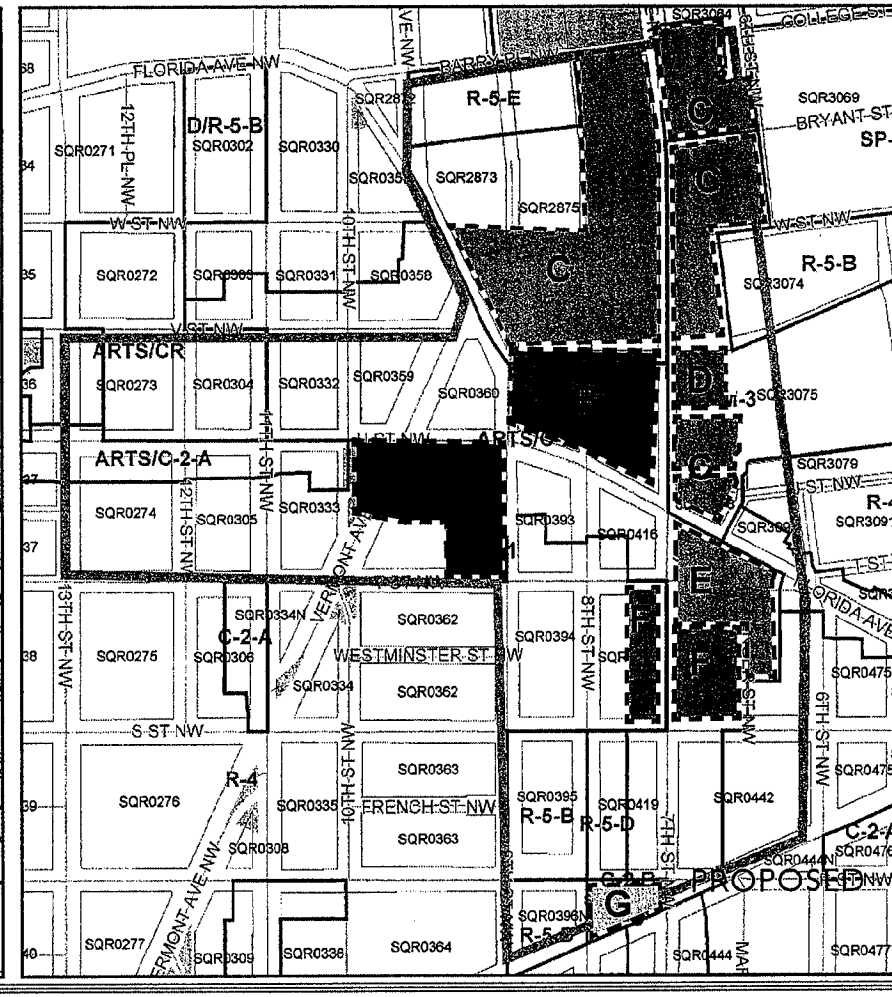
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008676

4. Zoning

knit new development with surrounding neighborhoods





FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008677

FOIA CONFIDENTIAL TREATMENT REQUESTED

4. Zoning

Zoning is an important tool for implementing the Comprehensive Plan and Development Framework Plans like this one. The base zone districts in combination with the overlay zones identify a maximum potential bulk, height, density, and a range of uses for each parcel. The Uptown Arts Overlay (DCMR Title 11 Chapter 19), which applies to 7th Street, U Street, 14th Street and 9th Street within this Project Area, encourages and incents certain preferred uses,*^ the enhancement of the area's design character, the adaptive reuse of older buildings, and a combination of new and old buildings.

This Framework Plan calls for land use adjustments that can be implemented through amendments to the zoning map, planned unit developments (PUD), and amendments to the zoning text. This Plan provides additional guidance to the Zoning Commission as they consider zoning actions for the area. PUDs should also refer to this Plan for guidance in design and when considering amenity packages, especially regarding affordable housing and Local Small Disadvantage Business Enterprise participation.

The underlying zoning categories allow:

Permitted Intensity (FAR) - Matter of Right

Zone District	Commercial Use Only	With Residential	Max. Height	% Lot Cover*	Rear Yard
C-2-A	1.5	2.5	50'	60%	15'
C-2-B	1.5	3.5	65'	80%	15'
CR	3.0	6.0	90'	75%	
C-M-1	3.0	N/A	40'	N/A	12'**
C-M-2	4.0	N/A	60'	N/A	12'**
C-M-3	6.0	N/A	90'	N/A	12'**
Others of relevance:					
C-3-A	2.5	4.0	65'	75%	---

Permitted Intensity (FAR) - With Planned Unit Development (PUD) For Land Areas over 15,000 SF

Zone District	Commercial Use Only	With Residential	Max. Height	% Lot Cover*	Rear Yard
C-2-A	2.0	3.0	65'	60%	15'
C-2-B	2.0	4.5	90'	80%	15'
CR	4.0	8.0	110'	75%	
C-M-1	3.0	N/A	60'***	N/A	12'**
C-M-2	4.0	N/A	90'	N/A	12'**
C-M-3	6.0	N/A	90'	N/A	12'**
Others of relevance:					
C-3-A	3.0	4.5	90'	75%	---

*^ The Uptown Arts Overlay preferred uses include below market housing, theater uses, specific retail store types, and preservation of buildings constructed before 1958.

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Additional Permitted Intensity (FAR) in underlying zoning districts per Uptown Arts Overlay - Maximums may require inclusion of "preferred uses" as described in the DCMR Title 11 Chapter 19.

Zone District	Commercial Use Only	With Residential	Max. Height	% Lot Cover*	Rear Yard
C-2-A	2.0	3.0	65'	60%	15'
C-2-B	2.0	4.5	90'	80%	15'
C-3-A	3.0	4.5	75'^^	75%	15'
CR	4.0	6.0	110'^^^	75%	

* Maximum for residential uses
** Above 20 feet the minimum depth of the rear yard shall be 2.5 in/ft of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 ft.
*** Maximum number of stories = 3.
^^ At 50' height of proposed building, required 45 degree or 1:1 setback for upper floors when adjacent to a residential zoning district.
^^^ At 65' height of proposed building, required 45 degree or 1:1 setback for upper floors when adjacent to a residential zoning district.

In order to implement "DUKE," the following actions are submitted as recommendations (the letters are key to the map on previous page):

A. Allow for commercial, residential and/or cultural use of the Grimke School: properties between Grimke School and the southeast corner of the intersection of U Street and Vermont Avenue; properties on the south of U Street on the 900 block and properties on the 1900 block of 9th Street. In doing so, be mindful of the historic preservation regulations which also impact these properties and that some residential and mixed uses properties are currently within residential or light manufacturing zones. Continue to require retail in properties fronting on U Street and 9th Street.

B. Change land uses regulations to allow for greater density up to 6.0 Floor Area Ratio and more lot coverage. Increase capacity of site to produce a variety of residential units types, more affordable housing, more office use, and shared parking possibilities. Provide incentive for location of destination anchor in the Housing Finance Agency site. Require ground floor retail to front onto Florida Avenue, V Street and Georgia Avenue. Allow up to 65 feet in height. Provide ability to rise to a maximum of 90 feet with a one to one setback from the cornice after 65 feet on any public street. Each additional floor above the 65 foot height should utilizes not less than 75% of the envelope created by the additional height up to 90 feet. Encourage preservation and adaptive re-use of existing structures which are possibly eligible for preservation.

C. Require ground floor retail uses which front onto V Street and Georgia Avenue for properties north of the intersection of Florida Avenue/Georgia Avenue and 7th Streets. Apply design guidelines compatible with those in the Uptown Arts Overlay and this Framework Plan. Encourage preservation and adaptive re-use of existing structures which are possibly eligible for preservation on the northeast corner of Florida Avenue/Georgia Avenue and 7th Streets.

D. Preserve the existing open space in front of the Howard University Hospital as open space.

E. Strengthen preservation and zoning requirements to maintain and encourage adaptive re-use of the architecturally distinct, existing structures on Square 0440 and the portion of Square 0441 confronting T Street and portion of Square 0441 east of Wiltberger Street.

F. Change land uses regulations to allow for greater density up to 6.0 Floor Area Ratio and more lot coverage. Increase capacity of site to produce an expanded variety of residential units types, more affordable housing, more office use, and shared parking possibilities. Allow up to 65 feet in height. Provide ability to rise to a maximum of 90 feet with a one to one setback from the cornice after 65 feet on any public street. Each additional floor above the 65 foot height should utilizes not less than 75% of the envelope created by the additional height up to 90 feet. Encourage preservation and adaptive re-use of the potentially preservation-eligible portions of the Wonder Bread Building.

G. Allow low density commercial uses on the Watha T. Daniel/Shaw Neighborhood library site to a maximum height of 65 feet and a density of 3.5 FAR to encourage a mix of uses, including a new library building, on the site.

Other technical and programmatic recommendations include:

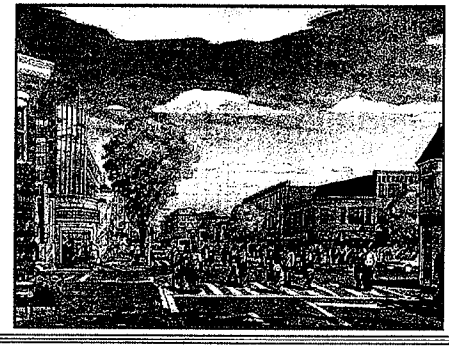
1. Allow concert halls, other performing arts spaces and nightclubs as eligible evening uses which may share parking with other destination district uses;

2. Consider construction of a public parking structure to relieve projected parking needs and the need created by the historic properties which may be rehabilitated. Relieve site specific parking requirements for property owners who are located within a 2 block radius of this garage and who also incorporate eligible or preferred uses within the Uptown Overlay.

3. Seek to provide a financial resources for existing property owners to repair their historic properties by allowing Transfer Development Rights that provide for as bonus density on a 1 to 1 basis for unused density per underlying zoning from buildings in the Project Area that contribute to the character of the historic district to a designated receiving area in or outside the Project Area. Include preservation covenants and processes. Add a provision that TDRs and bonus density are not allowed to increase density and height on a lot occupied by a building that contributes to the character of the historic district.

4. Require ground floor levels to have a minimal structural clearance of 14 feet in height to a minimum depth from the building restriction line of 40 feet.

5. Provide for the ground floor glass display window and entrances requirement of no less than 60%.



WMATA-INV 008678

5. Mixed Land Uses

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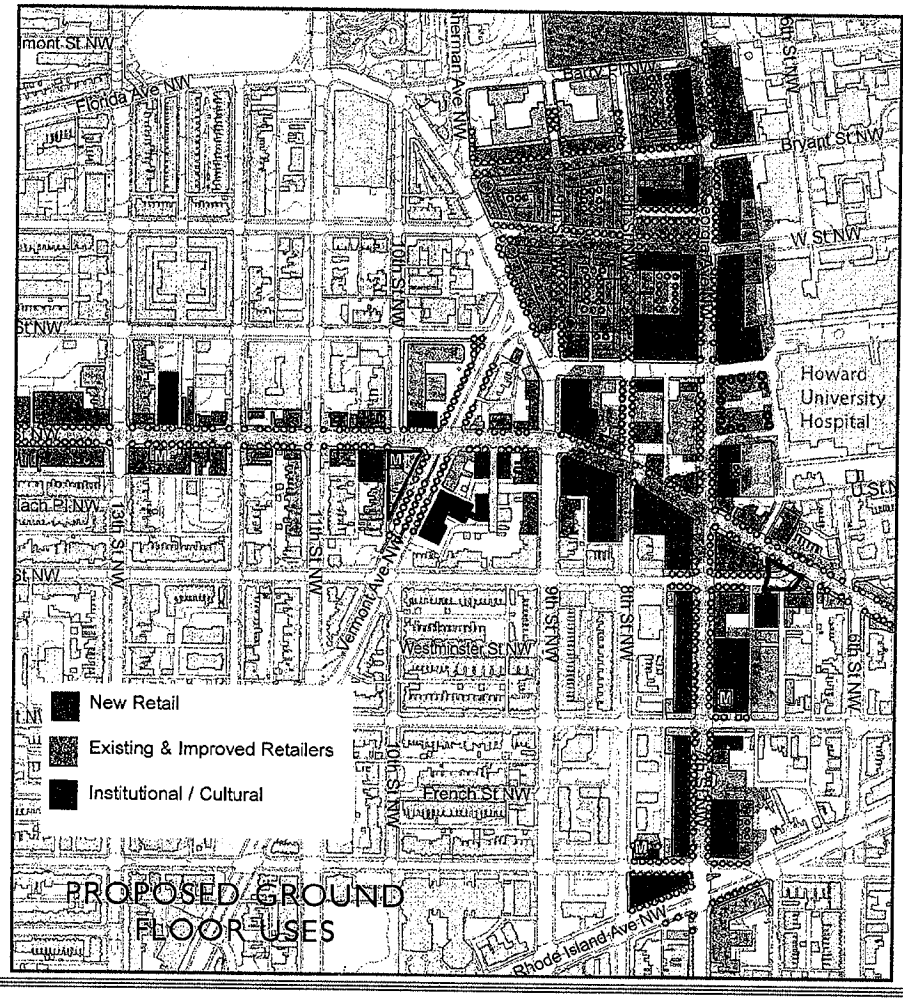

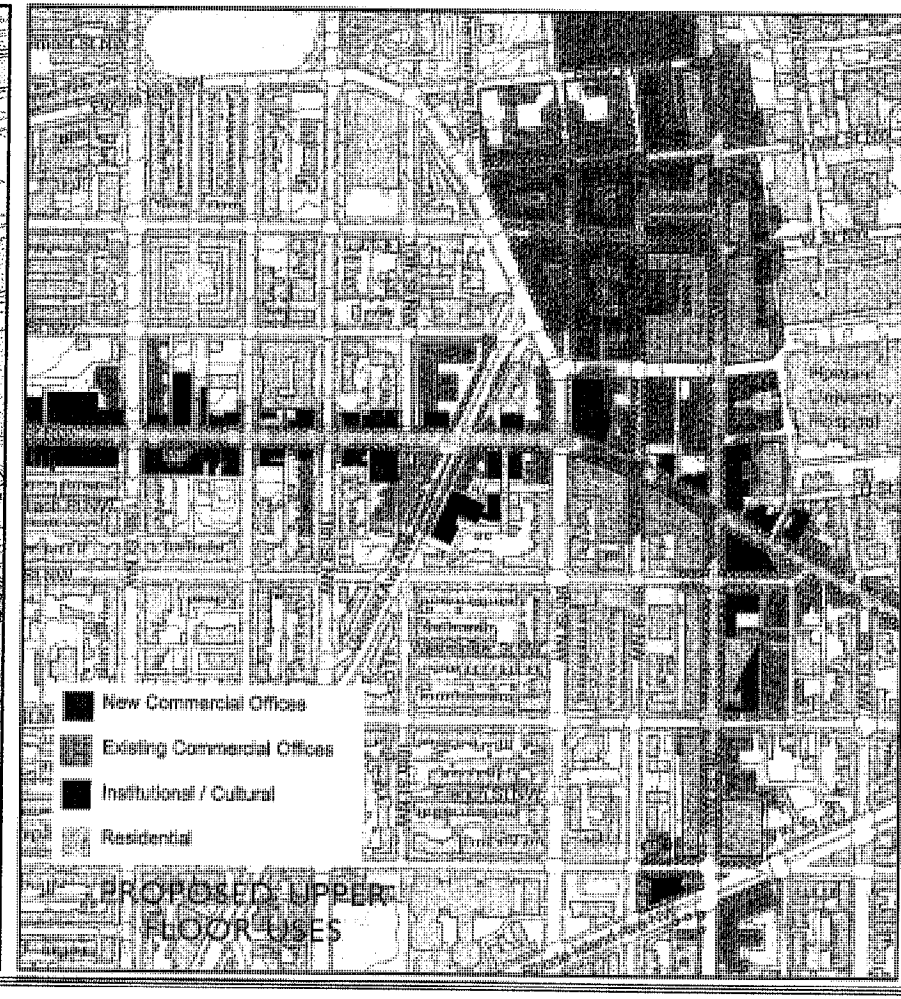

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008679

FOIA CONFIDENTIAL TREATMENT REQUESTED

6. Transportation & Parking

Capitalize upon existing, planned and proposed transit services to create an inviting pedestrian-oriented neighborhood district and also develop a parking demand management system to relieve parking pressures as development happens.

RECOMMENDATIONS

1) Explore the potential for the expansion of Metrorail Yellow Line service and the Downtown Circulator to this area.

2) As rapidly as possible, complete assessments, now underway, that are necessary for final approval, funding and scheduling of new surface transit service along the U Street/Florida Avenue and 7th Street/Georgia Avenue corridors.

3) Schedule design and construction of special streetscape improvements for the U Street/Florida Avenue and the 7th Street/Georgia Avenue corridors to coordinate with transit improvements, and in the interim implement the city streetscape standards to ensure a safe and attractive pedestrian environment.

4) Review the scopes for DDOT's upcoming studies of the UDD area to ensure that they contain, among other things:

   A) Estimated parking demand and deficits from existing and proposed destination uses.

   B) Estimated parking demand and deficits from historic properties in the Project Area where preservation will not allow adequate provision of parking on-site.

   C) Estimated demand from potential removal of curbside parking to accommodate transit and other streetscape improvements.

   D) Potential for joint and shared use of existing and proposed parking resources.

   E) Workable locations for adding parking to service demand identified above.

   F) Tour bus parking and management.

   G) Strategies for management of spillover parking from Project Area businesses and institutions to residential neighborhoods.

   H) Priority locations for public parking given demand estimates.

   I) The existing capacity of alleyways to accommodate service and loading functions and a strategy for enhancing alleys, by expansion and other means, to allow transition of service and loading functions from curbside locations to them.

   J) Suggested auto ingress/egress and service locations for development sites fronting on pedestrian streets where curbcuts are prohibited.

   K) Suggested auto ingress/egress points to minimize impacts on residential neighborhoods and conflicts with proposed transit, bicycle, and pedestrian systems.

5) Resolve lead responsibility and roles between the City and NCRC for creating public parking in the Project Area and aggressively formulate a parking strategy and facilities program that seeks input from local businesses, institutions and the community, with special emphasis on cooperative arrangements with Howard University.

6) Support revision of zoning regulations and operating protocols that would facilitate tax exempt financing of public parking facilities.

7) Support creation of Tax Increment Financing, Payment in Lieu of Taxes, and Special Assessment projects and districts to help leverage other public funds (e.g., industrial revenue bonds, federal and local transportation funding) to finance implementation of transit and parking facilities.

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KEY OPPORTUNITY SITES

1 - Howard University and others
2 - Square 0441
3 - NCRC + UHOP site
4 - WMATA + HU / CVS site
5 - Housing Finance Agency
6 - Howard Hospital parking lot
7 - HU'S 125 Bed Site (redeveloped)

WMATA-INV 008680

7. Character of Built Environment

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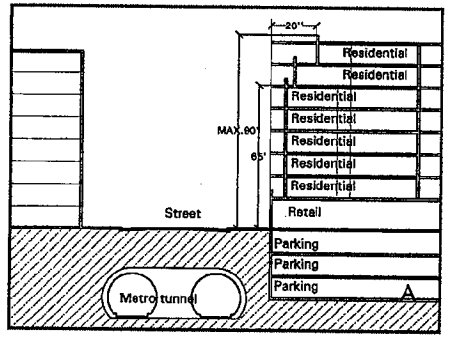
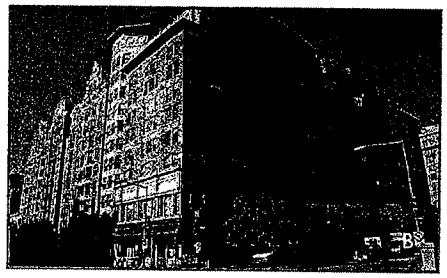




(a) BUILT FORM

As it did historically, architecture will play a critical role in shaping the image of this destination district. In many ways, the future architecture of this place, in addition to the proposed uses, will be like a "phoenix rising from the ashes" left after the 1968 riots and years of disinvestment. Therefore, it is very important that all stakeholders work to achieve signature architecture that adhere to these general guidelines:

A. Employ innovative use of materials and color;
B. Incorporate interesting details and rhythms;
C. Exploits natural and artificial lighting;
D. Use massing and scale to "fit in";
E. Include well designed ground floors.

All buildings are to be set directly on the front and side property lines. In the rear, buildings may be set back from the rear property line, but are not required to create a yard. Buildings should have clearly articulated bases that are two story in height and cornices. Tripartite facade arrangements are encouraged. Tripartite means an articulated two story base, body of building and cornice/parapet.

Where allowable and recommended by this Plan, new construction should rise from the property line up to a 65 foot height then step up on a 1:1 basis to a maximum building height of 90 feet from any public street, e.g. on 7th Street and Florida from 7th to 9th Streets.

Facades should not be flat, but should be articulated with bay windows, balconies or other architectural element. Significant transparency is encouraged.

Parking should be below grade or behind the building and shielded from view from adjacent streets.

Preservation regulations apply to structures within Historic District.

(b) GROUND FLOOR / PEDESTRIAN LEVEL

The following guidelines are intended to encourage the development of a flexible and vibrant neighborhood shopping street which includes cafe's, restaurants and other retail / entertainment uses that enliven the quality of life both indoors and outdoors.

1) Provide an architectural frame and window opening that allow flexibility for changing uses and tenants over time, while creating a consistent rhythm and identity;

2) Incorporate frequent entrances to ground floor uses, with building entrances at least every 40 feet;

3) Use windows and glass doors in no less than 60% of the total ground floor facade;

4) Encourage transom windows above doors and storefront windows;

5) Set windows a maximum of 18 inches above the ground and within 12 inches of the finished ceiling;

6) Provide a minimum of 14' ground level floor to finished ceiling clear height;

7) Prohibit black glass, opaque glass and other "false window" techniques;

8) Encourage creative signs which express the type of business and perhaps recall area history.

(c) PUBLIC REALM

Priority should be given to crime reduction, safety and an improved design of Ellington Plaza (T Street between 7th Street and Florida Avenue) and the African American Civil War Memorial Square area (the memorial plaza and adjacent Vermont Avenue), with construction funding scheduled to coordinate with redevelopment/renovation programs at the Howard Theatre and Grimke School, respectively.

DC Commission on the Arts & Humanities should be engaged to commission artwork for the following:

1) The U Street facade of the Garnet-Patterson School.

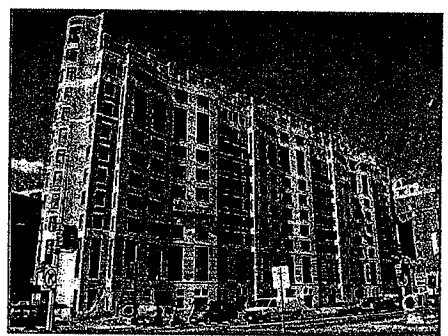
2) The gateway site (south side of Florida Avenue between Wiltberger and 6th Streets) of Ellington Plaza (placement to be coordinated with streetscape design and improvements).

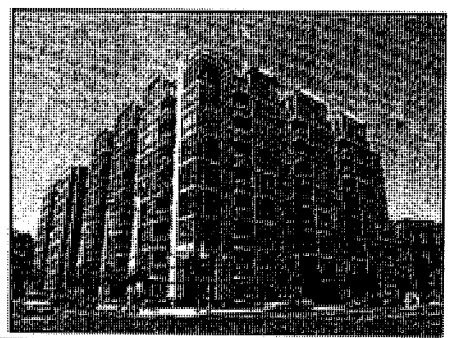
3) The gateway site at 7th Street and Rhode Island Avenue (design and placement coordinated with improvements to the Watha T. Daniel/Shaw Neighborhood Library improvements).

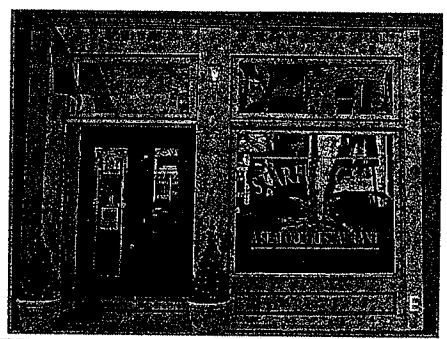
4) Other locations within the Project Area as determined by a Public Art Framework for the Area.

Use funds set-aside for the city in WMATA's Transit Infrastructure and Investment Fund to undertake design studies and implementation of resulting recommendations to improve the functionality, appearance and public placemaking contribution of Metro plazas in the Project Area, with the following order of priority:

1) Lincoln Common (entrance of the U Street / Cardozo Metro station south of U Street, across from the Lincoln Theatre).







FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008681

7. Character of Built Environment

2) 7th and S Street (north entrance of the Shaw-Howard University Metro station at the NCRC/WMATA redevelopment site), to be coordinated with design and redevelopment of the parcel.

3) 8th & R Street (south entrance of the Shaw-Howard University Metro station).

Coordinate schedules for design and improvement of U Street/Florida Avenue and 7th Street/Georgia Avenue streetscapes with schedules for implementation of surface transit improvements in those corridors, with interim improvements made to the District's standard in conjunction with ongoing redevelopment/renovation activities.

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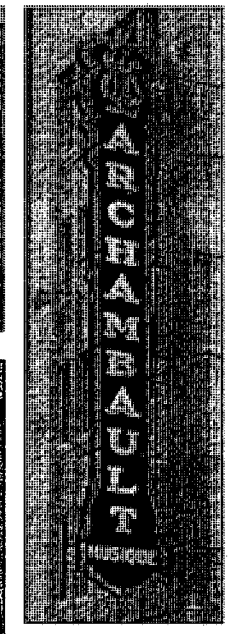
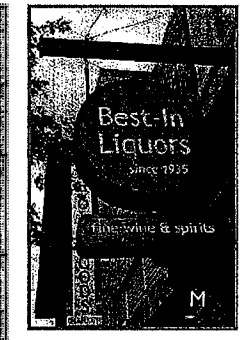
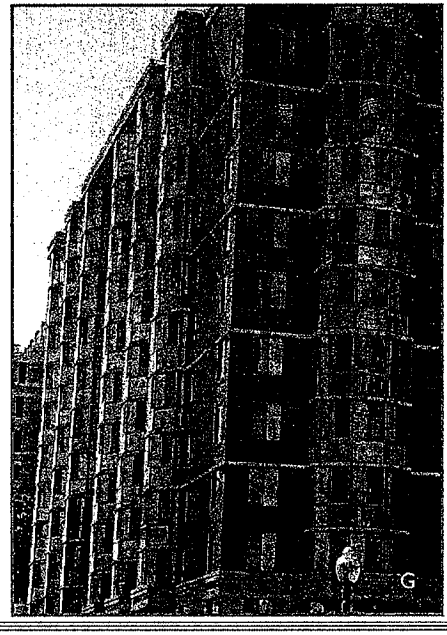
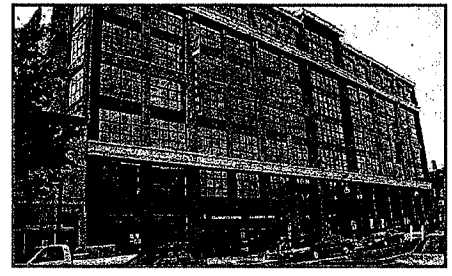
PHOTOS

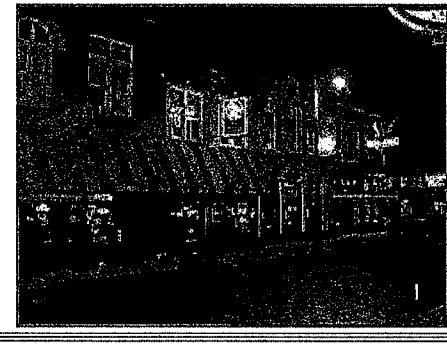
A. Building section illustrating set back at 65 feet.
B. Lansburgh Apartments - Tripartite building treatment.
C. New residences. Flat facades are discouraged.
D. Solo Piazzo, Washington, DC. Increased facade transparency.
E. Starfish. Detailed and interesting retail business expression.
F. Bethesda Outdoor dining and coffeehouses.
G. Meridian Apartments. Washington, DC. Note rhythm of the facade and degree of transparency.
H. The Logan. Note tripartite building treatment.
I. Beale Street, Memphis, TN. Note signage and lighting.
J. Nikatown - Back Bay, Boston. Note detailed cornice.
K. Post Apartments - Washington, DC. Note use of color and varied facade rhythm and shape.
L. Archambault Musique. Marquee signs recommended for all significant destination venues (proposed and existing)
M. Best-In Liquours. Improved business signage and facade led to a significant increase in business sales.
N. Bread & Chocolate - distinctive architectural signage band.
O. Sonsie Boston. Allowing indoor activites to enliven outdoor areas is strongly encouraged.

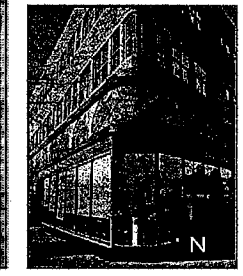












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WMATA-INV 008682

C. African American Cultural Heritage

Promote cultural tourism initiatives based on the rich African American historical and cultural assets of the area that will bring economic development opportunities for local residents and businesses.

RECOMMENDATIONS

Recognize Cultural Tourism DC (CT/DC) as the lead agent for working with local cultural and neighborhood organizations to formulate and coordinate expanded heritage-related programming in the Project Area and adjacent historic neighborhoods in order to bring more jobs and business opportunities to the area through cultural tourism; and endorse and support CT/DC's program initiatives:

1) Seek resources to strengthen the capacity of local cultural attractions to provide engaging and interrelated interpretive programs that relate the history of the area in the context of African American and American history.

2) With local entrepreneurs and cultural partners, establish a tour business that perpetuates model walking and bus tours, currently co-sponsored by CT/DC and Manna CDC.

3) Conduct training for tour guides, "sidewalk storytellers" and Green Team employees on the area's history, attractions, and welcoming and orientation skills.

4) Convene the cultural and business organizations in the Project Area to assess the support for establishing a welcome and orientation center; and, if strong support, to encourage them to designate/structure an organization to lead the effort.

5) In conjunction with cultural partners and Main Streets, formulate and promote cultural events based on the African American heritage of the area.

6) Work with city officials and civic and philanthropic leaders to develop funding partnerships designed to interest international, national and regional tourists in discovering and experiencing the attractions in the Project Area and adjacent neighborhoods and patronizing its cultural arts venues and businesses.

7) Continue to advocate the protection and restoration of the historic assets of the area and adjacent historic neighborhoods.

8) Continue to convene a bimonthly Roundtable for all public and private partners to provide networking opportunities, focus on common issues of current importance, encourage collaboration, and pursue joint advocacy for program implementation.

9) Conduct surveys to test and refine initiatives' acceptance, effectiveness and impacts.

Note: CT/DC estimates approximately $1.5 million will be required ($300,000 annually) as core support to develop these initiatives. Funding sources might include local businesses, institutions and cultural/arts partners; the foundation community; and local and federal governments.

Restore and adaptively reuse the Howard Theatre as a mixed-use, performing venue in ways that reflect the cultural significance of the site, including an interpretive museum that relates to the history of the theatre.

Designate the Grimke School for adaptive reuse to include among other uses facilities for an interpretive museum for the African American Civil War Memorial and its Foundation, a welcoming and orientation center for visitors to the area, and potentially other cultural facilities (e.g., the Black Fashion Museum); initiate a design and programming study to determine capacity and feasibility; and implement.

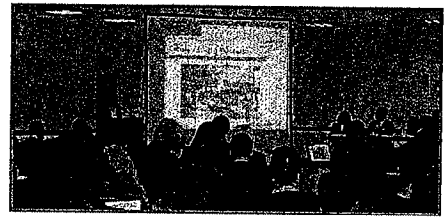
Encourage and support efforts to restore, maintain and actively use and interpret the Mary Church Terrell and Robert Terrell Home in adjacent LeDroit Park, and the Carter G. Woodson Home just south of the UDD on 9th Street.

Target facade and development funding and zoning incentive programs and technical assistance to give priority to ensuring restoration and reuse of the above noted historic and cultural assets and to adjacent historic properties that reinforce their setting.

Encourage local cultural institutions to explore the technical and curatorial assistance, and collections sharing programs afforded by affiliate status with the Smithsonian Institution.

Explore relationships with the Smithsonian Institution (in particular, American History, and the emerging African American Culture and History and Music museums) that inform members and visitors of the attractions in UDD and encourage visitation.

PHOTOS: On May 4, 2004, DC Office of Planning convened a roundtable of cultural heritage experts from Harlem, New York; Philadelphia, Pennsylvania; Kansas City, Missouri; and Washington, DC. Those experts provided guidance about improving upon being an attractive destination, facilities development and partnering with cultural industry artists.



promote cultural tourism initiatives based on the rich African American historical and cultural assets

Cultural Heritage Experts

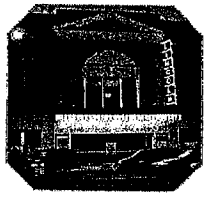
Kenneth Knuckles, CEO & President, Upper Manhattan Empowerment Zone (UMEZ)

Patricia Washington, Vice President Grants & Development, Greater Philadelphia Tourism & Marketing Corporation (GPTMC)

Mikki Shepard, Board Member - UMEZ, Chair, Cultural Industry Investment Fund (CIIF)

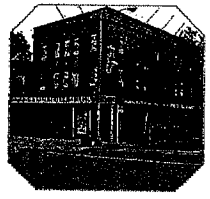
Frank Smith, Founder, African-American Civil War Memorial & Museum - Washington, DC

H. David Whalen, President & CEO, Jazz District Redevelopment Corporation - Kansas City



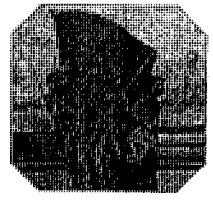
Lincoln Theatre

True Reformer Building

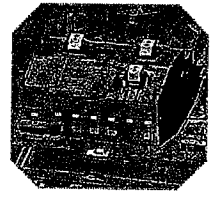


Bohemian Caverns

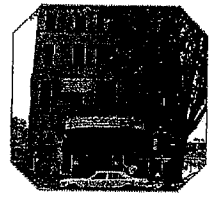
Prince Hall Grand Lodge



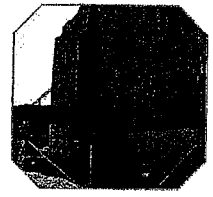
African-American Civil War Memorial



9:30 Club



Dunbar Theatre



Howard Theatre

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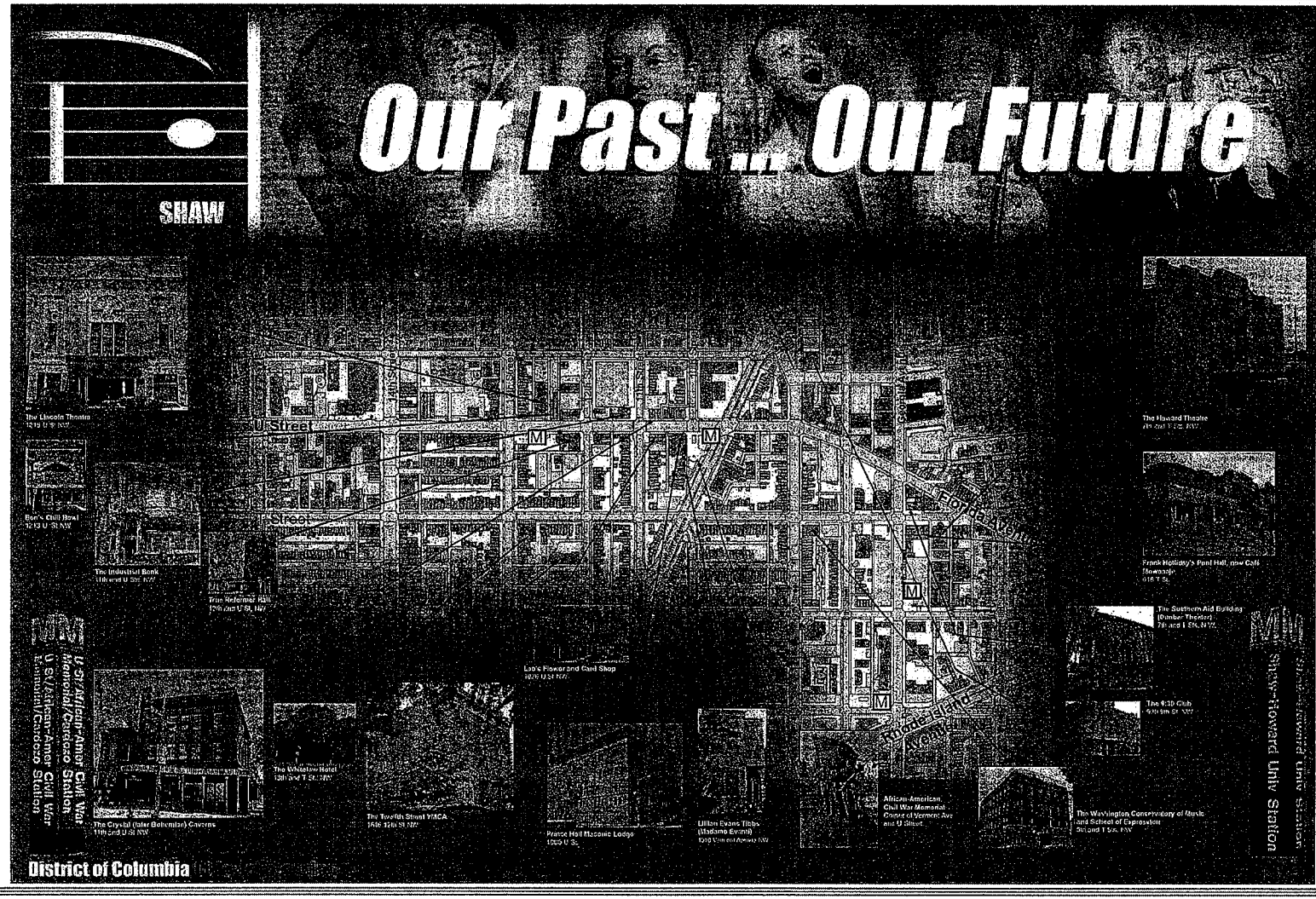
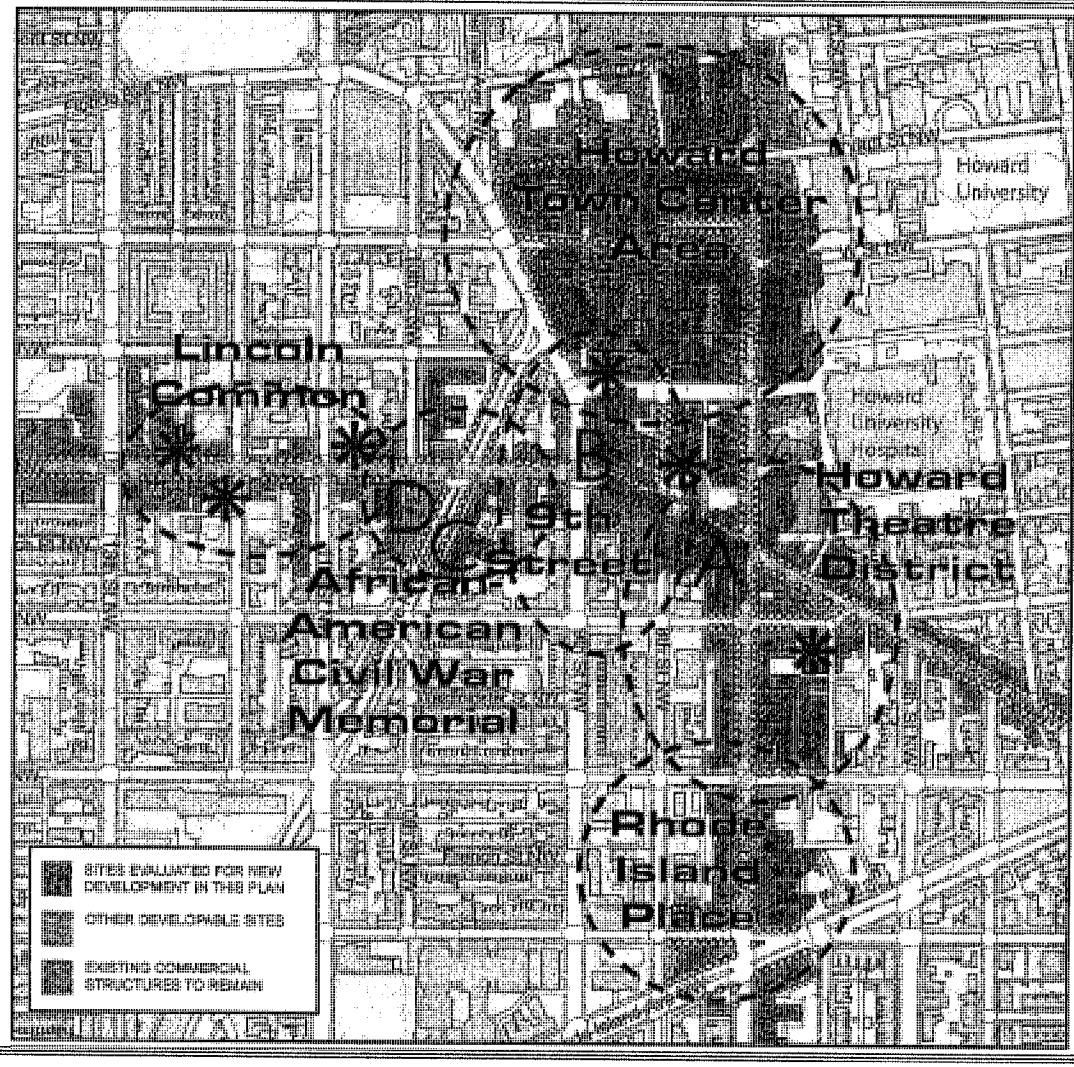


FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008684



D. Destination Venues

Allow for the active expression and appreciation of music with particular emphasis upon the area's jazz heritage.

Upon rehabilitation as a mixed entertainment venue for 500-600 persons, the Howard Theatre will be another destination anchor within the Project Area. It should work in a complementary fashion with existing venues, i.e. Lincoln Theatre, 9:30 Club, etc. Other destination uses are needed to fill in the "cultural/entertainment gap" that exists between the Howard Theatre and uses further west along U Street.

Several additional destination uses should be incorporated into the development of the following sites:

A. WMATA + HU / CVS Site, southwest corner of the intersection of 7th Street & Florida Avenue;
B. Housing Finance Agency Site, northeast corner of 9th Street & Florida Avenue;
C. Grimke School, Vermont Avenue near U Street; and
D. Prince Hall Grand Lodge - First Floor at the Memorial Plaza.

Of those four, it is critically important that the Housing Finance Agency site's destination use have a live music entertainment use of significant size and retail attractive to patrons and those who are there during the day. The Housing Finance Agency site is at a critical bend in the U Street / Florida Avenue intersection where the greatest opportunity is both a visual connection and a programmatic connection.

The auditorium at Grimke School could also take on a destination role if programmed in conjunction with re-use of the overall facility. Care should be taken to mitigate the impact of any proposed destination use in the school with the surrounding neighborhood.

Existing cultural facilities should be provided assistance, as needed, to expand and improve their cultural offerings. The Lincoln Theatre and Bohemian Caverns, in particular, are critical to the storytelling about the Project Area's heyday and to the mixed use and health of the Project Area into the future. A Cultural Facilities fund should be established which would provide financial and technical assistance to qualifying for profit and not for profits whose overall mission includes both a sustainable financial forecast and a cultural heritage component. New uses with a similar African American or African cultural heritage should be actively encouraged and attracted to locate within this area.

James Brown Live in New York City's Battery Park - Event sponsored by American Express.

allow for the active expression and appreciation of music

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008685

E. Retail Development (DC Main Streets)

foster a spirited environment of local entrepreneurship

Foster a spirited environment of local entrepreneurship in which local businesses are provided enhanced services and opportunities and the best in new retail ideas are supported.

RECOMMENDATIONS

Business Retention, Expansion & Attraction

1) Support ongoing efforts by the 14th and U Main Streets Initiative and Shaw Main Streets, Inc. (collectively "Main Streets") to complete surveys and needs assessments of existing corridor businesses in the Project Area.

2) Encourage Main Streets to formulate a coordinated Retail Attraction and Branding Strategy for the Project Area that builds on the surveys, needs assessments, market assessments prepared for this study, and takes advantage of technical assistance provided by reSTORE DC and the National Main Streets Center at the National Trust for Historic Preservation.

   Note: The Retail Attraction and Branding Strategy is an element of the Main Street and reSTORE DC programs. The Strategy is a combined business and community-based effort that: a) assesses existing and future conditions and opportunities of the commercial corridor, b) evaluates how existing businesses can better serve neighborhood needs and take advantage of evolving markets, c) identifies opportunities for new businesses, and d) identifies programs and resources to make it happen. The Strategy serves as a common blueprint for business revitalization. Compatibility with the Strategy positions businesses and projects to access reSTORE DC project funds. Private property owners should actively and jointly participate in this effort.

3) Support Main Streets programs to form partnerships to provide businesses and prospective entrepreneurs with free/low cost technical assistance to, among other things: understand the current and evolving marketplace so that they can position products and services to capture demand; refine business practices and plans so they can attract customers and capital; and establish networking system so they can take advantage of products offered by other local businesses, supportive organizations and the City and federal assistance programs.

4) Support Main Streets efforts to strengthen local business organizations that provide networking, advocacy and collective marketing.

5) As extension of technical assistance initiatives, encourage Main Streets and their business organization partners to establish relationships with local lenders to expand capital flow to local businesses.

6) Consolidate program administration of the facade grant/loan program within reSTORE DC to facilitate targeting resources for businesses and projects consistent with the Retail Attraction and Branding Strategy and, where appropriate, leveraging reSTORE DC's Commercial Property Acquisition and Development Program (CP-A&D).

7) Encourage reSTORE DC to involve the Historic Preservation Office in review of facade grants/loans to speed design and approval and also to establish coordinated working relationships with the L'Enfant Trust and the National Trust's Community Partners to ensure maximum leveraging of federal tax benefits through facade dedications and restoration tax credits.

8) Provide case studies and seminars to introduce Project Area businesses, organizations and the lending community to how they can use reSTORE DC's CP-A&D program and the US Small Business Administration's (SBA) 504 loan program to finance acquisition and improvement of business properties, with special focus on the potential for joint venture and/or condominium interest -- which may be more attractive and feasible in the Project Area given relatively high property values.

9) Encourage SBA's local business center to aggressively market HUB Zone programs to eligible Project Area businesses.

10) Support the Williams Administration's initiatives to expand Tax Increment Financing and Payment in Lieu of Taxes financing in support of loans to neighborhood businesses to fund capital improvements at affordable terms.

11) Encourage the National Capital Revitalization Corporation to aggressively use Economic Development Finance Corporation and Neighborhood Economic Development Corporation funding to leverage capital and operating funding for neighborhood businesses.

12) In conjunction with redevelopment of publicly-owned/controlled properties and extension of publicly-assisted financing (e.g., revenue bonds) for projects in the vicinity, require redevelopers and beneficiaries to provide priority outreach and opportunities for contracting with Project Area businesses as part of their Local, Small and Disadvantaged Business Enterprises (LSDBE) commitments.

    Note: These City programs require redevelopers and beneficiaries to commit 35% of related contracting opportunities to LSDBEs.

13) Within redevelopment projects on publicly-owned/controlled land, provide corridor businesses that are consistent with the Retail Attraction and Branding Strategy and leasing objectives for the buildings with first option to lease.

Critical & Additional Services

1) Support extension of 14th & U Main Street Initiative's Green Team demonstration project and, working in collaboration with Shaw Main Streets, Inc., expansion of the area covered to include all of the Project Area's commercial corridors.

2) Authorize and encourage public and public-related agencies having properties in the areas served by the Green Team to maintain their properties to a high standard, coordinate security, and to make financial contributions matching privately-raised contributions for maintenance of Green Team operation.

3) Through reSTORE DC, provide technical assistance to Main Streets efforts to research, market and, if supported by area property owners, form a business/community improvement district where special assessments would provide a stable and sustainable funding source for Green Team and other selected services.

Promotions

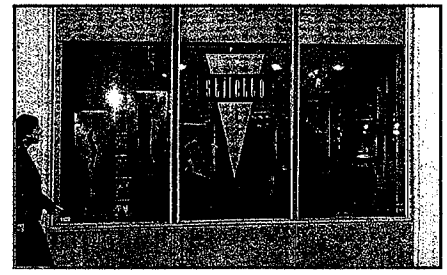
1) Support Main Streets efforts to maintain and expand a regular calendar of UDD activities and events.

2) Encourage Main Streets to formulate a business plan and strategic partnerships ensuring that promotional events are financially sustainable.

3) Continue the 14th & U Farmers Market at the Reeves Center (an initiative of the 14th & U Main Streets Initiative, Community Harvest and Manna CDC).

4) Involve Main Streets and CT/DC in design planning for improvements to the plaza at the African American Civil War Memorial and Ellington Plaza and secure commitments for using the improved spaces for promotional events.

5) Private and corporate partnerships should be encouraged and sought for sponsorship of signature events and festivals within the Project Area. Those events should be centered around the destination venues, especially the Howard Theatre, Lincoln Theatre and Housing Finance Agency sites.



PHOTOS: Unique locally owned stores: (top) Capogiro Gelato exterior & interior - Philadelphia. (center) Stiletto Shoes - Philadelphia. (bottom) 14th & U's Dogs Days of Summer event.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008686

FOIA CONFIDENTIAL TREATMENT REQUESTED

F. Local Access & Participation

ensure that existing residents receive opportunities and a voice

Ensure that existing residents receive opportunities and a voice in shaping how the destination district develops.

RECOMMENDATIONS

Affordable Housing

1) Require inclusion of 20 to 30 percent affordable housing units in the Request for Proposals for redevelopment of the National Capital Revitalization Corporation's (NCRC) property on Square 442 (adjacent to the United House of Prayer site) and, if any portion is dedicated to housing, for NCRC's property on Square 441.

2) Encourage Howard University and the Washington Metropolitan Area Transit Authority (WMATA) to include the provision of affordable units as a selection criterion in seeking development proposals for the site at Seventh Street and Florida Avenue (Square 0416).

3) Explore strategic acquisition (through land swaps, purchase of fee or joint ventures) by the NCRC and/or the City of redevelopment opportunity sites to expand affordable housing, including but not limited to the Howard University (former PIC) site on Square 417 and the north and south parcels of the Lincoln/Westmoreland site on Square 419.

4) Target federal and local zoning and funding incentives to redevelopment of the above listed sites (pledging availability as part of the Request for Proposals) to leverage affordable housing and to preserve asset value.

5) Explore use of Section 8 vouchers to enable low-income households to purchase homes.

6) Approach area churches to solicit support and/or sponsorship for development of additional affordable housing in the area.

7) Work with the U.S. Department of Housing and Urban Development (HUD) and owners of existing affordable housing developments to seek retention of affordable housing.

8) Assist area developers to access D.C. Housing Finance Agency multi-family mortgage financing, available to housing developments which are affordable to households with incomes below $43,500 for a family of four.

9) Have the Home Again program to accelerate disposition of any eligible units existing in surrounding areas.

10) Alert area residents to the availability of income-tax credits for very-low-income, long-term homeowners whose property taxes increase faster than 5.0 percent per year.

Note: The tax credits, enacted in the Housing Act of 2002, are designed to protect residents who have owned their homes for at least seven years from being forced out of their homes by rising property values and real property taxes.

11) Support the Williams Administration's initiatives to expand Tax Increment Financing and Payment in Lieu of Taxes financing in support of neighborhood development.

Employment & Entrepreneurship

1) Encourage Main Streets and their business and institutional partners to maintain a job bank alerting residents to employment opportunities and matching them with jobs.

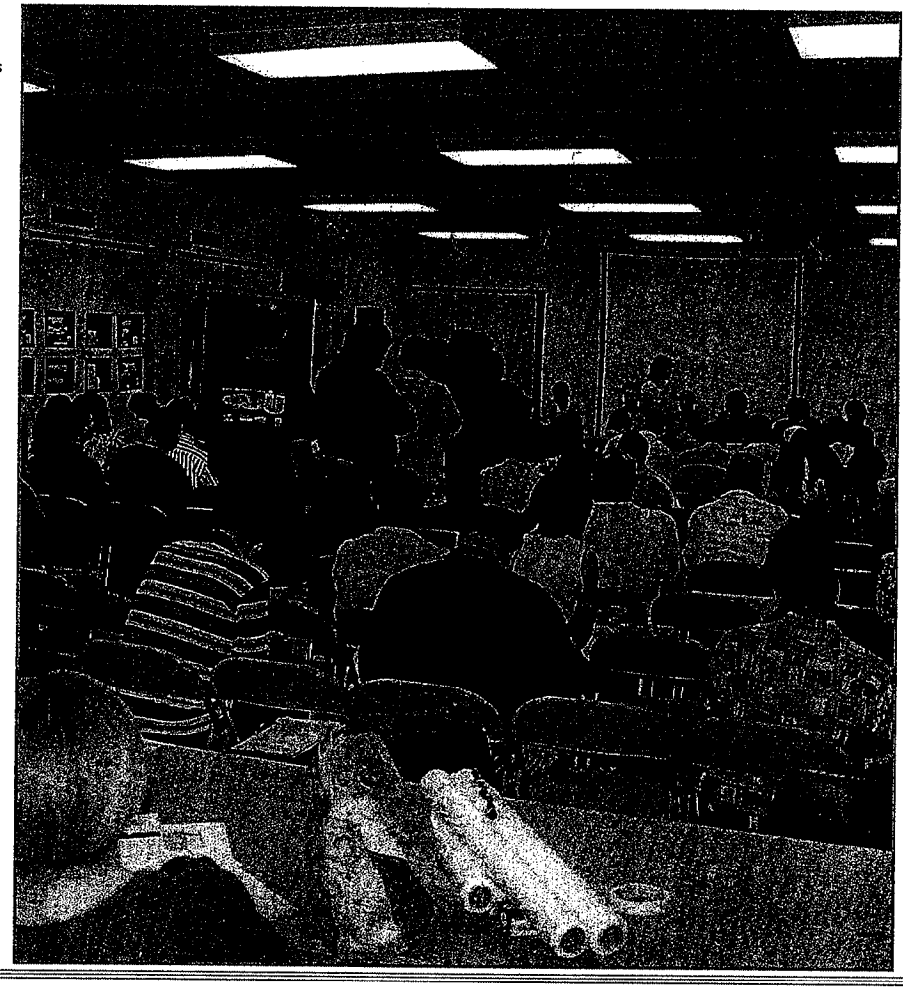
2) Support Main Streets and CT/DC's efforts to hire and train local residents for the Green Team and as tour guides and "sidewalk storytellers".

3) Advertise job postings resulting from First Source Agreements (with redevelopers of public sites and their contractors and recipients of public financing programs) with Main Streets and Advisory Neighborhood Commissions to better alert neighborhood residents of opportunities.

4) Give priority to neighborhood residents for apprenticeship opportunities resulting from First Source Agreements.

5) Support the Williams Administration's initiatives providing wage credits to encourage local businesses to hire residents.

6) Support Main Streets initiatives to provide prospective entrepreneurs with free/low cost technical assistance and training.



WMATA-INV 008687

Acknowledgements

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Frank Smith	African American Civil War Memorial - DC

Special thanks to the nearly 500 residents, business owners, institutional representatives, developers and property owners who attended the community meetings that were a part of this planning process. DC Office of Planning looks forward to continued work with you as each component of this strategic development plan moves toward implementation. This document should serve to keep us all focused on specific development and design targets which will help us to realize an uptown, neighborhood destination district which "plays second fiddle to no one."

FOIA CONFIDENTIAL TREATMENT REQUESTED
WMATA-INV 008688

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"INCLUSIONARY ZONING FINAL RULEMAKING CONGRESSIONAL REVIEW EMERGENCY DECLARATION RESOLUTION OF 2009".

General Information

Legislation #	Short Title		Act/Res #
PR18-0083	"INCLUSIONARY ZONING FINAL RULEMAKING CONGRESSIONAL REVIEW EMERGENCY DECLARATION RESOLUTION OF 2009".		R18-0022
Law #	**Expiration Date**	**Enactment/Action Date** Tuesday, February 03, 2009	**Effective Date**

View Legislation Online
Introduction
Enrollment

Introduction

Introduction Date	Place of Introduction	Circulation Date	Committee Referral
Friday, January 30, 2009	Office of the Secretary	Friday, January 30, 2009	Retained by the Council
Comments	**Official Referral**	**Committee Re-Referral Date**	
Committee Reassign	**Comments Reassign**	**Public Notice of Introduction**	
Introduced By Gray	**At Request of**	**Co-Sponsored By**	

+ **Hearings Information** (click to expand/collapse)

Council Action

Committee Action	Report Filed	COW Action	First Vote/Reading
	EMERGENCY LEGISLATION	EMERGENCY LEGISLATION	
Final Vote/Reading 02-03-09, CC	**Third Vote/Reading**	**Reconsideration**	

+ **Voting Information** (click to expand/collapse)

Mayoral Review

Transmitted	Review End Date	Returned - Signature	Veto Date
		- Not Signed	
Override Date	**Act/Resolution #** R18-0022	**Enactment/Action Date** Tuesday, February 03, 2009	

Congressional Review

Transmitted	Re Transmitted	Projected DC Law Date

DC Register Publication

Act/Resolution Date	Vol	Page	Law
Friday, February 20, 2009	56	1646	

DC Law

Law #	Law Effective	Applicability Date	Expiration Date

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008690

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.

CC: Joel R. Washington, Marc Bondi

July 13, 2010

MEMORANDUM FOR: Chairman and Members of the Board

SUBJECT: Unsolicited Proposals

Mr. Graham has asked staff to analyze how WMATA's policies and guidelines address unsolicited proposals received if there has been a prior joint development solicitation for the site.

Staff undertakes this analysis without the benefit of a specific factual context or hypothetical situation. Therefore, three sets of Joint Development Guidelines will be discussed in an attempt to include all Joint Development Solicitations that are currently open, on-going, distressed or on-hold. This memorandum includes references to the Joint Development Policies and Guidelines dated February 21, 2002; July 21, 2005 and November 20, 2008 ("2002 Guidelines"; "2005 Guidelines" and "2008 Guidelines" respectively or collectively "Guidelines").[1] In addition to these Guidelines, references are provided to the July 28, 2004 Joint Development Solicitation ("2004 JDS") and the August 2006 Joint Development Solicitation ("2006 JDS" or collectively with the 2004 JDS, "Solicitations").[2] The WMATA Board of Directors adopted its first Joint Development Policy in August, 1980 and the first Joint Development Policies and Procedures Manual in 1988. A review of all of the complete history of guidelines and solicitations is beyond the scope of the request made to staff.

We note that a complete analysis of the status of negotiations of a Joint Development Solicitation is a fact-specific inquiry including information regarding action (or inaction) on behalf of each party involved in the negotiation. The analysis below, therefore, is by necessity at summary level.

---

[1] Excerpts of the Guidelines and Solicitations referenced in this memorandum are attached for the reader's convenience.

[2] No Request for Proposals has been issued under the November 2008 Joint Development Policies and Guidelines as of this writing. A Request for Qualifications (RFQ) was issued pursuant to the 2008 Guidelines; however the processes established in the RFQ are not the same as the processes undertaken to complete an RFP and therefore are not addressed in this memorandum.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008692**

In completing the requested analysis, staff also reviewed the Board Resolutions authorizing the referenced Guidelines. In each case, the Guidelines were adopted on a going-forward basis for Solicitations and Proposals. That is to say, as staff undertakes this analysis in 2008, the 2008 Guidelines apply to future solicitations and unsolicited proposals. If the question presented involved an on-going solicitation or negotiation (pre-failure of negotiations) the site-specific JDS would be read in the context of the then-current Guidelines to inform the decision.

For purposes of this memorandum, we have divided the Joint Development Solicitation process into four segments:

1. Solicitation of Developer Proposals;
2. Developer Submissions and Term Sheet Negotiations;
3. Joint Development Agreement Negotiations and Project Build-out; and
4. Failure of Joint Development Negotiations

Solicitation of Developer Proposals

WMATA could receive a development proposal during an open solicitation of proposals from a developer who was unaware of the solicitation. Notwithstanding the developer's possible lack of awareness of the open and on-going process, the 'unsolicited proposal' would be received and evaluated as a response to the open solicitation.[3] It is likely, but not certain, that, should the developer's proposal not address the requirements of the solicitation, the developer would be given the opportunity to amend or revise its submission in order to fully participate in the solicitation and provide a responsive proposal.

Developer Submissions and Term Sheet Negotiations

After the submission window closes, WMATA begins evaluation of submissions on both a technical and financial basis. During this period, an 'unsolicited proposal' received by WMATA is technically a late proposal. The issue of Late Proposals is not addressed in the Guidelines; however, the Solicitations allow consideration of Late Proposals "at the sole discretion of WMATA's Contracting Officer."[4] The Guidelines and the Solicitations contemplate an evaluation and negotiation process during this phase in which the developers would be ranked by staff and a recommendation made to the Board. The

[3] Section 2 of the Solicitations and Section 7 of the Guidelines address proposal requirements.
[4] Solicitations at 1.15

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008693

Guidelines and Solicitations further contemplate a "bump-down" process wherein Staff can move from the highest-ranked developer to the next-highest-ranked developer should negotiations with the highest-ranked developer fail to produce a Term Sheet approved by the Board.

> "If negotiations [for a Term Sheet] 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." 2006 JDS at Section 3.1.E, Proposal Review Process; *See similar language in 2004 JDS at Section 3.1.E.2, Proposal Review Process.*[5]

> "If negotiations [for a Term Sheet] are unsuccessful, Staff may terminate negotiations and commence negotiations with the second ranked developer, and those ranked thereafter, in order of ranking." 2008 Guidelines at 7.8; *See similar language at 2005 Guidelines at 7.3.6; and 2002 Guidelines at 7.3.8.*

In addition to the bump-down, the 2008 Guidelines contemplate requesting new submissions from all proposers should there be a material change in circumstances.[6] These options are in addition to the Board's inherent authority and discretion to cancel the solicitation and hold the property for WMATA use or re-start the process.

Joint Development Agreement Negotiations and Project Build-out

After the Board has approved a Selected Developer and Term Sheet an obligation to negotiate exclusively with that Selected Developer attaches to the process. Unlike the 'unsolicited proposal' received during the developer selection and term sheet negotiations process where some latitude is provided under the Solicitations; 'unsolicited proposals' received during this phase should be rejected because an approved Term Sheet confers on the Selected Developer an exclusive right to negotiate with WMATA. WMATA does not have the discretion to entertain a new developer at this late stage in the process. The Solicitations set a developer's expectation of a period of exclusive negotiations.

---

[5] Under the 2004 JDS and the 2002 Guidelines, Board Approval was required to designate a Selected Developer and Alternate Selected Developers before term sheet negotiations. A "bump-down" under the 2004 JDS and the 2002 Guidelines, therefore, was available if 1) the Board approved an Alternate Selected Developer and 2) Term Sheet negotiations failed with the Selected Developer. Beginning with the 2005 Guidelines and continuing through the 2008 Guidelines, Board Approval is sought concurrently for the Selected Developer and the Term Sheet, thus the availability of a "bump-down" under the current guidelines is not dependent on Board designation of an Alternate Selected Developer.

[6] 2008 Guidelines at 7.6.1

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008694**

> "A Developer designated by the WMATA Board of Directors as a Selected Developer will be required to pay WMATA, in immediately available funds, a nonrefundable option fee for WMATA's granting to the Selected Developer the exclusive right to negotiate a Development Agreement. 2006 JDS at Section 3.3.B, Post Developer Selection Process. *See 2004 JDS at Section 3.3, Post Developer Selection Process, where the JDS establishes a negotiation schedule, but not an express exclusive right to negotiate.*

It is true that there is no binding agreement with WMATA until a subsequent Joint Development Agreement has been approved by the Board and signed by the parties; however, as a governmental entity it is important for WMATA to deal fairly and in good faith with others and a cancellation at this point in the process would arguably breach these obligations.

Failure of Joint Development Negotiations

In the event that the Joint Development Agreement negotiations fail,[7] the Solicitations provide two alternative paths. Either the Board can reestablish the Selected Developer and provide additional time for negotiations or the Board can re-advertise the Joint Development Site.

> "In the event that this [negotiating] 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." 2006 JDS at Section 3.3.E, Post Developer Selection Process. *See also 2004 JDS at Section 3.3.B, Post Developer Selection Process.*

Neither the Solicitations nor the Guidelines address "bumping-down" after the failure of Joint Development negotiations. Read together with the express "bump-down" option during developer selection and term sheet negotiations, it is staff's opinion that "bumping-down" is not an option at this stage of the process.

It is possible to receive an unsolicited proposal after failure of negotiations but before

[7] Joint Development Agreement negotiations may fail for a variety of reasons. This memorandum assumes a good faith effort to reach agreement fails without wrong-doing or obstruction by either party.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008695**

the Joint Development Site is re-advertised. In this case, the 2008 Guidelines would apply. Section 14 of the 2008 Guidelines addresses Unsolicited Proposals and provides for internal reviews including screening for operational use[8] and notification of the local jurisdiction.[9] After these threshold reviews are successfully completed, WMATA would advertise the availability of the site for development and solicit additional proposals.[10] Staff would then evaluate the Unsolicited Proposal or solicited proposals and make a recommendation to the Board.[11]

Carol B. O'Keeffe
General Counsel

Nat Bottigheimer
Assistant General Manager
Planning and Joint Development

[8] 2008 Guidelines at 14.2
[9] 2008 Guidelines at 14.3
[10] 2008 Guidelines at 14.4
[11] Where no competitive proposals are received, Section 14.5 of the 2008 Guidelines would apply; where competitive proposals are received, Section 14.6 of the 2008 Guidelines would apply. In either case, Staff would ultimately present a Term Sheet and Joint Development Agreement to the Board for approval.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008696**

M E M O R A N D U M

7/1/10
Sent to BPH

DATE: June 23, 2010

SUBJECT: Re-solicitation of Florida Avenue Joint Development Property

FROM: Carol B. O'Keeffe

TO: [redacted]

COUN has been asked whether WMATA can either (i) re-advertise the Florida Avenue Joint Development project or (ii) negotiate exclusively with the losing bidders of the original Florida Avenue Solicitation.

FACTUAL BACKGROUND

In August 2007, WMATA issued the "Shaw-Howard/Florida Avenue Joint Development Site: Proposal Submission Requirements" (the "Solicitation"), seeking proposals for the development of WMATA's property on Florida Avenue, between 7th and 9th Streets Northwest in the District of Columbia (the "Property").

WMATA received three proposals. An evaluation team was convened to evaluate proposals. The net present value of the offers for the three teams was: (i) Banneker Ventures - $14 million; (ii) Moddie Turay - $11.8 million; and (iii) Lakritz Adler - $6 million. The evaluation team eliminated Lakritz Adler's proposal because the net present value of its offer did not meet WMATA's fair market value appraisal for the site ($7.5 million as of August 2007). In the Spring of 2008, Banneker Ventures was chosen over Moddie Turay. A Term Sheet was approved by the WMATA Board in July 2008. Banneker Ventures and WMATA attempted to reach an agreement on a lease and Joint Development Agreement for nearly two years. In March 2010, Banneker's status as the selected developer under the Solicitation expired.

Washington Metropolitan Area Transit Authority

DISCUSSION

The guiding documents for this project's competitive selection process are the Solicitation and WMATA's Joint Development Policies and Guidelines, as revised on July 21, 2005 (the "JD Guidelines").

Re-Advertisement.

The JD Guidelines do not address the scenario where a developer, selected under

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

the competitive process, is unable to reach a binding agreement with WMATA and so the developer's exclusive negotiation period expires. While the JD Guidelines are silent on this matter, they do not present a bar to WMATA's re-advertisement of the Property.

The Solicitation does address this exact situation. Per Section 3.3(C) of the Solicitation, in such cases, WMATA may choose to reestablish the selected developer's exclusive negotiation period or re-advertise the Property.

Negotiating Exclusively with Other Bidders.

The guiding documents are less clear about WMATA's ability to negotiate exclusively with the losing bidders after the expiration of a selected developer. Neither the Solicitation nor the JD Guidelines addresses whether WMATA, after an unsuccessful negotiation with a selected developer (after the execution of the term sheet), may go back and re-open negotiations with the other bidders. The guiding documents neither specifically permit nor prohibit this action.

As explained above, the Solicitation states that WMATA may extend the selected developer's exclusive negotiation period or re-advertise the Property, but the language used may be read as either permissive or restrictive. Under a permissive reading, the language does not restrict WMATA's actions to only these two actions, and WMATA may enter into negotiations with losing bidders. Under a restrictive reading, WMATA may only choose either (i) to extend negotiations with the selected developer or (ii) to re-advertise the Property.

Both the JD Guidelines and the Solicitation address the analogous scenario where WMATA is unable to successfully negotiate a term sheet with the highest ranked proposer (*See* Solicitation §3.1E and Joint Development Policies and Guidelines §7.3.6). In such cases, WMATA may terminate negotiations and commence negotiations with the second ranked proposer and those ranked thereafter, in order of ranking. Alternatively, WMATA may decide upon competitive negotiations with two or more ranked proposers.

CONCLUSION

The Solicitation makes it clear that WMATA may re-advertise in the event that a selected developer's exclusive negotiation period expires. The JD Guidelines and the Solicitation are less clear on WMATA's ability to negotiate with losing bidders in this scenario, though it is not specifically prohibited.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

FL Ave 6/23/10

NB, SG, RD, BPK, COK

- Solicitation Language

  - Expiration → Keep working w/ Banneker or Re-advertise

- Have to Resolve FL Ave issue by 7/23 meeting (w/ BM Graham)

- if BM Graham asks before then → "COUN is Researching" is the answer

- Unsolicited Proposals

  - Can you have an unsolicited RFQ?
    - SAAM Rejected, but told them will have a published RFQ in future

- memo - COK signed
  1.) - Can we Re-open RFP?
    - 2005 guidelines → Same as Solicitation
      - Bump down Rankings → T/S, not JDA/Lease
  ~~2)~~ Lease, not sale
  2.) Solicitation Expired; Alternative approaches (Gray Area)

- Business Reasons
  - L/A not Seriously (appraised value exceeded offer)
  - what if get down to $ that BV proposed

- Didn't Consider L/A
  - WMATA has decision memo & Sent letter to L/A

6/23/10

- FL Ave → Business Decision
  - Sell as excess property → SG
    - Graham wants lease
  - Cok → Still uncomfortable, but it is better than going down Ranking

- Excess or JD Proceeds
  - JD - Tiff
  - Excess - Capital

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).

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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 <u>excluding</u> all financial information (5 pages maximum).

E. Development Team Information

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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.

Tompkins

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;

TGP 6. Concept plan preparation and approval;

7. Intentionally omitted.

TGP 8. Development plan preparation and approval, including interim WMATA Replacement Facilities plan (allow 30 calendar days for WMATA approval);

TBP 9. Local and other governmental approvals and actions (zoning, site plan, alley closings, grants, etc., as applicable);

10. Project financing approval;

TGP 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.

TBP 12. Local permitting process;

13. Intentionally omitted.

14. Project construction period (per phase, if applicable);

15. Initial occupancy; and

16. Stabilization period.

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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.

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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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008705

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

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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 _____.

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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.

FOIA CONFIDENTIAL 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 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/JFT/jftb.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.

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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.

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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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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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WMATA
JOINT DEVELOPMENT
POLICIES AND GUIDELINES

Washington Metropolitan Area Transit Authority
Office of Property Development & Management
600 Fifth Street, NW
Washington, DC 20001

Revised: July 21, 2005

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APPENDIX

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1.0 INTRODUCTION

The Washington Metropolitan Area Transit Authority (WMATA) defines joint development as 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. Projects are encouraged 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, promote and enhance ridership, generate long-term revenues for WMATA, and encourage revitalization and sound growth in the communities which WMATA serves. WMATA's joint development opportunities consist of property interests owned or controlled by WMATA and approved by the WMATA Board of Directors for inclusion in the Joint Development Work Program. WMATA has been involved in the joint development of real estate since the early 1970s.

The goals of WMATA's joint development program are:

- Promote Transit Oriented Development (TOD) by giving priority to Joint Development proposals which contain 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 laws and requirements; and 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 Metro stations;

- Create a source of revenue for the Authority to operate and maintain the transit system by expeditiously negotiating joint 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.

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2.0 PURPOSE

The purpose of these policies and guidelines is:

- To disseminate information about WMATA's Joint Development program to developers, local jurisdictions, the local community and the general public;
- To identify the roles and responsibilities of the WMATA Board of Directors, the General Manager/Chief Executive Officer, local jurisdictions, developers and the community in the joint development process;
- To establish procedures for the marketing of joint development sites and the selection of private and public sector joint development participants through a competitive proposal process (except in instances of joint development agreements entered into with adjacent property owners at WMATA's discretion);
- To define a replacement policy for on-site WMATA facilities, including surface parking, where the cost of facility replacement makes joint development infeasible;
- To define WMATA's community involvement process in the joint development program; and
- To identify a procedure for addressing special joint development sites.

3.0 SCOPE OF POLICIES AND GUIDELINES

These policies and guidelines apply to joint development projects to which WMATA is a party. They do not apply to:

- "System interface" projects: Projects which have direct connections between WMATA's facilities and adjacent development owned by others. These projects are managed by WMATA's Office of Property Development and Management (LAND) under separate procedures established by the Board.
- "Adjacent construction" projects: Projects which are administered by WMATA's Office of Joint Development and Adjacent Construction.
- "Interim leasing" of WMATA-owned land. These leases are managed by LAND.
- "Sale of excess property" - This program is administered by LAND, Asset Management Branch.

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4.0 POLICIES OF LOCAL JURISDICTIONS AFFECTING JOINT DEVELOPMENT

WMATA coordinates closely with local jurisdictions, and the State of Maryland, to implement its joint development program. Additionally, WMATA requires its selected developers to work with local jurisdictions throughout the joint development process. The policies which influence joint development activity in local jurisdictions are generally contained in planning, land use and related documents, such as comprehensive plans, sector or station area plans, zoning ordinances and maps, adequate public facilities ordinances and capital improvement programs. Interested parties may obtain these documents and plans by contacting the jurisdiction involved. In addition, developers are required to seek the views of the local jurisdiction prior to submitting a proposal to WMATA.

5.0 MAJOR ROLES AND RESPONSIBILITIES IN THE JOINT DEVELOPMENT PROGRAM

The WMATA joint development program is implemented by the combined efforts of the Board, the General Manager/Chief Executive Officer and WMATA staff, local jurisdictions, developers and the community. Their major responsibilities are outlined below:

5.1 The WMATA Board of Directors

The WMATA Board of Directors establishes policies on behalf of WMATA for joint development, exercises specific approvals within the joint development process, and maintains oversight of the joint development program. The Board has specific responsibilities to approve the Joint Development Annual Work Program, approve developer selection and a non-binding term sheet based on a staff recommendation, authorize staff to negotiate a lease or sales agreement (the final contract) with the designated developer, and approve the terms of such final contract. Additionally, the WMATA Board conducts a public hearing, prior to final site plan approval by the local jurisdiction, when such is required due to a change in transit access or parking to the site.

5.2 General Manager/Chief Executive Officer

The General Manager/Chief Executive Officer is responsible for the overall management, administration and conduct of the joint development activities on behalf of WMATA.

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5.3 Local Jurisdictions

Jurisdictions in the WMATA Transit Zone include: the District of Columbia, Arlington, Fairfax, Montgomery and Prince George's Counties, and the Cities of Alexandria, Falls Church, Fairfax and Rockville. In addition, WMATA will work with the State of Maryland. Each contributes to the planning and implementation of joint development projects.

- WMATA and local jurisdictions maintain an ongoing, informal dialogue regarding planning and zoning changes at or around WMATA sites, developers interest in such sites and any jurisdictional initiatives for planning for TODs.

- Local jurisdictions participate with WMATA and consultants in conducting the real estate portfolio analysis which is used to help identify sites to be included in the Annual Joint Development Work Program and other joint development studies.

- Local jurisdictions participate in development of the Annual Joint Development Work Program.

- Based on the ongoing dialogue with the local jurisdictions, WMATA provides a draft of the Annual Work Program to local jurisdictions by the end of March each year.

- When the Joint Development Work Program is sent out to local jurisdictions for comments on the suitability of including specific sites as joint development opportunities in a future solicitation, the local jurisdiction and the WMATA Board member from that jurisdiction are asked to provide WMATA with a list of community organizations, including municipalities, community groups, civic associations and ANCs, that could be interested in the development of the property. (Note: The list of interested organizations will be retained by WMATA and provided to all potential developers upon request.)

- Discussions are held with local jurisdictions to resolve any issues in May of each year; and

- A draft Work Program, incorporating comments from the local jurisdictions, is provided to the Real Estate Committee and Board for their consideration.

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- Local jurisdictions, at their discretion, are encouraged to directly sponsor joint development projects within their boundaries. Local jurisdictions are encouraged to mobilize their own resources and those of private developers to jointly propose a joint development project on an available site.

- Local jurisdictions participate in the review and evaluation of developer proposals.

- WMATA's solicitations encourage developers to contact local jurisdictions to obtain land use and zoning information about a site prior to submitting joint development proposals to the WMATA. In addition, developers are required to meet with community organizations that have been identified by the local jurisdictions as those that would be interested in the development of a site within their area.

- Local jurisdictions are asked to designate a person or office as the liaison to WMATA for joint development activities.

- Local jurisdictional representatives receive a briefing from WMATA staff when proposals are received.

- Local jurisdictional representatives are invited to participate in the oral presentation by the developer to WMATA's technical evaluation committee. Developers are required to organize their presentations into two segments:

  1) land use proposals, zoning actions required, construction schedules; and

  2) financial offer to WMATA. (Local jurisdictional representatives do not participate in the discussion of the second segment.)

- Local jurisdictional representatives are invited to participate in the technical evaluation committee discussion(s) of the proposal and to provide formal comments to the committee.

- If desired, the local jurisdictions participate with the developer in informational meetings with the community organizations which have been identified by the affected jurisdiction.

- Local jurisdictions are invited to submit formal comments during the evaluation of development proposals submitted in response to a formal solicitation or unsolicited proposal.

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- After selection of a developer by the Board, local jurisdiction continue their involvement.

- Local staff are provided periodic updates and status reports by WMATA staff.

- Developers' site plans are reviewed by WMATA and local jurisdictional staffs.

- Local jurisdictions may sponsor community forums and invite WMATA staff and developer to participate.

- WMATA monitors any required zoning and other actions by the local jurisdictions; WMATA staff participation is on an "as directed by Board members" basis.

- Local jurisdictions review and approve (or disapprove) the developers' site and project plans through local policies, land use plans, zoning and development-related capital improvements.

- Following approval of the development by the local jurisdiction, but prior to final site plan approval, when such is required due to a major change to transit facilities such as customer parking or access to the site, a WMATA Compact public hearing is required, the affected local jurisdiction will be invited to be a participant in that public hearing process.

5.4 Developers

Public and private development entities, land owners or their agents may participate in planning as well as in implementation phases of the joint development program.

- Developers may propose introduction of a site into the draft Annual Joint Development Work Program through coordination with local jurisdictions and WMATA.

- Developers or other interested parties may initiate unsolicited proposals for a WMATA property at any time. Such proposals are processed in accordance with the procedures provided in the Unsolicited Proposal section.

- Potential developer(s) are required to meet with the local jurisdiction and interested community organization(s) to share information about a pending proposal submission to WMATA and to seek their views prior to submitting the proposal to WMATA. At these meetings, the

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developer is expected to share as much detailed information as possible about his/her proposed project. As part of the submission to WMATA, the developer will provide information about the meetings held with the local jurisdiction and interested community organizations, including an identification of issues raised at the meetings and how his/her proposal addresses them. The developer will also include in the submission how the proposed project meets the goal of achieving transit oriented development.

- Upon receipt of proposals, WMATA staff will evaluate the proposals for the developer's technical capacity, competency, satisfaction of the community meeting requirement and may reject any that do not meet technical and business standards.

- Proposals will be processed as set forth in Sections 6.0 and 7.0.

- A selected developer will be required to participate in a WMATA Compact public hearing process after approval of the developer's proposal by the local jurisdiction, but, prior to final site plan approval, if the proposal necessitates a major change in transit facilities such as customer parking or access to the site.

- A selected developer will, with WMATA's assistance, obtain all necessary plan approvals, zoning and permits from the local jurisdiction.

- A selected developer will plan, construct and operate a joint development project in accordance with pertinent joint development agreements and jurisdictional laws and requirements.

5.5 Community

- When the WMATA Joint Development Work Program (the "Work Program") is sent out to local jurisdictions for comments on the suitability of including specific sites as joint development opportunities in a future solicitation, the local jurisdiction and the WMATA Board member from that jurisdiction will be asked to provide WMATA with a list of community organizations, including municipalities, community groups, civic associations and ANCs, that could be interested in the development of the property. (Note: The list of interested organizations will be retained by WMATA and provided to all potential developers upon request.)

- Potential developer(s) will be required to meet with the local jurisdiction and interested community organization(s) to share information about a pending proposal submission to WMATA and to

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seek their views prior to submitting the proposal to WMATA. At these meetings, the developer is expected to share as much detailed information as possible about his/her proposed project. As part of the submission to WMATA, the developer will provide information about the meetings held with the local jurisdiction and interested community organizations, including an identification of issues raised at the meetings and how his/her proposal addresses them. The developer will also include in the submission how the proposed project meets the goal of achieving transit oriented development.

- Upon receipt of proposals, WMATA staff will evaluate the proposals for the developer's technical capacity, competency, satisfaction of the community meeting requirement and may reject any that do not meet technical and business standards.

- Proposals will be processed in accordance with Sections 6.0 and 7.0.

- Following the Board's approval of the negotiated final contract, the selected developer will be required to send a letter to the interested community organizations that he/she initially met with to inform them as to how the project approved by WMATA addresses their issues or concerns.

- The selected developer will then go through any land use, zoning, permitting or entitlement processes required by the local jurisdiction, including any public hearings.

6.0 JOINT DEVELOPMENT PROCEDURES

This section describes the procedures followed for joint development. The stages are illustrative; they are not mandatory; and may not be necessary for each joint development project. A separate set of procedures applies to the processing of unsolicited proposals.

6.1 Preparation of the Annual Joint Development Work Program

The Annual Joint Development Work Program is prepared yearly in coordination with local jurisdictions. The Work Program includes a list of sites by jurisdiction that WMATA believes are suitable for development. Beginning in 2002, the sites included in the draft Work Program will have been evaluated through an outside, professional independent portfolio analysis. The draft Work Program is prepared by the General Manager/Chief Executive Officer and submitted to the local jurisdictions for comment. A modified Work Program, incorporating any comments by local jurisdictions is then prepared for submission to the WMATA Board. The Work Program will include only those sites which have been approved for marketing by the

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local jurisdiction in which the site is located. As part of their review, local jurisdictions can recommend special sites for inclusion in the work program for the Board's consideration. The Annual Joint Development Work Program is generally approved by the WMATA Board of Directors so that it is distributed by June 30th of each year. A given year's work program is developed as follows:

- LAND prepares and issues a draft Joint Development Work Program to each jurisdiction in March of each year.
- Jurisdictions review the draft Work Program and transmit to LAND their comments and list of affected community organizations for each site.
- LAND discusses the submitted comments with the jurisdiction, if needed, to resolve any issues which may exist. All discussions are generally concluded by mid May of each year.
- During each fiscal year, the General Manager/Chief Executive Officer submits a draft Work Program, comprised of sites approved for marketing by each jurisdiction to the WMATA Board for its consideration by June.

6.2 Board Approval of Joint Development Work Program and Authorization of the General Manager/Chief Executive Officer to Initiate a Joint Development Competitive Developer Selection Process.

In June of each year, the General Manager/Chief Executive Officer submits to the Board WMATA's recommended Annual Joint Development Work Program, including all jurisdictional comments. A request for authorization to initiate a joint development Competitive Developer Selection process is normally included in the work program package to the Board. Further, the General Manager/Chief Executive Officer recommends fiscal year funding authority to the Board for the inclusion of joint development activities as required.

6.3 Development and Issuance of Solicitation Document

LAND drafts a Solicitation Document to solicit joint development proposals from developers on a competitive basis for sites contained in the Board approved Annual Joint Development Work Program. Concurrently, WMATA offices and the affected jurisdictions are consulted for comments. The local jurisdiction advises WMATA as to planning, urban design and other guidelines which will apply to the proposed development site. WMATA then issues a Solicitation Document following its established joint development competitive selection procedures. Normally these include:

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- Advertisement of the availability of the solicitation in local and national newspapers;

- A pre-proposal conference, if needed, to respond to questions from prospective respondents;

- A proposal due date, generally 30 to 60 days from the date of issuance of the Solicitation Document;

- Review and evaluation of proposals as set forth in Section 7.0.

7.0 JOINT DEVELOPMENT COMPETITIVE SELECTION PROCESS

7.1 Introduction

Joint Development employs a competitive selection process to which the provisions of the WMATA Procurement Procedure Manual do not apply. Joint Development is the development or disposition of property interests, at or adjacent to Metrorail stations, owned and/or controlled by WMATA, with the objective of developing transit oriented public and private projects which enhance the ridership and revenue of WMATA and Local Jurisdictions.

7.2 Guidelines and Evaluation Criteria

In order to promote the objectives of the Joint Development Program and to provide fair and open competition and full and fair consideration of all proposals for each joint development opportunity, the guidelines set forth below will be followed for Joint Development solicitations.

- In order to ensure fair and open competition, WMATA will periodically publicize its joint development opportunities in print media with wide circulation and, as necessary, through solicitation documents and public events. The preferred process will be an annual solicitation including several potential development sites.

- WMATA will entertain proposals for long-term lease, sale, combination lease/sale, or other arrangements. (WMATA prefers transactions other than the sale of its property, but will consider a sale, if it is determined to be in WMATA's best interest.)

- WMATA encourages developers to include Disadvantaged Business Enterprises in their joint development projects, and will assist developers in identifying such firms.

- In evaluating proposals, the criteria used by WMATA will include, consistent with FTA's "Highest and Best Use" or "Highest and Best

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Transit Use" requirements, the following:

Technical
Degree to which the project reflects transit oriented development principles;
Market/financial viability of the joint development project;
Development team experience and prior performance;
Innovation and creativity; and
Compatibility of development with local requirements and transit area.

Economic
Enhanced Metrorail and Metrobus ridership;
Financial benefits accruing to WMATA and the local jurisdiction;
Joint development project completion time-line.

7.3 Processing of Proposals

Proposals will be processed as follows:

7.3.1 WMATA will select the developer for each joint development opportunity using commercially reasonable business practices and screening against the established criteria, including FTA's "Highest and Best Use" or "Highest and Best Transit Use" requirements.

7.3.2 If, after receipt of proposals, material change occurs with respect to matters published in the marketing document or the joint development site, notice of such change shall be provided only to developers who submitted proposals and they shall be afforded an opportunity to amend their proposals accordingly.

7.3.3 WMATA will review the proposals, and identify those proposals reasonably susceptible of being selected for award screening against the selection criteria established in Section 7.2 above and satisfaction of the requirements set out in the marketing or solicitation document. Any proposals which do not meet published requirements and guidelines, and any proposals not reasonably susceptible for selection, may be rejected by the Managing Director, Office of Property Development and Management.

7.3.4 WMATA will conduct a preliminary analysis and evaluation of each proposal.

7.3.5 WMATA may, but is not required to, meet with each developer who submitted a proposal to receive a developer presentation and conduct specific discussions about the proposal. The discussions will include

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identifying areas of the proposal that require clarification, improvement, or do not comply with the marketing document. The proposers may be requested to submit revised proposals based on the discussions. (Local jurisdictional representatives will be invited to participate in evaluating a proposer's development concept and provide questions/comments to WMATA for discussion with the developer.)

7.3.6 LAND staff, in coordination with LAND's Managing Director, will rate each responsive proposal and rank the proposals based upon confidential criteria in accordance with Section 7.2. LAND staff, in coordination with LAND's Managing Director, will then make a tentative developer selection and commence negotiations of a non-binding term sheet which outlines the major business terms of the project. If negotiations are unsuccessful, LAND staff, in coordination with LAND's Managing Director, may terminate negotiations and commence negotiations with the second ranked developer, and those ranked thereafter, in order of ranking. Alternatively, LAND staff, in coordination with LAND's Managing Director, may enter into competitive negotiations with two or more ranked developers.

7.3.7 As soon the principal terms of a potential developer's project have been reduced to a term sheet, the Managing Director will submit the recommended selected developer and the term sheet to the Board for approval.

7.3.8 After receipt of Board approval, LAND staff, in coordination with LAND's Managing Director, will negotiate a contract with the selected developer that incorporates the terms of the term sheet. A summary of the completed contract, highlighting significant new terms as well as material changes from the term sheet, will be presented to the Board for approval.

7.3.9 A term sheet entered into with a developer is non-binding and does not constitute a contract; there is therefore no binding agreement between WMATA and the selected developer until the Board has approved the final negotiated contract.

7.3.10 If a WMATA Compact public hearing is required due to a major change to transit facilities such as customer parking or access to the site, the selected developer will be required to participate in the public hearing process and fund the costs of the public hearing. The WMATA Compact public hearing shall be held after approval of the developer's proposal by the local jurisdiction, but prior to final site plan approval.

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7.4 Unsolicited Proposals

Proposals received for development of a site owned by WMATA which were not in response to a specific marketing effort (Unsolicited Proposals) will be processed as follows:

7.4.1 Notice of receipt of the unsolicited proposal will be published in the print media along with WMATA's procedure for processing unsolicited proposals, as provided for in this Section.

7.4.2 WMATA will begin processing the unsolicited proposal in accordance with Section 7.3 to determine if the proposal merits selection for award of a contract.

7.4.3 If WMATA receives additional proposals before developer selection is completed on the initial unsolicited proposal, any new proposals, including the unsolicited proposal, will be competed and processed in accordance with Section 7.2.

7.4.4 When a developer is selected for award of a contract for the site under either 7.4.2 or 7.4.3 above, no further proposals will be entertained for that site.

7.5 Adjacent Property Owner

WMATA may negotiate a joint development agreement with an adjacent property owner without competition and without advertising the availability of WMATA site provided that there is only one adjacent property owner or only one interested adjacent property owner, and WMATA has determined that only a specific adjacent property owner can take advantage of the joint development opportunity due to site constraints or other limiting factors.

7.6 Confidentiality of Proposals

WMATA will hold the financial contents of all proposals in confidence until a final agreement is approved and executed; provided however, that WMATA may review the zoning and land use aspects of any proposal(s) with state and local zoning, land use planning, transportation, and environmental officials, and at the sole discretion of the WMATA Board of Directors, such review may include conducting public hearings, town meetings, and similar public forums. Upon approval by the Board of Directors, WMATA staff may release project scope information to the public.

7.7 Approval of Federal Transit Administration

The execution of any agreement negotiated between WMATA and the

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selected developer is contingent upon the approval of WMATA's Board of Directors and the Federal Transit Administration of the U.S. Department of Transportation (FTA) under either the "Highest and Best Use" or "Highest and Best Transit Use" concept.

8.0 SPECIAL SITES

8.1 Definition

The annual work program for Joint Development may include one or two special sites that will become a focus of staff efforts to move the properties from a non-marketable status to a viable joint Development site. Special sites may be included in the work program, based on a staff recommendation, and based on a recommendation from the local jurisdiction with the Board's concurrence. In making their recommendations, the local jurisdictions may consider the potential of assembling the WMATA-owned property with other private or publically-owned parcels. Additionally, the local jurisdictions may consider the use of brokers or special consultants to evaluate the development steps required at these special locations.

9.0 WMATA PARKING AND FACILITY REPLACEMENT

9.1 Policy for Parking and Facility Replacement

It is WMATA's policy that parking displaced by a joint development will be replaced on a 1-for-1 basis at the developer's cost. Upon review of a site to be included in the joint development program, the Board of Directors may determine that:

A. Parking at the site may be replaced at a reduced specified amount at the cost of the developer, consistent with the requirements of FTA and WMATA's Bond Resolution.

B. Parking at the site will be replaced at an increased specified amount at the cost of the developer.

The Board may also determine that, where the analysis indicates that its parking replacement policy makes development of a site infeasible, an inducement may be required to support development of the site. That inducement shall be specified and may be in the form of a funding mechanism (such as Transit Infrastructure Investment Fund (TIIF) funds allocated to the local jurisdiction) to pay for the partial or entire cost of parking. The Board may also consider alternative parking locations and fee structures.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008732

M E M O R A N D U M

DATE: June 23, 2010

SUBJECT: Re-solicitation of Florida Avenue Joint Development Property

FROM: Carol B. O'Keeffe

TO: [redacted]

COUN has been asked whether WMATA can either (i) re-advertise the Florida Avenue Joint Development project or (ii) negotiate exclusively with the losing bidders of the original Florida Avenue Solicitation.

FACTUAL BACKGROUND

The subject property consists of three parcels on Florida Avenue, between 7th and 9th Streets Northwest in the District of Columbia (the "Property"). In August 2007, WMATA issued the "Shaw-Howard/Florida Avenue Joint Development Site: Proposal Submission Requirements" (the "Solicitation"), seeking proposals for the development of the Property.

WMATA received three proposals. An evaluation team was convened to evaluate proposals. The net present value of the offers for the three teams was: (i) Banneker Ventures - $14 million; (ii) Moddie Turay - $11.8 million; and (iii) Lakritz Adler - $6 million. The evaluation team eliminated Lakritz Adler's proposal because the net present value of its offer did not meet WMATA's fair market value appraisal for the site ($7.5 million as of August 2007). In the Spring of 2008, Banneker Ventures was notified that it had been selected as the developer and a Term Sheet was approved by the WMATA Board in July 2008.

Washington Metropolitan Area Transit Authority

Banneker Ventures and WMATA attempted to reach an agreement on a lease and Joint Development Agreement for nearly two years. In March 2010, Banneker's status as the selected developer under the Solicitation expired.

LEGAL FRAMEWORK

The guiding documents for this project's competitive selection process are the Solicitation and WMATA's Joint Development Policies and Guidelines. (1)

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(1) - Section 6.2.1 of the WMATA's Procurement Procedures Manual states that the provisions of the WMATA Procurement Procedures Manual do not apply to the Joint Development competitive selection process.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

Solicitation can be read to direct WMATA to choose either to extend the selected developer's exclusive negotiation period or re-advertise the Property, the Solicitation and Joint Development Policies and Guidelines are silent as to whether WMATA may reach out to the other bidders instead of re-advertisement. In fact, in an analogous situation, where negotiations of the term sheet have failed, WMATA is directed to negotiate with the other bidders.

WMATA
JOINT DEVELOPMENT
POLICIES AND GUIDELINES

Washington Metropolitan Area Transit Authority
Office of Property Development & Management
600 Fifth Street, NW
Washington, DC 20001

Revised: November 20, 2008

JOINT DEVELOPMENT POLICIES AND GUIDELINES

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008736

1.0 INTRODUCTION

WMATA has been involved in the joint development of real estate since the early 1970s.These Joint Development Policies and Guidelines ("Guidelines") set forth the general practices of the joint development program of the Washington Metropolitan Area Transit Authority ("WMATA").

WMATA defines joint development as 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. Projects are encouraged that:

1. integrate WMATA's transit facilities
2. reduce automobile dependency
3. increase pedestrian/bicycle originated transit trips
4. foster safe station areas
5. enhance surrounding area connections to transit stations
6. provide mixed-use including housing and the opportunity to obtain goods and services near transit stations
7. offer active public spaces
8. promote and enhance ridership
9. generate long-term revenues for WMATA
10. encourage revitalization and sound growth in the communities that WMATA serves

WMATA's joint development opportunities consist of property interests owned or controlled by WMATA and approved by the WMATA Board of Directors for inclusion in the joint development work program.

1.1 Goals and Standards

1.1.1 Goals

The goals of WMATA's joint development program are to:

1. Promote Transit-Oriented Development (TOD) by giving priority to joint development proposals that contain 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 laws and requirements; and the opportunity to obtain goods and services near transit stations and offer active public spaces.

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2. Attract new riders to the transit system—particularly riders who will use underutilized transit capacity in outbound directions and in off-peak time periods—by fostering commercial and residential development projects on WMATA-owned or controlled land and on private properties adjacent to Metro stations.
3. Where appropriate to station setting, market dynamics, and local policy, support the establishment of employment centers consistent with TOD design principles and transit system operating and investment needs.
4. Implement station access improvements that support pedestrian, bicycle, bus, ADA (Americans with Disabilities Act), and automobile access consistent with each station area's particular station access needs as determined by WMATA's station access planning program.
5. Support other transit agency goals as they may arise, including affordable housing. Implementation of this goal will be subject to WMATA Board adoption of a policy governing the application of this goal.
6. Create a source of revenue for WMATA to operate and maintain the transit system by negotiating joint development agreements between WMATA and public or private development entities.
7. 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.

1.1.2 Standards

Station access planning should be done according to the WMATA standards for replacement facilities. Should conflicts arise between standards and project goals, the conflicts should be identified and solutions proposed to be resolved as stated in these Guidelines.

1.2 Definitions

1.2.1 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.

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1.2.2 Joint Development Solicitation or "JDS"

The joint development solicitation or "JDS" refers to any solicitation document that WMATA may use to offer and market joint development opportunities.

1.2.3 WMATA Board of Directors or "WMATA Board" or "the Board"

The policy and governing body for WMATA, as created by Article III section 5 of the WMATA Compact.

2.0 PURPOSE

The purpose of these Joint Development Policies and Guidelines is to:

1. Disseminate information about WMATA's joint development program to developers, local jurisdictions, the local community and the general public.
2. Identify the roles and responsibilities of the WMATA Board of Directors, the General Manager, local jurisdictions, developers and the community in the joint development process.
3. Establish procedures for the marketing of joint development sites and the selection of private and public sector joint development participants.
4. Define a policy for the replacement of on-site WMATA facilities.
5. Define terms under which WMATA will sell joint development properties to constituent jurisdictions.
6. Define WMATA's community involvement process in the joint development program.
7. Define processes for evaluating and estimating joint development project benefits, including cash value, the development of new transit facilities, fiscally positive operating impacts, provision of housing to support staff recruitment, and other benefits.
8. Define processes for dealing with unsolicited proposals and special situations involving adjacent property owners.

3.0 SCOPE OF POLICIES AND GUIDELINES

These Joint Development Policies and Guidelines apply to joint development projects to which WMATA is a party. They do not apply to:

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1. System interface projects: Projects that have direct connections between WMATA's facilities and adjacent development owned by others. These projects are managed under separate procedures established by the Board.
2. Adjacent construction projects.
3. Interim leasing of WMATA-owned land.
4. Excess property dispositions: Properties that are no longer needed by WMATA with no ongoing WMATA interest.

4.0 POLICIES OF LOCAL JURISDICTIONS AFFECTING JOINT DEVELOPMENT

WMATA coordinates closely with local jurisdictions to implement its joint development program. Additionally, WMATA requires its selected developers to work with local jurisdictions throughout the joint development process. The policies that influence joint development activity in local jurisdictions are generally contained in planning, land use and related documents, such as comprehensive plans, sector or station area plans, zoning ordinances and maps, adequate public facilities ordinances and capital improvement programs. These policies may also be reflected in regulations or laws related to the replacement of transit access facilities and/or the availability of funding for transit access investments, such as pedestrian and bicycle paths, sidewalks, parking spaces, pedestrian bridges and tunnels, etc. Interested parties may obtain these documents and plans by contacting the jurisdiction involved. In addition, developers are required to seek the views of the local jurisdiction prior to submitting a proposal to WMATA.

WMATA welcomes the participation of jurisdictional representatives in all phases of its developer selection process, however, only WMATA staff may participate in assigning ratings to each proposal received.

5.0 MAJOR ROLES AND RESPONSIBILITIES IN THE JOINT DEVELOPMENT PROGRAM

The WMATA joint development program is implemented through the combined efforts of the Board, the General Manager, WMATA staff, local jurisdictions, developers and the community. Their major roles and responsibilities are outlined below:

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5.1 The WMATA Board of Directors

The WMATA Board of Directors establishes joint development policies, exercises specific approvals within the joint development process, and maintains oversight of the joint development program. The Board has specific responsibilities to authorize joint development solicitations, approve developer selection and a non-binding term sheet based on a staff recommendation, and approve terms of a lease or sales agreement (the final contract) with the designated developer. Additionally, the WMATA Board authorizes a public hearing, prior to final site plan approval by the local jurisdiction, when such hearing is required because of a substantial change to WMATA facilities on site or a change to the site access.

5.2 General Manager and WMATA Staff

The General Manager is responsible for the overall management, administration and conduct of joint development activities on behalf of WMATA. Included among these responsibilities are:

1. Establishment of development goals and station access needs through planning.
2. Establishment of a process leading to internal and external decisions on use of WMATA property.
3. Prioritization of projects and establishing overall program pace to achieve highest quality project outcomes.
4. Establishment of annual work programs that broadly emphasize enhancement of land development potential and, ultimately, development of land, and more specifically, include: station access planning; participation in, and advocacy for, station area TOD planning; marketing of development opportunities; selection of development partners; and negotiation of final agreements.
5. Minimization of time required to reach agreement with development partners.
6. Presentation of development projects to communities along with local jurisdictions and developers.
7. Collaboration with developers to obtain zoning and development approvals (with the level of WMATA involvement dependent on project specifics).
8. Use of mechanisms that maximize developer interest and competitive pricing of joint development projects.

As used in these Policies and Guidelines, "staff" means the General Manager or staff designated by the General Manager.

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5.3 Local Jurisdictions

Jurisdictions with joint development policy interests in the WMATA Transit Zone include: the District of Columbia, Arlington, Fairfax, Montgomery and Prince George's counties, and the cities of Alexandria, Falls Church, Fairfax and Rockville. While not strictly a "local jurisdiction", the State of Maryland as a transit operator and funder of WMATA operations and capital projects has a clear policy interest in WMATA's joint development program, and is treated as a local jurisdiction for the purposes of these Guidelines.

Reflecting the fact that different agencies of each local jurisdiction bring to bear different information and diverse policy perspectives, WMATA understands that the term "local jurisdiction" does not suggest that any single agency or elected representative of a local jurisdiction completely represents local jurisdictional policies. The term "local jurisdiction" as used here implies a broad range of agencies and jurisdictional representatives taken together, including planning, transportation, housing, economic development, parks and recreation, etc. As used herein, "consultation," "coordination," and "collaboration" with local jurisdictions (excepting the State of Maryland) means coordinated efforts with: designated representatives of the executive branch; an appropriate or designated representative of the legislative branch; and – where it may be an independent agency – appropriate representatives of the local land use planning authority. Should a particular station or transit facility be located within both a "local jurisdiction" and a local municipality that is a political subdivision of the local jurisdiction, "consultation," "coordination," and "collaboration" will be similarly understood to include representatives of executive, legislative, and – if separate – planning authorities.

The District of Columbia, Arlington, Fairfax, Montgomery and Prince George's counties, the cities of Alexandria, Falls Church, Fairfax and the State of Maryland may be referred to herein as "Constituent Jurisdictions".

Each local jurisdiction plays an important role in the planning and implementation of WMATA joint development projects.

A. WMATA and local jurisdictions maintain ongoing, informal communications regarding planning and zoning changes at and around WMATA sites; developer interest in such sites; and jurisdictional TOD planning and initiatives.

B. Local jurisdictions participate with WMATA and consultants in identifying sites to be assessed for joint development potential, analyzed in terms of their station access needs, and/or offered as joint development projects.

Local jurisdictions, at their discretion, are encouraged to directly sponsor joint development projects within their boundaries. Provided that these projects are consistent with WMATA transit planning goals and TOD principles, WMATA will

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collaborate with local jurisdictions to advance these projects and to establish, through coordinated planning, the maximum transit-oriented development benefits possible.

1. Local jurisdictions participate in the review and evaluation of non-economic aspects of developer proposals. WMATA recognizes that certain local jurisdiction policy positions may depend on economic values offered to WMATA by joint development project proposals. WMATA will share project economic information with local jurisdiction representatives to the extent possible without compromising proposer confidentiality requirements and without unduly weakening WMATA's ability in negotiations with proposers to achieve the greatest transit and/or economic return possible.
2. WMATA's joint development solicitations encourage developers to contact local jurisdictions to obtain land use and zoning information about a site prior to submitting joint development proposals to WMATA. In addition, developers are required to meet with community organizations that have been identified by the local jurisdictions as those that would be interested in the development of a site within their area.
3. Local jurisdictions are asked to designate a person or office as the liaison to WMATA for joint development activities.
4. Local jurisdictional representatives receive a briefing from WMATA staff when proposals are received.
5. Local jurisdictional representatives are invited to participate in any oral presentations by the developer to WMATA's technical evaluation committee. Developers are required to organize their presentations into two segments:
   a) land use proposals, zoning actions required, construction schedules; and
   b) financial offer to WMATA. (Local jurisdictional representatives do not participate in the discussion of the second segment.)
6. If desired, the local jurisdictions participate with the developer in informational meetings with the community organizations that have been identified by the affected jurisdiction.
7. Local jurisdictions are invited to submit formal comments during the evaluation of development proposals submitted in response to a formal solicitation or unsolicited proposal.
8. After selection of a developer by the Board, local jurisdictions continue their involvement.
9. Local jurisdictional staff are provided periodic updates and status reports by WMATA staff.

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10. Developers' site plans are reviewed by WMATA with input from local jurisdictional staffs.
11. Local jurisdictions may sponsor community forums and invite WMATA staff and developers to participate.
12. WMATA works cooperatively with local jurisdictions on any required zoning and other actions by the local jurisdictions.
13. Local jurisdictions review and approve (or disapprove) the developers' site and project plans through local policies, land use plans, zoning and development-related capital improvements.
14. Following approval of the development by the local jurisdiction, but prior to final site plan approval, when such is required due to a major change to transit facilities such as customer parking or access to the site, a WMATA Compact public hearing is required. The affected local jurisdiction will be invited to be a participant in that public hearing process.

5.4 Developers

Public and private development entities, land owners or their agents may participate in planning as well as in implementation phases of the joint development program. Examples of such participation and implementation are as follows:

1. Developers or other interested parties may initiate unsolicited proposals for a WMATA property at any time. Such proposals are processed in accordance with the procedures provided in Section 14 (Unsolicited Proposals).
2. Potential developer(s) are required to meet with the local jurisdiction and interested community organization(s) to share information about a pending proposal submission to WMATA and to seek their views prior to submitting the proposal to WMATA. At these meetings, the developer is expected to share as much detailed information as possible about his/her proposed project. As part of the submission to WMATA, the developer will provide information about the meetings held with the local jurisdiction and interested community organizations, including an identification of issues raised at the meetings and how his/her proposal addresses them. The developer will also include in the submission how the proposed project meets the goal of achieving transit-oriented development.
3. Proposals will be processed as set forth in Sections 6.0, 7.0 and 8.0 herein.
4. A selected developer will, with WMATA's assistance, obtain all necessary plan approvals, zoning and permits from the local jurisdiction.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008744

5. In coordination with WMATA, a selected developer will plan and construct, typically at their cost and expense, any and all required replacement facilities at the joint development site.
6. A selected developer will plan, construct and operate a joint development project in accordance with pertinent joint development agreements and jurisdictional laws and requirements.

5.5 Community

WMATA staff is required to meet with local jurisdictions and potentially affected communities prior to the solicitation of development proposals. If WMATA staff has participated in a recent jurisdictional planning process at which future development of the site is discussed, that may satisfy the requirement of this section. Potential developer partners will also be required to meet with the local jurisdiction and interested community organizations to share information about pending proposal submissions to WMATA and to seek local and community views prior to submitting proposals to WMATA. At these meetings, developers are expected to share as much detailed information as possible about proposed projects. As part of submissions to WMATA, developers will provide information about the meetings held with local jurisdictions and interested community organizations, including identification of issues raised at the meetings and how proposals address them.

6.0 OBJECTIVES AND PROCEDURES

Sections 6.0, 7.0 and 8.0 describe the procedures followed for joint development. The stages are illustrative; they are not mandatory; and they may not be necessary for each joint development project. A separate set of procedures applies to the processing of unsolicited proposals.

6.1 Joint Development Objectives

The program objectives listed below have been developed to address issues that are critical to achieving high-quality joint development outcomes quickly and with broad support.

1. Before soliciting price-competitive proposals, create as much development certainty as possible via planning in conjunction with stakeholders as to land use and station access.
2. Streamline the proposal process as much as possible.
3. Have flexibility to match developer selection processes to transit needs and site specifics.

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4. Use the station access planning process—whether prior to an RFP or broker-managed process, or simultaneously with an RFQ process—to build value into transit development projects through such techniques as shared parking, etc.
5. Have the flexibility to incorporate fiscal impacts and benefits into the overall assessment of project economic benefits.
6. Use all available approaches to maximize development industry interest, including use of private partners, agents, and/or brokers where appropriate to maximize awareness and interest.
7. Promote innovative transit-oriented land development practices.

6.2 Procedures

6.2.1 Introduction

Joint Development employs a competitive selection process to which the provisions of the WMATA Procurement Procedures Manual do not apply.

6.2.2 Outline of Steps in Competitive Selection Process (as further detailed in subsequent Sections):

A. Staff creates a list of sites which potentially could be offered for joint development

B. Station access planning to include

(i) consultation with relevant WMATA offices,
(ii) consultation with local jurisdictions, and
(iii) community input

C. Assessment of zoning and market readiness

D. Board approves solicitation for a particular site and method of solicitation

6.2.3 The Staff List of Joint Development Sites

The list of sites to be studied for possible joint development will be derived from requests from local jurisdictions, general market readiness as determined by staff but which may be based on advice or rankings provided by an outside consultant(s), and staff resources.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008746

6.2.4 Station Access Planning

"Station access planning" as used herein includes, where appropriate, planning for joint development projects at non-station WMATA facilities such as bus garages or air rights over right of way, in addition to planning at Metrorail stations.

Before soliciting interest in any given joint development project, WMATA will complete a station access planning study—in coordination with any affected local jurisdiction and with relevant WMATA offices, and with any affected community—to establish the station access needs at a station or other property experiencing joint development.

It will be a goal of WMATA's joint development program – to the extent that staff and funding resources permit, and that local planning priorities coincide with WMATA station access planning and joint development program priorities – to undertake station access planning in concert with local sector plan or other relevant planning exercises so that, at the conclusion of local planning studies, WMATA's station access plan needs are well understood and can be reflected in local sector plan documents.

WMATA station access planning studies will typically have two key components: (1) a functional needs assessment that is not design or location specific; and (2) concept designs that identify potentially feasible transit facility locations. Certain station access designs – such as those for second entrances – may be more independent of station area development planning needs than others and in these cases a range of potential design schemes will likely be identified. Certain other station access facilities – such as parking – may be more difficult to assign locations and designs in the absence of a development partner with which development schemes can be negotiated. For these facilities, station access plans will give greater attention to functional needs and "performance standards" compared to specific designs.

In general, though, WMATA station access plans will address both the amount of each specific type of transit access facility that is needed, and at a concept level subject to the considerations described above will also identify where, optimally, such facilities might be located on or around the station site, and will evaluate operational impacts. (This is not intended to foreclose new ideas that may be submitted through the solicitation process.) The study will make use of existing studies, such as the WMATA Regional Bus Study.

The amount, kind, and location of planned transit access facilities will be complementary to the station area development environment as it has developed, is developing, or is expected to develop compared to the prevailing or expected station area development environment at the time the station was originally built, and consistent with the most current station area planning documents.

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Station access planning studies will also consider the role that station bus facilities play in the structure of bus services that serve the station. Subject to the design considerations described above, the study may also include the location of new or relocated WMATA facilities on the site.

The local jurisdiction and the WMATA Board members from that jurisdiction will be asked to provide WMATA with a list of community organizations, including municipalities, community groups, civic associations and ANCs, that could be interested in participating in the station access planning process. (Note: The list of interested organizations will be included in the joint development solicitation, if available. Otherwise, the list will be provided to potential developers upon request.) As described above, it will be the goal of the joint development and station access planning programs to coordinate station access and joint development studies as closely as possible with local planning studies and exercises.

In certain cases, it may be desirable to create a Memorandum of Understanding ("MOU") with the local jurisdiction and possibly other stakeholders to specify outreach and procedures, including potential developer proposal evaluation factors, developer selection and negotiation timetables, or other joint development project elements that may be of interest to local jurisdiction and other stakeholders. If this is done, the MOU shall be subject to WMATA Board approval. WMATA staff will have the sole responsibility for preparing materials related to this section for Board approval.

6.2.5 Assessment of Zoning and further Market Readiness

Once the Station Access Plan is complete, staff will assess whether the current zoning and/or jurisdictional comprehensive plan align with the Station Access Plan. If changes are needed, staff will consult with jurisdictional representatives as to the local process and whether a possible solicitation should move forward or whether it should wait for changes to the current zoning and/or jurisdictional comprehensive plan. WMATA will also assess the general readiness of the site for development based on market conditions.

6.2.6 Board Authorization

The General Manager will request that the Board authorize the issuance of a solicitation document for a specific site. The request shall specify which of the solicitation processes given in the Guidelines will be employed, and the reasons for selecting that process. Upon Board approval, the solicitation will be issued.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008748

6.2.7 Development and Issuance of Solicitation Document

The solicitation document will reflect the Board approved method according to the process given in the following sections. Normally, a solicitation will include the following competitive selection procedures:

1. Advertisement of the availability of the solicitation in local and national newspapers.
2. A pre-proposal conference, if needed, to respond to questions from prospective respondents.
3. A proposal due date and a schedule for WMATA to evaluate proposals and make a selection.
4. Review and evaluation of proposals as set forth in Sections 7.0 or 8.0.

6.2.8 Alternate Processes

Sections 7.0 and 8.0 below outline alternate processes that may be used to conduct a solicitation. These alternates are intended to provide flexibility to design a solicitation document best suited to the particular situation of a given property. Some may be in areas with established land use patterns and recent, local zoning and/or comprehensive plan reviews; others may have unique site conditions or be in areas about to go through a thorough review and updating of land use and transportation access options. In either process, WMATA will dispose of property via long-term lease, sale, combination lease/sale, or other arrangements. (WMATA prefers transactions other than the sale of its property, but will consider a sale, if it is determined to be consistent with WMATA's interest, necessary to pursue an effective project, or necessary to meet important transit needs.)

WMATA encourages developers to include Disadvantaged Business Enterprises in their joint development projects, and will assist developers in identifying such firms.

7.0 COMPETITIVE SELECTION PROPOSAL ("RFP") PROCESS

7.1 Outline of the Process

A. Station access plan
B. Alternate Step—Request for Prior Experience ("RFPE")
C. Advertise solicitation, by staff or (subject to advice of Counsel) third party advisor; obtain WMATA Board approval, including step "B" above if utilized
D. Order appraisal

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E. Initial evaluation
F. Community forum
G. Final evaluation
H. Select developer, negotiate Term Sheet, and obtain WMATA Board Approval
I. Negotiate Joint Development Agreement and related documents; obtain WMATA Board approval
J. Compact Public Hearing; obtain WMATA Board approval
K. Federal Transit Administration ("FTA") approval

7.2 Station Access Planning

Conduct station access planning process as outlined in Section 6.2.4.

7.3 Alternate Step—RFPE

An optional first step in the solicitation process is to seek Requests for Prior Experience from developers in order to create a "short list" of qualified developers. This step might be used when there are doubts about the marketability of a site, and to elicit developer interest without requiring the time and expense of a response to a formal solicitation.

The step might also be used when numerous responses are anticipated in order to pre-qualify respondents. 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, members of the project team, and the specific personnel to be assigned to the project. Prior experience in public/private transactions may also be considered.

7.4 Advertise Solicitation

To promote fair and open competition, WMATA will publicize its joint development opportunities in print media with wide circulation and on WMATA's web site, and as necessary, through public events. WMATA may conduct the solicitation itself or may employ a third party such as a real estate advisor to conduct the solicitation. If the latter, staff will provide an explanation of why the use of a third party is desirable in the particular case, and the use of such third party must be approved by the WMATA Board. The solicitation shall contain a description of the station access needs resulting from the station access planning process including those that are requirements of the solicitation, jurisdictional zoning classification, information on pre-proposal conferences and response due dates, a requirement that developers meet with community groups, and any other relevant requirements of the solicitation.

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7.5 Appraisal

Based on the terms of the solicitation, WMATA staff will order an appraisal of the property typically from a third party appraiser, but according to the policies in effect at the time.

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.

7.6.1 Material Change

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008751

If, after receipt of proposals, material change occurs with respect to matters published in the marketing document or the joint development site, notice of such change shall be provided only to developers who submitted proposals and they shall be afforded an opportunity to amend their proposals accordingly.

7.6.2 Unresponsive Proposals

WMATA will review the proposals, and identify those proposals reasonably susceptible of being selected for award screening against the selection criteria established above, including developer competency and financial capacity, and satisfaction of the requirements set out in the marketing or solicitation document, including the community contact requirement. Any proposals which do not meet published requirements and guidelines, and any proposals not reasonably susceptible for selection, may be rejected by WMATA staff as unresponsive.

7.6.3 Evaluation Meetings

WMATA may, but is not required to, meet with each developer who submitted a proposal to receive a developer presentation and conduct specific discussions about the proposal. The discussions will include identifying areas of the proposal that require clarification, improvement, or do not comply with the marketing document. Developers may be requested to submit revised proposals based on the discussions. (Local jurisdictional representatives will be invited to participate in evaluating a proposer's development concept and provide questions/comments to WMATA for discussion with the developer.)

7.7 Community Forum

After the initial evaluation, WMATA staff may organize, in cooperation with the local jurisdiction, a community forum to explain proposed changes to WMATA facilities, and to obtain community input as to the technical (non-financial) aspects of the proposals.

7.8 Final Evaluation

Staff may request best and final offers from developers and then will rate each responsive proposal and rank the proposals in accordance with Section 7.6. Staff will then make a tentative developer selection and commence negotiation of a non-binding term sheet that outlines the major business terms of the project. If negotiations are unsuccessful, Staff may terminate negotiations and commence negotiations with the second ranked developer, and those ranked thereafter, in order of ranking. Alternatively, Staff may enter into competitive negotiations with two or more ranked developers. In the situation in which WMATA receives competitive proposals but only

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one proposal meets or exceeds the appraised value of the WMATA site, and there are no other special or transit benefits to WMATA, the proposals do not have to be scored and ranked. Rather, the one proposal which meets or exceeds the appraised value of the joint development site will be considered using the criteria in accordance with Section 7.6 above.

7.9 Developer Selection

Once the principal terms of a potential developer's project have been reduced to a term sheet, staff will forward the developer selection recommendation and the term sheet to the WMATA Board for approval. A term sheet entered into with a developer is non-binding and does not constitute a contract; there is therefore no binding agreement between WMATA and the selected developer until the Board has approved the final negotiated contract.

7.10 Joint Development Agreement

If the Term Sheet is approved, staff will negotiate a Joint Development Agreement with the selected developer that incorporates the terms of the term sheet. A summary of the completed Joint Development Agreement, highlighting significant new terms as well as material changes from the term sheet, will then be forwarded to the WMATA Board for approval.

7.11 Compact Public Hearing

If a WMATA Compact Public Hearing is required due to a major change to transit facilities such as customer parking or access to the site, the selected developer will be required to participate in the public hearing process and fund the costs of the public hearing.

7.12 FTA Approval

If required, the station changes and terms of the Joint Development Agreement will be submitted to the Federal Transit Administration for approval under FTA's requirements, including those stated in Section 13 of these Policies and Guidelines.

7.13 Unsolicited Proposals

Proposals received for development of a site owned by WMATA that were not in response to a specific marketing effort (Unsolicited Proposals) will be evaluated as provided in Section 14.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008753

7.14 Adjacent Property Owner

WMATA may negotiate a joint development agreement with an adjacent property owner without competition and without advertising the availability of the WMATA site provided that there is only one adjacent property owner or only one interested adjacent property owner, who WMATA has determined can take advantage of the joint development opportunity due to site constraints or other limiting factors. (One example would be the situation in which the WMATA parcel is small and one party owns all of the surrounding property.) Such a negotiation must be conducted consistent with principles given in Sections 6.2.4 and 6.2.5, and Sections 7.5 through 7.12 (modified to reflect a non-competitive selection process).

7.15 Confidentiality of Financial Proposals

WMATA will hold in confidence the financial benefits accruing to WMATA of all proposals until a Joint Development Agreement is approved and executed. Upon approval by the Board of Directors, WMATA staff will maintain all information received for joint development projects, including any confidential business information, in accordance with WMATA's *Privacy and Public Access to Records Policies* (PARP). All other aspects of the proposals may be reviewed and publicized at public hearings, town meetings, and similar public forums, or as otherwise provided in these Guidelines.

7.16 Subsequent Process

The selected developer will then go through any land use, zoning, permitting or entitlement processes required by the local jurisdiction, including any public hearings.

8.0 COMPETITIVE SELECTION QUALIFICATION ("RFQ") PROCESS

8.1 Outline of the Process

A. Obtain WMATA Board approval to advertise for developers based on qualifications
B. Select developer; obtain WMATA Board approval
C. Jointly with developer, enter into planning process with jurisdiction, community and other local stakeholders. Establish plan for station access needs and land use
D. Order appraisal
E. Negotiate price and term sheet; obtain WMATA Board approval
F. Negotiate Joint Development Agreement; obtain Board approval; negotiate related documents
G. Compact Public Hearing (*Could be after C)*; obtain Board approval
H. FTA approval

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008754

8.2 Introduction

This process is intended to be used when there are special site conditions, when the jurisdiction is about to begin a master plan revision or rezoning, or other situations for which it would be desirable to have a developer in place to provide input as to the effect of options on potential development, and to participate in the process.

8.3 Advertise for Developers Based on Qualifications

To promote fair and open competition, WMATA will publicize its developer selection opportunities in print media with wide circulation and, as necessary, through public events. The solicitation shall contain a description of the developer qualifications sought, the subject station and processes in which the developer would be asked to participate (such as comprehensive plan amendment), the requirements of the solicitation, information on pre-submission conferences and response due dates, information on the WMATA process leading to price determination and Board approvals, and any other relevant requirements of the solicitation.

8.4 Developer Selection and WMATA Board Approval

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 criteria 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

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recommendations to the Board regarding the criteria that will be used for evaluation of Qualifications under the RFQ process.

8.4.2 Material Change

If, after receipt of Qualifications, material change occurs with respect to matters published in the marketing document or the joint development site, notice of such change shall be provided only to developers who submitted Qualifications and they shall be afforded an opportunity to amend their Qualifications accordingly.

8.4.3 Threshold Evaluation

WMATA will review the Qualifications, and identify those Qualifications reasonably susceptible of being selected for award screening against the selection criteria established above, including developer competency and financial capacity, and satisfaction of the requirements set out in the marketing or solicitation document. Any Qualifications which do not meet published requirements and guidelines, and any Qualifications not reasonably susceptible for selection, may be rejected by WMATA staff.

8.4.4 Developer Meetings

WMATA may, but is not required to, meet with each developer who submitted Qualifications to receive a developer presentation and conduct specific discussions about the Qualifications. The discussions will include identifying areas of the Qualifications that require clarification, improvement, or do not comply with the marketing document. The proposers may be requested to submit revised Qualifications based on the discussions.

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8.4.5 Selection

Staff will rate responsive Qualifications and rank the Qualifications based upon the selection criteria. Where a local jurisdiction and other stakeholders express interest in participating in the Qualifications evaluation process, WMATA staff will accommodate that interest by sharing Qualifications information and by including stakeholders in evaluation discussions. In the event that local jurisdiction and other stakeholders desire to participate in Qualifications evaluation in this manner, they will be invited to participate in a developer selection advisory committee and to participate in all developer interviews and all Qualifications information submitted to WMATA will be made available to stakeholders participating in the advisory evaluation process. All evaluations prepared by stakeholders will remain strictly advisory. WMATA staff will be solely responsible for conducting evaluations and making selection recommendations for submission to the WMATA Board.

Staff will then make a tentative developer selection and commence negotiations on a Memorandum of Understanding which outlines the terms of how the parties will proceed with the project, and the responsibilities of each. If negotiations are unsuccessful, staff may terminate negotiations and commence negotiations with the second ranked developer, and those ranked thereafter, in order of ranking. Alternatively, staff may enter into competitive negotiations with two or more ranked developers.

8.4.6 Memorandum of Understanding

The Memorandum of Understanding sets out agreement on a process, but does not contain a price for development rights and other terms of a development agreement. Once the Memorandum of Understanding has been agreed upon by WMATA and the developer, staff will forward the developer selection recommendation and the Memorandum of Understanding to the WMATA Board for approval. There is no binding agreement for a development project between WMATA and the selected developer, and any Developer investment is at risk, until the Board has approved a final negotiated Joint Development Agreement.

8.5 Establish Plan for Station Access and Land Use

WMATA and the selected developer will enter into the process to develop the access needs of the station and land use parameters around the station, pursuant to the terms of the approved Memorandum of Understanding.

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8.6 Appraisal

Based on the results of the station access and land use process, WMATA staff will order an appraisal of the property development rights typically from a third party fee appraiser, but according to the policies in effect at the time. The appraisal should reflect the station access needs, which are intended to become the cost of the developer in subsequent development of the station site.

8.7 Price and Term Sheet

Staff will commence negotiations on a term sheet that outlines the major business terms of the project, including price to be paid for the development rights. If negotiations are unsuccessful, Staff may terminate negotiations and re-advertise the station development rights pursuant to section 7.0 (excluding 7.13 and 7.14) herein. As soon as the principal terms of a term sheet have been agreed upon, staff will forward the recommended selected developer and the term sheet to the WMATA Board for approval. A term sheet entered into with a developer is non-binding and does not constitute a contract; there is therefore no binding agreement between WMATA and the selected developer until the Joint Development Agreement is signed by both parties.

8.8 Joint Development Agreement

If the Term Sheet is approved, staff will negotiate a Joint Development Agreement with the selected developer that incorporates the terms of the term sheet. A summary of the completed Joint Development Agreement, highlighting significant new terms as well as material changes from the term sheet, will then be forwarded to the WMATA Board for approval.

8.9 Compact Public Hearing

If a WMATA Compact public hearing is required due to a major change to transit facilities such as customer parking or access to the site, the selected developer will be required to participate in the public hearing process and fund the costs of the public hearing.

8.10 FTA Approval

If required, the station changes and terms of the Joint Development Agreement will be submitted to the Federal Transit Administration for approval under FTA's requirements, including those stated in section 13 of these Policies and Guidelines.

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9.0 WMATA TRANSIT ACCESS FACILITY REPLACEMENT

WMATA will work with the local jurisdiction to determine the appropriate transit access facility replacement for each joint development project at a Metrorail station. It is WMATA's policy that transit facilities displaced by joint development be replaced to ensure that the same number of transit riders is accommodated and the balance of transit access facilities at a given station can be altered to reflect the transformation of the station and the area around it to a pedestrian-friendly, transit-oriented community. An analysis of the costs and benefits of alternative transit facility replacement scenarios will be conducted and will be shared with the local jurisdiction as well as public agency staff and community members in public meetings. Part of such an analysis must include maintaining appropriate access via bicycle, bus (including local jurisdictional systems), and pedestrian (including ADA). The documentation of this analysis will be incorporated into concise and comprehensible public presentation materials. If not incorporated into a prior Board presentation for its review and approval, the materials will be included in any final compact hearing staff report materials presented to the Board for review and decision.

10.0 SALE OF PROPERTY TO CONSTITUENT JURISDICTIONS

10.1 Policy for Sale of Property to Constituent Jurisdictions

When WMATA offers a property for sale, and one of its constituent jurisdictions wishes to purchase the property, WMATA will sell it to the jurisdiction provided: 1) WMATA receives a price equal to at least the appraised market value; 2) the jurisdiction agrees to the station upgrades, changes, and/or reservations contained in the offer, and agrees to bear the cost thereof; and 3) the jurisdiction agrees that if the value of the property is increased due to approval of a higher density allowance or other similar zoning action, or if the property is sold by the jurisdiction at a sale price in excess of the price paid to WMATA, then WMATA will shall receive one hundred percent (100%) of the additional value so created or obtained. If required, the transaction will be subject to FTA approval.

In the case where the constituent jurisdiction initiates a proposed sale, the same standards as above will apply with the following modifications: (a) WMATA shall screen the property internally and may refuse to sell if WMATA has an intended use for the property; (b) WMATA may require certain station upgrades or changes to be made by the jurisdiction; (c) there will be no adverse impact on WMATA operations or facilities; and (d) in the situation where the sale is for a non-transit purpose, the appraised fair market value will take into consideration loss of potential development revenue in situations where there are impacts beyond the property being purchased.

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11.0 ADVOCACY FOR JOINT DEVELOPMENT AND TRANSIT-ORIENTED DEVELOPMENT IN LOCAL PLANNING PROCESSES

Provided that adequate staff resources are available, and there are meaningful opportunities for WMATA staff input, WMATA staff will participate cooperatively in local planning processes to advocate for conditions that will facilitate joint development projects that will create TOD, value for WMATA, and will create improvements in WMATA's transit facilities.

12.0 RESOLUTION OF CONFLICTS WITHIN THE AUTHORITY

The Chief of Staff (or the person occupying any successor position) will be designated to quickly resolve conflicts within the Authority in evaluating plans for joint development.

13.0 FTA REQUIREMENTS

WMATA joint development projects must meet the following FTA-mandated requirements: projects must (1) enhance economic development or incorporate private investment; (2)(a) enhance the effectiveness of a public transportation project and relate physically or functionally to that public transportation project, or (b) establish new or enhanced coordination between public transportation and other transportation; and (3) provide a fair share of revenue for public transportation that will be used for public transportation. Private investment need not be monetary; it may take the form of cash, real property, or other benefit to be generated initially or over the life of the joint development improvements.

WMATA will submit to FTA a Joint Development Checklist and Certificate of Compliance, or whatever successor documents as may be required by future amendments to the FTA regulations. WMATA should substantiate compliance with all of the statutory elements discussed in the FTA Joint Development Guidelines. Reference FTA's joint development authority (49 U.S.C. 5302 (A)(1)(G) and section (1)(a) of FTA Guidance on the Eligibility of Joint Development Improvements under Federal Transit Law (72 Fed. Reg. 5788,5790 (February 7, 2007); also 49 CFR 18.31 and 49 U.S.C. 5334(h).

In approving a joint development project, the Board shall determine, following reasonable investigation, that the terms and conditions of the joint development improvement (including without limitation, the share of revenues for public transportation that shall be provided as part of the project) are commercially reasonable and fair to WMATA, and that such revenue shall be used for public transportation.

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14.0 UNSOLICITED PROPOSALS

14.1 General

Proposals received for development of a site owned by WMATA that were not in response to a specific marketing effort (Unsolicited Proposals) will be evaluated as follows:

14.2 Screening

The proposal will be screened with internal WMATA departments. If such screening reveals an operational use of the property, the unsolicited proposal will be rejected. (Unlike screening of excess properties, this is intended to apply to, for example, bus garages for which no replacement site has been identified, or a joint development site for which WMATA is planning a new WMATA facility, such as the Ft. Totten police station.)

14.3 Threshold Criteria

The local jurisdiction will be notified in a timely manner in the event that WMATA receives an unsolicited proposal for a property in that jurisdiction. If no station access planning analysis of the site has been conducted—and if, after consultation with the local jurisdiction, joint development project planning is either not supported by local development policy or there are obstacles to conducting station access planning contemporaneously with private project planning and development—then WMATA will not have any obligation to further evaluate the unsolicited proposal, and may reject it.

14.4 Advertising a Proposal

If not rejected pursuant to Sections 14.2 or 14.3, notice of receipt of the unsolicited proposal will be published in the print media along with WMATA's procedure for processing unsolicited proposals, as provided for in this Section. Any proposal or site specific requirements will be included in the notice. Such notice shall contain a reasonable time period for competing proposals to be submitted. When the stated time period expires, no further proposals will be entertained for that site.

14.5 Evaluation – Unsolicited Proposal Only

WMATA will begin evaluating the unsolicited proposal in accordance with Section 7.6 to determine if the proposal merits selection for award of a contract. WMATA may hold a Community Forum as described in Section 7.7. If the proposal does merit selection,

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staff will negotiate a non-binding term sheet and Joint Development Agreement and forward each to the WMATA Board for approval. Sections 7.11,7.12, 7.15, and 7.16 will also apply.

14.6 Evaluation – Unsolicited and Competing Proposals

If WMATA receives additional proposals during the time period provided in Section 14.4, any new proposals, including the unsolicited proposal, will be evaluated in accordance with Sections 7.6 through 7.12, 7.15, and 7.16.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008762

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: _____

UNSOLICITED PROPOSALS IN THE CONTEXT OF OPEN SOLICITATIONS

A. JD Solicitation Made and On-going
   1. Proposals Received and then "Unsolicited Proposal" received
      (a) Not possible as would be within Solicitation window
      (b) Review with other proposals
   2. Proposal Deadline Closes and then "Unsolicited Proposal" received
      (a) Reject as out-of-time for solicitation on the street
   3. Term Sheet and then "Unsolicited Proposal" received
      (a) Reject as out-of-time
      (b) Reject as WMATA is in negotiations with Selected Developer
      (c) Reject as property is not available
   4. Selected developer and then "Unsolicited Proposal" received
      (a) Reject as out-of-time
      (b) Reject as WMATA is in negotiations with Selected Developer
      (c) Reject as property is not available
   5. JDA and then "Unsolicited Proposal" received
      (a) Reject as out-of-time
      (b) Reject as WMATA is in negotiations with Selected Developer
      (c) Reject as property not available

B. JD Solicitation put on street and then unsuccessful negotiations
   1. JDS has Expired or was Terminated or Cancelled
   2. Unsolicited Proposal is addressed under Section 14 of the JD Policies and Guidelines

C. Compare Solicitation Document and JDP&G? [*Do we want to address as there was no request for this level of specificity? Also, it begs the question of what JDP&G applies to a JDS dated earlier than the current JDP&G]*
   1. Solicitation Document/JDP&G contemplates limited competition through completion of Term Sheet/Selected Developer
      (a) If no TS with first; then go to second (JDP&G 7.8)
      (b) If conditions change; then all proposers resubmit (JDP&G 7.6.1)
   2. After TS/SD then WMATA's options are:
      (a) Not addressed in 7.8 and 7.6.1
         1. These apply only to the time before TS/SD approval by Board
      (b) Extend time (JDS 3.3 for NC 2004; JDS 4.3 in other solicitations)
      (c) Terminate/Expire/Cancel *Id.*

ATTORNEY WORK PRODUCT – NOT FOR DISTRIBUTION

The question put to me is as follows:

> "This is a matter of taking the current JD guidelines and pulling out any information which addresses the issue of how we analyze/respond to an unsolicited proposal for a property for which we have previously undertaken a solicitation. They should work with COUN on this."

I have reviewed the Guidelines of November 20, 2008, and find nothing that specifically deals with this issue. The Guidelines set out various threshold issues such as internal screening, station access plan, and local jurisdictional policies. If there are objections to the Unsolicited Proposal based on any of these areas, staff may reject the Proposal. If not, the Guidelines direct that it be evaluated as an RFP according to sections7.6—7.12, 7.15 and 7.16.

Of greater significance is the RFP section itself. Section 7.4 states that advertisements for a solicitation shall contain "response due dates." Section 7.6.1 states that "If, after receipt of proposals, material change occurs with respect to matters published in the marketing document or the joint development site, notice of such change shall be provided only to developers who submitted proposals and they shall be afforded an opportunity to amend their proposals accordingly." Taken together these provisions provide that once the due date is past, the solicitation is open only to those developers who submitted proposals, and not those who submit later, unsolicited or not. Of course, by definition if an proposal arrives while there is an active solicitation, it is a solicited proposal not an unsolicited proposal.

WMATA may terminate a solicitation until such point as a JDA is approved by the Board. If there is no active solicitation, the Guidelines give the procedure for starting a new one. Or, there may be an Unsolicited Proposal if, as previously stated, there is no active solicitation. The fact that there was once a solicitation that is now closed or terminated does not seem to be relevant.

Unsolicited Proposal

- Gary Malasky - will send docs to MEB
  - what about the Solicitation itself?
  - nothing in JDP&G discusses unsolicited proposal where there has been a previous solicitation.
    - Treat like a regular Solicitation → $14.0
    - what is the Status of previous Solicitation?

Unsolicited Proposal 6/25/10

- MEB - G. Malasky
- COK

- Bm Graham → Asked for guidelines on unsolicited proposals where there has been a solicitation
  - Answer under 02/05/08 Guidelines
- Solicitation → New Carrolton + FL Ave are different on this
  - pre-developer Selection
  - post-Selection
- Can Always pull the plug on a Solicitation → may be a "Good Faith" issue

Solicitations

- under 08 → wheaton
- 05
- 02

- After T/S
  - Can you bump down?
    - it doesn't make sense when offer is out-of-date

- Memo from COK
  - keeps out of public

Biondi, Marc E.

From: O'Keeffe, Carol B.
Sent: Thursday, July 08, 2010 1:29 PM
To: Goldin, Steven
Cc: Biondi, Marc E.; Bottigheimer, Nat
Subject: RE: Unsolicited Proposals Memo

Go ahead and add the examples. You have the info.

From: Goldin, Steven
Sent: Thursday, July 08, 2010 1:26 PM
To: O'Keeffe, Carol B.
Cc: Biondi, Marc E.; Bottigheimer, Nat
Subject: RE: Unsolicited Proposals Memo

Carol/Mark

Very interesting. It seems like we should clean-up/tighten our guidelines.

My question is this: If a solicitation is issued under, say, the 2002 Guidelines, but the process was still ongoing (pre-JDA) and the 2005 Guidelines were approved, which Guidelines then govern the process regarding that 2002 solicitation?

I think to avoid further wrangling we need to actually show two examples to present to Mr. Graham at our meeting next Thursday: New Carrolton and Florida Avenue. Using your memo and showing how each solicitation should now be interpreted. If we don't do this, he's going to want to do it in that meeting. I know we will be unable to parse it on the spot and the issue will re-emerge at the next week's Board Meeting. Can COUN provide a one page analysis of each of those projects for next week?

Steve

From: O'Keeffe, Carol B.
Sent: Thursday, July 08, 2010 8:57 AM
To: Bottigheimer, Nat; Malasky, Gary; Goldin, Steven
Subject: FW: Unsolicited Proposals Memo

For your review.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008768

- Master's Req'mts
- School's Accreditation

Paper files were Transferred to JWM. Electronic files are under "FL AVE SHAW JD" or in Email Archive under LAND Projects — SHAW FL AVE

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.

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.

Washington Metropolitan Area Transit Authority

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.

Marc Biondi
Signature

MARC BIONDI
Print Name

ASST. GEN. COUN.
Title

007371
Employee Number

June 10, 2010
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.

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
		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

FOIA CONFIDENTIAL TREATMENT REQUESTED

Eric's Comments

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.

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, the terms of which consent will 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 ("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] ~~- fourteen months (14)~~ 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. *[[COMMENT: WE PRESUME THAT ALL NECESSARY SUBDIVISION HAS/WILL BE COMPLETED BY WMATA.]]*

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008775

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, ~~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 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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008776

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 ($200,000.00~~250,000.00~~) [redacted], 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. ~~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.~~

6.4~~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 unreasonable 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 to DEVELOPER within ten (10) days of its receipt of a copy of the Certificate of Occupancy for the Project.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008777

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~~non-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, [redacted] or forty-five (45) [redacted] T. ~~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. [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.

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-

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008778

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 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 75% 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]

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008779

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 C~~c~~apital E~~e~~vent 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 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~~'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 *[[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 ~~7~~ 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,*

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008780

"DECREASE" RELATIVE TO WHAT?]] as a result of any Periodic Rent Revaluation. [redacted]

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~~Proposal Security of One Hundred Thousand and No/100 Dollars ($100,000.00)~~ to DEVELOPER within ten (10) days.

7.8 WMATA Delays: The maximum length of 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 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~~caused by WMATA~~. [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.?]]*

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 75%. [redacted]

7.9.2 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

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008781

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.

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?]]* ONE ANWSER IS THAT YOU SHOULD NOT BE PROPOSING A PROJECT THAT DOES NOT HAVE REASONABLE CHANCE OF SUCCEEDING.

9.1 Community Contact: Within sixty (60) days of the WMATA Board's approval of the

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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 [name of specific District agency] ~~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

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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. [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~~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

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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

By:

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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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Every

12-19-07

LaKritz / Adler → WMATA Appraisal? Other Offers? Compo?

Low from Market on $ Proposed
↳ Bids vs Valuation

- Discount Offers / Appraisals

3yr old Appraisal on P3 (2004)

25% Return on Costs – Appropriate?

$60 FAR w/o WMATA Tunnel Costs
(Proposed $48 in Submittal)

* Prefer Fee Purchase *
– Complexity of Dual Ownership –
– ~~Requires~~ Ownership of P2 –
Pufus

BATO?
Complexity of 2 owners?
Tunnel Costs?

LAKRITZ ADLER

real estate development

December 18, 2007

Office of Property Development and Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001
Attention: Joel Washington, Director, Station Area Planning and Asset Management

Re: Shaw-Howard-Florida Avenue Joint Development Site, Dec. 4 clarification request

Dear Mr. Washington:

This letter addresses the questions raised in your request for clarifications dated December 4, 2007, in preparation for our presentation to WMATA, now scheduled for December 19, 2007, at 2 p.m.

Below, we repeat and number each question and provide our response.

Technical Information

1) Within the schedule you presented, please indicate the outside, firm date by which a purchase or lease would occur.

We are willing to make the dates presented on page 22 of Volume 1 firm outside dates (rounding to the closest first of the month). Therefore outside date for land purchase would be November 1, 2011, or ground lease start date would be January 1, 2013. Note that it is quite possible closing will occur much sooner, if the WMATA selection process takes less than the ten-plus months advised by WMATA, and if the developer selection process is sufficiently certain at an early stage for us to start our study period and early approvals process – plan preparation, HPRB and BZA submissions, etc. – concurrent with the developer selection process.

2) What, if any, zoning approvals or variances will you be seeking for Parcels 1 or 3?

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As stated on page 23, Volume I, of our submission, Section J.1., "Zoning": "All projects proposed are by-right, with the exception of a parking reduction to be sought for the hotel proposed for Parcel 3 (the alternative plan for Parcel 3 of office and retail would not require any zoning relief at all.)" The same is indicated in Sections D and G of our submission, in the description of our plans for each parcel.

To clarify further: in order to keep the parking garage on Parcel 3 to a single level below grade, and thereby avoid any interference with the Metro tunnel easement, if we proceed with a hotel rather than office/retail on Parcel 3, we would expect to seek a zoning variance to reduce the C2B zone parking requirement for hotel use by 50%. The base C2B hotel requirement is 1 space per 2 rooms.

The plans proposed for Parcels 1 and 2 do not require any zoning approvals or variances, nor does the office and retail alternative plan for Parcel 3. This presumes that the bulk of the retail uses on Parcel 2 will be "evening uses" (principally restaurant and entertainment uses, as suggested in our submission) as described in D.C. Zoning Code Section 1901.5(a). In the unlikely event that the retail leasing market cannot produce restaurant and entertainment-related tenants for the bulk of the ground floor of Parcel 2 (and Parcel 3 if an office/retail plan is pursued), we would seek a special exception from the BZA to reduce parking requirements by 25%, thereby keeping the parking to a single level below grade.

Of course, given the rapidly changing nature of today's real estate market and the unknown time period until a final agreement with WMATA is approved, we must reserve the right to seek additional zoning exceptions, variances and other approvals as necessary to maintain the marketability and financial viability of the proposed projects.

3) Do you expect that Parcel 3 loading from Florida Avenue will be acceptable to DDOT?

The placement of loading access on Florida Avenue for Parcel 3 was an error in the preliminary design, as such access is prohibited by Section 1903.2 of the D.C. Zoning Code. Parcel 3 loading access will be relocated to 8th Street.

4) 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?

(Prepared by Max Mednick, Milestone Hotels)

Our research indicates that the market immediately surrounding the subject property is severely underserved by hotel properties. We believe that this particular neighborhood has the ability to absorb the supply of several additional hotels. By way of example, in 2006, the supply of hotel rooms in the identified competitive set grew by 24.9%

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(reflected by the opening of the 384-room Embassy Suites Washington Convention Center in November 2005). Despite the additional supply, the comp set increased its average rate and REVPAR (revenue per available room) by 9.5% and 8.4% respectively in 2006 versus 2005. Furthermore, it is our strong belief that any commercial development in the immediate surrounding market, whether hospitality-related or otherwise, will only benefit the entire neighborhood and continue to pull critical mass up the U Street Corridor as has been occurring the past several years. In short, we would not only welcome additional supply to the market, but would also be interested in constructing additional supply ourselves if the right opportunity presented itself. In an environment of ever-increasing construction costs, newly built properties always benefit existing properties by pushing room rates higher in the market to compensate for the initial costs of development.

The proposed hotel is in no way reliant on Howard University as the sole demand generator. The subject property will benefit from a wide range of primary and overflow generators based on its close proximity to the Washington Convention Center, central business core, and major tourist attractions, in much the same manner as is already occurring at management's Hilton Hotel in Silver Spring, Maryland, located five (5) miles to the north.

(LaKritz Adler adds): Our contacts at Howard University have indicated, and current public plans for Howard Town Center show, that there are no plans for a hotel at Howard Town Center as of the date of this letter, and they have further indicated, in response to our query, that there is "no chance" of a hotel at Howard Town Center. Howard does, however, continue to express interest in developing a hotel as a joint venture that combines Parcel 3 and the adjacent CVS site, as described in our Volume 1 submission.

5) Please relate your experience with office condominiums.

(Prepared by Douglas Bream, DANAC Corp.)

Condominiumizing a building provides an opportunity for commercial and/or residential clients to purchase property and share in the long term benefit of ownership. Recently, DANAC Corporation developed a 72,000 SF building, condominiumized it into three units, and sold two of the units to Metropolitan Regional Information Systems, Inc (MRIS). The third condominium unit, which is the ground floor level, is currently for sale or lease. Another recent example is the development of the Rockville Town Square, where as the master developer DANAC sold the retail space to Federal Realty Investment Trust, developed the parking directly for the City of Rockville, and condominiumized the residential area into 648 units, which we sold to third parties.

For certain projects a condominium structure provides more flexibility and a stronger client interest with a long term benefit to the surrounding community. This is particularly true for the likely tenants or office condo owners of 800 Florida Avenue, many of whom

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are non-profit organizations that can obtain below-market financing for ownership through tax exempt bonds, New Market Tax Credits, and tax-deductible capital campaigns, but cannot use these low cost capital sources for paying rent.

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. Likewise, the percentage of rent to value falls below WMATA appraisal thresholds and needs to be raised. These are FTA requirements.

It is difficult to answer this question without knowing the date and content of the WMATA appraisal. Our valuations were derived using widely accepted methods for calculating market land residuals based on the proposed development plans for the sites. We would need to consider whether the WMATA appraisal takes into account the decline in FAR values in the vicinity of the parcels since summer 2005; further, how does the WMATA appraisal adjust the land values for the time and cost impacts of the Metro tunnel running beneath the parcels? Does the WMATA appraisal account for ongoing double-digit construction cost inflation, and the impact on development land values? Does it reflect realistic by-right construction yields for the site based on actual architectural and engineering studies of the sites, and not just hypothetical, unachievable zoning envelopes?

We would hope that WMATA appreciates these nuances, and is willing to update its appraisal to reflect current market values and site conditions if the appraisal is found to be unrealistic.

In fact, we have in our possession an actual, complete MAI commercial appraisal of Parcel 3 which puts the value at $2.3 million in 2004 – our current offer of $2.7 million for this parcel is 17% higher than the appraisal value. And land values in this vicinity have been falling since mid-2005, so a 2004 appraisal is probably not far off from today's value.[1]

Regardless of the appraisal, we also understand that WMATA's intent is that we raise our offer price. Our economic calculations for the site have not changed since our

[1] The drop in land values is well-known, even if it is reflected more in a slowdown in land settlements and increased contract cancellations than in settled sales at lower prices. For example, when the DC Housing Finance Authority publicly offered for sale its 29,000 square foot Arts/C2B-zoned parcel at 815 Florida Avenue, directly across the street from Parcels 1 and 2 (but outside the Historic Preservation overlay and also without a Metro tunnel underneath, and therefore of superior value on both counts), in summer 2005, it reportedly received over a dozen offers in the approximate range of $10 million to $12 million. One year later, after two consecutive sale contracts fell through, DCHFA reoffered the site to the public, and received offers reportedly in the range of $5 million to $6 million – a 50% decline in land value in a single year.

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submission of our Volume 2 on October 5, 2007. If anything, the decline in both residential and commercial land values has accelerated since this time, owing to the widely-reported ongoing global credit crisis, which has caused a sharp increase in commercial and residential financing costs and reduced the availability of most forms of leverage, thereby reducing the value of real estate assets and increasing risk on development projects. Cap rates have been rising, pressuring commercial real estate values downward, even in the best markets.

Nonetheless, we would consider adding our estimated Metro tunnel-related site work costs for each parcel back into the parcel prices for Parcels 2 and 3 (Parcel 1 assumes no special site work), less $250,000 for each parcel for general site work, provided that WMATA will reduce the actual sale price at settlement (or reimburse us after settlement, as the parties may agree) by the amount that a qualified site work contractor and structural engineer determine, in a Guaranteed Maximum Price form of contract, will be required to address Metro-tunnel specific costs in the projects as designed, not to exceed our original site work estimates. In other words, we will increase our offer price on Parcel 2 by $538,408 (43% of the $1.5 million budget less $250,000, since Parcel 2 is 43% of the area of the Parcel 2 and 1920 8th combination), to $2,138,408, provided that Metro will reduce sale price or reimburse us up to $538,408 for our actual site work, excavation and foundation (and related soft) costs in the project to be built on Parcel 2 caused specifically by the presence of the Metro tunnel and systems under and about Parcel 2.

Similarly, we could increase our offer price on Parcel 3 by $1.589 million, to $4,289,000, provided that Metro will reduce our sale price or reimburse us up to $1.589 million for our actual site work, excavation and foundation (and related soft) costs in the project to be built on the Parcel 3 caused specifically by the presence of the Metro tunnel and systems under and about Parcel 3.

We are already assuming there will be no Metro-tunnel related costs on Parcel 1, so we are unable to adjust this price.[2]

Ground lease rates could be adjusted accordingly, as 4.77% in the first year of the new sale prices, after adjusting for the site work cost. (In fact, since the date of our offer, long-term interest rate indexes have fallen, suggesting that the ground lease rate should be reduced.)

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[2] Parcel 1, along with Parcel 2, is a good example of a site where an appraiser who has not performed an architectural and engineering study could very easily make wrong estimates about the site valuation, since a simple FAR calculation would suggest that the site has 17,100 residential square feet available, but in fact, owing to the small, irregular size, underground tunnel and parking constraints, only a single story retail building with mezzanine (about 4,100 square feet) is achievable under zoning requirements and with a modicum of cost-effectiveness and efficiency.

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2) WMATA expects escalation in 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.

As shown in Volume 2, our offer prices have been derived assuming purchase settlement occurs on October 26, 2011, or ground lease payments start on December 19, 2012, and as stated on pages 6 and 7 of Volume 2, we will increase purchase price by 3% and rent rate by 2% annually, pro rated monthly, for each year that settlement or lease start is delayed beyond those dates (provided that the delay is the fault of the developer, and not WMATA). Since our calculations assume that we are not paying debt costs or equity returns on land value prior to the project settlement or lease start dates, if purchase or lease were to start sooner than these dates, the purchase price or ground rent would have to be adjusted downward to derive the same returns, which are the minimum acceptable returns for this project. In other words, our offer prices are not today's values – they are higher than today's values.

At this time, Metro has received a $100,000 earnest money deposit for our contract on the parcels. In addition, we will be spending over $2 million during the contract period, investing in an entitlement process that adds great value to these Metro-owned properties, including HPRB, BZA and DCRA permit processes. If we were holding a passive land option on the properties for a period of time until deciding whether or not the develop the land, an option fee would make sense, but we are expediting the development process, at our time and expense, adding value to the Metro land and making it possible for us (or another purchaser) to purchase the land from Metro at the proposed values (without these entitlements, the land is worth less than the offer prices). We believe option fees are not appropriate for this situation.

3) 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).

We presume this question is only applicable in a ground lease scenario, since in a sale WMATA has no ongoing interest in the properties. We would appreciate further clarification of what WMATA has in mind for participation. We can then run a net present value analysis of the ground lease taking the additional payments to WMATA into account, and reduce the base ground rent rate accordingly, to achieve the same minimum required return for the investor equity and debt. Alternatively, we are open to a percentage ground rent, where ground rent payments are calculated on the net rental income from the improved properties, and are increased or reduced as a fixed percentage of that net rent. This would be an alternative to a base ground rent rate.

Having made this offer, we nonetheless urge WMATA to make these transactions as simple as possible, through fee simple sales on all three parcels, without complicating

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and therefore handicapping the transactions and potential developments by adding options, recapitalization and revaluation distribution formulas and percentage rent calculations to an already complex situation on three relatively small parcels in a transitional location and a downward-trending real estate market.

4) 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.

We are most interested in a sale on all three parcels, first and foremost, because a fee simple sale is the simplest type of transaction, and would give the developer the greatest range of development, financing and ownership structure options, thereby giving the project the greatest likelihood of success in an uncertain and rapidly changing market environment. On pages 29-32 of our Volume 1 submission, we go into great detail as to the reasons we prefer a fee simple sale on all three parcels. It is true, as described on page 31 and cited in your question above, that multiple and different land ownership structures beneath a single building will be difficult to accomplish and will needlessly complicate the transaction, and therefore make it less likely to succeed. This is not only a reason to sell Parcels 1 and 2 fee simple, it is also a reason to sell Parcel 3 fee simple, because there is a good probability that Parcel 3 will be combined with Howard University's adjacent CVS parcel in the ultimate development, and this will entail the same problems as combining Parcel 2 on an unsubordinated WMATA ground lease with 1920 8th Street.

To restate our argument on pages 31-32, our market feedback is that many prospective commercial tenants for these location will want at least a purchase option or right of first refusal on sales of their office spaces, if not an outright purchase of an office condominium, to induce them to locate to this pioneering office location. This would be very hard to accomplish if the land underlying the buildings is on a ground lease (especially a ground lease with multiple lots and owners.) Again, the key to success in this project, for any developer, will be flexibility – best achieved through a fee simple sale with no strings attached.

As to how we could combine 1920 8th with Parcel 2 if Parcel 2 is on a ground lease – our ground lease and option terms for 1920 8th Street explicitly allow us to combine the lot with adjacent lots for zoning and building purposes during our ground lease period. We would have a single building lot for zoning purposes with multiple tax lots for ownership and taxation purposes. Of course, WMATA would have to agree to this arrangement as well. If we owned Parcel 2 in fee simple this would not be an issue.

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5) It appears you are valuing the property adjacent to Parcel 2 at $94/FAR sf, whereas you value Parcel 2 at $42/FAR sf. Please explain the disparity and assure WMATA that it is not subsidizing the adjacent property deal.

We appreciate your concern. Therefore, it is important for us to better explain the terms of our 1920 8th ground lease and purchase option contract. To review, the essential terms of the 1920 8th ground lease are:

- Commenced August 3, 2007, with a one year base term and nine one-year renewal options
- Ground rent of $225,000/year in the first year, $150,000/year for renewal terms 1-4, and $200,000/year for renewal terms 5-9.
- Purchase option exercisable at any time during base term and renewals. Exercise price of $4,800,000 in the base term, increasing by 1.5% in each of the first three renewal terms and then remaining fixed at $5,019,256.20 for the remainder of the renewal terms.
- $100,000 of ground rent, once paid, credited toward the purchase option in the base term and in each of the first two renewal terms, with 100% of ground rent paid following the second renewal term and in every renewal term thereafter credited toward the option price. Therefore the purchase option balance due (*i.e.*, the purchase price) at the end of the last renewal term (August 3, 2017) shall be **$3,419,256.20.**
- Landlord is obliged under the ground lease to subordinate its unencumbered fee interest in the Property to Tenant's Construction Lender (and subsequent lenders), meaning that Tenant has full use of the land value of the Property as collateral to secure its construction financing, in place of a cash equity investment of equal value.

Under our agreement, we will be paying $3.42 million to buy 1920 8th in August 2017, a price of $67/FAR-sf. Let us assume we would close on the WMATA land at $42/FAR-sf on November 1, 2011, our firm outside closing date. Rounding to a six-year interval between the two settlements, and assuming an 8% discount rate, the Net Present Value (NPV) of a $42/sf number in 2011 is equivalent to the NPV of a $67/sf number in 2017. In other words, the values are identical.

Moreover, during the ten-year 1920 8th ground lease period, we are carrying 100% of the $3.42 million purchase price at an interest-only rate of 4.39% over the next four years ($150,000/year), increasing to a rate of 5.89% over the following five years ($200,000/year). This rate is superior to the bank financing terms we would receive on the land purchase today.

But the biggest difference between our deal on the 1920 8th parcel and the proposal for the WMATA parcels is that the 1920 8th ground lease is a fee-subordinated ground lease. The landlord has to pledge 100% of his fee interest in the property as collateral to our

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development, construction and permanent financing. This means that lenders will count the land value as the equivalent of cash invested in the deal, yet we and our investors do not have to invest this cash, and we are not compensating the cash beyond the low carry cost rates described above (an average of 5.2% over the next nine years). The minimum return for cash invested in a real estate development project today is 20%, compounding annually (and in most cases it is more). Assuming that 1920 8th appraises for $3.42 million and thus replaces an equal amount of cash equity in our project, the correct discount rate to apply to the future cash flows (ground lease payments) and eventual (2017) purchase price is 20%. We can compare this NPV to the NPV of purchasing the WMATA Parcel 2 for $1.6 million in 2011 at an 8% cost-of-funds (discount) rate, and then paying an 8% interest-only rate on 100% debt financing on that purchase until 2017. The end result is an NPV of $1.2 million for the 1920 8th Street deal, versus $1.5 million for Parcel 2.

Therefore, we are offering to pay WMATA 25% more for Parcel 2 than we are paying for the adjacent property at 1920 8th Street. It is not WMATA Parcel 2 that is subsidizing the purchase of 1920 8th, it is 1920 8th subsidizing WMATA. There are other ways to analyze this differential, but the gap would be even larger if we considered the full near-term benefits of the land equity available to us from the subordinated ground lease. We would happily make the same deal on the same proportionate price and terms with WMATA, but WMATA has stated that it will not subordinate its fee interest in a ground lease.

A final point of distinction between the two parcels is that at 1920 8th Street, we have a by-right, 47,600 square foot office building plan that meets zoning code parking requirements without any underground garage, saving us the entire cost of both Metro tunnel site work and underground garage construction if we build 1920 8th on its own. Anyone building on Parcel 2 on its own would either have to obtain a zoning variance for a large (50%) parking reduction, impairing the marketability of the building, or would have to incur relatively large underground garage and metro-tunnel specific costs to construct a by-right building on Parcel 2, which even then would not come close to the full FAR potential of the site because of the parking requirements (without going an unfeasible two floors underground for parking). Thus the Parcel 2 sale price must be reduced by the costs imposed by the Metro tunnel running beneath it, whereas 1920 8th on its own does not need to be discounted by this cost (although it does need to be discounted if combined with Parcel 2, since both sites will then incur the special site work costs over a larger area.)

6) Note that WMATA standard leases require annual minimum escalations of rent (as opposed to the once every 10 years 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.

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

FOIA CONFIDENTIAL TREATMENT REQUESTED

We will agree to change our ground rent escalation rate to 1.8% per year, rather than 20% every ten years.

Eliminating the right of first refusal on future sale of the property eliminates one of the inducements for a developer to enter a ground lease for the parcels, rather than a purchase. As a trade off, we believe the ground rent rate should be reduced, which would also bring the rate more into line with current market trends.

We look forward to further discussion on December 19th, and reaching an agreement with WMATA to acquire these parcels.

Sincerely,

Joshua Adler
Co-Managing Member

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA PRESENTATION
Shaw-Howard / Florida Avenue JDS

PART II: Technical Proposal Summary

LaKritz | Adler Development, LLC
December 19, 2007

LAKRITZ | ADLER

WMATA-INV 008798

FOIA CONFIDENTIAL TREATMENT REQUESTED

I. Executive Summary

- LaKritz | Adler Development, a Washington D.C., LSDBE developer strong in the Shaw, U Street and Georgia Avenue communities, working with DANAC Corporation, a regional commercial developer (built the one million square foot Rockville Town Square), and Milestone Capital Corporation, a regional hotel developer/operator (built Silver Spring's Hilton, Hampton Inn and Homewood hotels), proposes to acquire Parcels 1, 2 and 3, join Parcel 2 with 1920 8th Street, and develop:
  - On Parcel 1: 4,100 s.f. New "Warehouse Theater" and Restaurant
  - On Parcel 2 + 1920 8th Street: 90,000 s.f. Office and Retail
  - On Parcel 3: 72,000 s.f. Hotel and Retail

LAKRITZ | ADLER

WMATA-INV 008799

FOIA CONFIDENTIAL TREATMENT REQUESTED

II. Development Team

- LaKritz | Adler Development, LLC: lead developer
  - Principals: Robb LaKritz, Josh Adler (LSDBE/RBO-certified, Washington, D.C.)
  - Exclusive control of key adjacent parcel (1920 8th St., 11,320 s.f. lot)
  - Unique knowledge and history of the sites
  - Strong history in Shaw, U Street, Georgia Avenue communities
    - Moderno: 35,000 s.f. mixed-use project, 12th & U, in construction ($12 million cost)
    - Veritas Building: 13,000 s.f. office/retail rehab, Florida Ave.
    - Temperance Hall: 6,000 s.f. new construction retail & office, Georgia Ave.
    - Watha T. Daniels House: historic mixed-use rehab, 9th St., Shaw
- DANAC Corporation: co-developer (office), construction, property management
  - Founded 1963. Owner/CEO: John F. Jaeger, CFO: Douglas Bream (Bethesda, MD)
  - Leading regional office, mixed-use developer
  - Lead developer, one million s.f. Rockville Town Square ($220 million, 2005-2007)
  - Public – Private Partnerships: Rockville Town Square, Old Town Gaithersburg
  - Vast commercial construction experience: over 5 million square feet developed
  - Strong financials: $250 million in assets, below 50% total leverage, privately held

LAKRITZ | ADLER

WMATA-INV 008800

FOIA CONFIDENTIAL TREATMENT REQUESTED

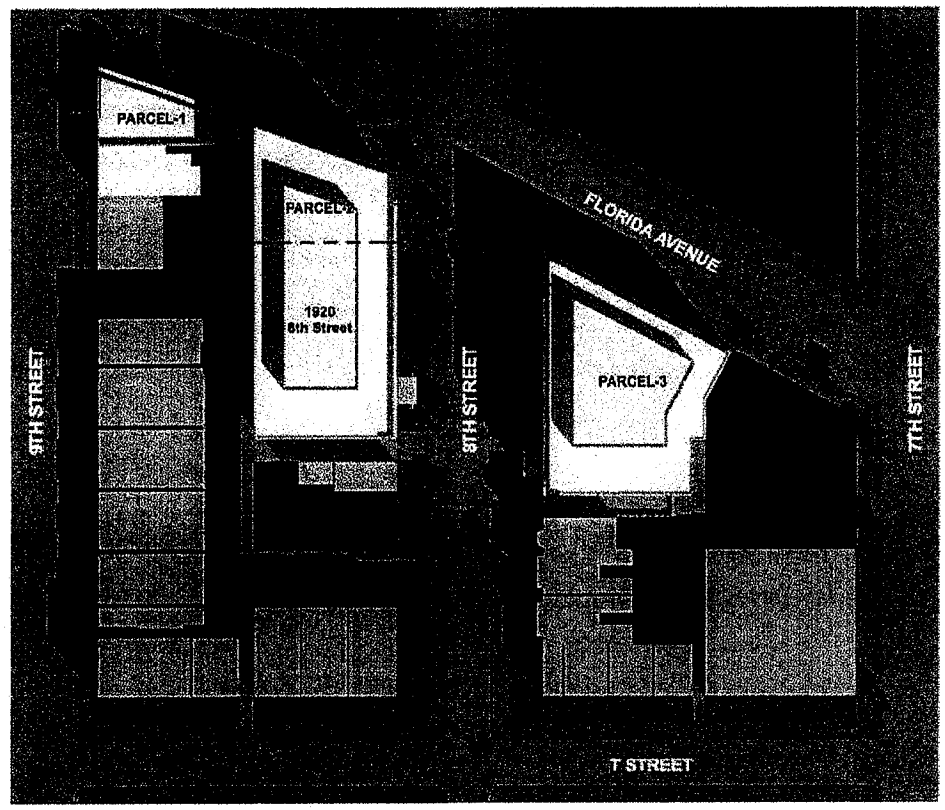
Development Team

- Milestone Capital Corporation: co-developer (hotel), hotel management
  - Principals: Sander Mednick, Michael Wachtell, Mason Mednick
  - Leading regional hotel developer, operator
  - 14 hotels in 7 states, 2,371 rooms in portfolio today
  - 40+ hotels developed, over $500 million value, past ten years
  - Developer & Operator, Silver Spring Hilton, Hampton Inn, Homewood Suites
- CORE Architecture/Design
  - #1 retail architect in Washington, D.C.
  - Metro/U Street experience: designed 1250 U office bldg., U St. Metro Entrance
  - NMAC HQ (U St.); XM Satellite HQ; Atlas Performing Arts Center; Dean & DeLuca
- Warehouse Theater: retail tenant
  - Shaw cultural institution relocating, needs new home in Shaw
- Cushman & Wakefield: commercial leasing
  - Brokered True Reformer Building, 12th & U, to Public Welfare Foundation

WMATA-INV 008801

FOIA CONFIDENTIAL TREATMENT REQUESTED

III. Site Plans



SITE PLAN

AREA PLAN

	Use	Height	Stories
Parcel - 1	Retail	24'-0"	1 Story + Mezzanine
Parcel - 2	Retail + Office	65'-0"	5 Stories
Parcel - 3	Retail + Hotel	65'-0"	6 Stories
Parcel - 3	(alternate) Retail + Office	65'-0"	5 Stories

N

WMATA-INV 008802

FOIA CONFIDENTIAL TREATMENT REQUESTED

Site Plan: Parcel 1

- ***Parcel 1*** *- 4,124 SF Freestanding Retail/Restaurant Building*
  - 4,124 square foot free-standing neighborhood performing arts center and restaurant in joint venture with the Warehouse Theater
  - Keeps the Warehouse Theater in the Shaw neighborhood
  - By-right plan
  - No zoning relief
  - No public subsidies
  - Advances the goals of D.C. Office of Planning's "Duke Plan" by creating a new entertainment destination in the Uptown Arts Overlay.

WMATA-INV 008803

FOIA CONFIDENTIAL TREATMENT REQUESTED

Site Plan: Parcel 2 (800 Florida Ave.)

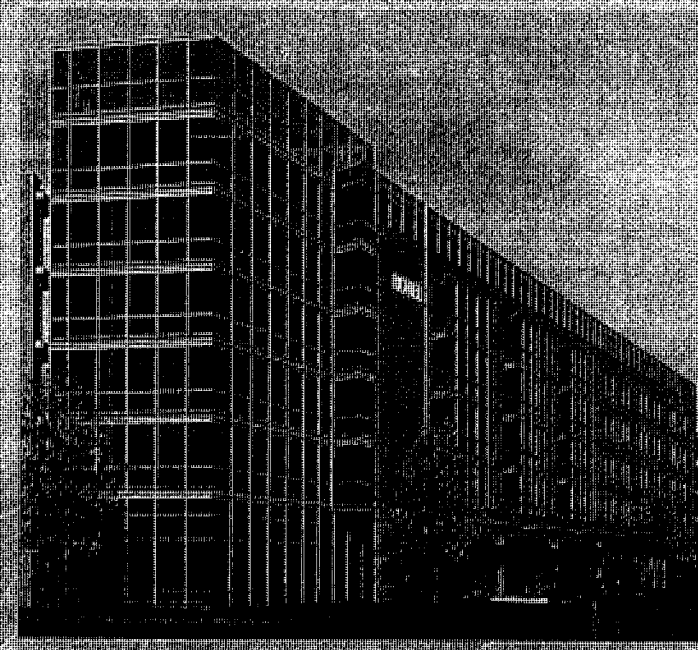
- ***Parcel 2 + 1920 8th St.*** *- 89,483 s.f. Commercial Building*
  - 89,483 square foot, 4.5 FAR, LEED-Certified, five-story retail and office building
  - 14,000 rentable s.f. ground floor restaurant, entertainment and retail space
  - 71,000 rentable s.f. office area
  - 44 underground parking spaces on one level
  - Maximum density, by-right plan on 19,885 s.f. combined lot area
  - No zoning relief, no public subsidies.

WMATA-INV 008804

FOIA CONFIDENTIAL TREATMENT REQUESTED

Site Plan: Parcel 3

- ***Parcel 3*** *- 72,000 SF By-Right, 6-story Hotel with 8,000 SF Retail*
  - 72,000 s.f., 4.5 FAR, LEED-Certified, 6-story upscale boutique hotel
  - Serve Howard, Convention Center, and Greater Shaw/U Street area
  - Flags: Marriott Spring Hill Suites, Hyatt Place, Starwood Aloft, Intercontinental Indigo
  - Approximately 145 rooms and at least 8,000 s.f. retail
  - Maximum density plan, parking reduction from BZA, no public subsidy



- *Alternate Plan:* 72,000 s.f., 4.5 FAR, LEED, 5-story office and retail building, max density by-right, no zoning relief, 12,000 square feet retail, 34 parking spaces

- LaKritz | Adler in talks with Howard and CVS to combine Howard's 21,000 s.f. parcel at 7th & Florida with Parcel 3 in J.V.

LAKRITZ | ADLER

WMATA-INV 008805

FOIA CONFIDENTIAL TREATMENT REQUESTED

IV. Transit Oriented Development Principles / Highest and Best Transit Use

- LaKritz | Adler plan maximizes density and public transit use on sites
- Adds 1,977 persons to daily area population
  - Versus only 937 for hypothetical maximum density residential plan
- Without 1920 8th Street, other plans cannot achieve max density
- Most new traffic will be public transit, reverse commuters
- Highest density and public transit use anchor retail, street activity
- Diversifies neighborhood with daytime, commercial uses
  - Preferred by ANC, O.P., other neighborhood associations

LAKRITZ | ADLER

WMATA-INV 008806

FOIA CONFIDENTIAL TREATMENT REQUESTED

V. Project Schedule

Name	Duration	Start Date	Finish Date	Notes
WMATA PROCESS	465 days	1/1/2008	4/9/2009	
BUILDING PERMITS	840 days	4/10/2009	7/28/2011	
HPRB Design & Approval	8 mons	4/10/2009	12/5/2009	3 rounds with HPRB
BZA Design & Approval	8 mons	4/10/2009	12/5/2009	Optional - parallel to HPRB
Development Financing Approval	90 days	2/5/2009	2/3/2010	
Schematic Design / Construction Docs	6 mons	2/4/2010	8/2/2010	
WMATA Approval & Design	3 mons	8/3/2010	10/31/2010	Interspersed with design
DCRA Building Permit Approval	9 mons	11/1/2010	7/28/2011	Current DCRA delay 12 months
CONSTRUCTION	510 days	7/29/2011	12/19/2012	
Construction Financing Approval	3 mons	7/29/2011	10/28/2011	
Closing on Land & Ground Lease	0 days	10/28/2011	10/28/2011	Land + Ground Lease only
Construction Phase 1	8 mons	10/27/2011	8/22/2012	
Construction Phase 2 and 3	14 mons	10/27/2011	12/19/2012	
Construction Phase 3	14 mons	10/27/2011	12/19/2012	
Substantial Completion	0 days	12/19/2012	12/19/2012	
LEASING / STABILIZATION	1.00 mons	4/10/2009	3/14/2014	
Marketing	24 mons	4/10/2009	3/10/2011	Start at Dev Plan approval
Initial Occupancy	2 mos	12/20/2012	2/17/2013	
Commenced Lease Payments	0 days	12/19/2012	12/19/2012	Ground lease only
Stabilization Lease Up	12 mons	12/20/2012	12/14/2013	

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WMATA-INV 008807

FOIA CONFIDENTIAL TREATMENT REQUESTED

VI. Zoning

- No zoning relief required for Parcel 1 and 2 plans.
- BZA parking reduction required for Parcel 3 hotel plan
- No zoning relief required for alternate Parcel 3 plan (office)

LAKRITZ | ADLER

WMATA-INV 008808

FOIA CONFIDENTIAL TREATMENT REQUESTED

VII. Local Jurisdiction Benefit

SUMMARY TAX BASE IMPACT ANALYSIS

ONE-TIME TAX EVENTS	
Construction Permitting Fees	$176,062.80
Purchase Recordation Tax	$112,740.00
Sale Transfer & Recordation Tax	$2,745,610.58
Financing Recordation Tax	$460,828.00
Construction Jobs Income Tax on Avg $80k, 83% in D.C.	$586,464.00
Legal/Professional/Kell Income Tax on Avg $120k, 50% in D.C.	$344,004.00
Franchise Tax on Development Profits	[illegible]
TOTAL ONE-TIME D.C TAXES	**$7,612,176.18**
Total Construction/Development Jobs Created:	**473**
Jobs Created in D.C. Only:	**237**
ONGOING TAXES ON OPERATIONS (at stabilization)	
Restaurant & Retail Sales Taxes	
Parcel 1	[illegible]
Parcel 3	[illegible]
Parcel 4	[illegible]
Restaurant/Retail Jobs Income Tax on Avg $30k, 78% D.C.	[illegible]
Office Jobs Income Tax on Avg $75k, 50% D.C.	[illegible]
Hotel Jobs Income Tax on Avg $45k, 80% D.C.	$51,933.00
Hotel Taxes	
Room Taxes Parcel 1	[illegible]
Dining Taxes	[illegible]
Parking Taxes All Parcels @ 12%	[illegible]
Property Taxes (1.85% year on pro forma capitalized value)	
Parcel 1	[illegible]
Parcel 3	[illegible]
Parcel 4	[illegible]
TOTAL ONGOING D.C. ANNUAL TAXES GENERATED	**$5,744,530.19**
Long-Term Jobs Created:	**514**
Long-Term D.C. Jobs Created:	**293**

LAKRITZ | ADLER

WMATA-INV 008809

FOIA CONFIDENTIAL TREATMENT REQUESTED

VIII. Local Jurisdiction / Community Input

- ANC 1B SMD and ANC 1B Secretary have endorsed LaKritz Adler Plan
  - Strong preference for new office, retail and hotel at this location
  - New residential is opposed, area is glutted
  - Poor economics for residential cause fear that residential project will fail
  - Interest in speedy development favors by-right plan, no public funding
  - ANC officially voted in favor of LaKritz Adler 1920 8th plan in past
  - LaKritz Adler has favorable history, good reputation with ANC 1B
- Mid-City Business Association has endorsed LaKritz Adler Plan
  - Keeps existing businesses in Shaw
  - Builds Shaw / U Street daytime commercial vitality
- Office of Planning has expressed support for LaKritz Adler plan
  - Strong support for speedy by-right plan, no public subsidies requested
  - Strong preference for new retail, office, hotel
  - Duke Plan calls for 18-hour destination district, only LAD plan provides
  - O.P. also provided extensive design input for HPRB process

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WMATA-INV 008810

FOIA CONFIDENTIAL TREATMENT REQUESTED

IX. Summary/Conclusion

- LaKritz Adler plan is Highest and Best Transit Use for JDS sites
  - Highest density: 71k SF office, 26k SF retail, 145 hotel rooms
  - Adds ~1,977 new people daily, reverse commuters on public transit
  - Fits with O.P. and ANC objectives for sites, area
  - Greatest positive impact on local economy and Metro ridership
- LaKritz Adler plan is most likely to succeed, and succeed quickest
  - No public subsidies required
  - Favorable commercial market dynamics v. residential market
  - By-right plan: minimal BZA relief required
- Most experienced, well-financed development team
  - Every member of LAD team has multiple, verifiable, market-rate, unsubsidized, successful development projects of similar type and scope
  - All local companies with strong relationships in community

LAKRITZ | ADLER

WMATA-INV 008811

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA PRESENTATION
Shaw-Howard / Florida Avenue JDS

PART 2: Economic Proposal Summary

LaKritz | Adler Development, LLC
December 19, 2007

LAKRITZ | ADLER

WMATA-INV 008812

I. Modified Purchase/Lease Prices

Parcel	Purchase Price	Ground Lease Base Rent (per annum)	Ground lease Term	Increases
1	$590,000	$28,143	99 years – 7 ten-year renewals	1.8% every year
2	$2,138,408 (before [illegible] site work adjustment)	$102,002 or 0.47% [illegible] adjusted price	99 years – 7 ten-year renewals	1.8% every year
3	$4,289,000 (before [illegible] site work adjustment)	$204,585 or 0.47% [illegible] adjusted price	99 years – 7 ten-year renewals	1.8% every year

LAKRITZ | ADLER

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

III. Payment Schedule

- Outside closing date, sale: November 1, 2011
- Outside commencement, ground lease payments: January 1, 2013

LAKRITZ|ADLER

WMATA-INV 008814

FOIA CONFIDENTIAL TREATMENT REQUESTED

IV. Financial Viability

- Priced for 25% Return on Cost at 6.5% stabilized cap rate (fee sale)

- Experienced development team with ample balance sheets
- No public subsidies required
- Minimal or no zoning relief required
- Favorable market trends for product types (office, retail, hotel)
- Control of key adjacent parcel, including 100% land equity
- Best plan for Metro ridership increases, reverse commutes

LAKRITZ | ADLER

WMATA-INV 008815

BB&T

Branch Banking & Trust Co.

1909 K Street NW
Washington, DC 20006

IRREVOCABLE STANDBY LETTER OF CREDIT

Letter of Credit No: 9560251537/00001
Issue Date: _October 5, 2007

APPLICANT:
Name: LaKritz Adler Development LLC
Address: 4326 8th Street, Washington, DC 20011-7214

Re: Issued in connection with
Joint Development Site: Shaw Howard/Florida Avenue
Joint Development Solicitation (JDS) Dated: October 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: _9560251537/00001__ 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_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 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 credit shall expire, unless extended as provided herein, at 5:00 PM local time in Washington, DC on December 31, 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 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, we notify you by Registered Mail that we elect not to extend this credit for any additional period. Upon your receipt of such a notification, you may draw your sight draft on us 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 extend.

4. All drafts drawn under this letter of credit must refer to the number and issue date of this credit, and must be marked "Drawn under Branch Banking & Trust Company Irrevocable Standby Letter of Credit No. 9560251537/00001 .

5. We agree to honor each draft drawn under and in compliance with the terms of this credit, if duly presented at our offices at 1909 K St. Washington, DC at or before 5:00 P.M. local time in Washington, D.C. 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 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 credit.

7. Partial drawings under this letter of credit are permitted.

8. This credit shall be governed by the Uniform Customs and Practices for Documentary Credits, UCP 500 (1993 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.

Very truly yours,

Branch Banking & Trust Company

Brian R. Kuehn
Vice President

CC: Exhibit A: Sight Draft

Sight Draft

Date:_____

AT SIGHT, pay to the order or-Washington Metropolitan Area Transit Authority, the sum of _____Dollars (USD"_____).

For Value Received, and charge to the account of LaKritz Adler Development LLC.

Drawn under Branch Banking & Trust Company Irrevocable Standby Letter Credit No. _____, dated _____.

Washington Metropolitan Area Transit Authority, as Beneficiary under said Irrevocable Standby Letter of Credit No. _____, dated _____, hereby certifies to you that:

[insert certification language]

TO: Branch Banking & Trust Company
1909 K St. NW 2nd Floor
Washington, DC 20005
Attn: Letter of Credit Department

Washington Metropolitan Area Transit Authority

By: _____

Print Name: _____

Title: _____

600 Fifth Street, NW
Washington, D.C. 20001

LAKRITZ | ADLER
real estate development

April 17, 2008

Office of Property Development and Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001
Attention: Joel Washington, Director, Station Area Planning and Asset Management

Re: Shaw-Howard Florida Avenue Joint Development Site Offer

Dear Mr. Washington:

We are writing to follow up on Rosalyn Doggett's phone call to us of March 3, 2008, informing us that our offer price was the lowest of the three remaining finalists. We appreciate the courtesy call in advance of the formal WMATA Board Meeting, as well as the frank discussion regarding the value of the Parcels during our presentation to WMATA staff in December.

While we continue to believe that our offer price represents the correct valuation of the Parcels, we are willing to enter into more detailed discussions with WMATA to arrive at what both we and WMATA might together agree is the fair market value for the Parcels.

We believe our offer to be the most thorough and credible. We control the key parcel adjacent to, and essential for, the construction of a substantial building on WMATA Parcel 2. We have relevant development experience. Our assumptions are based on actual, current construction costs for a project of similar size and location, and we have actual engineering reports on the cost impact of the Metro tunnel beneath the sites. An essential consideration must also be that our offer price and proposed project can be financed in today's real estate debt and equity environment, and we can execute on the terms we have proposed without relying on uncommitted third parties.

We therefore hope for the opportunity to meet again with WMATA staff to reach agreement on the fair market value of the WMATA Parcels.

Sincerely,

Joshua Adler
Co-Managing Member
LaKritz Adler Development

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

FOIA CONFIDENTIAL TREATMENT REQUESTED

In short, we are highly confident that our proposed uses are best and that our valuation is the highest that can be supported by conventional financing, without the need for substantial public subsidies, under today's market conditions for financing, leasing, construction and sales. We are confident that if the WMATA appraisal differs significantly from our conclusions, it is because the appraisal is either out of date, or uses inappropriate sale comparables, construction costs, or financing assumptions.

Finally, having given additional thought to the practical difficulty of administering the purchase price credit that we suggested in our most recent response letter for unique tunnel-related site-work, we would like to reaffirm the purchase prices set forth in our proposal:

Parcel 1: $590,000
Parcel 2: $1,600,000
Parcel 3: $2,700,000
Total Offer Price: $4,890,000

Ground Lease. In response to your question about whether we are still interested in a ground lease, we are. However, we continue to believe that a ground lease represents an inferior alternative for both parties. For one, it provides less development flexibility for these sites, resulting in a lower present valuation. If WMATA's interest is in long-term income, it would be better served to maximize its proceeds from an unrestricted sale and then reinvest those proceeds in investment vehicles that would provide a higher rate of current return than the unsubordinated ground leases on these sites (given the value-impairment that the unsubordinated ground leases impose). This is trebly the case if WMATA insists on a 60-year ground lease term for the parcels, which would greatly constrain development options. Such a short term ground lease would probably make single-story retail the only feasible plan, as a large, complex construction project could not be recouped with an adequate return from cash flow in sixty years (the short lease would eliminate the appreciation component of the return). This would not only contradict WMATA's expressed interest in achieving the highest and best transit use of the parcels, it would contradict the principles of transit-oriented development and the jurisdiction's comprehensive plan for mixed-use and maximum density on these sites. Needless to say, the present value of the parcels would be dramatically reduced as well.

In summary, we remain eager to reach an agreement to purchase these lots from WMATA on market-rate terms, as we have proposed, and we are certain of our ability to perform on the plans and terms we have proposed, even in today's unfavorable market conditions. As you know, we have been studying and planning the development of these lots for several years, and as residents and active developers in the immediate neighborhoods, we know how strongly our community wants to see these long-vacant lots finally contribute to the economic renaissance of U Street and the greater Shaw neighborhood.

Sincerely,

Joshua Adler
Co-Managing Member
LaKritz | Adler Development, LLC

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008821

Lakretz Adler
Robb Jon
12/19/07

1. Parcel 1 - because of small size, core would eat up 50% of space stay 1 level + mezzanine

2. OP wants to sell by night — something done fast

3. Phil Spaulding endorsing a specifically commercial project
& Myla Moss endorsing ~~co~~ L/A

4. Hotel - limited service
"Hyatt Place" - Boutique-ish
Sheraton Aloft, Springhill Suites, Intercontinental Indigo
Milestone has Hyatt + Hilton now
traveler-related, not expensive

~~[illegible]~~

2 bldgs next door - facades would have to remain, historic protected

WMATA facilities impact
Parcel 2 fan shafts on 8th St = higher shoring + shoring cost
Parcel 3 also

based on Clark Foundation cost estimates
Messer structural
] of a couple of years ago

Envi has it now with 25% return on cost

Washington Metropolitan Area Transit Authority
Office of Property Development and Management

Meeting: LAKritz/Adler

Date: 12-19-07

Name	Office/Organization	Office Phone Email Address
1. MARC BIONDI	WMATA / COUN	202 962 1011 MEBIONDI@WMATA.COM
2. John Magarelli	WMATA / SAAM	202-962-1357 jmagarelli@wmata.com
3. Joel R. Washington	WMATA / SAAM	202-962-2616 jrWASHINGTON@WMATA.COM
4. ROSALYN DOGGETT		
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LAKRITZ | ADLER
real estate development

DEVELOPMENT PROPOSAL
WMATA SHAW/U STREET DISTRICT
WASHINGTON, D.C.
PARCELS 1, 2 and 3

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I. EXECUTIVE SUMMARY

LaKritz | Adler Development, a Washington D.C.-based, LSDBE-certified development company, in conjunction with Marriott International, Inc., the Warehouse Theater, Robertson Development, CORE Architects and the Academy for Learning Through the Arts (ALTA), proposes to acquire WMATA Parcels 1, 2 and 3, either through a purchase or ground lease.

Plans for each of the three WMATA parcels, as more fully described in Section IV herein, include:

- Parcel 1 – 4,124 square foot free-standing neighborhood performing arts center on the corner of 9th and U Streets that keeps the Warehouse Theater in the Shaw neighborhood and advances the goals expressed in the D.C. Office of Planning's "Duke Plan." To the chagrin of the Shaw community, the Warehouse Theater is being forced to relocate from its historic property on 7th Street NW and away from the Greater Shaw/U Street area.

- Parcel 2 – 126,000 square foot retail and office building **(accomplished by combining Parcel 2 with the LaKritz | Adler-controlled adjacent 11,327 SF vacant parcel and obtaining a PUD approval).** Retail tenants would include locally-owned businesses, including a neighborhood-anchoring restaurant operated by LaKritz | Adler (similar to its well-known bistro, *Temperance Hall*, located one block from the Georgia Avenue/Petworth Metro Station). Upper-floor commercial tenants would include the Academy for Learning Through the Arts (ALTA), an established Greater Shaw/U Street area public charter school for the arts currently seeking expansion space, as well as loft office space for local professional services

firms, local non-profits and arts groups who can no longer afford space downtown and prefer an emerging neighborhood location.

- Parcel 3 –96,000 square foot Marriott boutique hotel serving the Convention Center, the Greater Shaw/U Street area and Howard University. The hotel will also incorporate a plethora of neighborhood retail, restaurant and entertainment options, all consistent with the Duke Plan. There is not a single hotel serving any of these markets today.

Given LaKritz | Adler's long-standing presence and development experience in the U Street area, as well as our unique knowledge of and history with these specific sites, we believe these plans represent the highest and best uses for these this site. The uses we have proposed best embody the overlapping goals of the Duke Plan, the intentions of the U Street Arts Overlay, and the wishes and desires of the surrounding community.

II. KEY FEATURES OF THE LAKRITZ | ADLER PROPOSAL

A. Exclusive Control of Major Adjacent Parcel

LaKritz | Adler Development has held an exclusive purchase option on 1920 8th Street, the vacant 11,327 parcel abutting Parcel 2 owned by Medal Inc., for most of the past two years (and holds it currently). Without this parcel, it is difficult or impossible to build underground parking to serve a new building on Parcel 2 and to maximize the FAR, efficiency and marketability of a project at this site. Further, by combining the sites, LaKritz | Adler would be afforded the opportunity under D.C. Zoning Regulations to pursue a PUD for the combined site, increasing the compensation LaKritz | Adler can pay to WMATA.

LaKritz | Adler and Marriott Hotels have also been in talks for over one year with Howard University regarding the incorporation of the Howard-owned 21,000 square foot CVS parcel abutting Parcel 3 and possible joint development plans for combining this site with Parcel 3 to expand the hotel facility contemplated. LaKritz | Adler and Marriott have completed initial feasibility studies for these sites.

B. Unique Knowledge of the Site

During its extended option period on 1920 8th Street, LaKritz | Adler designed a six-story mixed-use building for the site, obtained ANC endorsement of the design, obtained preliminary Historic Preservation and Review Board approval for the design, and performed extensive due diligence, construction budgeting and value engineering for the site, including all the special due diligence, foundation engineering reports and estimates necessary to construct a six-story building with several levels of underground parking adjacent to this specific Metro tunnel and fan system. In addition, LaKritz | Adler commissioned and received an engineering study with foundation cost estimates from Muesser & Rutledge Engineers (who performed the original engineering studies for this portion of

the Green Line) specifically with regard to the costs of building similar structures on Metro Parcels 1, 2 and 3, in preparation for an offer on these parcels. LaKritz | Adler has detailed knowledge of the special costs of construction on these specific sites, as well as the relationships with the HPRB, local community leaders and the ANC with respect to these specific sites, that no other developer could have at this stage in the WMATA solicitation process.

Therefore, LaKritz | Adler is highly confident that its development plans for these sites take into account the unusual foundation and engineering costs associated with building on these parcels, and the true sentiments of neighborhood leaders, the ANC and HPRB with respect to these sites. WMATA, in turn, can be highly confident that LaKritz | Adler's proposed purchase and lease terms are the real numbers for this site, not highball estimates that will have to be revised later when the developer performs its due diligence and learns the real costs of building above and beside the Metro tunnel on these parcels.

C. Relevant Design and Construction Experience

The architecture firm chosen by LaKritz | Adler for this project, CORE Architects, was the lead architect for the 44,000 SF retail and office building built directly over the U Street Metro Station at 13th and U Streets. CORE therefore possesses unique qualifications and experience for developing the design and construction of the buildings that will sit these parcels. During its due diligence for the 1920 8th parcel, LaKritz | Adler also commissioned designs for WMATA parcels 1, 2 and 3 from CORE. We therefore have a high degree of confidence about the efficiency, yield and cost for the project we are proposing. LaKritz | Adler, Robertson Development and CORE are also currently developing *Moderno*, a 35,000 square foot mixed-use new construction project at 1939 12th Street, three blocks due west of Parcel 1 (www.lovemoderno.com).

D. U Street Knowledge and Expertise

Like LaKritz | Adler, many D.C. development companies possess the expertise and financial backing to develop WMATA parcels 1, 2, and 3. What distinguishes LaKritz | Adler (and our team) is that no other group has the same level of experience developing property in and support of the Greater Shaw/U Street and Georgia Avenue communities. Because the same team is currently building *Moderno*, the *Beauregard* (11th/V), the *Murano* (10th/V), and recently completed the *Visio* (10th/V), we have the most current, proprietary information regarding construction costs, sale prices and rents in this submarket, as well as a history of obtaining HPRB and BZA approvals for similar mixed-use projects in the same ANC and the U Street historic overlay. Collectively, LaKritz | Adler, Robertson Development and CORE Architects have been responsible for more than two dozen commercial, retail and residential projects in the Greater Shaw/U Street, Columbia Heights and Georgia Avenue communities, including over a dozen projects completed or in construction in the immediate vicinity of U Street and Florida Avenues alone.

E. Community Support and Amenities

LaKritz | Adler believes the development plan and amenities it is proposing most strongly deliver on the wishes and desires expressed to us by the surrounding community, the Executive Office of the Mayor and the Office of Planning, all of whom support new retail and office projects in this immediate location, in order to create the 18-hour business district called for by the Duke Plan. We know, for example, that many neighborhood leaders are generally opposed to new residential condominium projects for these sites, believing that the area is "oversaturated" with new condo projects (over 1,000 residential units are now in construction or in planning within a three-block radius of the WMATA parcels). We know that the community desires more "daytime traffic," the kind of activity that only office and hotel uses will draw.

F. Ground Lease Option

Because LaKritz | Adler is proposing commercial projects for all three parcels, it can offer to ground lease all three sites from WMATA, as is WMATA's expressed preference. However, our preference would be to purchase the lots outright, if possible, and we have provided pricing for both scenarios.

PART III: THE DEVELOPMENT TEAM

LaKritz | Adler Development (www.lakritzadler.com)

LaKritz | Adler Development, is a Washington D.C.-based, LSDBE-certified development company, whose principals Robb LaKritz and Josh Adler, are D.C. Resident Business Owners (RBO). LaKritz | Adler is well-regarded as a leading community developer in D.C. (See attached exhibit from Summer 2007 *On Site* Magazine featuring the company). LaKritz | Adler has completed over two dozen residential, retail and commercial projects in the District, the majority of which are in the Greater Shaw/U Street area and along the Georgia Avenue corridor. A few of LaKritz Adler's relevant projects include:

- *Moderno*, LaKritz | Adler is currently developing and constructing a 35,000 square foot new construction mixed-use project three blocks east of Parcels 1, 2, and 3 and one block west of the U Street Metro Station at 13th and U Streets.

- *The Veritas Building.* LaKritz | Adler acquired, renovated and leased a 12,000 square foot historic retail and office building at 2031 Florida Avenue. The project includes a signature LaKritz | Adler neighborhood-anchoring restaurant, aptly named "Veritas."

- *The Temperance Hall Building.* LaKritz | Adler purchased and expanded an existing 1,500 square foot shell into a 6,000 square feet neighborhood restaurant one block south of the Georgia Avenue/Petworth Metro Station. The result has been widely acclaimed, featured twice on the front page of the *Washington Post*, broadcast on *Fox News*, and cited in numerous other publications. (In this proposal, LaKritz | Adler proposes to bring several new neighborhood restaurants similar to Temperance Hall to the Greater Shaw/U Street community.

- *First Baptist Church of Silver Spring*: LaKritz | Adler recently commenced development of a prominent two-acre site in downtown Silver Spring, at the prime corner of Wayne and Fenton Streets. LaKritz | Adler will construct a 200,000 square foot new construction retail and office project.

- *3646 Georgia*: LaKritz | Adler recently commenced development of a prominent new construction mixed-use project at the corner of Georgia and New Hampshire Avenues, directly across from the Georgia Avenue/Petworth Metro Station.

- *4201-4205 Georgia.* LaKritz | Adler recently acquired the corner of Upshur and Georgia Avenues, where we are renovating the existing building for a mixed-use retail and office development.

- *The Watha T. Daniels House.* LaKritz | Adler purchased, restored and leased the historic home of Shaw pioneer and 1920's neighborhood activist, Watha T. Daniels. This landmark building is located on 9th Street in Shaw, just a few blocks south of the site.

The principals of LaKritz | Adler are Robb LaKritz and Josh Adler. Prior to forming LaKritz Adler Development, Robb M. LaKritz was a real estate attorney with the Washington, D.C. firm of Baker, Donelson, Bearman and Caldwell. Mr. LaKritz served as Senior Advisor to the United States Treasury Secretary and is a Phi Beta Kappa graduate of the University of Michigan and Juris Doctorate recipient from Emory University. Prior to forming LaKritz | Adler, Joshua Adler was a founder of the biotechnology company iLife Systems in Dallas, Texas. He served as the Chief Speechwriter to two United States Treasury Secretaries, and holds a degree in Economics from Yale University.

Robertson Development (www.robertsondevelopment.com)

Robertson Development was founded in August of 1999 by Paul Robertson and has earned a reputation for developing and building distinctive properties of the highest quality. The company invests heavily in beautiful and engaging exterior designs that complement and enhance their surroundings. Interior spaces provide both style and function. Executed with craftsmanship, high-end materials and a never-ending attention to detail, each property is truly special. The company's success is the result of a combined effort of its staff; experienced professionals who take great pride in their work and share a determination for upholding the company's mission: "To create spaces that reflect our passion for great design and true quality craftsmanship, while always striving to achieve the highest level of customer satisfaction and business ethics".

The company's projects are located in the Dupont Circle, Logan Circle and the U Street corridor neighborhoods of Washington, DC with new projects being considered throughout the Washington Metropolitan Area. Projects currently in construction include *Moderno*, in collaboration with LaKritz | Adler Development, a 35,000 SF mixed-use new construction project at 12th and U Streets, by the U Street Metro Station, and the *Murano*, a 16-unit new construction project at 10th and V. Recent completed projects include the Beauregard, a 45,000 SF new construction project at 11th and

V, the Visio at 10th and V, and Woodson Row at 12th and U. Paul Robertson lives at 11th and V, two blocks from the proposed projects.

Few developers have been more active or have a better reputation for quality construction and community relationship-building in the Greater Shaw/U Street neighborhood. In a competitive marketplace, Robertson Development consistently demonstrates a commitment to a truly "higher standard". Robertson Development would serve as the exclusive construction management firm for this project.

CORE Architects

CORE is considered DC's leading retail architecture firm, and is ranked among the top 50 retail architecture firms in the country. CORE is the architect for Moderno at 12th and U, and was the lead architect for 1250 U Street, the 44,000 SF retail and office building built above the U Street Metro Station at 13th and U in 2004. CORE also designed the 7,500 SF headquarters building for the National Minority AIDS Council in the U Street Historic District. Other recent major commercial and arts design credits include Eckington Place, also known as the XM Satellite Radio building at Florida and New York Avenues (250,000 SF), the 58,000 SF Atlas Performing Arts Center on H Street NE, and Square 452, a 380,000 SF new construction retail and office building at Massachusetts Avenue and 6th Street. CORE is also well-known for its destination restaurant work in Washington – recent credits include Mie N Yu, Black Salt, Jackie's, Beck, Lia's by Chef Geoff, and Café du Parc at the Hotel Willard Intercontinental.

Marriott International, Inc.

Marriott International, Inc., is a leading lodging company. Its heritage can be traced to a root beer stand opened in Washington, D.C., in 1927 by J. Willard and Alice S. Marriott. Today, Marriott International has nearly 2,900 lodging properties located in the United States and 67 other countries and territories. Marriott Senior Vice President Norman Jenkins is a Howard University graduate and is leading Marriott's plans to co-develop a SpringHill Suites brand boutique hotel with LaKritz | Adler at Parcel 3. This would be the first SpringHill Suites in the Washington, D.C. area, an exciting prospect for this new Marriott brand.

SpringHill Suites sets the standard for mid-priced lodging by offering spacious studio suites that are approximately 25% larger than traditional hotel guest rooms. These suites feature separate areas for sleeping, working, relaxing, and grooming. A flexible bed-mix of kings, doubles, and a pull-out sofa enables the brand to meet the demands of business and leisure travelers. The brand's spacious suites are complemented by stylish public spaces and thoughtful amenities.

SpringHill Suites targets upper to moderate tier guests who seek spacious suites, quality accommodations and pure pleasure. In short, the properties target guests who place a high premium

on enjoyment—the enjoyment of their work and the enjoyment of their surroundings. Each SpringHill Suites property features genuine, spirited and welcoming hospitality. Each suite displays design elements that are unexpected, vibrant, contemporary and progressive.

Completely unique SpringHill Suites are constructed in urban or historic settings, and this site is both. These non-prototype SpringHill Suites are designed to reflect the singular character of their surrounding neighborhoods and to preserve the architectural integrity of buildings of historical significance. As such, we believe SpringHill Suites is the perfect brand for the first hotel serving the U Street neighborhood.

The Warehouse Theater (www.warehousetheater.com)

The Warehouse Downtown Arts Complex is Washington's leading independent art space. Located in three historic buildings on 7th Street in Shaw, the Warehouse presents the best in theater, music, art, film, dance and happenings. Created in 1994, the complex includes 2 theaters, a live music venue, a screening room, a bar and café, and several gallery spaces. Over the years, the Warehouse has hosted thousands of performances and artists and continues to be a home to artists (local, national and international) of every variety. Called "an avant garde Kennedy Center," by the *Washington Post*, Warehouse Arts is recognized by both artists and patrons as one of the best live arts spaces in the city. It's a venue that hosts a variety of artists and performances – from gallery exhibitions of local visual artists, to one night shows of punk rock bands, to weekend cabaret evenings to professional theater.

As recently reported in the *Washington Post*, high property taxes are forcing the Ruppert family to sell the 7th Street properties they have owned for 120 years and find a new home for the Warehouse Theater complex. In this proposal, the Warehouse Theater would form a JV with LaKritz | Adler to develop and operate Parcel 1 as a freestanding restaurant and live entertainment venue that would keep the Warehouse theater in the Shaw community, and the Warehouse Theater would also operate a 3,000 SF nonprofit community theater space in the Parcel 2 building as part of a community amenity package for a Planned Unit Development.

The Academy for Learning Through the Arts (www.alta-pcs.com)

The Academy For Learning Through the Arts opened its doors to 59 students in September of 2005. ALTA found space in the Augustana Lutheran Church near 16th and U just ten days before it opened its doors to students. ALTA's mission is to educate students for a productive adulthood through a demanding academic and arts interrelated curriculum, a vibrant school culture, highly qualified teachers, involved parents and strong ties to the community. ALTA evolved from Patricia Mitchell's successful 30 year experience as director of the Fillmore Arts Center, an award-winning arts education program and summer camp which has served thousands of District students. ALTA's teachers are trained by the Kennedy Center's Changing Education Through the Arts (CETA) program. ALTA is the only DC school selected for inclusion in this program.

ALTA has been called by its new parents "the hidden gem of the charters schools". Its five-year goal is to grow to 300 students and to add 7th and 8th grades to the school. The planned commercial building to be built on Parcel 2 and 1920 8th Street would offer ALTA enough space to accommodate our growth trajectory, while keeping the school in the U Street neighborhood that its cherishes, given its history of music and theater. ALTA would also use the community theater space in the same building for student performances and events – a crucial and unique benefit for its arts education program.

Patricia Mitchell, ALTA's founder, served for 27 years as an administrator in the District of Columbia Public Schools system, during which time she established the Fillmore Arts Center, an award-winning arts-integrated education program serving kindergarten through grade eight students from six elementary schools. She has served as a consultant for the U.S. Department of Education, assisting in identifying exemplary arts education programs, and has consulted with new and emerging arts-integrated educational programs nationally. Ms. Mitchell received the *Jeffrey Lawrence Award* in recognition of exemplary dedication, talent, and achievement from the International Network of Schools for the Advancement of Arts Education, and the Mayor's Art Award for Excellence in Arts Education from the D.C. Commission on the Arts and Humanities. Ms. Mitchell serves as Secretary for the DC Arts and Humanities Collaborative, and is a member of the governing boards of the Network (see above) and the National Arts and Learning Collaborative (Boston, MA). MA: Educational Administration and Supervision (University of the District of Columbia); BA: Sociology (Newton College).

ALTA will occupy up to two floors of the building planned for Parcel 2, and will make use of the community theater space planned for the same building.

PART IV: THE PLAN (aerial sketches and floor plans shown as exhibits)

A. Parcel 1 - 4,124 SF Freestanding Retail/Restaurant Building

At Parcel 1, LaKritz | Adler proposes to build a freestanding 4,124 square foot restaurant building, designed by CORE, which will be operated as a neighborhood restaurant and joint venture between LaKritz | Adler and the Warehouse Theater. The building will serve as the new home for nearly all the Warehouse Theater's functions. The building will include approximately 3,440 square feet of ground floor seating, kitchen and stage area, and approximately 684 square feet of mezzanine area, overlooking the main dining and entertainment areas. This footprint leaves room for one parking space on the site, satisfying the full zoning requirement for this structure and use.

The primary justification for this building plan is that Parcel 1, at 3,800 SF, is too small to accommodate any underground parking, and too small for an efficient multistory structure. The

proposed building is the largest building that can be built on the site while meeting parking requirements on-site for this zone.

In addition, the restaurant use will generate 8,248 square feet of Arts Overlay bonus credits, which can be transferred to the non-arts commercial FAR on Parcel 2 through a combined lot development agreement which the developer will execute between Parcels 1 and 2.

B. *Parcel 2 - 126,000 SF PUD, 7-Story Arts-Oriented Commercial Building, including 3,000 SF community theater, 8,600 SF neighborhood restaurant and retail, 30,000 SF arts-related Public Charter School, 84,000 SF office space, and 44 underground parking spaces.*

To develop Parcel 2, LaKritz | Adler will join Parcel 2 with 1920 8th Street, the abutting 11,327 SF vacant parcel LaKritz | Adler controls immediately to the south of Parcel 2, to create a combined lot area of 19,892 SF. This will allow LaKritz | Adler to seek Planned Unit Development (PUD) approval for the combined lot (Parcel 2 is too small on its own to qualify for a PUD application).

LaKritz | Adler will propose a 6.0 FAR, 90-foot high commercial building on the site with approximately 126,000 SF, the maximum allowed under PUD guidelines for this zone. In the event the PUD cannot be achieved, LaKritz | Adler will build the same building by-right, with 4.5 FAR and 65-foot height, by eliminating two floors of office, thereby reducing the office area to 77,900 SF before deducting space for the charter school, and converting the community theater space into additional retail/restaurant space for a total of 11,600 SF of retail, for a total building area of 89,514 SF. The 44 parking spaces, which will fit on a single level of underground garage beneath the site (thereby not encroaching on the Metro tunnel easement) would exceed the zoning requirement for the building in the by-right scenario. In the PUD scenario, the same parking may require a special exception to reduce commercial parking spaces otherwise required by up to 25%.

The 89,514 SF commercial building without PUD is by-right because of the Arts Overlay bonus FAR generated by the restaurant, theater and arts school uses, in addition to the bonus FAR generated by the restaurant on Parcel 1. Even with the full PUD, the arts uses on Parcels 1 and 2 generate enough bonus FAR for the entire building to be in commercial use under the Arts Overlay rules.

The 8,600 SF retail space will include one or several restaurants. Any non-restaurant retail will be Arts Overlay favored uses.

The 3,000 SF community theater space will be operated on a non-profit basis by the Warehouse Theater in the same fashion as the existing Warehouse theater space on 7th Street, which will close and relocate to Parcel 2. The theater space will pay a below-market rent that allows the theater to continue its independent, community-serving mission.

The Academy for Learning Through the Arts (ALTA), a popular and growing public charter school located in the U Street corridor will also relocate to a larger, new space on the second and third floors of Parcel 2, and will share in the use of the theater space for student educational purposes.

If for some unforeseen reason LaKritz | Adler must develop Parcel 2 separately from 1920 8th Street, LaKritz | Adler and CORE have designed a five-story retail and office building for Parcel 2 with 9 surface parking spaces. The building would contain a total of 29,499 SF, of which 4,999 would be restaurant and 24,498 would be office. The community theater space and public charter school would be eliminated. The separation of Parcel 2 and 1920 8th would not impact the valuation for Parcel 2 in the by-right scenario (but eliminates the opportunity for the PUD scenario, where LaKritz | Adler proposes to increase compensation to WMATA above the by-right value), but it would require zoning special exceptions to reduce the parking and loading requirements. Of course, this is not LaKritz Adler's preference, as the sites combined are far more efficient than they are when separated.

C. Parcel 3 - 96,000 SF PUD, 8-story Marriott Boutique with Restaurants and Retail

On Parcel 3, LaKritz | Adler will collaborate with Marriott International to seek a PUD approval and construct a 6.0 FAR, 90-foot tall, 96,000 SF boutique hotel, with approximately 8,000 SF of ground floor restaurant and retail, and one level of underground parking containing 34 parking spaces.

In the event a PUD is not approved, LaKritz | Adler will construct the same project, with 72,000 SF, six stories, 4.5 FAR and 65-foot height.

LaKritz | Adler has found a high level of enthusiasm in the community for a boutique hotel in this location, as there is no hotel serving Howard University or the Greater Shaw/U Street community at this time, and few sites remain to build one. LaKritz | Adler and Marriott have already completed their initial feasibility study for the site, and the financial projections are sufficient to proceed with this location. Marriott SVP for New Development, Norman Jenkins, a Howard University graduate, has taken a personal interest in seeing a Marriot Hotel developed on U Street that would, in part, serve Howard University.

LaKritz | Adler and Marriott are now in talks with Howard University and CVS, negotiating to combine Howard University's 21,000 SF land parcel at 7th Street and Florida Avenue, which is now occupied by a CVS pharmacy and surface parking, with Parcel 3, and thereby build a larger, full-service hotel serving the University and Greater Shaw/U Street community. However, LaKritz Adler's development plans are in no way contingent on reaching an agreement with Howard University.

PART V: THE SCHEDULE

PHASE	DATE	DURATION
Ratify Contract with WMATA/Initial Deposit	September 1, 2007	
General Study Period / Prepare PUD Application	September 1, 2007	60 days
Commence PUD and HPRB Applications	November 1, 2007	12 to 18 months (assume 15)
HPRB Approved	November 1, 2008	
PUD Approved	February 1, 2009	
Prepare Building Permit Set / Construction Docs	February 1, 2009	3 months
Submit for Building Permits	May 1, 2009	6 to 12 months (assume 9)
Receive All Permit Approvals	February 1, 2010	60 days to construction financing
If Purchase: Close Land Purchase	April 1, 2010	
Commence Construction	April 1, 2010	18 months
Construction Complete/Commence Operations	October 1, 2011	
If Ground Lease: Commence Lease Payments	October 1, 2011	

All three parcels are assumed to have the same schedule, so that all construction will occur simultaneously, to maximize economies of scale and minimize community construction impact.

PART VI: WMATA COMPENSATION AND TERMS

For all three parcels, LaKritz | Adler is proposing both purchase and ground lease terms, with the understanding that LaKritz | Adler prefers to purchase, but that WMATA is more likely to favor a ground lease proposal. Land values have been calculated to allow the developer and its investors a 20% gross project margin and a 25% return on cost, assuming that land settlement occurs immediately prior to construction start. Ground lease starting annual base rents are a fixed percentage of the calculated land value for each parcel that produces a similar level of return and net cash flow after debt service for the developer as under the land purchase, after adjusting for the relatively lower market valuation of properties owned on a ground lease and the relatively higher market mortgage rates for such properties when the ground lessor's fee interest is not subordinated to the long term mortgage.

Note that all offer prices are already adjusted for the special engineering, approval, foundation and monitoring costs of building above and beside the green line Metro tunnel and fan system at these specific building sites with the specific building plans proposed. LaKritz | Adler has already commissioned and received an foundation engineering report specifically for Metro Parcels 1, 2 and

3, and has already designed, cost engineered and estimated cost for the project adjacent to Parcel 2. The special costs for the Metro tunnel have a significant impact on the final values of the sites.

Except as specified below, acquisitions and leases for all parcels shall have the same terms. Only major business terms for a proposed contract are specified below; all the essential terms for Purchaser/Tenant are not included.

Property/Parcels/Premises	Parcels 1, 2 and 3 as described more fully in WMATA solicitation for Shaw/U Street Parcels
Seller/Landlord	WMATA
Purchaser/Tenant	An affiliate or subsidiary of LaKritz Adler Development, LLC
Purchase Price	
Parcel 1	$675,000
Parcel 2	$2,300,000
Parcel 3	$3,700,000
PUD Bonus (purchase only)	
Parcel 2	$60/SF for each square foot approved above 4.5 FAR attributable to Parcel 2 land area only (43% of total when combined with 1920 8th Street), reduced by the proportionate share of direct PUD application, legal, engineering and architectural costs and proportionate share of cost of any public amenities and concessions offered. Payable at settlement as an adjustment to purchase price.
Parcel 3	$52/SF for each square foot approved above 4.5 FAR attributable to Parcel 3 land area only, reduced by the proportionate share of direct PUD application, legal, engineering and architectural costs and proportionate share of cost of any public amenities and concessions offered. Payable at settlement as an adjustment to purchase price.
Study Period	60 day general study period commencing upon final ratification of binding purchase and sale agreement between the parties, and receipt by purchaser/tenant of all due diligence materials from seller/landlord.
Approvals Contingency	In the event that Purchaser/Tenant, prior to Settlement, after diligent and commercially reasonable pursuit of approvals for the properties, determines in its sole discretion that the

	Minimum Approval cannot be achieved for any Parcel (whether by action of the HPRB, BZA or other regulatory or government agency), Purchaser/Tenant may discontinue the purchase or lease obligation for that specific parcel and receive the immediate return of its Deposit, with interest and without penalty.
Parcel 1	A 4,120 SF restaurant with one surface parking space and CT license with entertainment endorsement.
Parcel 2	If not combined with 1920 8th Street: a 29,499 SF, 5-story, 65-foot high mixed-use commercial office building with at least 4,999 SF of ground floor restaurant, nine surface parking spaces, no loading dock or loading berth, no underground parking. If combined with 1920 8th Street: an 89,500 SF, 5-story, 65-foot high mixed-use commercial office building with at least 11,600 SF of ground floor retail or restaurant, and not more than one level of underground parking containing not more than 44 parking spaces,
Parcel 3	A 72,000 SF, 6-story, 65-foot high hotel building with one level of underground parking containing 34 parking spaces.
Minimum Approval	A Minimum Approval shall not be achieved if the actual final approval restricts final above-grade square footage, number of floors, building height or use to a lesser amount or value than the specifications of the Minimum Approval, or a condition of such final approval imposes a higher construction or operational cost for the Purchaser/Tenant relative to such cost under the Minimum Approval (except where the higher cost is caused solely by an increase in the approved above-grade area, height, or use of the proposed building relative to the Minimum Approval.)
Settlement (purchase only)	60 days following final approval of building permits, including any WMATA engineering approvals. Not to exceed 42 months following final contract ratification
Ground Lease Term	Twenty Nine Years (29) with seven (7) ten-year

	renewal options
Annual Base Rent	Payable in equal monthly installments
Parcel 1	$32,400 per annum
Parcel 2	$110,400 per annum
Parcel 3	$140,600 per annum
Base Rent PUD Bonus (ground lease only)	
Parcel 2	$2.88/year/SF for each square foot approved above 4.5 FAR attributable to Parcel 2 land area only (43% of total when combined with 1920 8th Street), reduced by the proportionate share of direct PUD application, legal, engineering and architectural costs and proportionate share of cost of any public amenities and concessions offered, such costs amortized and deducted evenly from the PUD bonus adjustment over the initial term of the lease.
Parcel 3	$1.98 /year/SF for each square foot approved above 4.5 FAR attributable to Parcel 2 land area only (43% of total when combined with 1920 8th Street), reduced by the proportionate share of direct PUD application, legal, engineering and architectural costs and proportionate share of cost of any public amenities and concessions offered, such costs amortized and deducted evenly from the PUD bonus adjustment over the initial term of the lease.
Rent Increases	Annual Base Rent shall increase by 20% at the end of each ten year period, and at the commencement of each ten year renewal.
Lease Commencement	Monthly lease payments to commence upon completion of construction and issuance of final Certificate of Occupancy for each completed building, not to exceed 60 months from final contract ratification.
Memorandum of Lease and other Documentation	Tenant shall receive a recorded memorandum of lease and a recorded memorandum of purchase option, subordination agreement with Tenant's construction lender, title affidavits, certificates,

	lien waivers, corporate resolutions and other documents and information requested by Tenant's title company in support of a leasehold title policy.
Permits and Zoning	Landlord will cooperate with and actively support Tenant's permitting and execute applications, plats, subdivisions, site plans, certifications, documents and recordable instruments as may be required by the applicable jurisdictions for purposes including, but not limited to, subdivisions, zoning variances, and planned unit developments including the Property.
Development Agreements	Landlord will cooperate with Tenant's efforts in joining with other properties for the allocation of development rights to Tenant's construction project, so long as such agreements shall not reduce the value of the Property.
Construction	Tenant shall be permitted to construct mixed-use retail and/or office and/or hotel uses, or any other legal use on the Premises in Tenant's sole discretion, in compliance with all laws and thereafter to alter and replace the same, without Landlord's consent. Landlord's approval of plans shall be prompt and not to be withheld absent showing of structural defect or non-compliance with law.
Assignment, subletting and mortgages	Tenant may assign, sublease, mortgage or encumber its interest in the Lease and Purchase Option. Landlord shall subordinate its fee interest to Tenant's construction financing lender during the Construction Period and thereafter until Tenant can stabilize and refinance the completed project.
Purchase Option	At the end of the Lease Term and at the end of each renewal period, Tenant may elect to purchase the Property for its Fair Market Value in its present use, exclusive of the value of any improvements, and settlement shall occur 60 days after Tenant gives written notice to

	Landlord of Tenant's intention to exercise purchase option.
Additional Renewals	At the end of Tenant's final renewal period under this Lease, and each Additional Renewal period herein described, Tenant may elect to renew the Lease at Fair Market Value, based upon its residual land value at the time of renewal exclusive of the value of any improvements, for an additional ten year period.
Right of First Refusal	At any time during the Lease Term, if Landlord shall elect to sell or transfer the Property, Landlord shall first offer to sell Property to Tenant at the price for which Landlord intends to offer the Property for sale or transfer. In the event the parties do not reach agreement on the offered price, Landlord may then offer the Property to the public, but may not accept an offer less than the price offered to Tenant without first offering the Property to Tenant at the lower price.

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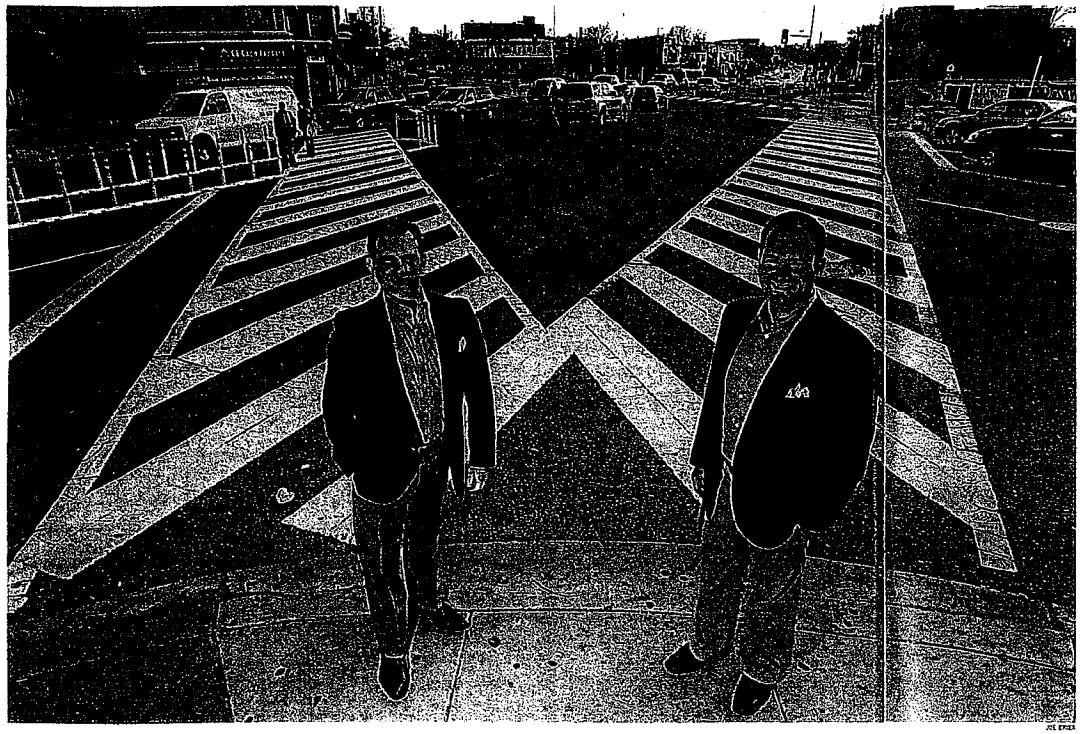

GEORGIA AVENUE is at a crossroads, say development partners Robb LaKritz, left, and Josh Adler. They have bought several properties near Georgia and New Hampshire avenues NW to develop spaces for neighborhood services such as banks, yoga studios and restaurants.

Robb LaKritz and Josh Adler

Shaw / Petworth

ROBB LAKRITZ USED to walk around his Shaw neighborhood five or six years ago lamenting the empty and abandoned buildings.

"I was really curious why economic development wasn't happening in my backyard," says LaKritz, at the time a senior adviser in international affairs at the Department of Treasury. "This is sort of like a parlor game in D.C. Why is that building vacant? Why isn't there a coffee shop there?"

In a very un-Washington way, however, he decided to do something about it. He partnered with fellow Treasury official Josh Adler to buy a building at 1525 Ninth St. NW, just two blocks from the new convention center. A tax lien and residential zoning complicated matters, but the pair persevered and redeveloped the project, leasing the main floor to an insurance company and creating two residential units upstairs.

It wasn't long before LaKritz and Adler quit their day jobs to become full-time developers. LaKritz wondered about the destitution of Georgia Avenue every time he drove up the corridor. "Why is Georgia Avenue this way? This is a beautiful corridor," he thought. "This is a boulevard."

After moving to Petworth in 2003, LaKritz began talking to residents and discovered they were clamoring for a sit-down restaurant. LaKritz/Adler bought a 6,000-square-foot boarded-up barber shop at 3646 Georgia Ave. NW south of the Petworth Metro station. In 2005, the renovated building opened with a yoga studio on the second floor. A restaurant, Temperance Hall, opened last year. They partnered with Joe Englert, an H Street NE developer and bar owner, on both the building and the restaurant.

LaKritz has tracked down the owners of all sorts of vacant buildings, only to have his offers rebuffed. "The guys who own these buildings don't want to sell," he says. "They just want to speculate."

The duo now is working on the Moderno condominiums just off U Street, and they have several properties on Georgia Avenue. In January, they bought the triangular parcel at Georgia and New Hampshire avenues NW and the vacant 4,600-square-foot Petworth Pharmacy building at Georgia and Upshur Street NW. They are negotiating deals to buy other small parcels to accommodate neighborhood services. So far they have provided all the equity for their projects, but LaKritz says they may begin to seek outside investors.

LaKritz takes a philosophical approach to the area's renaissance.

"Responsible revitalization is demand driven," he says. "It's not about bringing the suburbs into the city. It's about the enhancement of a community."

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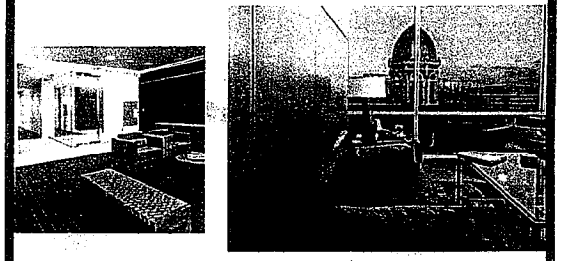

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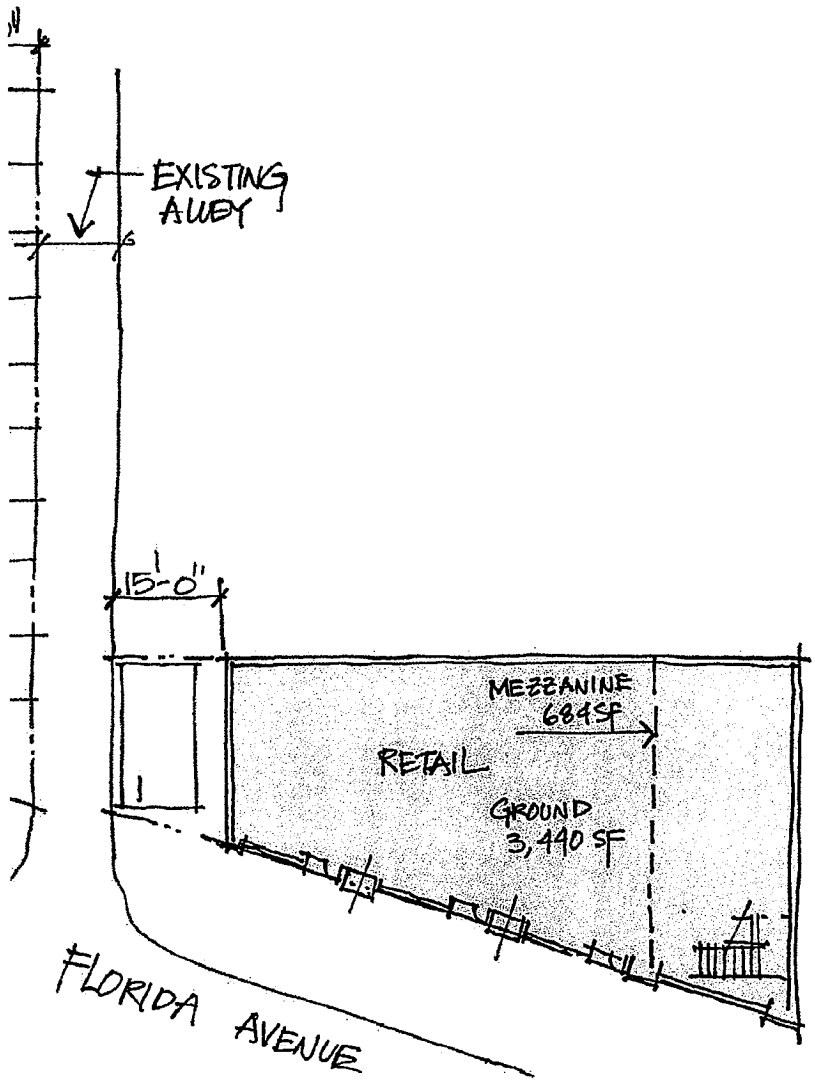


Parcel 1

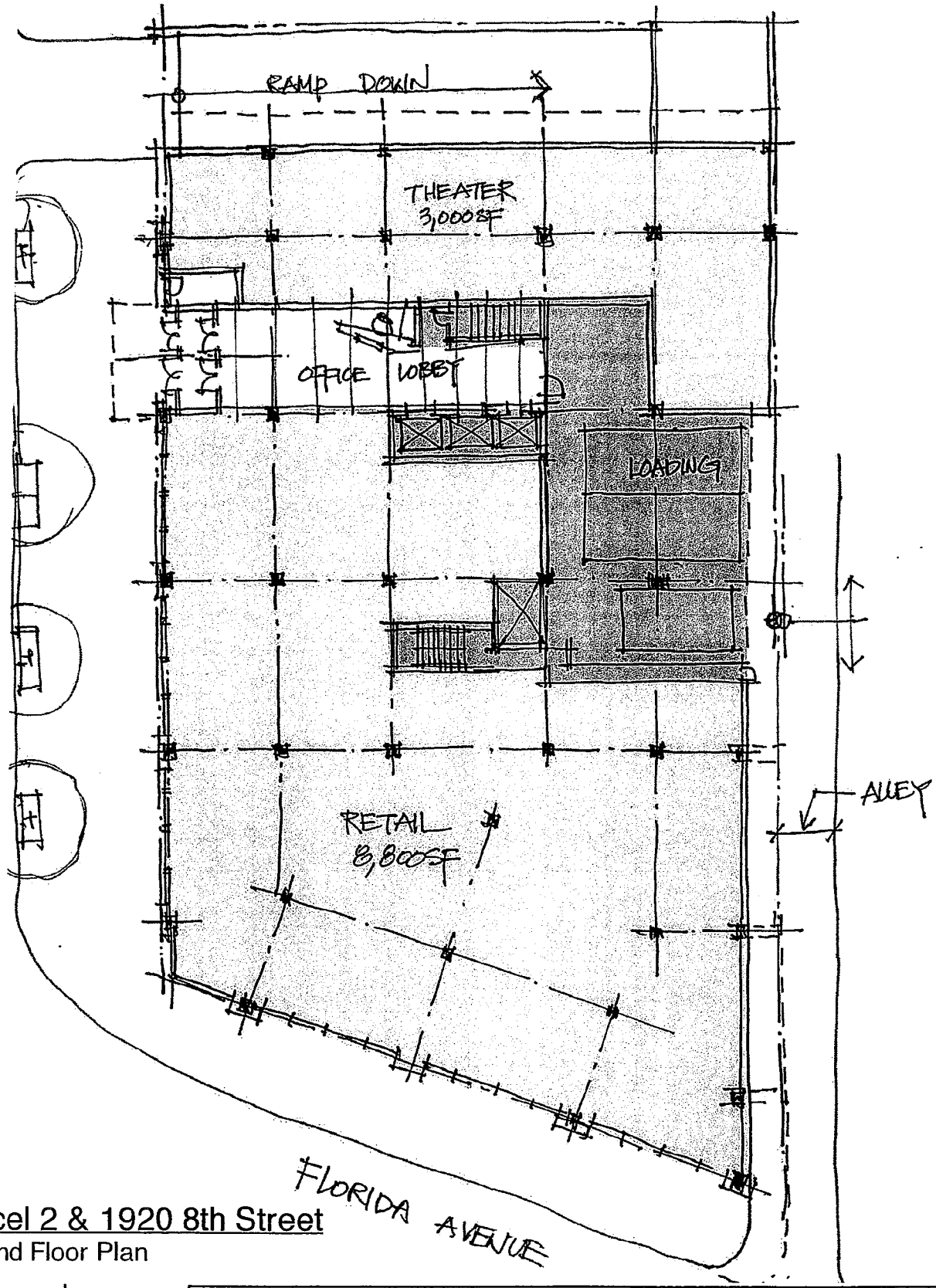
Ground Floor Plan

LAKRITZ | ADLER

CORE architecture design

WMATA - U Street

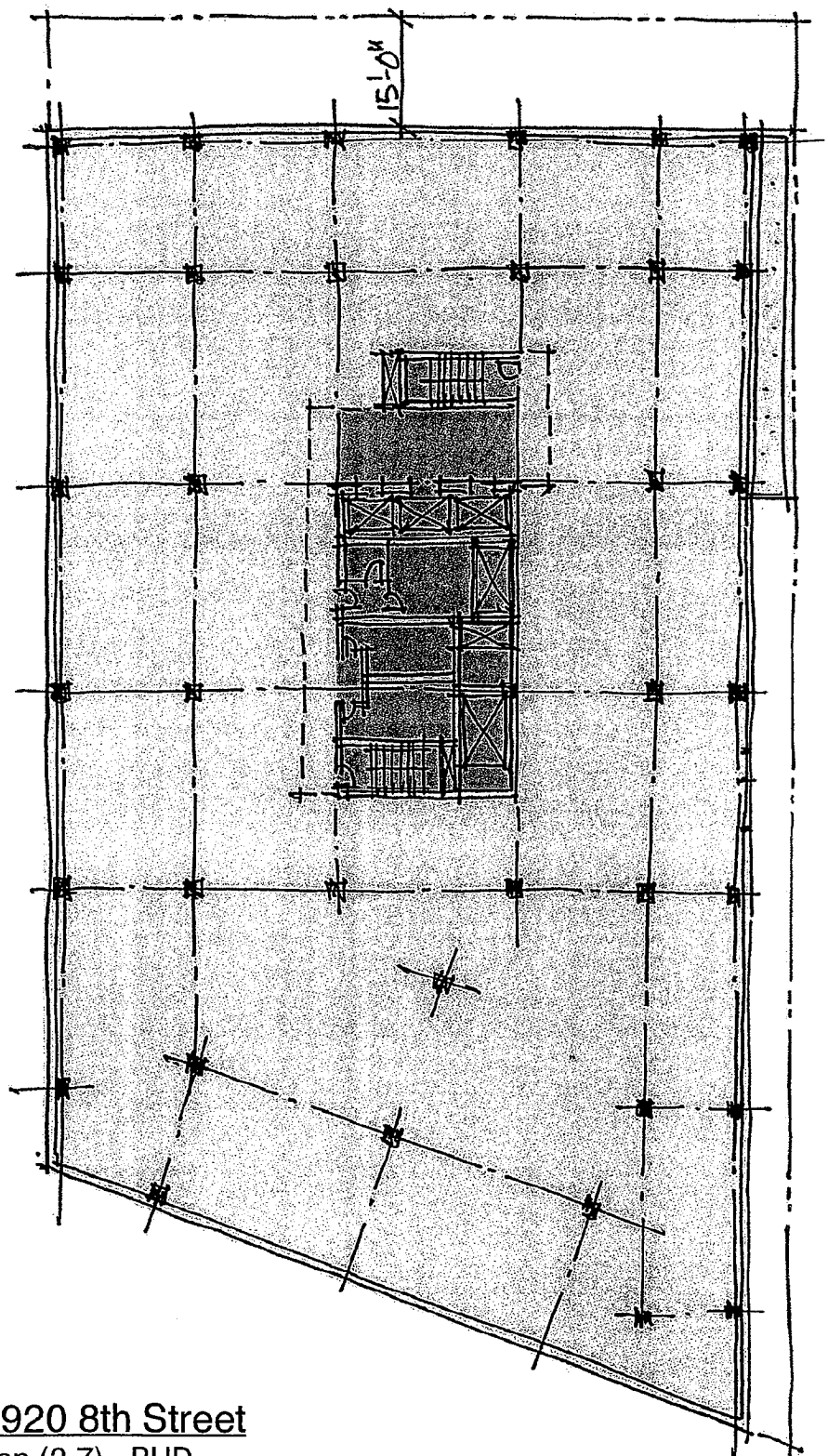
Washington, DC



Parcel 2 & 1920 8th Street
Ground Floor Plan

LAKRITZ | ADLER
CORE architecture design

WMATA - U Street
Washington, DC



Parcel 2 & 1920 8th Street

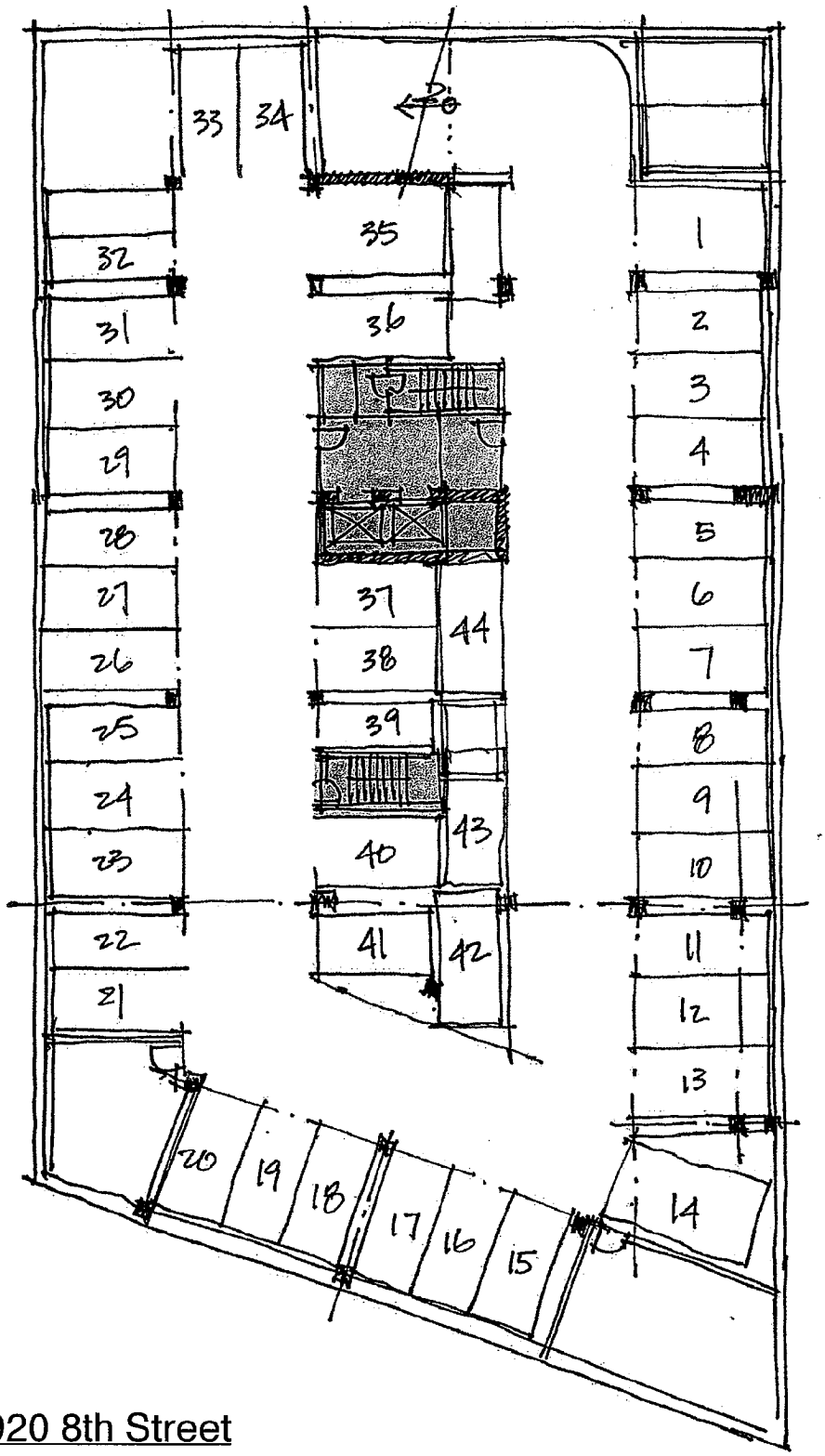
Typical Floor Plan (2-7) - PUD

LAKRITZ | ADLER

CORE architecture. design

WMATA - U Street

Washington, DC



Parcel 2 & 1920 8th Street

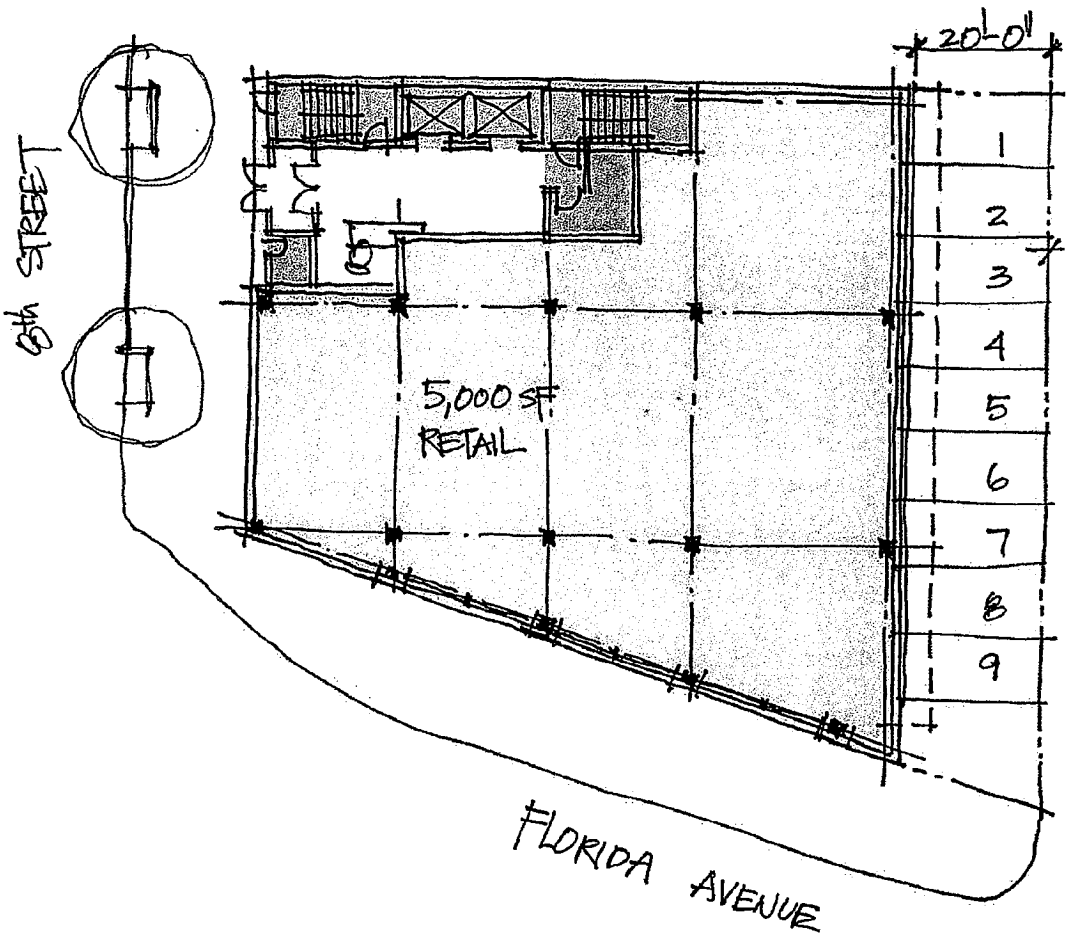
Parking Level Plan

LAKRITZ | ADLER

CORE architecture design

WMATA - U Street

Washington, DC



Parcel 2

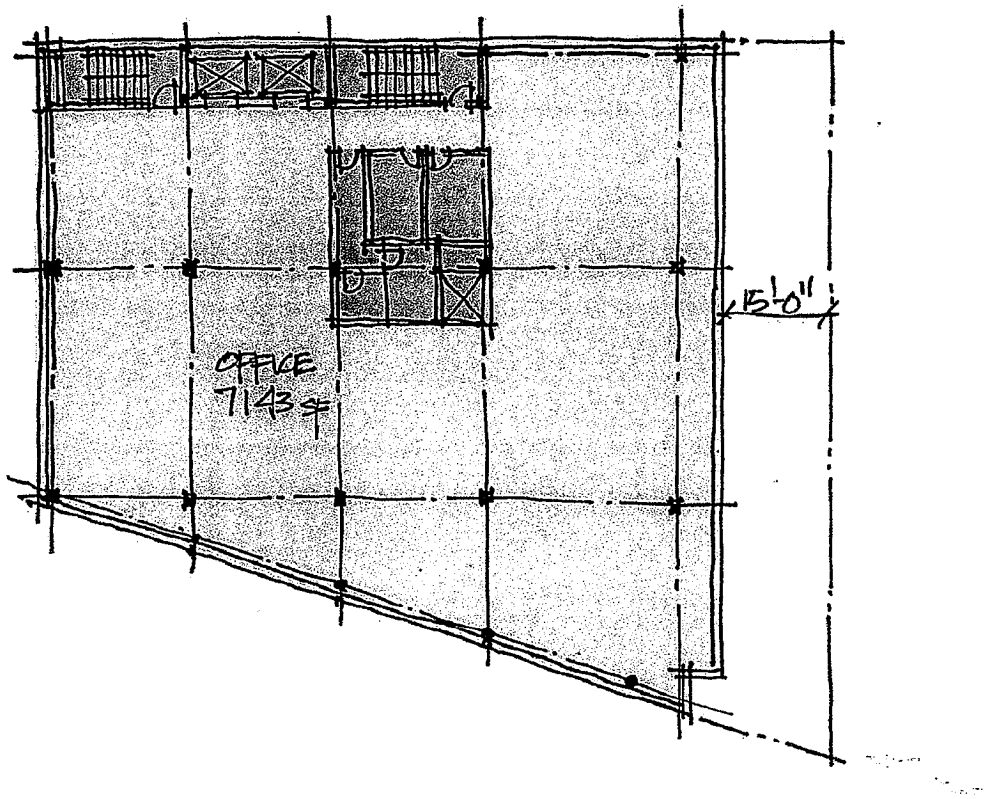
Ground Floor Plan

LAKRITZ | ADLER

CORE architecture, design

WMATA - U Street

Washington, DC



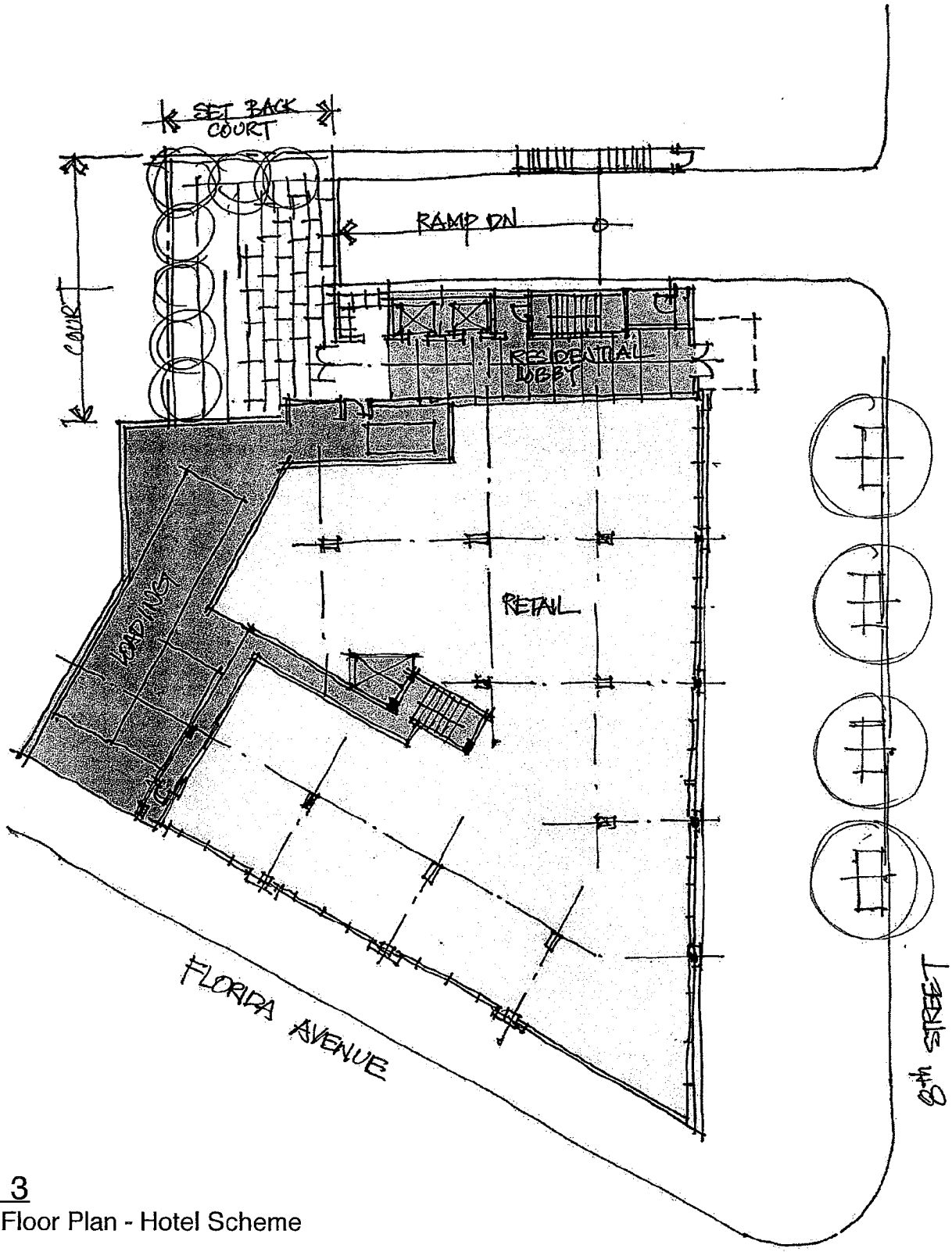
Parcel 2

Typical Floor Plan (2-5)

LAKRITZ | ADLER

CORE architecture | design

WMATA - U Street
Washington, DC



Parcel 3

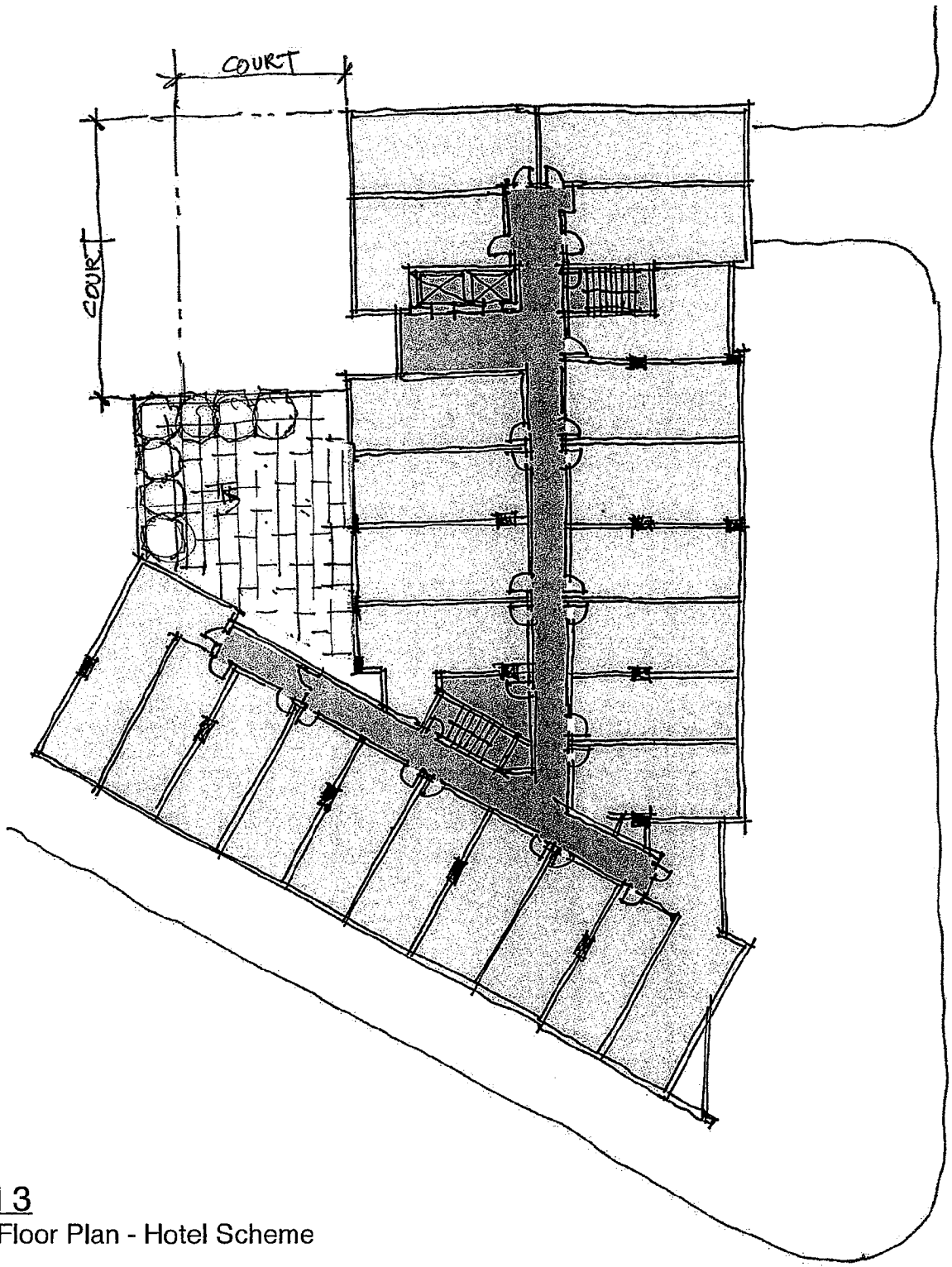
Ground Floor Plan - Hotel Scheme

LAKRITZ | ADLER

CORE architecture, design

WMATA - U Street

Washington, DC



Parcel 3

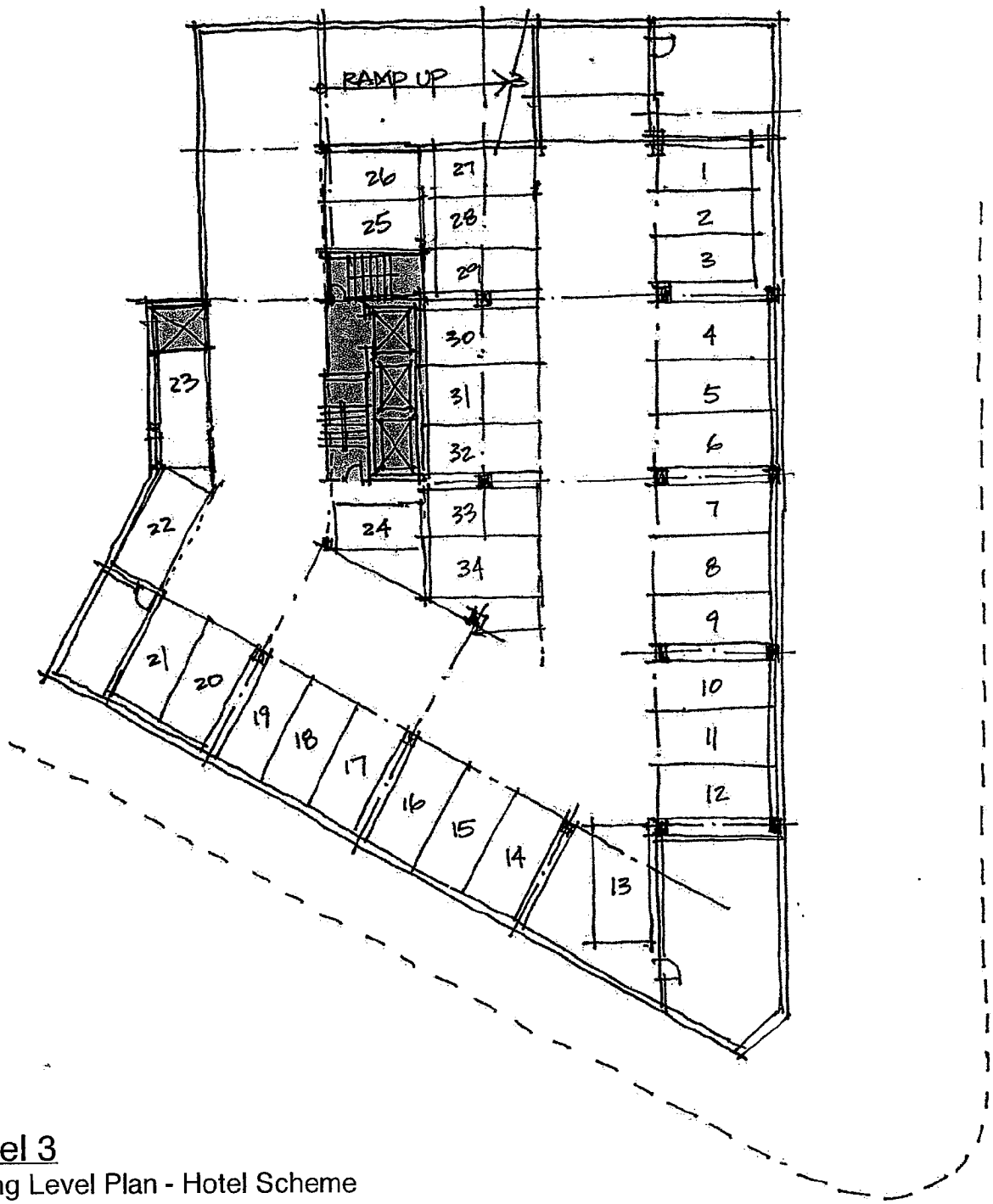
Typical Floor Plan - Hotel Scheme

LAKRITZ | ADLER

CORE architecture design

WMATA - U Street

Washington, DC



Parcel 3

Parking Level Plan - Hotel Scheme

LAKRITZ | ADLER

CORE architecture design

WMATA - U Street

Washington, DC

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

PROPOSAL
SHAW HOWARD/FLORIDA AVENUE JOINT DEVELOPMENT SITES

VOLUME 1 – TECHNICAL INFORMATION

Development Proposal

LaKritz | Adler Development, LLC
4326 8th Street, NW
Washington, DC 20011
Contact: Joshua Adler, Principal
Tel. (202) 882-0808
Fax. (202) 882-0809
josh@lakritzadler.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008850

A. Transmittal Letter

4326 8th Street, NW
Washington, DC 20011

October 5, 2007

Office of Property Development and Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

To Whom It May Concern:

As an authorized officer of LaKritz | Adler Development, LLC, I hereby state that this proposal is valid for a minimum of 180 days from the date of submission. If selected, we will negotiate in good faith with WMATA.

Sincerely,

Joshua A. Adler
Principal & Co-Managing Member
LaKritz | Adler Development, LLC

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008851**

B. Completed Proposal Form

[EXHIBIT A – 3 PAGES]

FOIA CONFIDENTIAL TREATMENT REQUESTED

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008854

D. Executive Summary

LaKritz | Adler Development, a leading Washington D.C.-based, LSDBE-certified development company best known for its work in the Shaw, U Street and Georgia Avenue communities, working with a team that includes the Warehouse Theater of Shaw, DANAC Corporation, a leading regional commercial and mixed-use development company (developer of the one million square foot Rockville Town Center), and Milestone Capital Corporation, a leading regional hotel developer and operator (developer of Silver Spring's Hilton, Hampton Inn and Homewood hotels), proposes to acquire and develop WMATA Parcels 1, 2 and 3, either through a purchase or ground lease.

Plans for each of the three WMATA parcels include:

- *Parcel 1* – We will build a 4,124 square foot free-standing neighborhood restaurant and performing arts center in joint venture with the Warehouse Theater, keeping the Warehouse Theater in the Shaw neighborhood. This is a by-right plan that requires no zoning relief or public subsidies, and advances the goals expressed in the D.C. Office of Planning's "Duke Plan" by creating a new entertainment destination in the Uptown Arts Overlay. To the chagrin of the Shaw community, the Warehouse Theater is being forced to relocate from its historic property on 7th Street NW and away from the Greater Shaw/U Street area.

- *Parcel 2* – We will build a 90,000 square foot, 4.5 FAR, LEED-Certified, five-story retail and office building with 44 underground parking spaces and approximately 14,000 square feet of ground floor retail **(accomplished by combining Parcel 2 with LaKritz | Adler's 11,320 SF parcel at 1920 8th Street). This is a maximum density by-right plan that requires no zoning relief or public subsidies.** Preferred retail tenants would include locally-owned businesses, such as a neighborhood-anchoring restaurant operated by LaKritz | Adler (similar to its well-known bistro, *Temperance Hall*, located by the Georgia Avenue/Petworth Metro Station) and businesses encouraged by the Arts Overlay. Upper-floor commercial tenants might include the Academy for Learning Through the Arts (ALTA) or the Meridian School, both established U Street-area public charter schools currently seeking expansion space, as well as local professional services firms, local non-profits, arts groups, institutions and associations who can no longer afford office space downtown and prefer an emerging neighborhood location with U Street's amenities.

- *Parcel 3* –We will build a 72,000 square foot, 4.5 FAR, LEED-Certified, six-story upscale boutique hotel serving Howard University, the Convention Center, and the Greater Shaw/U Street area. The hotel will include at least 8,000 square feet of retail and approximately 145 guest rooms. Possible flags include Marriott's Spring Hill Suites, Hyatt's Hyatt Place, Starwood's Aloft, and Intercontinental's Indigo. **This is a maximum density plan that does not require any public subsidy,** and is by-right except for a possible parking

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008855

reduction, owing to the presence of the Metro tunnel beneath the site. The hotel would incorporate substantial neighborhood retail, restaurant and entertainment options, all consistent with the Duke Plan. There is not a single hotel serving any of these markets today.

As an alternative plan to hotel that would not require any zoning relief, and depending on market conditions, we may build a 72,000 square foot, 4.5 FAR, LEED-Certified five-story office and retail building, maximum density by-right with at least 8,000 square feet of ground floor retail and 34 parking space.

Given LaKritz | Adler's long-standing presence and development experience in the U Street area, as well as our unique knowledge of and history with these specific sites, we believe these plans represent the highest and best uses for this site. The uses we have proposed best embody the overlapping goals of the Duke Plan, the principles of Transit-Oriented Development, the intentions of the Uptown Arts Overlay, and the wishes and desires of the Mayor's Office of Planning, the Advisory Neighborhood Commission, and the surrounding community.

KEY FEATURES OF THE LAKRITZ | ADLER PROPOSAL

A. Exclusive Control of Major Adjacent Parcel

LaKritz | Adler Development has ratified a 10-year fee-subordinated ground lease and purchase option on 1920 8th Street, the vacant 11,320 square foot parcel abutting Parcel 2, currently owned by Medal, Inc. Without this parcel, it is impossible to build underground parking to serve a new building on Parcel 2 and to maximize the FAR, efficiency and marketability of this site in a by-right project.

LaKritz | Adler has also been in talks with Howard University regarding the incorporation of the Howard-owned 21,000 square foot CVS parcel abutting Parcel 3 and possible joint development plans for combining this site with Parcel 3 to expand the planned hotel facility. LaKritz | Adler and its hotel development partner have completed initial feasibility studies for these sites. We believe Howard University administration is favorable toward our hotel and commercial development plan and may be interested in a joint development plan. **However, our plans are in no way contingent on reaching any kind of agreement with Howard University.**

B. Unique Knowledge of the Site

In 2005, LaKritz | Adler designed a six-story mixed-use building for 1920 8th Street adjacent to Parcel 2, obtained ANC endorsement of the design, obtained preliminary Historic Preservation and Review Board approval for the design, and performed extensive due diligence, construction budgeting and value engineering for the site, including all the special due diligence, foundation engineering reports and estimates necessary to construct a six-story building with several levels of underground parking adjacent to this specific Metro tunnel and fan system. In addition, LaKritz | Adler commissioned architectural designs from CORE Architects, engaged in pre-construction

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008856

consulting with Forrester Construction, and received an engineering study with foundation cost estimates from Muesser & Rutledge Engineers (who performed the original engineering studies for this portion of the Green Line) specifically with regard to the costs of building similar structures on Metro Parcels 1, 2 and 3, in preparation for an offer on these parcels. LaKritz | Adler has detailed knowledge of the special costs of construction on these specific sites, as well as the relationships with the HPRB, local community leaders and the ANC with respect to these specific sites, that no other developer could have at this stage in the WMATA solicitation process.

Therefore, LaKritz | Adler is highly confident that its development plans for these sites take into account the unusual foundation and engineering costs associated with building on these parcels, and the true sentiments of neighborhood leaders, the ANC and HPRB with respect to these sites. WMATA, in turn, can be highly confident that LaKritz | Adler's proposed purchase and lease terms are the real numbers for this site, not highball estimates that will have to be revised later when the developer performs its due diligence and learns the real costs of building above and beside the Metro tunnel on these parcels.

C. Relevant Community Design and Construction Experience

LaKritz | Adler is closely integrated in the U Street / Shaw community, and is one of the most highly respected developers within this submarket. LaKritz | Adler and CORE, the lead architect for the proposed project, are currently constructing *Moderno*, a 35,000 square foot mixed-use new construction project at 1939 12th Street, three blocks due west of Parcel 1 (www.lovemoderno.com), in the same ANC and Historic District as the proposed project. LaKritz | Adler also redeveloped the historic Watha T. Daniels building on 9th Street, the Veritas Building on Florida Avenue, and the Temperance Hall building on Georgia Avenue – streets that intersect at the proposed sites. Indeed, the principals of LaKritz | Adler live on Florida Avenue and on 8th Street.

CORE Architects was the lead architect for the 44,000 SF retail and office building directly over the U Street Metro Station at 13th and U Streets, as well as a number of other relevant projects, such as the National Minority AIDS Council headquarters at 13th and U, the Atlas Performing Arts Center on H Street, NE, and the XM Satellite Radio Headquarters at Florida and New York Avenues.

LaKritz | Adler's commercial development partner DANAC Corporation, based in Bethesda, Maryland, is one of the Washington area's leading commercial developers, having developed more than four million square feet of new office and retail space in the metro area, including the one million square foot Rockville Town Center, widely recognized for its adherence to Transit-Oriented Development principles and new urban design.

LaKritz | Adler's hotel development partner, Milestone Capital Corporation, in Silver Spring, Maryland, is one of the region's leading hotel developers and operators. Local developments include the Silver Spring Hilton, Silver Spring Hampton Inn, and Silver

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008857**

Spring Homewood Suites. Milestone has acquired or developed 19 hotels totaling over 3,000 rooms since 1996.

D. Community Support and Amenities

LaKritz | Adler believes the development plan and amenities it is proposing most strongly deliver on the wishes and desires expressed to us by the surrounding community, the Executive Office of the Mayor and the Office of Planning, all of whom support these new retail, office and hotel projects in this immediate location, in order to create the 18-hour business district called for in the Duke Plan. We know, for example, that many neighborhood leaders are generally opposed to new residential projects for these sites, believing that the area is "saturated" with new residential projects (over 1,500 residential units are now in construction or in planning within a three-block radius of the WMATA parcels). We know that the community desires more "daytime traffic," activity tha office and hotel uses will generate, and that residential will not.

E. Ground Lease Option

Because LaKritz | Adler is proposing commercial projects for all three parcels, it can offer to ground lease all three sites from WMATA, as is WMATA's expressed preference. However, our preference would be to purchase the lots, and we have provided pricing for both scenarios.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008858**

E. Development Team Information

1. Developer and Development Team Description

Lead Developer: LaKritz | Adler Development (www.lakritzadler.com)

LaKritz | Adler Development, is a Washington D.C.-based, LSDBE-certified real estate development company. Its principals, Robb LaKritz and Josh Adler, are D.C. Resident Business Owners (RBO); Robb LaKritz lives on 8th Street, NW, and Josh Adler lives on Florida Avenue (which intersect at the WMATA parcels in question.)

LaKritz | Adler is well-regarded as a leading community developer in D.C. (See attached EXHIBIT B from Summer 2007 *On Site* Magazine featuring the company as the leading "Shaw / Petworth" neighborhood developer, and EXHIBIT C from July 2007 *DC Modern*). LaKritz | Adler has completed over two dozen residential, retail and commercial projects in the District, the majority of which are in the Greater Shaw/U Street area and along the Georgia Avenue corridor. A few of LaKritz | Adler's relevant projects include:

- *Moderno.* LaKritz | Adler is currently developing and constructing a 35,000 square foot new construction mixed-use project at 1939 12th Street, three blocks due east of Parcel 1, and one block west of the U Street Metro Station, in the same ANC and historic district as the WMATA Parcels. LaKritz | Adler obtained ANC, HPRB and BZA approvals for Moderno.

- *1920 8th Street.* LaKritz | Adler acquired an 11,320 square foot long-vacant parcel adjacent to WMATA Parcel 2, and obtained final ANC and preliminary HPRB endorsement for a 50,000 SF mixed-use project (the further development of which it has postponed pending WMATA's decision with respect to Parcels 1, 2 and 3.)

- *The Veritas Building.* LaKritz | Adler acquired, renovated and leased a 13,000 square foot historic retail and office building at 2031 Florida Avenue. The project includes a signature LaKritz | Adler neighborhood-anchoring restaurant, "Veritas," which opened in September 2007 to rave reviews.

- *Temperance Hall.* LaKritz | Adler purchased a 1,500 square foot commercial shell one block south of the Georgia Avenue/Petworth Metro Station and transformed it into a 6,000 square foot restaurant and office building featuring the neighborhood bistro Temperance Hall and the Yoga House yoga studio. The result has been widely acclaimed, featured twice on the front page of the *Washington Post*, broadcast on *Fox News*, and cited in numerous other publications. (In this proposal, LaKritz | Adler proposes to bring several new neighborhood restaurants similar to Temperance Hall to the Shaw/U Street community.)

- *First Baptist Church of Silver Spring (8415 Fenton Street).* LaKritz | Adler recently formed a joint venture with the First Baptist Church of Silver Spring to redevelop a prominent two-acre site in downtown Silver Spring, at the prime corner of Wayne and Fenton Streets, directly across from the Silver Spring Whole Foods Market. LaKritz |

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008859

Adler will construct a 200,000 square foot retail and office project, including a new church.

- *3646 Georgia*: LaKritz | Adler has commenced development of a new mixed-use project at the long-vacant corner of Georgia and New Hampshire Avenues, directly across from the Georgia Avenue/Petworth Metro Station. A key component of the development has been the successful negotiation of an environment remediation and closure plan with the District's Department of the Environment.

- *4201-4205 Georgia.* LaKritz | Adler is acquiring the corner of Upshur and Georgia Avenues, where we will renovate the existing building as a mixed-use retail and office development.

- *The Watha T. Daniels House.* LaKritz | Adler purchased, restored and leased the historic home and business of Shaw pioneer and 1920's neighborhood activist, Watha T. Daniels. This landmark mixed-use building is located on 9th Street in Shaw, just a few blocks south of the site.

- *Kettering Crossing.* LaKritz | Adler acquired and repositioned a 30,000 square foot neighborhood retail center in Upper Marlboro, Maryland.

The principals of LaKritz | Adler are Robb LaKritz and Josh Adler. Prior to co-founding LaKritz | Adler Development, Robb M. LaKritz was a real estate attorney with the Washington, D.C. firm of Baker, Donelson, Bearman and Caldwell. Mr. LaKritz served as Senior Advisor to the United States Treasury Secretary and is a Phi Beta Kappa graduate of the University of Michigan and Juris Doctorate recipient from Emory University. Prior to co-founding LaKritz | Adler, Joshua Adler was a founder of the biotechnology company iLife Systems in Dallas, Texas. He served as the Chief Speechwriter to two United States Treasury Secretaries, and holds a degree in Economics from Yale University.

Lead Architect: CORE Architects

CORE is considered DC's leading retail architecture firm, and is ranked among the top 50 retail architecture firms in the country. CORE is the architect for Moderno at 12th and U, and was the lead architect for 1250 U Street, the 44,000 SF retail and office building built above the U Street Metro Station at 13th and U in 2004. CORE also designed the 7,500 SF headquarters building for the National Minority AIDS Council in the U Street Historic District. Other recent major commercial and arts design credits include Eckington Place, also known as the XM Satellite Radio building at Florida and New York Avenues (250,000 SF), the 58,000 SF Atlas Performing Arts Center on H Street NE, and Square 452, a 380,000 SF new construction retail and office building at Massachusetts Avenue and 6th Street. CORE is also well-known for its destination restaurant work in Washington – recent credits include Mie N Yu, Black Salt, Jackie's, Beck, Lia's by Chef Geoff, and Café du Parc at the Hotel Willard Intercontinental. (See EXHIBIT D – CORE PROFILES)

Co-Developer (Office) / Equity Partner: DANAC Corporation

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008860**

DANAC Corporation is a diversified real estate development firm engaged in acquisition, development, construction, and property management. Founded in 1963, DANAC has become known as one of the most prominent developers in the Washington metropolitan area.

From the late 1960's to early 1980's DANAC was a subsidiary of a large publicly held financial services organization that was acquired by the Continental Group (Continental Can Co.) in 1977. Through a series of public to private transactions beginning in 1985, DANAC became a privately held corporation under the ownership of John F. Jaeger. Mr. Jaeger is the sole stockholder of DANAC.

For the past forty three years, DANAC has been active in all aspects of the commercial real estate market. The firm has developed and built over four million square feet of office space in 60 buildings, as well as two major shopping centers. In addition to this commercial space, DANAC has developed three residential projects comprising 966 townhouse and apartment units.

Most prominently, DANAC recently completed development of the new Rockville Town Center, over one million square feet of retail, office, and residential construction, designed with the best in Transit-Oriented Development and New Urban Principles.

These years of experience have enabled DANAC to become uniquely efficient. DANAC projects are routinely completed on time and on budget. DANAC's reputation for quality, reliability, and client satisfaction has attracted prominent tenants such as Federal Express, IBM, Marriott Corporation, Westinghouse, EOSAT, Hewlett-Packard, MERANT, Human Genome Sciences, and Digital Equipment Corporation. DANAC buildings have attracted major institutional purchasers such as Equitable Life Assurance Society and Prudential Insurance.

Other current projects include DANAC Stiles, a 669,000 square foot office park located in the heart of Montgomery County's High Technology Corridor. Phase I, three buildings totaling 280,000 square feet, was occupied by Manugistics, Inc., in May of 2002. Phase II, a 72,000 square foot three-story build-to-suit for Metropolitan Regional Information Services (MRIS), is under construction and will deliver in early 2008.

DANAC is delighted to have the opportunity to partner with LaKritz | Adler Development for this exciting commercial development project in the booming U Street corridor, which has seen tremendous residential growth, but now demands new office and retail growth to create the 18-hour destination district that the city leadership and residents desire. In its role as co-developer, DANAC would advise LaKritz | Adler on the commercial building designs and value-engineering, provide construction management services during construction, and manage operations of the completed office buildings. As an equity partner, DANAC would provide cash equity toward the project as needed, and may offer its (approximately) $100 million net worth toward construction financing requirements. (See EXHIBIT E – DANAC PROFILES)

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008861**

Co-Developer (Hotel) / Equity Partner: Milestone Capital Corporation

Milestone Capital Corporation (MCC) was founded in 1996 and is controlled by Sander Mednick and Michael L. Wachtell. MCC is the entity through which the principals of the Milestone Group of Companies (also including Milestone Hotel Partners, Milestone Hospitality Management, and Milestone Development Group) seek to develop opportunities for hotel acquisitions, dispositions, and strategic financing on behalf of the investors of Milestone Hotel Partners. Since 1996, MCC has acquired or developed 19 hotel properties in seven states totaling 3,038 rooms. The Milestone portfolio currently includes 14 hotel properties in seven states totaling 2,371 rooms. The operations of the Milestone portfolio are supported by an equity capital investment of approximately $30 million.

Milestone Hotel Partners is headquartered in Boca Raton, Florida, with satellite offices in Washington, DC, New York City, and Los Angeles.

The Milestone Hotel Portfolio includes:

- Hilton Hotel, Silver Spring, Maryland
- Best Western Inn, Hershey, Pennsylvania
- Best Western Inn, Utica, New York
- Holiday Inn, New Hartford, New York
- Holiday Inn (Harrisburg-Hershey), Grantville, Pennsylvania
- Holiday Inn, DeLand, Florida
- Microtel Inn and Suites, Sulphur, Louisiana
- Days Inn (Cincinnati), Fort Wright, Kentucky
- Days Inn, Frankfort, Kentucky
- Days Inn (Louisville South), Shepherdsville, Kentucky
- The Chateau Resort, Tannersville, Pennsylvania
- The Lancaster Host, Lancaster, Pennsylvania
- The Sturbridge Host, Sturbridge, Massachusetts

Milestone is currently developing the new Hampton Inn and the new Homewood Suites in downtown Silver Spring, Maryland.

In the past ten years, the principals of MHP have been involved in the acquisition and development of more than forty hotels located throughout the United States with an aggregate value in excess of $500 million. Prior to the formation of Milestone Hotel Partners, its principals helped launch Grand Heritage Hotels in 1987. Grand Heritage grew to a collection of seventeen historic, independent hotel properties located throughout the United States, and more than seventy historic international affiliates located in the United Kingdom, Ireland, France, Spain, and Italy. In August 1997, Grand Heritage was sold to Patriot American Hospitality Inc.

Milestone has been in talks with LaKritz | Adler Development for the past several years, looking for the right opportunity to joint venture in the downtown D.C. marketplace with

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008862**

a new boutique, focused-service hotel. We believe WMATA Parcel 3 is an outstanding location for a new upper upscale focused-service hotel serving Howard University, the Convention Center and the greater U Street neighborhood. (Indeed, part of our confidence in the strength of this market comes from the large number of Howard University guests who stay at our Silver Spring Hilton property, the only full-service hotel on the entire length of Georgia Avenue.)

In this project, MCC would advise LaKritz | Adler on hotel design, assist in financing, obtain the best hotel flag for the site, and manage hotel marketing and operations once the project is complete. As an equity partner, MCC may contribute cash and balance sheet support to the construction financing requirements. (See EXHIBIT F – MILESTONE PROFILES)

Venture Partner / Anchor Tenant: The Warehouse Theater (www.warehousetheater.com)

The Warehouse Downtown Arts Complex is Washington's leading independent art space. Located in three historic buildings on 7th Street in Shaw, the Warehouse presents the best in theater, music, art, film, dance and happenings. Created in 1994, the complex includes two theaters, a live music venue, a screening room, a bar and café, and several gallery spaces. Over the years, the Warehouse has hosted thousands of performances and artists and continues to be a home to artists (local, national and international) of every variety. Called "an avant garde Kennedy Center," by the *Washington Post*, Warehouse Arts is recognized by both artists and patrons as one of the best live arts spaces in the city. It's a venue that hosts a variety of artists and performances – from gallery exhibitions of local visual artists, to one night shows of punk rock bands, to weekend cabaret evenings to professional theater.

As recently reported in the *Washington Post*, high property taxes are forcing the Ruppert family to sell the 7th Street properties they have owned for 120 years and find a new home for the Warehouse Theater complex. In this proposal, the Warehouse Theater would form a JV with LaKritz | Adler to develop and operate Parcel 1 as a freestanding restaurant and live entertainment venue that would keep the Warehouse Theater in the Shaw community.

Prospective Tenant: The Academy for Learning Through the Arts (www.alta-pcs.com)

The Academy For Learning Through the Arts opened its doors to 59 students in September of 2005. ALTA found space in the Augustana Lutheran Church near 16th and U just ten days before it opened its doors to students. ALTA's mission is to educate students for a productive adulthood through a demanding academic and arts interrelated curriculum, a vibrant school culture, highly qualified teachers, involved parents and strong ties to the community. ALTA evolved from Patricia Mitchell's successful 30 year experience as director of the Fillmore Arts Center, an award-winning arts education program and summer camp which has served thousands of District students. ALTA's teachers are trained by the Kennedy Center's Changing Education Through the Arts (CETA) program. ALTA is the only DC school selected for inclusion in this program.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008863**

ALTA has been called by its new parents "the hidden gem of the charter schools". Its five-year goal is to grow to 300 students and to add 7th and 8th grades to the school.

The planned commercial building to be built on Parcel 2 and 1920 8th Street would offer ALTA enough space to accommodate our growth trajectory, while keeping the school in the U Street neighborhood that its cherishes, given its history of music and theater. ALTA would also use the neighboring community theater space for student performances and events – a crucial and unique benefit for its arts education program.

Patricia Mitchell, ALTA's founder, served for 27 years as an administrator in the District of Columbia Public Schools system, during which time she established the Fillmore Arts Center, an award-winning arts-integrated education program serving kindergarten through grade eight students from six elementary schools. She has served as a consultant for the U.S. Department of Education, assisting in identifying exemplary arts education programs, and has consulted with new and emerging arts-integrated educational programs nationally. Ms. Mitchell received the *Jeffrey Lawrence Award* in recognition of exemplary dedication, talent, and achievement from the International Network of Schools for the Advancement of Arts Education, and the Mayor's Art Award for Excellence in Arts Education from the D.C. Commission on the Arts and Humanities. Ms. Mitchell serves as Secretary for the DC Arts and Humanities Collaborative, and is a member of the governing boards of the Network (see above) and the National Arts and Learning Collaborative (Boston, MA). MA: Educational Administration and Supervision (University of the District of Columbia); BA: Sociology (Newton College).

ALTA might occupy up to two floors of the building planned for Parcel 2.

2. Developer Authority

LaKritz | Adler Development, LLC, as 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008864

F. Development Entity

1. Description of Business Entity

LaKritz | Adler Development, LLC, is a District of Columbia Limited Liability Company (LLC). Its sole owners and managing members are Robb LaKritz and Joshua Adler, with each managing member controlling 50% of the economic and voting interests.

1920 8th Street, LLC, is a Delaware LLC which owns the 10-year fee-subordinated ground lease and purchase option on 1920 8th Street, NW. Its sole owners and managing members are Robb LaKritz and Joshua Adler, with each managing member controlling 50% of the economic and voting interests.

If awarded Parcels 1, 2 and 3, the Developer will form three new single-purpose entities, all Delaware Limited Liability Companies, to take title to and develop each of the parcels as an independent entity. The ownership and control of each new LLC will be the same as for LaKritz | Adler Development, LLC, except as agreed with the co-developers and equity partners following formation of the new entities.

2. Project Ownership and Management

The Project's owner and manager will be LaKritz | Adler Development, via the new single purposes entities formed for the exclusive control of each parcel, except as agreed with co-developers and equity partners prior to commencement of construction.

In its role as co-developer, DANAC may advise LaKritz | Adler on the commercial building designs and value-engineering, provide construction management services during construction, and manage operations of the completed office buildings. As an equity partner, DANAC may provide cash equity toward the project as needed, and offer its $100 million net worth toward construction financing requirements.

In this project, Milestone Capital Corporation would advise LaKritz | Adler on hotel design, assist in financing and obtaining the best hotel flag for the site, and manage hotel marketing and operations once the project is complete. As an equity partner, MCC would contribute cash and balance sheet to the construction financing requirements.

LaKritz | Adler Development, LLC, reserves the right to include or exclude these and any other co-developers, joint venture partners and/or equity investors from the projects pertaining to any of the parcels at any time and in its sole discretion. The inclusion of the co-developers (DANAC and Milestone) is not an irrevocable commitment by either co-developer to participate or invest in the projects described, and inclusion or cooperation may be withdrawn at any time in the sole discretion of the co-developer.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008865

G. Proposed Site Plan

[SEE EXHIBIT G -- Elevations, Renderings and Floor Plans]

[Also See Enclosed 2' x 3' Full Color Visual and CD-ROM]

1. ***Parcel 1*** *- 4,124 SF Freestanding Retail/Restaurant Building*

At Parcel 1, we propose to build a 4,124 square foot free-standing neighborhood performing arts center and restaurant in joint venture with the Warehouse Theater, keeping the Warehouse Theater in the Shaw neighborhood. This is a by-right plan that requires no zoning relief or public subsidies, and advances the goals expressed in the D.C. Office of Planning's "Duke Plan" by creating a new entertainment destination in the Uptown Arts Overlay. (To the chagrin of the Shaw community, the Warehouse Theater is being forced to relocate from its historic property on 7th Street NW and away from the Greater Shaw/U Street area.)

This freestanding 4,124 square foot performing arts center and restaurant, designed by CORE (architect for the Atlas Theater), may be operated as a joint venture between LaKritz | Adler and the Warehouse Theater. The building will serve as the new home for nearly all the Warehouse Theater's functions. The building will include approximately 3,440 square feet of ground floor seating, kitchen and stage area, and approximately 684 square feet of mezzanine area, overlooking the main dining and entertainment areas. This footprint leaves room for one parking space on the site, satisfying the full zoning requirement for this structure and use.

The primary justification for this building plan is that Parcel 1, (at 3,800 SF,) is too small to accommodate any underground parking, and too small for an efficient multistory structure. The proposed building is the largest building that can be built on the site while meeting parking requirements on-site for this zone. The only immediately adjacent private parcel, which is approximately 3,000 square feet immediately to the south of Parcel 1, is occupied by two small, tenanted, historically-protected row house structures which therefore cannot be demolished, and in any case, even if these structures could be demolished, the addition of the 3,000 square foot lot would insufficient to alter the basic development plan for this corner site.

The arts use has the additional benefit of generating 8,248 square feet of Arts Overlay bonus credits, which can contribute to the non-arts commercial FAR on Parcel 2 through a combined lot development agreement which the developer will execute between Parcels 1 and 2.

2. ***Parcel 2*** *- 89,483 SF By-Right, 5-Story Arts-Oriented Commercial Building, including 14,000 rentable SF ground floor restaurant, entertainment and retail space, approximately 71,000 rentable SF office area, and 44 underground parking spaces.*

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008866**

On Parcel 2, LaKritz | Adler proposes to build an 89,483 square foot, 4.5 FAR, LEED-Certified, five-story retail and office building with 44 underground parking spaces **(accomplished by combining Parcel 2 with LaKritz | Adler's abutting 11,320 SF vacant parcel at 1920 8th Street, to create a combined lot area of 19,892 SF)**. This is a maximum density by-right plan that requires no zoning relief or public subsidies. Preferred retail tenants would include locally-owned businesses, such as a neighborhood-anchoring restaurant operated by LaKritz | Adler (similar to its well-known bistro, *Temperance Hall*, located by the Georgia Avenue/Petworth Metro Station) and businesses encouraged by the Arts Overlay. Upper-floor commercial tenants might include the Academy for Learning Through the Arts (ALTA) or the Meridian School, both established U Street-area public charter schools currently seeking expansion space, as well as local professional services firms, local non-profits, arts groups, institutions and associations who can no longer afford office space downtown and prefer an emerging neighborhood location with U Street's amenities. Indeed, LaKritz | Adler is already planning a 50,000 SF commercial building with similar functionality and design to stand alone on the 1920 8th Street site, and will proceed with these plans in the event that the lots cannot be assembled.

The 44 parking spaces, which will fit on a single level of underground garage beneath the site, thereby not encroaching on the Metro tunnel easement, would meet or exceed the Arts Overlay parking requirements for the building in the by-right scenario, assuming certain favored uses in a portion of the retail space.

The 89,483 SF commercial building without PUD is by-right because of the Arts Overlay bonus FAR generated by the restaurant, retail and arts uses in the planned building, in addition to the bonus FAR generated by the restaurant on Parcel 1. If for some reason the Developer decided to reduce the Arts Overlay bonus uses in the building, there is a fluid market for the purchase and transfer of Arts Overlay credits at reasonable prices, sufficient to put the entire building into commercial use without any arts-bonus uses in the building itself.

The14,000 SF retail space will include one or several restaurants. Any non-restaurant retail will be Arts Overlay favored uses.

The Academy for Learning Through the Arts (ALTA), a popular and growing public charter school located in the U Street corridor may relocate to a larger, new space on the second and third floors of Parcel 2, and will share in the use of any theater space for student educational purposes.

3. ***Parcel 3*** *- 72,000 SF By-Right, 6-story Hotel with at least 8,000 SF Restaurant and Retail, and approximately 34 underground parking spaces*

On Parcel 3, LaKritz | Adler proposes to build a 72,000 square foot, 4.5 FAR, LEED-Certified, six-story upscale focused-service boutique hotel serving Howard University, the Convention Center, and the Greater Shaw/U Street area. Possible flags include

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008867**

Marriott's Spring Hill Suites, Hyatt's Hyatt Place, Starwood's Aloft, and Intercontinental's Indigo. The hotel would contain approximately 145 rooms and at least 8,000 square feet of ground floor retail, possibly more if lobby areas and upper floor areas incorporate retail, restaurant and entertainment functions. This is a maximum density plan that does not require any public subsidy, and is by-right except for a possible parking reduction, owing to the presence of the Metro tunnel beneath the site. The hotel would incorporate substantial neighborhood retail, restaurant and entertainment options, all consistent with the Duke Plan. There is not a single hotel serving any of these markets today.

Alternative Plan: As an alternative plan to hotel that would not require any zoning relief, and depending on market conditions at the time of completion of negotiations with WMATA, we may build a 72,000 square foot, 4.5 FAR, LEED-Certified five-story office and retail building, maximum density by-right with up to 12,000 square feet of ground floor retail/restaurant space and 34 underground parking spaces on one level below grade, similar to the proposed structure for Parcel 2.

LaKritz | Adler has found a high level of enthusiasm in the community for a boutique hotel in this location, as there is no hotel serving Howard University or the greater Shaw/U Street community at this time, and few sites remain to build one. LaKritz | Adler and Milestone have completed a favorable initial feasibility study for the site.

LaKritz | Adler will continue its discussions with Howard University and CVS to combine Howard University's 21,000 SF land parcel at 7th Street and Florida Avenue, which is now occupied by a CVS pharmacy and surface parking, with Parcel 3, and thereby build a larger, full-service hotel serving the university, convention center and Shaw/U Street community. **However, LaKritz | Adler's development plans are in no way contingent on reaching an agreement with Howard University.**

Transit-Oriented Development Principles / Highest and Best Transit Use

The LaKritz | Adler Development plans described above are the highest and best transit use for the sites, and maximize transit-oriented development principles. Not only does the LaKritz | Adler Office/Retail/Hotel plan maximize density at the parcels in a way that no other plan could—by incorporating the major private parcel adjacent to Parcel 2—it is a quantitatively and qualitatively superior transit-use plan compared to any principally residential plan for the same sites. Because the bulk of new and existing development in this vicinity is now residential, public transit ridership from these areas is primarily outbound in the morning, inbound in the evening. The addition of approximately 71,000 square feet of new office, 145 hotel rooms, and at least 26,000 square feet of new retail would generate substantial "reverse commute" traffic through the U Street and Shaw-Howard Metro Stations, and would add far more bodies to the public transit ridership and daytime pedestrian street presence than a residential plan. At one person per 200 SF-office, 1.5 persons per hotel room at 75% occupancy, 1 hotel employee per 5 rooms, 1 employee per 200 SF-retail, and 50 visitors per day per 1,000 SF-retail, our plan would

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008868

increase the daily population of the immediate area by about 1,977 persons, most all of whom would use public transportation (given a total of 79 parking spaces in the project). The alternative proposed plan of office rather than hotel on Parcel 3 would increase this figure by another 96 persons per day.

Even if all three WMATA parcels were developed to maximum residential density (impossible on Parcel 1 in any circumstance and impossible on Parcel 2 without 1920 8th Street), and with maximum ground floor retail – this would be 104,950 square feet of residential and 14,183 square feet of retail – assuming 1 unit per 1,000 GSF residential with 1.5 persons and the same retail ratios described above, the total daily population increase from such a plan would only be 937 persons – less than half of the daily population increase from the proposed LaKritz | Adler plan. And that calculation makes an impossible favorable assumption for the residential plan, which is that 4.5 FAR (17,100 SF) could be built on the 3,800 square foot Parcel 1, and that 4.5 FAR (38,543 SF) could be built on the irregularly shaped 8,565 SF Parcel 2, and moreover that residents and retailers would be willing to occupy both of these buildings fully with close to zero parking. In reality, the achievable square footage on those parcels is far lower.

In short, from the standpoint of both transit-oriented development principles, which seek to maximize density and population near transit nodes, and highest and best transit use calculations, no residential/retail plan can come even close to the LaKritz | Adler proposal with mixed commercial uses. Plus, the LaKritz | Adler plan is more favorable for traffic flows, and better meets the desires of community residents and the objectives of the Office of Planning DUKE Uptown Destination District plan.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008869**

H. Explanation of Impact on WMATA Facilities beneath the Sites

No impact on the WMATA facilities beneath the sites is expected for any of the proposed plans, which do not contemplate any excavation below 19-feet. Monitoring during and after the construction period, typical of new construction within Metro tunnel sphere-of-influence will be performed.

LaKritz | Adler has already commissioned architectural designs from CORE Architects, engaged in pre-construction consulting with Forrester Construction, and received an engineering study with Metro monitoring, loading and unloading, and special foundation cost estimates from Muesser & Rutledge Engineers (which performed the original engineering studies for this portion of the Green Line for WMATA) specifically with regard to the costs of building structures similar to those proposed in the submission on Metro Parcels 1, 2 and 3, in preparation for an offer on these parcels, including one or two levels of underground parking facilities. LaKritz | Adler has detailed knowledge of the special costs of construction on these specific sites and has incorporated these into its financial calculations for the sites.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008870

I. Proposed Project Schedule

[See EXHIBIT H -- MS Project Chart Attached]

LaKritz | Adler Shaw-Howard WMATA JDS Proposal Project Schedule

Name	Duration	Start_Date	Finish_Date	Notes
WMATA PROCESS	465 days	1/1/2008	4/9/2009	
Term Sheet Negotiations	120 days	1/1/2008	4/29/2008	
Approval of Selected Developer	30 days	4/30/2008	5/29/2008	
Development Agreement Negotiations	120 days	5/30/2008	9/26/2008	
Approval of Development Agreement	30 days	9/27/2008	10/26/2008	
Study Period	120 days	10/27/2008	2/23/2009	
Agreements for Assemblage Parcels	60 days	10/27/2008	12/25/2008	Optional
Development Plan Preparation	45 days	2/24/2009	4/9/2009	
BUILDING PERMITS	840 days	4/10/2009	7/28/2011	
HPRB Design & Approval	8 mons	4/10/2009	12/5/2009	3 rounds with HPRB
BZA Design & Approval	8 mons	4/10/2009	12/5/2009	Optional - parallel to HPRB
Development Financing Approval	60 days	12/6/2009	2/3/2010	
Schematic Design / Construction Docs	6 mons	2/4/2010	8/2/2010	
WMATA Approval of Design	3 mons	8/3/2010	10/31/2010	Interspersed with design
DCRA Building Permit Approval	9 mons	11/1/2010	7/28/2011	Current DCRA delay 12 months
CONSTRUCTION	510 days	7/29/2011	12/19/2012	
Construction Financing Approval	3 mons	7/29/2011	10/26/2011	
Close on Land Purchase	0 days	10/26/2011	10/26/2011	Land purchase only
Construction: Parcel 1	8 mons	10/27/2011	6/22/2012	
Construction: Parcel 2 + 8th St	14 mons	10/27/2011	12/19/2012	
Construction: Parcel 3	14 mons	10/27/2011	12/19/2012	
Substantial Completion	0 days	12/19/2012	12/19/2012	
LEASING / STABILIZATION	1800 days	4/10/2009	3/14/2014	
Marketing	24 mons	4/10/2009	3/30/2011	Start at Dev Plan approval
Initial Occupancy	2 mons	12/20/2012	2/17/2013	
Commence Lease Payments	0 days	12/19/2012	12/19/2012	Ground lease only
Stabilization / Lease Up	12 mons	12/20/2012	12/14/2013	

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008871**

J. Zoning

1. Existing Zoning Classification

Existing zoning classification for all parcels is C-2-B, Arts Overlay, as well as Greater U Street Historic Preservation District. No change will be sought in the zoning classification of the sites. All projects proposed are by-right, with the exception of a parking reduction to be sought for the hotel proposed for Parcel 3 (the alternative plan for Parcel 3 of office and retail would not require any zoning relief at all.)

2. Permitted FAR

C-2-B ordinarily allows up to 3.5 FAR for residential uses (including hotel) and up to 1.5 FAR for non-residential uses. However, in the Uptown Arts Overlay, where these sites are located, the by-right maximum density for both residential and non-residential uses may be increased to 4.5 FAR, provided that certain bonus-generating uses are including in the project, or that bonus FAR is transferred from another property within the Arts Overlay that has excess arts credits through a Combined Lot Development agreement (CLD). The proposed projects, as designed and with the tenants contemplated, generate sufficient bonus arts credits to build 4.5 FAR all-commercial projects on both Parcels 2 and 3 without any CLD. However, there are a very large number of excess arts credits available for purchase and transfer from properties within the Arts Overlay (for example, the Studio Theater is currently seeking to sell more than 200,000 square feet of excess arts credits, and the Lincoln Theater possesses well in excess of 200,000 square feet of credits). Under the Arts Overlay rules, virtually every existing building within the Arts Overlay generates unused arts credits that are transferable. The credits trade at rates far below $10 per foot, and LaKritz | Adler will purchase them for this project as needed.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008872

K. Proposed Business Relationship and Terms

1. Lease Terms

LaKritz | Adler is proposing both lease and purchase terms for all three WMATA parcels, as requested by WMATA. However, we would strongly prefer to purchase, and we believe a sale would be in the best interests of WMATA, as described below. The base lease term proposed for all sites is 29 years, with seven 10-year renewal options, fixed increases every ten years and a market rate renewal option at the end of the final term.

The reason for the 29-year base term is that any lease with a base term of 30 years or longer is construed as a sale by D.C. law, and triggers transfer and recordation taxes, an unnecessary project cost.

Proposed Ground Lease Terms for Parcels 1, 2 and 3

Property/Parcels/Premises	Parcels 1, 2 and 3 as described more fully in WMATA solicitation for Shaw-Howard/Florida Avenue Parcels
Seller/Landlord	WMATA
Purchaser/Tenant	An affiliate or subsidiary of LaKritz | Adler Development, LLC
Study Period	120 day general study period commencing upon final ratification of binding purchase and sale agreement between the parties, and receipt by Tenant of all due diligence materials from Landlord.
Approvals Contingency	In the event that Tenant, prior to Settlement, after diligent and commercially reasonable pursuit of approvals for the properties, determines in its sole discretion that the Minimum Approval cannot be achieved for any Parcel (whether by action of the HPRB, BZA or other regulatory or government agency), Purchaser/Tenant may discontinue the lease obligation for that specific parcel and receive the immediate return of its Deposit, with interest and without penalty.
Parcel 1	A 4,120 SF restaurant with one surface parking space and CT license with entertainment endorsement.
Parcel 2 (Subdivided for consolidation with	An 89,483 SF, 5-story, 65-foot high mixed-use commercial office building with at

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008873

Tenant's 1920 8th Street parcel)	least 13,800 SF of ground floor retail or restaurant, and not more than one level of underground parking containing not more than 44 parking spaces,
Parcel 3	A 72,000 SF, 6-story, 65-foot high hotel building with one level of underground parking containing 34 parking spaces.
Minimum Approval	A Minimum Approval shall not be achieved if the actual final approval restricts final above-grade square footage, number of floors, building height or use to a lesser amount or value than the specifications of the Minimum Approval, or a condition of such final approval imposes a higher construction or operational cost for the Tenant relative to such cost under the Minimum Approval (except where the higher cost is caused solely by an increase in the approved above-grade area, height, or use of the proposed building relative to the Minimum Approval.)
Permits and Zoning	Landlord shall execute any and all documents required for purposes of Tenant obtaining building permits and shall cooperate with and actively support Tenant's permitting and execute applications, plats, subdivisions, site plans, certifications, documents and recordable instruments as may be required by any applicable authority for purposes including, but not limited to, subdivisions, zoning variances, and planned unit developments including or involving the Property.
Development Agreements	Landlord will cooperate with Tenant's efforts in joining with other properties for the allocation of development rights to Tenant's construction project, including taking any and all steps required by Tenant to allow Tenant to construct a single building with a single construction loan on a single lot created by joining Landlord's lot with other adjacent lots that have third-party owners different from Landlord and Tenant, or to allow Tenant to obtain a single loan for the purpose of financing the

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008874**

	development, construction, stabilization or operation of such building.
Construction	Tenant shall be permitted to construct mixed-use retail and/or office and/or hotel uses, or any other legal use on the Premises in Tenant's sole discretion, in compliance with all laws and thereafter to alter and replace the same, without Landlord's consent except with respect to reasonable and prompt engineering review of any plans with respect to their impact on adjacent WMATA facilities. Landlord's approval of plans shall be prompt and not to be withheld absent showing of structural defect or non-compliance with law.
Rent Increases	Annual Base Rent shall increase by 20% at the end of each ten year period, and at the commencement of each ten year renewal.
Lease Commencement	Monthly lease payments to commence upon completion of construction and issuance of final Certificate of Occupancy for each completed building, not to exceed 60 months from final contract ratification.
Memorandum of Lease and other Documentation	Tenant shall receive a recorded memorandum of lease and a recorded memorandum of purchase option, title affidavits, certificates, lien waivers, corporate resolutions and other documents and information requested by Tenant's title company in support of a leasehold title policy.
Additional Renewals	At the end of Tenant's final renewal period under this Lease, and each Additional Renewal period herein described, Tenant may elect to renew the Lease at Fair Market Value, based upon its residual land value at the time of renewal exclusive of the value of any improvements, for an additional ten year period.
Right of First Refusal	At any time during the Lease Term, if Landlord shall elect to sell or transfer the Property, Landlord shall first offer to sell Property to Tenant at the price for which

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	Landlord intends to offer the Property for sale or transfer. In the event the parties do not reach agreement on the offered price, Landlord may then offer the Property to the public, but may not accept an offer less than the price offered to Tenant without first offering the Property to Tenant at the lower price.

1. Sale Terms

LaKritz | Adler prefers to purchase, rather than ground lease, all three parcels, and we believe this is more advantageous to the development plan and to WMATA, as described below.

Proposed Purchase Terms for Parcels 1, 2 and 3

Property/Parcels/Premises	Parcels 1, 2 and 3 as described more fully in WMATA solicitation for Shaw-Howard/Florida Avenue Parcels
Seller/Landlord	WMATA
Purchaser/Tenant	An affiliate or subsidiary of LaKritz | Adler Development, LLC
Study Period	120 day general study period commencing upon final ratification of binding purchase and sale agreement between the parties, and receipt by Purchaser of all due diligence materials from Seller.
Approvals Contingency	In the event that Purchaser, prior to Settlement, after diligent and commercially reasonable pursuit of approvals for the properties, determines in its sole discretion that the Minimum Approval cannot be achieved for any Parcel (whether by action of the HPRB, BZA or other regulatory or government agency), Purchaser may discontinue the purchase obligation for that specific parcel and receive the immediate return of its Deposit, with interest and without penalty.
Parcel 1	A 4,120 SF restaurant with one surface parking space and CT license with entertainment endorsement.
Parcel 2 (Combined with Purchaser's 1920	An 89,483 SF, 5-story, 65-foot high mixed-use commercial office building

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8th Street parcel)	with at least 13,800 SF of ground floor retail or restaurant, and not more than one level of underground parking containing not more than 44 parking spaces,
Parcel 3	A 72,000 SF, 6-story, 65-foot high hotel building with one level of underground parking containing 34 parking spaces.
Minimum Approval	A Minimum Approval shall not be achieved if the actual final approval restricts final above-grade square footage, number of floors, building height or use to a lesser amount or value than the specifications of the Minimum Approval, or a condition of such final approval imposes a higher construction or operational cost for the Purchaser relative to such cost under the Minimum Approval (except where the higher cost is caused solely by an increase in the approved above-grade area, height, or use of the proposed building relative to the Minimum Approval.)
Settlement	120 days following final approval of building permits, including any WMATA engineering approvals. Not to exceed 42 months following final contract ratification
Permits and Zoning	Seller shall execute any and all documents required for purposes of Purchaser obtaining building permits and shall cooperate with and actively support Purchaser's permitting and execute applications, plats, subdivisions, site plans, certifications, documents and recordable instruments as may be required by any applicable authority for purposes including, but not limited to, subdivisions, zoning variances, and planned unit developments including or involving the Property.
Development Agreements	Seller will cooperate with Purchaser's efforts in joining with other properties for the allocation of development rights to Purchaser's construction project.
Construction	Purchaser shall be permitted to construct mixed-use retail and/or office and/or hotel

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	uses, or any other legal use on the Premises in Purchaser's sole discretion, in compliance with all laws and thereafter to alter and replace the same, without Seller's consent. Seller's approval of plans shall be prompt and not to be withheld absent showing of structural defect or non-compliance with law.

2. Explanation for Sale versus Ground Lease

There are three primary reasons why LaKritz | Adler believes the contemplated development projects and WMATA are better served by a sale of the three parcels, rather than a long-term lease. These are: 1) the real estate market places a high value and allows higher leverage on a project on fee simple land rather than a ground lease, even with all other factors equal, especially for pre-stabilized development projects, so the parcels have a higher present value to WMATA when sold rather than when leased; 2) LaKritz | Adler will be combining Parcel 2 with the adjacent 1920 8th Street parcel (that is subject to a 10-year fee-subordinated ground lease and purchase option), and may achieve assemblages of parcels under different ownership adjacent to Parcel 3 and Parcel 1 – the legal complexity and cost of financing and operating a major construction project on a single lot with multiple, incompatible institutional ownership interests, durations and structures is technically complex; and 3) to attract commercial tenants to the new buildings planned for the sites, LaKritz | Adler will may have to offer purchase options with condominium ownership some -- but not necessarily all -- of the future commercial leases, which would be extremely difficult or impossible to offer if the land under the condominium regime is leased, and moreover, leased from and owned by different owners with different interests, prices and durations.

1) Commercial lenders and the commercial real estate market value a building or project on a ground lease less than a building on fee simple land. Therefore the present value that can be offered to WMATA on a ground lease is significantly less than the present value of a sale. All other facts held equal, a building on a ground lease has less value than a building on fee simple land. This lease versus fee value gap widens as a ground lease term becomes shorter. Indeed, many purchasers and lenders will not finance or acquire a building with a remaining ground lease term of less than 70 years. Because the last owner of the ground lease is left with nothing of value at the end of the final term, the property tends to decrease in value rather than increase in value over time. A building with a given net operating income (NOI) will typically be valued with a capitalization rate that is 50 to 100 basis points higher than the same NOI on a building on a ground lease. For example, a mixed-use commercial building in an emerging neighborhood location similar to the WMATA parcels with a $1 million NOI on fee

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simple land might be valued with a 7% cap rate today, or a sale price of $14.3 million. But the same NOI from a building on a ground lease (assuming the ground lease did not impact the cash flow negatively) would be valued with an 8% cap rate, or a sale value of $12.5 million for the exact same building. Since the land value is calculated as a residual of the building value, this suggests that the present value of the land under the ground lease should be $1.8 million less than the present value of the same land at the same time in a fee simple sale.

Moreover, the NOI of the building on ground lease land may produce a lower net income after debt service compared to the building on fee simple land, because debt secured by a leasehold interest rather than a fee interest tends to be more expensive, require a further reduction of the ground lease value.

The reduction in value from a ground lease rather than fee interest during a construction project is even more extreme. In addition to reducing the market value of the completed project, and thereby reducing the present value of the land, construction lenders find a leasehold interest security that is junior to a landlord's unsubordinated fee interest to be a far inferior form of security compared to the more typical fee interest that the lender usually obtains. This means that the lender will not lend as many dollars for the same project cost, and the loan will be more costly. Many lender will not make any construction loan against an unsubordinated ground lease, regardless of the other terms (and thus, those few that will make such loans charge more for them). This means the project requires a larger cash equity contribution for the same cost, which in turn means the internal rate of return (IRR) on the cash investment will be less because of the lower leverage, turning away many IRR-driven investors, unless the ground lease cost is further reduced to allow the investor to reach its IRR objective from a much higher cash flow (from a much cheaper ground lease) after completion and stabilization.

For example, assume a new construction project that requires 80% debt and 20% equity financing, with total cost of $1 million not including financing cost, and a 20% return on cost, where the project takes one year from start to finish and debt costs 8% per annum. The investor IRR in this case would be about 68% on its $200,000 investment. Now take the same project, but assume 60% leverage, 40% equity. The investor IRR would fall by almost half, to 38% on a $400,000 investment, even though the project profits after debt actually increased. There is much more equity available for a project that will return 68% than a project that will return 38%. (These figures are purely hypothetical, of course, and do not indicate the expected IRR for the proposed projects in any case.)

Given the extraordinary jump in risk premiums in the real estate debt and (therefore) equity markets since July 2007, it is possible that any substantial project (e.g., more than a simple one-story retail box) on these sites on an unsubordinated ground lease will prove to be simply unfinanceable, given the risk multiplier for lenders on the inferior security of an unsubordinated ground lease in an already risky market for new construction. A new construction project in a "transitional neighborhood" secured by an unsubordinated ground lease is about as risky as it gets, from a financier or investor's perspective. Indeed, more than one leading institutional equity investor has commented to us on this

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specific project that they would only be interested in a fee simple deal, to retain control and flexibility with respect to the parcels after construction start.

In the current environment, WMATA should be taking all available steps not only to maximize its present value in the land, but also to ensure its land value by helping the proposed projects to succeed. The best way to do this is to sell the land so that the developer can use the land's full potential value to secure lenders and investors for fair returns in a risky environment.

2) Developing a single building on combined lots with multiple ownership interests and structures introduces greatly increased legal cost and complexity to the project, and reduces the likelihood of securing financing or future marketability. LaKritz | Adler controls 1920 8th Street, abutting Parcel 2, under a 10-year fee-subordinated ground lease and purchase option (a copy of the ratified contract is attached.) The only way to build a maximum density, by-right project on Parcel 2 (and thereby maximize land value and advance transit-oriented development principles) is to combine it with 1920 8th Street. We believe it imposes a significant practical constraint and serious legal and title costs to have to finance a single building on the combined lots when one portion of the combined lot is leased from one third-party wherein that party has pledged its fee interest to the lender and provides a near-term purchase option, and the other portion of the same lot is owned by a different fee-owner (WMATA) whose fee is not subordinated to the lender, and has a completely different ground lease term without a near-term purchase option. Any future buyer of the completed project would have to discount its value significantly for the complexity of the title and the limited financing options likely to be available.

We anticipate the same difficulties if Howard University were to agree to join in the development of Parcel 3 with a joint venture contribution of their CVS site (a reasonably likely outcome, based on recent discussions with Howard.) And it is not impossible that additional sites with different ownership structures could be assembled with Parcel 1 as well.

3. LaKritz | Adler prefers to grant purchase options in office and retail condominium leases to induce prospective tenants to relocate to this location. Based on multiple broker analyses of the proposed project, one important inducement to relocating downtown non-profit tenants and small retailers to this location may be to offer purchase options with their leases. In order to make the proposed projects as desirable to tenants as possible, the developer needs to have this ability, which cannot be granted if the new buildings are on a ground lease, rather than fee simple land. The grant of purchase options with the leases should result in a faster lease up period with higher quality tenants at higher rates, all leading to a higher present value for WMATA's land.

Although LaKritz | Adler is offering ground lease terms for all three sites to WMATA, and would be willing to develop all three sites on a ground lease, it is clear that WMATA is substantially reducing the present value of its land if it insists on an unsubordinated

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ground lease rather than fee simple sale for these sites, and WMATA substantially increases the risk that these projects will prove unfinanceable and unmarketable both to construction lenders and future owners. We recommend fee simple sale of all parcels, to maximize value, flexibility and marketability for all parties.

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L. Market Analysis and Marketing Strategy

As the project consists of retail, office and hotel components, this section will address market analysis and marketing strategy for each use type.

1. U Street/Florida Avenue Retail Analysis and Marketing Strategy
(Prepared for LaKritz | Adler Development by Steve Combs, KLNB Retail)

The U Street Corridor is in the midst of a rapid retail and residential revitalization. Emerging as a full-service retail and cultural destination, the area has benefited from a booming real estate market that has forced home buyers and renters to look to the north and east from the Central Business District and Dupont Circle.

Thousands of new lofts and condominium units have been added to the neighborhood, with a new supply of rental apartments on the way, and retailers have followed. Dozens of new businesses, including numerous home furnishing stores and restaurants, have opened in the area to serve these new urban residents. And with these new urban residents come new urban tastes. The boutique supermarket, Whole Foods, at 14th and P, which caters to the health conscious consumer, has found the neighborhood to be one of their most profitable locations, boasting the highest sales per square foot in the chain. Additionally stores such as Home Rule, Muleh and Maison 14 have located along 14th Street, making it a 'place to be' for home furnishing stores on the cutting edge of new and refreshing selections.

Once an underserved area, the area is now ripe with opportunities for retailers. Residential and office foot traffic is of the utmost importance for the existing retailers, and it is only going to increase. The demand for vibrant and diverse urban living will continue to provide opportunities as newly developed and renovated retail space becomes available. Retail rents are reaching the mid-$40s per square foot neat 14th & U, competing with asking prices in Adams Morgan and parts of downtown. Rents drop into the mid-$30s per foot for new construction leases as we move east along U Street to Florida Avenue.

New restaurants and trendy boutique shops, along with the established landmarks like Ben's Chili Bowl and the Lincoln Theatre, are making the area a "hip" location. Many young people and empty nesters with disposable income are attracted to the area, in part because they like the idea of restaurants, shops, and neighborhood-serving retail being just steps away from their homes. They also like the neighborhood's history and architectural character which contributes to an authentic urban neighborhood with its own identity, look, and style. In other words, it's vibrant, eclectic, and full of urban energy, not some cookie-cutter suburban mall scenario.

The neighborhood does not look like the rest of traditional Washington, and that is a draw. Projects such as Moderno by LaKritz | Adler continue to add to the area's growing population. It looks and feels more urban, more funky, and that is what makes the future of the U Street corridor exciting. More developers and retailers are keeping an eye out

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for opportunities in the area. The developing critical mass of future residents presents ample opportunities for additional services and restaurants.

U Street/Florida Avenue Corridor Demographics

- Over 118,400 daytime employees within a 1 mile radius
- Average weekday traffic count on U Street carries nearly 27,000 vehicles.
- The U Street and Columbia Heights Metro stations together carry 7,200 passengers on weekdays and 3,700 passengers on weekends
- 5,000 residential units are approved, funded, and under construction
- The entire corridor benefits from an Arts Overlay District and business investment incentives
- Designated as a DC MAIN STREET, the *14th & U Main Street Initiative* has created a marketing force to promote the corridors

Recent Retail Comparables

A) Alero's – 1301 U Street, 8,000 SF, $40 - $45 per SF w/$45 in Tenant Improvements (Restaurant) http://alerorestaurant.com/

B) The other Ellington Retailers: Countrywide Home loans, Sala Thai Restaurant, etc: $43 – $47 per SF with Tenant allowances in range of $30-$45 per SF.

C) Mar de Plata – 1410 14th Street, 4,500 SF, $33.50 per SF (Restaurant)

D) Subway – 2007 14th Street, 1,000 SF, $42 - $46.67 per SF (Restaurant) http://www.subway.com/

E) Twins Jazz Club – 1344 U Street, 1,500 SF, $37.50 - $42 per SF (Cafe/lounge) http://www.twinsjazz.com/

F) Children's Place – DC USA, (3224 14th Street, NW), 6,995 SF, $70 psf rent with a tenant allowance of $65 psf

G) Lane Bryant – DC USA, (approx 3208 14th Street), 5,000 SF, $65 psf Rent with a tenant allowance of $70 psf.

H) Vitamin Shop – DC USA, (approx 3228 14th Street), 3,000 SF, $60 psf Rent with a tenant allowance of $65 psf.

I) Panda Express – DC USA, (approx 1407 Irving Street, NW), 2,430 SF, $57 psf Rent with a tenant allowance of $50 psf.

J) Radio Shack – DC USA, (approx 3202 14th Street, NW), 2,700 SF, $72.50 psf Rent with a tenant allowance of $30 psf.

K) Fed Ex Kinko's, Kenyon Square , (approx 3211 14th Street, NW), 2,268 SF, $55 psf rent with a tenant allowance of $25 PSF.

L) BB&T Bank, Kenyon Square, (approx 3205 14th Street, NW), 3,500 SF, $70 psf rent with a tenant allowance of $45 psf.

M) Hanks Oyster Bar, Highland Park (1400 Irving Street, NW), 3,148 SF, $42 psf rent with $60 PSF Tenant Allowance.

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2. U Street / Uptown Office Market Analysis and Strategy
(Prepared for LaKritz | Adler Development by Malcolm Marshall, Senior Director, Cushman & Wakefield)

D.C. Office Market Trends

- Record rental rates are forcing tenants out of the core areas of downtown
- Real estate tax pass-throughs are adding $4.00-$5.00 costs for tenants
- "Fringe market" dynamics are gathering momentum:
  - NOMA
  - Navy Yard
  - Massachusetts Ave and 6th (Mt. Vernon Square)
  - Uptown / U Street
- Tenants more conscientious about future growth & protecting themselves from rental rate increases
- LEED design is taking center stage

Marketing Recommendations

- Development of marketing materials
- Aggressive marketing campaign
- Broker mailer
- Direct calling campaign
- Conference displays
- Washington D.C. Economic Partnership
- Charter school consultants
- Local community and ward meetings
- Focus search on realistic prospects
- Capitalize on movement to fringe markets

Leasing Prospects

- Howard University
- DC Government
- Charter Schools
- Community Impact Groups
- Associations / Not-for-Profit Groups
- Foundations
- For Profit Schools
- Active Prospects: Blue Cross/Blue Shield, Kaiser Permanente, Points of Light Foundation, UDC, etc…

Pricing

- $40.00 – $44.00 per square foot full service
- 10 year term
- $55.00 – $60.00 per square foot TI allowance over a defined base building delivery

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- 2.25% escalator
- $2.25 per square foot bump in year 6 in lieu of 2.25% escalation
- 4 – 8 months of rental abatement
- Passthroughs of operating expenses and real estate taxes above a base year

Florida Avenue / 8th Street NW Office Tenant Size Analysis

Project Size	Construction Period	Preleasing	Pricing	Term	TI's	Escalation Bumps	Potential Tenants[1]
50,000 sf	• 12 months to begin • 30 months for completion	50% within 6 months	$42.00 - $44.00 psf Full Service	10 Years	$60.00 psf above a warm lit shell	2.25% $2.25 bump in year 6	20,000 – 30,000: **14** 30,000 – 40,000: **8** 40,000 – 50,000: **8**
90,000 sf	• 30 months to begin • 44 months for completion	40% within 9 months	$42.00 - $44.00 psf Full Service	10 Years	$60.00 psf above a warm lit shell	2.25% $2.25 bump in year 6	30,000 – 60,000: **10** 60,000 – 90,000: **8**
120,000 sf	• 36 months to begin • 50 months for completion	35% within 12 months	$42.00 - $46.00 psf Full Service	10 Years	$60.00 psf above a warm lit shell	2.25% $2.25 bump in year 6	30,000 – 60,000: **10** 60,000 – 90,000: **8** 90,000 – 120,000: **3-4**

[1] There are approximately 52 existing Charter Schools in the District that would all be categorized as potential tenants but are not included in the statistics due to a lack of building information at this time. There is also potential for new Charter Schools that would consider the site.

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Recent Lease Comparables in D.C. "Fringe Markets"

Submarket Type / Class	Tenant Name Building Name / Address	Rental Rate Rent Type Square Feet	Execution Date Commencement Date Term	Lease Type TIs (psf) Escalations
Ball Park / Navy Yard Office / A	CSC 1201 M Street, SE Maritime Plaza	$39.00 Full Service 125,000	09/05/2007 N/A 5 Yrs.	Direct N/A 2%
Ball Park / Navy Yard Office / A	Unity Healthcare 1220 12th Street, SE Maritime Plaza II	$37.75 Full Service 25,658	07/12/2007 11/01/2007 10 Yrs. 4 Mos.	Direct N/A 3.0%, $2.00 bump in yr. 6
Southwest Office / A	HHS 409 3rd Street, SW Washington Office Center	$48.43 Full Service 21,391	07/05/2007 10/03/2007 10 Yrs.	Direct $17.00 Flat
Ball Park / Navy Yard Office / A	Parsons 100 M Street, SE .	$34.00 NNN 80,000	05/12/2007 10/01/2008 10 Yrs.	Direct $60.00 2.5%
Southwest Office / A	U.S. Immigration & Customs Enforcement 500 12th Street, SW Potomac Center North	$40.27 Full Service 90,196	06/18/2007 01/01/2008 10 Yrs.	Direct $38.30 N/A
Capitol Hill / NoMa Office / B	EEOC 131 M Street, NW One NoMa Station	$42.00 Full Service 144,000	05/10/2007 07/01/2008 10 Yrs.	Direct $50.00 Flat
Southwest Office / A	Cavarocchi Ruscio Dennis Associates 600 Maryland Avenue, SW Capital Gallery - Expansion	$45.00 Full Service 5,970	04/25/2007 9/01/2007 7 Yrs.	Direct $60.00 2%
Ball Park / Navy Yard Office / A	Sayre & Associates 1201 M Street, SE Maritime Plaza	$39.50 Full Service 3,443	04/01/2007 05/01/2007 4 Yrs.	Direct $2.00 N/A

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Southwest Office / A	DC Government 401 M Street, SW Waterside Mall / East 4th Street Bldg.	$28.40 NNN 250,000	03/01/2007 10/01/2009 15 Yrs.	Direct N/A 2%
Uptown Office / A	A.G. Edwards & Sons, Inc. 5301 Wisconsin Avenue, NW Chevy Chase Plaza	$39.00 Full Service 16,029	02/23/2007 05/01/2009 7 Yrs. 8 Mos.	Direct / Renewal $25.00 N/A
Capitol Hill / NoMa Office / B	Greenberg Quilan Rosner Research, Inc. 10 G Street, NE	$43.00 Full Service 29,484	01/11/2007 01/01/2008 10 Yrs.	Direct / Renewal N/A 2.0%, $2.50 bump in yr. 5
Ball Park / Navy Yard Office / A	Alion Science & Technology 1100 New Jersey Avenue, SE (140 M Street) Federal Gateway	$36.00 Net of Electric 31,000	11/29/2006 02/02/2007 12 Yrs.	Direct $15.00 N/A
Southwest Office / A	U.S. Immigration & Customs Enforcement 500 12th Street, SW Potomac Center North	$40.27 Full Service 403,897	09/28/2006 01/01/2007 10 Yrs.	Direct $38.30 N/A
Uptown Office / C	Academy For Educational Development 1875 Connecticut Avenue, NW Universal North Bldg.	$38.50 Full Service 70,238	08/08/2006 09/01/2007 10 Yrs.	Direct N/A N/A
Southwest Office / A	Dept of Health & Human Services 395 E Street, NW One Patriots Plaza	$45.17 Full Service 25,000	08/01/2006 11/01/2006 5 Yrs.	Direct N/A N/A
Capitol Hill / NoMa Office / A	ACICS 750 1st Street, NE	$37.75 Full Service 15,936	06/10/2006 06/01/2007 10 Yrs. 11 Mos.	Direct / Renewal $33.00 2.30%
Southwest Office / A	Federal Emergency Management Agency 395 E Street, NW One Patriots Plaza	$42.82 Gross 71,914	06/01/2006 N/A 5 Yrs.	Direct $20.00 N/A

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Uptown Office / C	British School of Washington 2001 Wisconsin Avenue, NW	$20.76 NNN 75,000	12/10/2006 01/01/2008 12 Yrs.	Sublease $35.00 3.0%, no bump in yr. 6

3. Hotel Market Analysis and Strategy

(Prepared for LaKritz | Adler Development by Mason Mednick, Executive Vice President, Milestone Capital Corporation)

[See EXHIBIT I -- CUSTOM SMITH TRAVEL RESEARCH REPORT ATTACHED]

Existing Competitive Supply

Based on our research, we identified eight area hotels with a total of 1,926 rooms that would compete to varying degrees with the proposed hotel property. The selection of these hotels was based on discussions with hotel management, the facilities offered, location, the nature of the demand accommodated by each, and the similarity of published room rates. There are other independent and chain-affiliated hotels located in the market area that were considered, but ultimately not included in the defined competitive sets, based on their size, room rate structure, marketing orientation, and/or higher quality. A table and map indicating the location of the competitive properties follows.

Name of Hotel	Open Date	Rooms
Embassy Suites Washington Convention Ctr	Nov 2005	384
Holiday Inn Washington DC On The Hill	May 1970	343
Courtyard Washington Convention Center	Jun 1999	188
Hilton Garden Inn Washington DC Franklin Square	Jan 2000	300
Homewood Suites Washington DC Convention Ctr	Apr 2001	175
Hotel Helix	Oct 1979	178
Residence Inn Vermont Avenue	Feb 1999	202
Courtyard Washington Embassy Row	Oct 1998	156
		1926

Source: Smith Travel Research

The competitive hotels are somewhat dispersed around the downtown Washington D.C. market and include hotels located in the area of the Convention Center, Logan Circle and Franklin Square.

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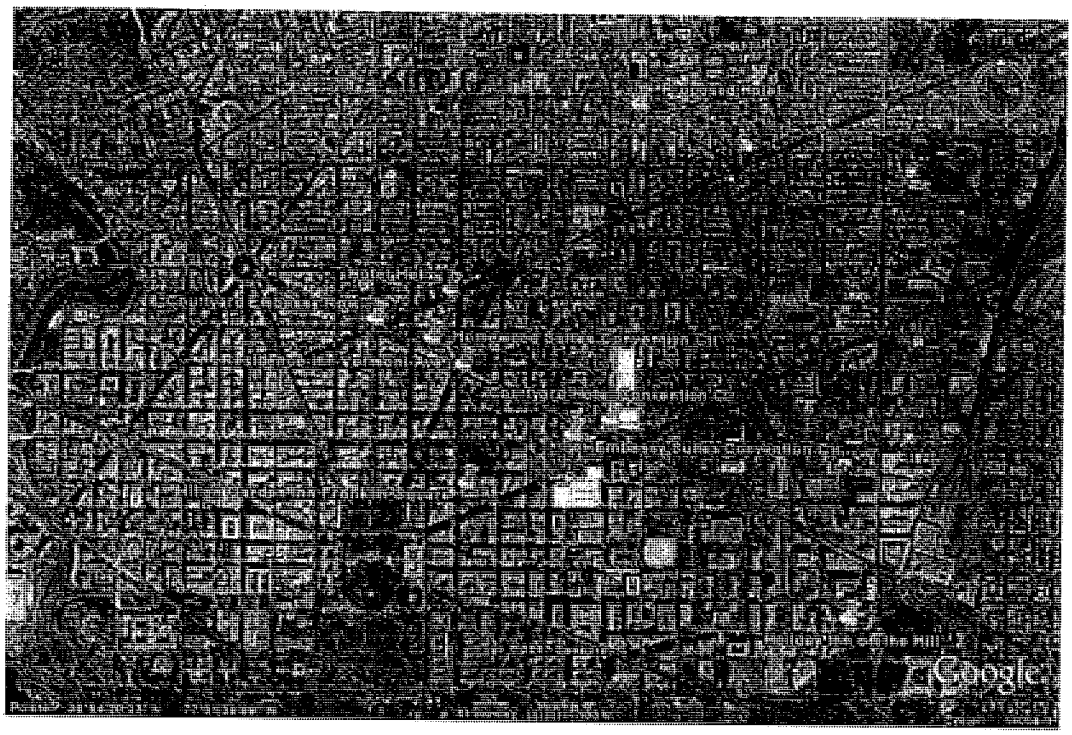

Overall, between 2001 and 2006, the competitive set occupancy increased from 70.0 to roughly 75.3 percent. During the same period, average daily rate dramatically increased from $127.72 to $182.21. The table that follows summarizes the estimated historical performance and market segmentation for the competitive set.

Year	Annual Occ %	Competitive Set Occupied Room Nights	Average Daily Rate	RevPAR
2001	70.0%	384,655	$127.72	$89.44
2002	70.9%	376,404	$127.22	$90.22
2003	71.1%	400,298	$127.77	$90.87
2004	77.0%	433,505	$146.25	$112.65
2005	76.1%	446,198	$166.34	$126.60
2006	75.3%	529,300	$182.21	$137.19
07/2007 YTD	81.7%	333,433	$196.68	$160.61

Market Segmentation

Milestone Hospitality Management, LLC estimates current market segmentation at its owned and operated full-service Hilton Hotel in Silver Spring, Maryland to be 36 percent corporate transient, 20 percent leisure transient, 5 percent government transient, and 39

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percent group. Overall market segmentation of 61 percent transient and 39 percent group business has remained relatively stable over the past several years for this property. Based on the location and product type (focused service) proposed for the subject hotel at the Shaw-Howard WMATA Property, management estimates that the transient to group mix would be closer to 80/20, with a greater emphasis on corporate and government transient business.

The Washington Convention Center will be the primary overflow demand driver for this location with respect to the corporate and association markets. According to the Washington, DC Convention & Tourism Corporation, the Washington Convention Center will attract more than 320,000 delegates for 43 events in 2007 (including 14 citywide conventions with 2,500 or more room nights). Howard University and the federal government will drive group related business. High rated leisure business will be strongest on weekends, when demand from corporate transient and group business subsides. As the nation's capital, Washington, D.C. is a major tourist, convention, and business destination offering a multitude of sights and activities for visitors. The tourism industry is second only to the federal government in size. From the subject property, most D.C. tourist attractions are within a 20 minute walk. Also, metro-rail provides convenient access to most area tourist attractions.

According to the Washington, DC Convention & Tourism Corporation, approximately 15 million people visited the area in 2006, two-thirds of which stayed overnight. A number of new tourist attractions have opened in the past few years, while there are several more still under construction or in the planning process, including the following:

- The new World War II Memorial was formally dedicated on the National Mall during Memorial Day weekend 2004.
- The newest Smithsonian Museum, the National Museum of the American Indian, opened to the public in September of 2004. The museum is located between the U.S. Capitol building and the National Air and Space Museum.
- The National Academy of Sciences officially opened its museum in April 2004. The new 5,700 square foot Marian E. Koshland Museum is located at 500 E Street, NW.
- Future tourist developments proposed to occur between 2006 and 2008 include the Newseum, the National Portrait Gallery, the U.S. Capitol Visitors Center, and the Martin Luther King Jr. Memorial, among others.

Seasonality Influences

Room night demand for the market is modestly seasonal with occupancies typically declining from November through January due to a drop in commercial transient, leisure, and group business. Comparatively, March through August are the strongest months due to increased commercial and group demand throughout the week and leisure demand on weekends. October also tends to be a strong month for commercial demand. September and February are considered shoulder months.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008890

Brand Contribution

Milestone Hospitality Management, LLC estimates current brand contribution of occupied room nights at its owned and operated full-service Hilton Hotel in Silver Spring, Maryland to be approximately 58 percent per annum. "Brand Contribution" is defined as total occupied room nights generated through the www.hilton.com website or 800-HILTONS central reservation network. Typical brand contribution among the top franchisors in the hospitality industry (Hilton, Hyatt, Marriott and Starwood) is generally in the range of 35%-55% nationwide. The Hilton Silver Spring achieves a somewhat higher level of brand contribution due to the relative paucity of Hilton family of hotel brands in the local market. Based on the location and product type (focused service) proposed for the subject hotel at the Shaw-Howard WMATA Property, management estimates that brand contribution would account for approximately 50 percent of occupied room nights.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008891

M. Summary of Project Impact on Tax Base

1. Identification of Property Taxes, Sales Taxes, Amount of Fees and Contributions and Other Local Public Income.

- Permitting Fees: 1% of project hard cost, plus $10,000
- Property Taxes: 1.85% per year of total property value each year
- D.C. Income Tax on New Jobs Created: 4.5% on income up to $10,000, 7% on income from $10,000 to $40,000, 8.7% on income above $40,000, per job, per year
- D.C. Sales Tax on retail sales: 5.75%
- D.C. Sales Tax on restaurant food and beverage sales: 10%
- D.C. Sales Tax on commercial parking income: 12%
- D.C. Sales Tax on hotel rooms: 14.5%
- D.C. Business Franchise Tax: 9.5% on all business profits earned in the District

SUMMARY TAX BASE IMPACT ANALYSIS

ONE-TIME TAX EVENTS		
Construction Permitting Fees	$	376,062.60
Purchase Recordation Tax	$	132,740.00
Sale Transfer & Recordation Tax	$	2,785,610.58
Financing Recordation Tax	$	800,628.00
Construction Job Income Tax on Avg $50k, 50% in D.C.	$	688,464.00
Legal/Professional Job Income Tax on Avg $120k, 50% in D.C.	$	334,834.00
Franchise Tax on Development Profits	$	2,493,837.00
TOTAL ONE-TIME D.C TAXES:	**$**	**7,612,176.18**
Total Construction/Development Jobs Created:	**473**	
Jobs Created in D.C. Only:	**237**	
ONGOING TAXES ON OPERATIONS (at stabilization)		
Restaurant & Retail Sales Taxes		
Parcel 1	$	213,554.00
Parcel 2	$	623,107.00
Parcel 3	$	385,300.00
Restaurant/Retail Jobs Income Tax on Avg $30k, 75% D.C.	$	182,345.00
Office Jobs Income Tax on Avg $75k, 50% D.C.	$	989,797.00
Hotel Jobs Income Tax on Avg $45k, 60% D.C.	$	51,939.00
Hotel Taxes		
Room Sales @ 14.5%	$	1,458,958.00
Dining Sales @ 10%	$	93,985.00
Parking Taxes All Parcels @ 12%	$	27,752.00
Property Taxes (1.85%/year on pro forma cap rate values)		
Parcel 1 Value	$	60,780.79
Parcel 2 Value	$	895,240.03
Parcel 3 Value	$	761,772.37
TOTAL ONGOING D.C. ANNUAL TAXES GENERATED	$	5,744,530.19
Long-Term Jobs Created:	**514**	
Long-Term D.C. Jobs Created:	**293**	

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008892**

N. Community Organization Meeting

On September 26, 2007, the principals of LaKritz | Adler Development met with Myla Moss, Single Member District representative of ANC 1B for the Shaw-Howard/Florida Avenue WMATA parcels. In addition, LaKritz | Adler has shared its first-round WMATA submission and further details of its plan with Phil Spalding, ANC 1B Commissioner and Secretary, and Dee Hunter, ANC 1B Commissioner and Chairman.

Prior to being selected as a finalist for this JDS, LaKritz | Adler Development principals had met with these commissioners on several occasions to discuss the ongoing plans and developments for these sites and 1920 8th Street. LaKritz | Adler also presented specific design plans for 1920 8th Street to the full assembled ANC at a regularly scheduled ANC meeting in early 2006, and won full ANC endorsement for the plans in a public vote.

LaKritz | Adler's submission to WMATA for these sites has been based, from the outset, on input from the community, which LaKritz | Adler sought in advance of its first round submission, because we have been developing 1920 8th Street and contemplating an assemblage with the adjacent WMATA parcels for several years, and have kept the ANC apprised of developments with the WMATA sites throughout that period (prior to the JDS announcement). Indeed, community representatives over the years have repeatedly asked LaKritz | Adler if it could somehow obtain control of the WMATA parcels to incorporate them into its planned 8th Street project to get the long-vacant lots developed in conjunction with 1920 8th Street.

Community representatives including Commissioner Moss, Commissioner Spalding and others have repeatedly voiced their enthusiasm specifically for new office and hotel on these sites, including at the meeting on September 26. Moreover, these commissioners and others have expressed their disfavor for additional residential projects on these sites, because over 1,500 new residential units are now in construction or planning within a three-block radius of the JDS sites, and the general community feeling is that there is a glut of residential in the area. Additional community concerns pertaining to daytime versus evening uses include that there is a dearth of people during the day in this location, which means a lack of support for daytime retail and restaurant and street life, while the excess of evening inhabitants (workers returning home and visitors for evening activities) means a shortage of parking at night and an excess of nightclubs, versus legitimate restaurants and other retail which need daytime traffic to thrive.

There was strong support for LaKritz | Adler's ability to complete the proposed projects without seeking an increase in the 65-foot height limit through a Planned Unit Development process, especially in light of the Historic Preservation Overlay in effect. The principle concern was not that the community would not support the greater height and density under a PUD, which for these specific projects on these sites would be forthcoming, given the widespread support for new hotel and office space here (though it was noted that community support would probably not be forthcoming for a residential project PUD on these sites.) Rather, the concern was that the Historic Preservation and Review Board process would greatly delay and economically hamper a project seeking to

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008893**

exceed current height limits for any purpose, and the community wants a project with the greatest probability of approval and commercial success, without contingencies for PUD, unlikely HPRB approvals, or any public financing or subsidies. Also, there was great concern that any residential project, given the current state of the market, would ultimately have to rely on public subsidies to succeed, whether stated or not in the JDS, and would ultimately fail to get such financing or meet pre-sale requirements, tying up the vacant JDS sites for many more years and further delaying the completion of new development on these prominent lots.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008894**

O. Local Jurisdiction Meeting

On September 20, 2007, the principals of LaKritz | Adler Development met with five representatives of the D.C. Office of Planning and the Mayor's Office of Economic Development regarding our Shaw-Howard/Florida Avenue JDS proposal. Jurisdictional staff present included:

- Geraldine Gardner, Associate Director, Office of Planning
- Zach Dobelbower, Ward 2 Planning Coordinator, Office of Planning
- Tarek Bolden, Ward 1 Planning Coordinator, Office of Planning
- Travis Parker, Development Review Specialist, Office of Planning
- Derrick Woody, Coordinator – Great Streets Initiative, Office of the Deputy Mayor for Planning and Economic Development

While this meeting represented the first formal presentation of LaKritz | Adler's plans for the JDS parcels, LaKritz | Adler has met with and discussed its plans for 1920 8th Street and the adjacent JDS parcels with several members of the Office of Planning and the Office of Economic Development over the past several years preceding the current JDS publication, including meeting Derrick Woody and Travis Parker regarding these specific sites on various occasions.

At the meeting, LaKritz | Adler presented large-format architectural renderings of the proposed development, presented the by-right and PUD suggestions for the sites, and received planning and design feedback from the jurisdictional staff. Jurisdictional staff was extremely enthusiastic about both the retail/office plan and the retail/office/hotel plan. They were agnostic about preference for office versus hotel on Parcel 3. However, they did state strong preference for the maximum density by-right development plans, rather than PUD plans, and the fact that LaKritz | Adler is the only developer capable of implementing a by-right maximum density plan for Parcel 2 (by combining with 1920 8th Street) was a major consideration.

Office of Planning staff strongly agreed that the LaKritz | Adler plan was an outstanding implementation of the transit-oriented development goals of the "DUKE" plan for the area, to make the Uptown Destination District an 18-hour destination, as it presently lacks meaningful daytime traffic. Because of their enthusiasm for the plan, and their desire to see development commence as soon as possible, they advised against seeking a Planned Unit Development, as this would substantially slow implementation, and the additional height and mass needed to make the PUD process worthwhile might be opposed by the Historic Preservation and Review Board, thereby foiling the development plan and causing further delays.

As a result of this input, LaKritz | Adler has eliminated its discussion of PUD plans in this JDS submission, and no longer intends to consider a PUD process for the sites.

Office of Planning's foremost concerns, given the strong support for the project concept, was that the project be as close to by-right as possible, and be economically viable

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008895**

without public subsidies, to ensure success. They agreed that in the present market, a residential plan without substantial public subsidies was unlikely to succeed.

Having agreed with the plan concept, Office of Planning staff moved on to offer design input with respect to the architectural renderings and site plan. Design recommendations included:

- Break up the façade aesthetics of the proposed buildings, to give them more of a smaller, "U Street" rhythm.
- Give greater visual weight to the retail floor and entryways.
- If possible, do not have the hotel driveway on Florida Avenue. Make parking and loading entries off 8th Street and public alleys.
- Try to include some local businesses in the retail component.

These design inputs would ultimately be incorporated during the HPRB public design review process.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008896**

P. Project Feasibility

The project proposed is not contingent on any local, state or federal government action or financial support or subsidies, including any change in regulations, street closings, alley closings, public funding, public guarantees or issuance of tax-exempt bonds, financing or credit enhancements, or leasing of space. This is a market-rate, market-driven project in its entirety.

Q. Additional Statements

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. Analysis of Impact on Metro Ridership

To be performed by WMATA.

S. Past, Current or Anticipated Relationship between Members of Development Team and WMATA, Staff or Board

None.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008897

T. Sample Previous Projects

1. Illustrative Materials on Three Recent Successful Projects

(i) Moderno by LaKritz | Adler [See EXHIBIT J – MODERNO BROCHURE]

(ii) Silver Spring Hilton by Milestone Capital Corporations [See EXHIBIT K]

(iii) Rockville Town Center by DANAC Corporation [See EXHIBIT L]

2. Sources and Amounts of Debt and Equity for Recent Previous Projects

(i) Moderno by LaKritz | Adler
35,000 square foot, 20-unit new construction mixed-use project at 12th & U Streets
Total Cost (excluding closing costs and commissions): $12,425,868
Senior Debt: $9,300,000 construction loan, PNC Bank
Subordinate Debt: $400,000 seller financing
Land Equity: $1,150,000 seller land equity contribution
Cash Equity: $1,575,868 LaKritz | Adler cash contribution

(ii) Hilton Washington D.C./Silver Spring, MD by Milestone Capital Corp.
263-room gut rehab renovation of full-service hotel
Total Cost: $18 million
Senior Debt: $12 million construction loan, Nationwide Life Insurance Co.
Subordinate Debt: $3 million, RockBridge Real Estate Fund I
Cash Equity: $3 million from Milestone Hotel Partners
Total Rooms: 263

(iii) Hampton Inn/Homewood Suites Silver Spring, MD by Milestone Capital Corp.
239-room gut rehab renovation of limited-service hotel
Total Cost: $40 million
Senior Debt: $28.5 million construction loan, Marathon Structured Finance Fund
Cash Equity: $11.5 million cash contribution from Milestone Hotel Partners, LLC
Total Rooms: 239

(iv) Rockville Town Square by RD Rockville (DANAC & Ross Development)
A public-private partnership, mixed-use development of 644 luxury residential units, 174,000 square feet of retail and office, and 1,947 parking spaces. RD Rockville, a partnership of DANAC Corporation and Ross Development, was the Master Developer. DANAC's team managed the construction of this project with Whiting Turner as General Contractor and WDG as architect.
Total Cost: $220.8 million
Senior Debt: $176.8 million from CORUS Bank and Fremont Investment
Sub Debt: $34 million from Lehman Brothers

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008898

Equity Amount: Cash Contribution of $10 million which was provided 50% by DANAC Corporation & 50% from Ross Development.

(v) DANAC STILES I by DANAC Corporation (282,783 SF new construction office)
282,783 SF "World Class" Corporate Campus: three buildings, 1,135 parking spaces.

Total Cost: $57.5 million
Senior Debt: $50.5 million from Bank of America
Sub Debt: None
Land Equity: $7 million of land equity contributed by DANAC

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008899**

U. Projects with Defaults or Bankruptcies

Neither the Developer nor any member of the development team has ever defaulted on a loan or project commitment or declared bankruptcy.

V. Criminal Indictments or Convictions

Neither the Developer nor any member of the development team has ever been indicted or convicted on any criminal charge, felony or fraud.

W. DBE Statement

The Developer is willing to include Disadvantaged Business Enterprises in the Project. Note that LaKritz | Adler Development, LLC, the lead developer, is certified as an LSDBE/RBO in Washington, D.C.

X. Assemblage Site Information: 1920 8th Street

LaKritz | Adler Development is proposing to combine JDS Parcel 2 with its adjacent property, 1920 8th Street, NW. 1920 8th Street is also known as 1916-1930 8th Street, or Lot 46 in Square 393. 1920 8th Street is approximately 11,320 square feet in area, or 120 feet by 94.33 feet, in the C-2-B Arts Overlay. LaKritz | Adler Development, LLC, has formed a single purpose entity, 1920 8th Street, LLC, a Delaware Limited Liability Company with the same business address, ownership and management as LaKritz | Adler Development, LLC, to take title to 1920 8th Street. The 1920 8th Street property is owned by Medal, Inc., a Virginia Corporation. 1920 8th Street, LLC, has entered into a 10-year fee-subordinated ground lease and continuous fixed-price purchase option in which ground lease payments are credited to the purchase option and the landlord's unencumbered fee interest is pledged in-full as collateral/equity for 1920 8th Street, LLC's development, construction and permanent financing, and the landlord must cooperate with lot combinations and joint development agreements requested by the Developer. A copy of the ratified agreement is attached. [See EXHIBIT M]

Y. Additional Information

The LaKritz | Adler Development plans described above are the highest and best transit use for the sites, and maximize transit-oriented development principles. Not only does the LaKritz | Adler Office/Retail/Hotel plan maximize density at the parcels in a way that no other plan could—by incorporating the major private parcel adjacent to Parcel 2—it is a quantitatively and qualitatively superior transit-use plan compared to any principally residential plan for the same sites. Because the bulk of new and existing development in this vicinity is now residential, public transit ridership from these areas is primarily outbound in the morning, inbound in the evening. The addition of approximately 71,000 square feet of new office, 145 hotel rooms, and at least 26,000 square feet of new retail under our plan would generate substantial "reverse commute" traffic through the U Street and Shaw-Howard Metro Stations, and would add far more bodies to the public transit

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008900

ridership and daytime pedestrian street presence than a residential plan. At one person per 200 SF-office, 1.5 persons per hotel room at 75% occupancy, 1 hotel employee per 5 rooms, 1 employee per 200 SF-retail, and 50 visitors per day per 1,000 SF-retail, our plan would increase the daily population of the immediate area by about **1,977 persons**, nearly all of whom would use public transportation. The alternative proposed plan of office rather than hotel on Parcel 3 would increase this figure by another 96 persons per day.

Even if all three WMATA parcels were developed to maximum residential density (impossible on Parcel 1 in any circumstance and impossible on Parcel 2 without 1920 8th Street), and with maximum ground floor retail – this would be 104,950 square feet of residential and 14,183 square feet of retail – assuming 1 unit per 1,000 GSF residential with 1.5 persons and the same retail ratios described above, the total daily population increase from such a plan would only be 937 persons – less than half of the daily population increase from the proposed LaKritz | Adler plan. And that calculation makes an impossibly favorable assumption for the residential plan, which is that 4.5 FAR (17,100 SF) could be built on the 3,800 square foot Parcel 1, and that 4.5 FAR (38,543 SF) could be built on the irregularly shaped 8,565 SF Parcel 2, and moreover that residents and retailers would be willing to occupy both of these buildings fully with close to zero parking. In reality, the achievable square footage on those parcels and their positive impact on the community would be far lower.

In short, from the standpoint of both transit-oriented development principles, which seek to maximize density and population near transit nodes, and highest and best transit use calculations, no residential/retail plan can come even close to the LaKritz | Adler proposal with mixed commercial uses. Plus, the LaKritz | Adler plan is more favorable for traffic flows, and better meets the desires of community residents and the objectives of the Office of Planning DUKE Uptown Destination District plan.

The LaKritz | Adler plan for the Shaw-Howard/Florida Avenue JDS parcels:

1. Has the greatest possible implementation of transit-oriented development principles and creates the highest and best transit use of the sites;
2. Is a market-rate, market-driven project that has the greatest probability of success without any public subsidies in today's turbulent real estate and credit markets;
3. Has a highly experienced, well-financed development team in which every member has multiple, verifiable, major successful new construction projects of similar or comparable scope without public subsidies;
4. Is innovative and creative, differing significantly and positively from the bulk of other proposals, brining new, much needed uses to the surrounding community;
5. Fits perfectly with the objectives of the Office of Planning's transit-oriented plan and land use policies for these sites; and
6. Generates far greater daytime population, economic stimulus, job growth, business activity and tax revenues for the local jurisdiction compared to other plans, as well as far greater Metro ridership and reverse commute traffic.

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008901**

ADDENDA / EXHIBITS

EXHIBIT A – WMATA PROPOSAL FORM A
EXHIBIT B – ON SITE MAGAZINE ARTICLE
EXHIBIT C – DC MODERN ARTICLE
EXHIBIT D – CORE PROFILES
EXHIBIT E – DANAC PROFILES
EXHIBIT F – MILESTONE PROFILES
EXHIBIT G – COLOR ELEVATIONS, RENDERINGS AND FLOORPLANS
EXHIBIT H – MS PROJECT CHART
EXHIBIT I – SMITH TRAVEL RESEARCH REPORT
EXHIBIT J – MODERNO BROCHURE
EXHIBIT K – SILVER SPRING HILTON BROCHURE
EXHIBIT L – ROCKVILLE TOWN CENTER BROCHURE
EXHBIT M – 1920 8th STREET RATIFIED CONTRACT

ALSO ATTACHED: CD-ROM containing jpegs of site plan and elevations

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 008902**

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
PROPOSAL FORM

JOINT DEVELOPMENT SITES

JOINT DEVELOPMENT SOLICITATION (JDS) DATED: October 5, 2007
PROPOSAL SUBMITTED FOR THE FOLLOWING JOINT DEVELOPMENT SITE:

Shaw-Howard / Florida Avenue

DEVELOPER:

Lakritz Adler Development, LLC
Name (must be existing entity)

Joshua Adler
Name of Authorized Representative

Signature of Authorized Representative

Co-managing member
Title

4326 8th Street, NW, Washington D.C. 20011
Address Including Zip Code

202-882-0808
Telephone Number

202-882-0809
Fax Number

Josh@lakritzadler.com
E-Mail Address

Name of Entity to be Formed (if applicable)

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 _____
[✓] a limited liability company (LLC) formed under the laws of District of Columbia
[ ] 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
  [ ] limited
  To be formed under the laws of _____
[ ] a non-profit organization
[ ] a corporation, incorporated under the laws of _____
[✓] 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, [✓] 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, [✓] 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, [✓] 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.

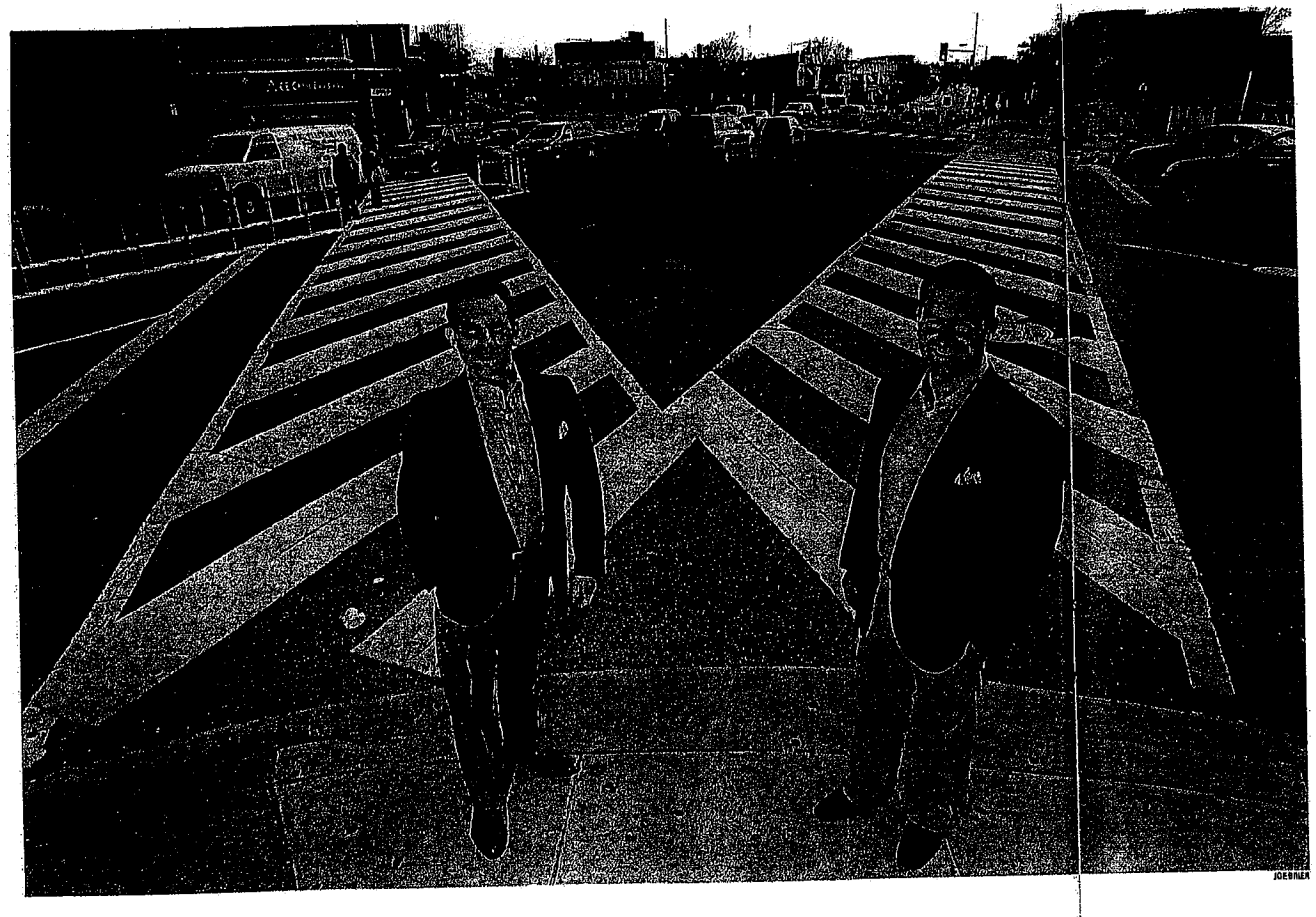
The undersigned Developer certifies that the foregoing is true.

10/05/2007
Date

Lakritz Adler Development, LLC
Developer

Authorized Representative

FOIA CONFIDENTIAL TREATMENT REQUESTED



JOE BRNER

GEORGIA AVENUE is at a crossroads, say development partners Robb LaKritz, left, and Josh Adler. They have bought several properties near Georgia and New Hampshire avenues NW to develop spaces for neighborhood services such as banks, yoga studios and restaurants.

Robb LaKritz and Josh Adler

Shaw / Petworth

ROBB LAKRITZ USED to walk around his Shaw neighborhood five or six years ago lamenting the empty and abandoned buildings.

"I was really curious why economic development wasn't happening in my backyard," says LaKritz, at the time a senior adviser in international affairs at the Department of Treasury. "This is sort of like a parlor game in D.C. Why is that building vacant? Why isn't there a coffee shop there?"

In a very un-Washington way, however, he decided to do something about it. He partnered with fellow Treasury official Josh Adler to buy a building at 1525 Ninth St. NW, just two blocks from the new convention center. A tax lien and residential zoning complicated matters, but the pair persevered and redeveloped the project, leasing the main floor to an insurance company and creating two residential units upstairs.

It wasn't long before LaKritz and Adler quit their day jobs to become full-time developers. LaKritz wondered about the destitution of Georgia Avenue every time he drove up the corridor. "Why is Georgia Avenue this way? This is a beautiful corridor," he thought. "This is a boulevard."

After moving to Petworth in 2003, LaKritz began talking to residents and discovered they were clamoring for a sit-down restaurant. LaKritz/Adler bought a 6,000-square-foot boarded-up barber shop at 3646 Georgia Ave. NW south of the Petworth Metro station. In 2005, the renovated building opened with a yoga studio on the second floor. A restaurant, Temperance Hall, opened last year. They partnered with Joe Englert, an H Street NE developer and bar owner, on both the building and the restaurant.

LaKritz has tracked down the owners of all sorts of vacant buildings, only to have his offers rebuffed. "The guys who own these buildings don't want to sell," he says. "They just want to speculate."

The duo now is working on the Moderno condominiums just off U Street, and they have several properties on Georgia Avenue. In January, they bought the triangular parcel at Georgia and New Hampshire avenues NW and the vacant 4,600-square-foot Petworth Pharmacy building at Georgia and Upshur Street NW. They are negotiating deals to buy other small parcels to accommodate neighborhood services. So far they have provided all the equity for their projects, but LaKritz says they may begin to seek outside investors.

LaKritz takes a philosophical approach to the area's renaissance.

"Responsible revitalization is demand driven," he says. "It's not about bringing the suburbs into the city. It's about the enhancement of a community." ■

WMATA-INV 008906

DC
DC

CORE architecture + design, Washington, DC

Role / Services: base building architecture / retail space design

CORE is an award-winning architecture firm dedicated to creating good design. The founding Principals and the talented individuals that make up the CORE team share a strong vision – a firm committed to working with people who are concerned about the quality of their environment and understand the importance of design in achieving that goal.

History/Ownership

CORE was officially formed on August 1, 1991 to create an environment where client satisfaction and quality design came first. The focus of the operation was then, and is now, to produce the highest quality work and to deliver client satisfaction. Combining over 100 years of large-firm experience, the four Partners at CORE have been responsible for projects ranging in size from under 500 square feet to over 450,000 square feet.

CORE Group, PC is a Professional Corporation organized under the laws of the District of Columbia and located in the Georgetown area of Washington, DC. The Corporation is led by principals Peter F. Hapstak III, AIA, IIDA, ISP, I. Guyman Martin, AIA, Dale A. Stewart, AIA and Neal R. Sumner, AIA, and the firm is licensed to practice architecture in more than 20 states. CORE is duly registered by the Office of Local Business Development as both a Local Business Enterprise and a Small Business Enterprise under the "Equal Opportunity for Local, Small, and Disadvantaged Business Enterprise Act of 1998" in Washington, DC and is otherwise classified as a Local and Small Business. The Certification Number is LS00176062008.

Areas of Practice

Our firm's capabilities include Architecture, Master Planning, Historic Preservation, Renovation and Adaptive Reuse, Interior Architecture, Interior Design, Entertainment, Hospitality and Retail design. We specialize in creative problem solving and have earned a reputation for delivering exceptional design, on time, on budget. Our growing list of national and regional projects includes a high percentage of repeat and legacy clients, affirming the success of our creative, solution-driven project approach. Staffed with 28 full-time personnel, our principals, project managers, architects and designers bring a high level of energy and passion to each new project. Our team members are cross-trained in various design disciplines and practice sectors to best inform solutions for each client and each challenge.

Design Excellence

CORE understands that the true expression of architecture and interior design is defined by the people that will use the buildings and spaces that we create. Our design solutions are unique, inspired responses to our clients' vision and the project goals. Designed with sensitivity to effectively managing construction costs, the new buildings, mixed-use projects, renovations, cultural spaces and retail facilities designed by CORE reflect the specific function and utilization of the building by the client and the community it serves. Our designs are unique expressions of our experience and our desire to create successful, user-friendly projects.

CORE continuously demonstrates with conviction that spirited and powerful design creates a vital contemporary contribution to the community, and can be obtained through the absence of expensive flourishes. We have provided hundreds of clients with consistent, simple, straightforward good design that exudes a spirit of invention and embraces an economy of means. For developers, corporations, individuals, municipalities, nonprofit organizations, associations and institutions we add value to our projects by creating environments of practicality, compassion, optimism, and cooperation.

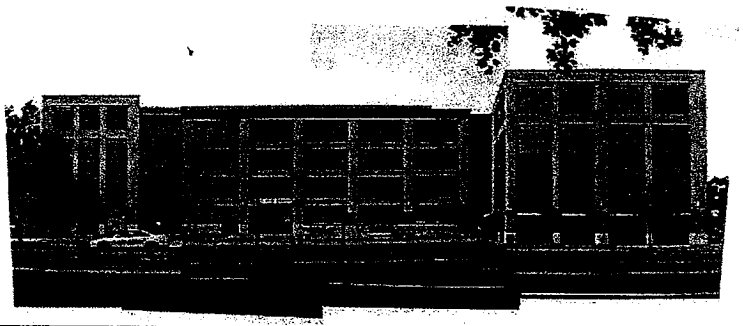
Since the inception of CORE more than fifteen years ago, the firm has been consistently recognized for design excellence by the design profession and our peers. We have been honored with more than 70 awards across all disciplines from the American Institute of Architects, the International Interior Design Association, the Washington Building Congress, Inc., and peer organizations and publications. Our firm's work has been published in hardbound editions and periodicals both internationally and regionally, and CORE is consistently included Top Design Firm lists on a regular basis for interior design, hospitality and retail design.

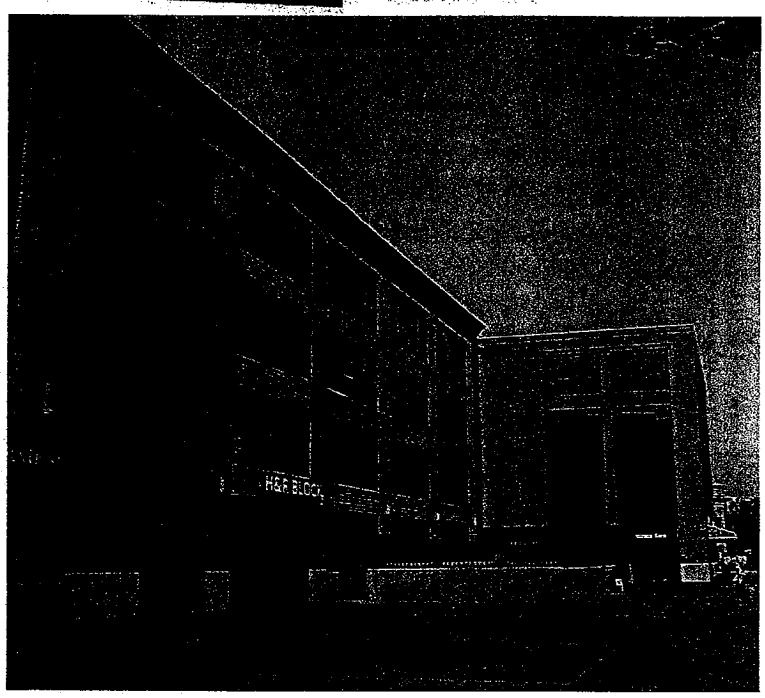
Technological Approach

CORE utilizes an advanced computer-aided three-dimensional modeling CADD design software, ArchiCAD, allowing us to efficiently model projects in the early phases of design. ArchiCAD is easily integrated with native AutoCAD DWG formats and layering systems, and other similar software packages, allowing seamless coordination and communication with other team members. Additionally, ArchiCAD 9 is also used as Building Information Modeling (BIM) based software. Construction documents are a by-product of the 3-D model, thus eliminating much of the tedious 2-D drafting process, producing fewer errors and efficiently meeting project schedule requirements.

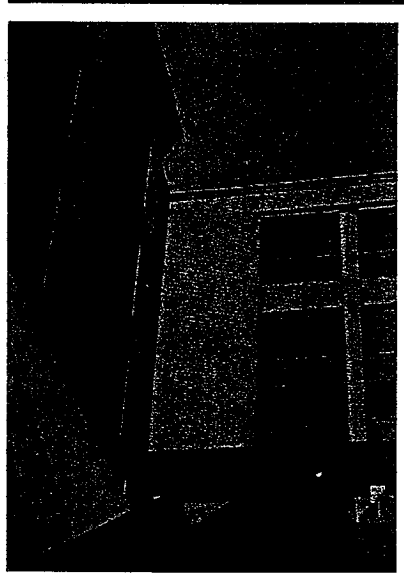
CORE architecture design

1250 U street
washington, dc





photography by CORE



project
new building, mixed-use office/retail

owner
The Jenco Group
1832 Jefferson Place, NW
Washington, DC

Marvin Jawer, President, 202.452.0088

design team
Dale A. Stewart, AIA, Project Principal
Peter F. Hapstak, AIA, IIDA, ISP, Principal
Ramon Santos, AIA, Project Manager
Adriana Radulescu, Project Architect
Kathleen Claire Ngiam, Senior Designer
Bo Soon Kim, Architect

contractor / consultants

gc	HBW Group Construction
structural	Rathgeber/Goss Associates
mep	GHT Limited
civil	Greenhorne & O'Mera

completion date 2004
size 44,000sf
budget $8 M

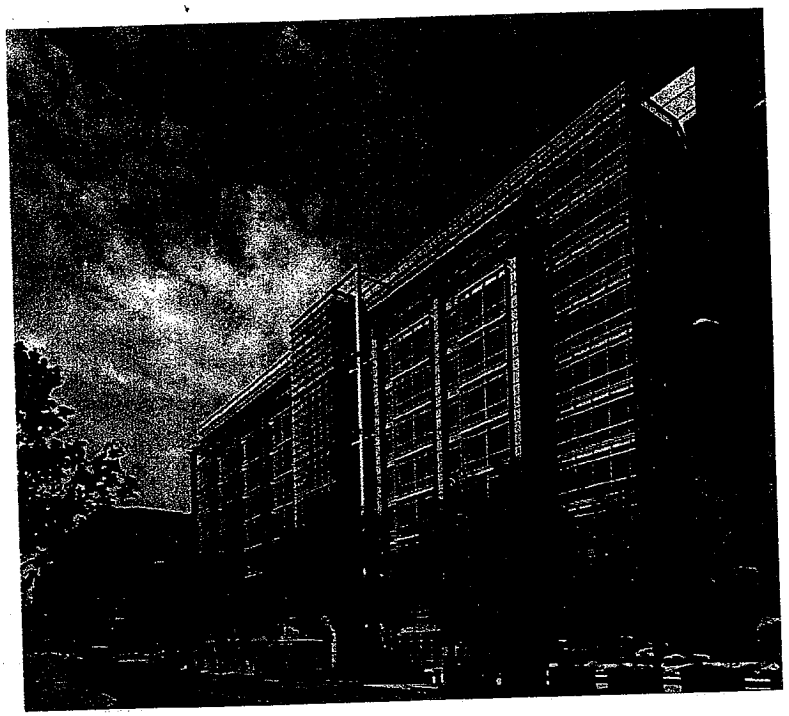
The project called for design of a four-story mixed-use building over the Cardozo-U Street Metro station in Washington DC. With a mix of District agencies and ground level retail as tenants, the goal was to create a building that created public space around the metro entrance and was an attractive addition to the surrounding neighborhood. CORE completed full architecture, interior design and construction administration services.

The site was severely restricted by a variety of visual, structural, and utility easements which complicated construction and restricted the footprint. Cut & Fill construction was used when the WMATA Metro station tunnels were built below the site. This resulted in poor soil bearing capacity, requiring pier foundations for our building. The specified 20' casons were value engineered out of the project and were replaced with geo-piers, saving significant time and money.

The building abuts commercial buildings to the east, yet not interfere with the restrictive easements. The design team worked with the staff of HPRB in developing an appropriate design that would serve as a backdrop for the Metro plaza, respect the easements, and would be compatible with the historic district requirements.

CORE architecture design

square 452
washington, dc



project
new office building

owner / client
Gould Property Company
1725 DeSales Street, NW, Suite 900
Washington, DC 20036

Garrett Preis, 202.467.6739

design team
Guy Martin, AIA, Project Principal
Ron Ngiam, AIA, Project Manager

contractor / consultants

contractor	TBD
civil	TBD
structural	Tadjer-Cohen-Edelson Associates, Inc.
mep	TBD
landscape	TBD

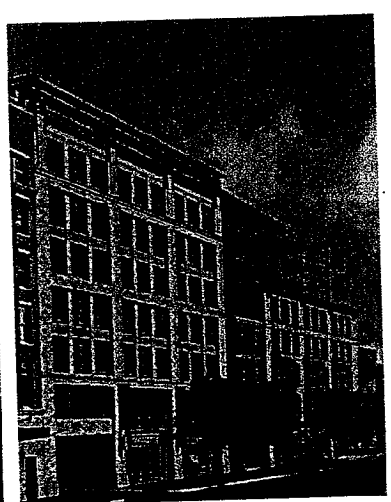
completion date 2010

size 380,000 sf w/ 300 underground parking spaces

budget TBD

Square 452 is a new speculative office building seated in the vibrant Chinatown neighborhood of Washington, DC. Located in the space between Massachusetts Avenue, Eye and 6th Streets, NW, the development of Square 452 necessitated a design approach that honored the historic surroundings, yet integrated current and contemporary approaches that will allow the building to stand out. The challenge was to design a retail/office building that is historically sensitive on Eye Street while maintaining a modern building design in the presence of the tradition of "Grand Boulevard" for the Massachusetts Avenue perspective.

A departure from the traditional Washingtonian building tower, the articulated "folding" glass of the building corner brings a new formal language to the site. The corner faces a park at the intersection of Massachusetts and 6th street, while maintaining a coherent form along the Massachusetts Avenue façade. Chinese motifs and characters are quietly incorporated throughout the design, which emphasizes the ground plain views through landscaping, storefront design and canopied entrances. These elements engage the dynamic quality of the street view, with focus placed on creating a warm, activated façade with the use of natural materials such as stone.

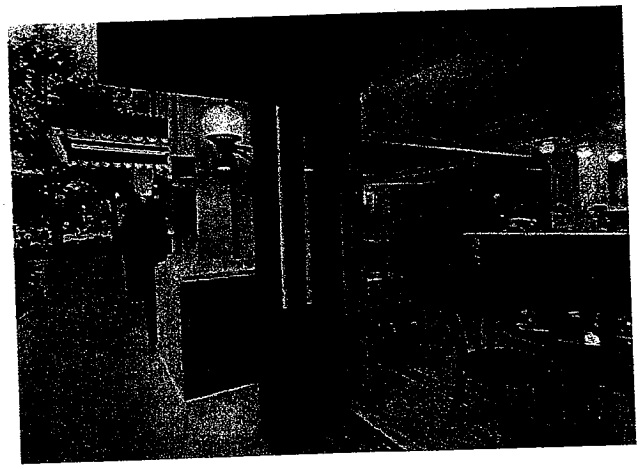


renderings by CORE

CORE architecture design

cafe du parc

willard intercontinental, washington, dc



photography by Michael Moran

project
french bistro / three-a-day restaurant

owner / client
Edward Lash
Columbia Equity Trust, Inc.
1750 H Street NW, Suite 500
Washington, DC 20006
202.303.3080

design team
Peter F. Hapstak III, AIA, IIDA, ISP, Design Principal
Cassandra Cullison, AIA, LEED AP, Proj. Manager
Kathleen Claire Ngiam, Senior Designer
Jennifer Jaffke, Project Architect
Nicole Burgess, Sourcing Designer

contractor / consultants

gc	Herman Stewart
mep	Allen & Shariff Corporation
structural	Rathgeber / Goss Associates
kitchen	Next Step Design, Inc.

completion date April 2007

size 4,150sf

budget $2.2 M

Located in the Willard InterContinental Hotel, Café du Parc stands as an authentic French bistro in an international city. The CORE design team utilized an approach that blends traditionally French materials, furniture, and lighting with modern execution and application. The contrast and balance of the architecture and design with the definitive French elements create an aesthetically inviting, comfortable and fresh environment.

CORE architecture | design

Geoff

LIA's by Chef

PROJECT
neighborhood bistro

OWNER /CLIENT
JBG Properties, Inc.
Bethesda, MD

Client: Geoff Tracy
(202) 237-7800

DESIGN TEAM
Peter F. Hapstak III, AIA, IIDA, ISP
Dale A. Stewart, AIA
Cassandra Cullison, AIA, LEED AP
Kathleen Claire Ngiam, Senior Designer
Mark Woodard, Project Architect

CONTRACTOR / CONSULTANTS

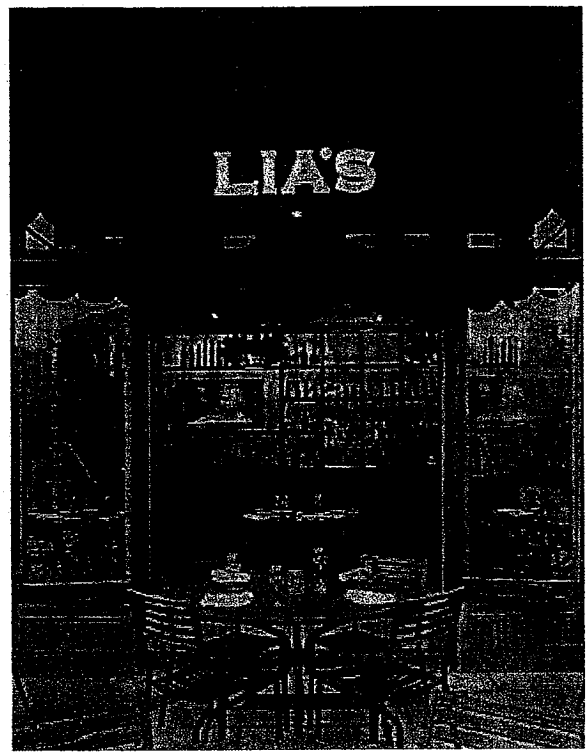
GC	Winmar Construction
MEP	Allen & Shariff Corporation
Structural	Rathgeber/Goss Associates
Kitchen	Woodburn & Associates

COMPLETED July 2006
SIZE 5,700sf
CONSTRUCTION COST $1.5 M

The neighborhood bistro is the place where people find comfort in the food, ambiance, and service. It is never pretentious or overly serious; rather it is fun and warm. For this third restaurant of a successful young chef, the concept, design and ambiance had to reflect another side of his culinary inspirations and a comfortable atmosphere.

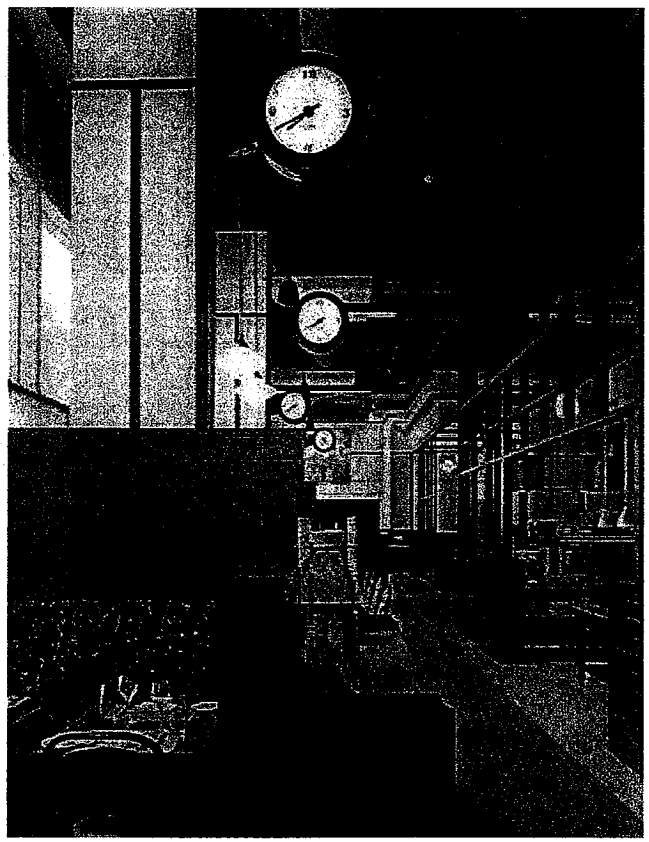
The approach to the restaurant is evocative of dining al fresco in the Italian countryside. Diners are invited to relax and chat with family and friends in the casual setting beneath the eaves of the large mixed-use building in which it is located. Entering the front door one is embraced by a glow of a golden yellows, deep reds, and soft rustic wood. There are bottles of wine, smiling faces, and the energy of a full house, an aromatic appeal and a bustling bar and main dining room. The bar was designed to attract guests to enjoy conversation, catch a ballgame on the flat screen, or to enjoy a light dinner with others.

Finally, the design and finishes palette was inspired by rusticated materials and styles found in the Italian countryside.



CORE architecture | design

brasserie BECK



PROJECT
authentic Belgian brasserie

OWNER NAME
The JBG Companies
1101 K St. NW
Client: Robert Weidmaier
(202) 296-1166

DESIGN TEAM
Peter F. Hapstak III, AIA, IIDA, ISP, Design Principal
Cassandra Cullison, AIA, LEED AP, Project Manager
Kathleen Claire Ngiam, Senior Designer
Jennifer Jaffke, Project Architect

CONTRACTOR / CONSULTANTS
GC: Forrester Construction
MEP: FACE Engineering Associates
Kitchen: Yui Design
Lighting: MCIA

COMPLETION DATE 2007
SIZE 8,500 sf
CONSTRUCTION COST $3.4M

The newest restaurant from Chef Robert Wiedmaier will establish a new benchmark for cosmopolitan dining in Washington D.C. With a menu inspired by his deep love of classic Belgian fare, Brasserie BECK is a progressive yet classically styled destination that captures the spirit of a modern brasserie.

The atmosphere of a luxurious 1930's Belgian brasserie has been reinterpreted to dazzle patrons. Just steps into the soaring ground floor space is an impressive glowing glass and steel 'solarium', which houses the large-scale open kitchen. Seating along the main line provides front row culinary theatre, which extends along a vast grand bar detailed in contemporary materials and finishes, through the main open dining room and into a series of smaller private dining parlors. The grand bar is framed by soaring columns of amber light and traditional dark wood paneling and is accented with European style train clocks and amber brasserie globes of light. The nearly 18' tall dining room walls are detailed with fairy tale inspired floral designs juxtaposed against carbon steel for a fresh approach to finishes.

With an emphasis on traditional Belgian cooking styles, food stations punctuate the dining room and include a seafood raw bar piled high with ice and fresh catches, a pommes frites station with mounds of twice-cooked potatoes, and a steam station next to a saltwater aquarium to bring the true spirit and excitement of Belgian dining directly to patrons.

DANAC PROFILE

HISTORY

DANAC Corporation is a diversified real estate development firm engaged in acquisition, development, construction, and property management. Founded in 1963, DANAC has become known as one of the most prominent developers in the Washington metropolitan area providing a full service approach.

From the late 1960's to early 1980's DANAC was a subsidiary of a large publicly held financial services organization that was acquired by the Continental Group (Continental Can Co.) in 1977. Through a series of public to private transactions beginning in 1985, DANAC, once again, became a privately held corporation under the ownership of John F. Jaeger. Mr. Jaeger is the sole stockholder of DANAC.

DEVELOPMENT AND CONSTRUCTION

For the past forty-three (43) years, DANAC has been active in all aspects of the commercial real estate market. The firm has developed and built over 3.9 million square feet of office space in 60 buildings, as well as, two major shopping centers. In addition to this commercial space, DANAC has developed three residential projects comprising 966 townhouse and apartment units.

The years of experience have enabled DANAC to become uniquely efficient. DANAC projects are routinely completed on time and on budget. DANAC's reputation for quality, reliability, and client satisfaction has attracted prominent tenants such as Federal Express, IBM, Marriott Corporation, Westinghouse, EOSAT, Hewlett-Packard, MERANT, Human Genome Sciences, and Digital Equipment Corporation. DANAC buildings have attracted major institutional purchasers such as Equitable Life Assurance Society and Prudential Insurance.

In 1993, DANAC was selected through competitive bid to be the developer of a 53,000 square foot build-to-suit for Federal Express in Hagerstown, Maryland. The success of that project led Federal Express to include DANAC as a developer to bid on a build-to-suit of a 70,000 square foot facility in Framingham, Massachusetts. DANAC was chosen as the developer in September of 1994 and delivered that facility in April of 1995. In August of 1996, DANAC delivered a third build-to-suit for Federal Express, 83,500 square feet located in Needham, Massachusetts. In 1998, DANAC completed their fourth (4th) City Station – BCB in Chantilly, Virginia consisting of 111,000 square feet. Lastly, DANAC delivered a 230,000 square foot AGT Station for Federal Express in Beltsville, Maryland.

Other current projects include DANAC Stiles, a 669,000 square foot office park located in the heart of Montgomery County's "*High Technology Corridor*". Phase I, which is three buildings totaling 280,000 square feet was occupied by Manugistics, Inc. in May of 2002. Phase II. A 72,000 square foot three-story build-to-suit for Metropolitan Regional Information Services (MRIS) is under construction and will deliver in early 2008. DANAC's Middlebrook Industrial Park, delivered its first 57,000 square foot building in January of 2001 which is part of a 325,000 square foot project in Germantown, Maryland.

REAL ESTATE MANAGEMENT

Property management and HVAC maintenance services are provided by the Real Estate Management Department. DANAC manages properties for other owners, as well as, for DANAC owned projects. The management philosophy is to provide preventive maintenance techniques, which minimize the operating expenses while maximizing investment performance.

DANAC employs a well-trained and experienced staff of licensed engineers to service the buildings it manages. Recent buildings include computerized energy management systems for financial monitoring of building performance. At the present time, approximately 1,600,000 square feet of office, retail and industrial property is managed by DANAC.

SUMMARY

DANAC provides a full range of real estate services from site acquisition to development, construction and property management. Having established itself in the Washington metropolitan area as well as the Greater Boston, Massachusetts real estate market, the firm looks to expanding its portfolio and to future opportunities throughout the nation.

DANAC CORPORATION

DEVELOPED PROJECTS

The following is a list of the major office buildings, shopping centers and warehouse facilities developed and built by DANAC:

	BUILDING	LOCATION	SQ.FT.
1.	12701 Twinbrook Pkwy.	Rockville, MD	15,000
2.	5625 Fishers Lane	Rockville, MD	42,000
3.	2101 Gaither Road	Gaithersburg, MD	106,000
4.	12501 Washington Avenue	Rockville, MD	27,000
5.	1901 Chapman Avenue	Rockville, MD	51,000
6.	12709 Twinbrook Pkwy.	Rockville, MD	25,000
7.	5635 Fisher Lane	Rockville, MD	16,000
8.	12721 Twinbrook Pkwy.	Rockville, MD	15,000
9.	5630 Fisher Lane	Rockville, MD	51,000
10.	Gaithersburg Square Shopping Center	Gaithersburg, MD	160,000
11.	570 N. Frederick Avenue	Gaithersburg, MD	10,000
12.	12720 Twinbrook Pkwy.	Rockville, MD	50,000
13.	Research Center 12729-12733 Twinbrook Pkwy.	Rockville, MD	65,000
14.	12411 Parklawn Drive	Rockville, MD	50,000
15.	5640 Fisher Lane	Rockville, MD	24,000
16.	15825 Shady Grove Road	Rockville, MD	82,000
17.	12750 Twinbrook Pkwy.	Rockville, MD	15,000
18.	1 Bank Street	Gaithersburg, MD	35,000
19.	#3 Choke Cherry Road	Rockville, MD	46,000
20.	15 Firstfield Road	Gaithersburg, MD	31,000
21.	#5 Choke Cherry Road	Rockville, MD	74,000
22.	1203 Quince Orchard Blvd.	Gaithersburg, MD	9,000
23.	12402 Parklawn Drive	Rockville, MD	100,000
24.	1370 Piccard Drive	Rockville, MD	106,000
25.	19 Firstfield Road	Gaithersburg, MD	25,000
26.	700 Quince Orchard Rd.	Gaithersburg, MD	163,000
27.	5615 Fisher Lane	Rockville, MD	35,000
28.	Quince Orchard Plaza Shopping Center	Gaithersburg, MD	125,000
29.	Montgomery Plaza	Gaithersburg, MD	110,000
30.	21 Firstfield Road	Gaithersburg, MD	53,000
31.	Hewlett-Packard	Rockville, MD	50,000
32.	U.S. Pharmacopeia 2601 Twinbrook Pkwy.	Gaithersburg, MD	30,000

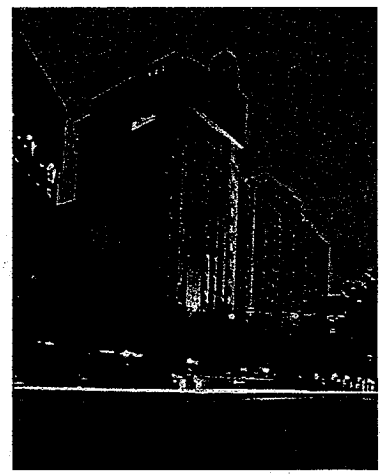
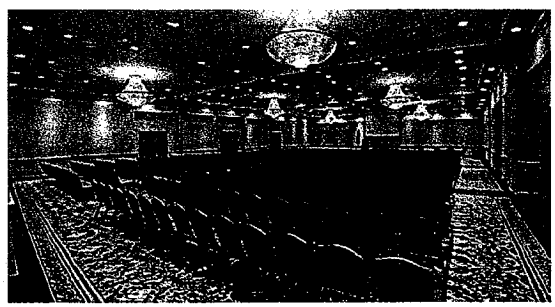
	BUILDING	LOCATION	SQ.FT.
33.	20 Firstfield Road	Gaithersburg, MD	53,000
34.	22 Firstfield Road	Gaithersburg, MD	54,000
35.	Rockwall I	Rockville, MD	135,000
36.	Rockwall II	Rockville, MD	185,000
37.	1300 Quince Orchard Blvd.	Gaithersburg, MD	52,000
38.	2092 Gaither Road	Rockville, MD	54,000
39.	704 Quince Orchard Rd.	Gaithersburg, MD	78,000
40.	708 Quince Orchard Rd.	Gaithersburg, MD	49,000
41.	2094 Gaither Rd.	Rockville, MD	56,000
42.	2098 Gaither Rd.	Rockville, MD	50,000
43.	2096 Gaither Rd.	Rockville, MD	50,000
44.	9400 Key West Ave.	Rockville, MD	50,000
45.	9430 Key West Ave.	Rockville, MD	60,000
46.	9420 Key West Ave.	Rockville, MD	116,000
47.	9410 Key West Ave.	Rockville, MD	48,000
48.	4300 Forbes Blvd.	Lanham, MD	47,000
49.	10003 Derekwood Ln.	Lanham, MD	56,000
50.	10001 Derekwood Ln.	Lanham, MD	56,000
51.	PACE Membership Warehouse	Gaithersburg, MD	117,000
52.	Shady Grove KidStop	Rockville, MD	10,000
53.	Federal Express City Station	Hagerstown, MD	53,000
54.	Federal Express City Station	Framingham, MA	70,000
55.	Federal Express City Station	Needham, MA	83,500
56.	Comp USA	Gaithersburg, MD	27,300
57.	Federal Express City Station	Chantilly, VA	111,000
58.	Federal Express City Station	Harrisburg, PA	135,000
59.	Federal Express City Station	Beltsville, MD	230,000
60.	16 South Summit Avenue	Gaithersburg, MD	43,000
61.	20410 Century Boulevard	Germantown, MD	44,000
62.	19560 Amaranth Drive	Germantown, MD	50,000
63.	9715 Key West Avenue	Rockville, MD	133,000
64.	9717 Key West Avenue	Rockville, MD	74,000
65.	9719 Key West Avenue	Rockville, MD	74,000
		COMMERCIAL TOTAL	**4,299,800**
66.	Diamond Farms Townhouses	Gaithersburg, MD	268 units
67.	Diamond Farms Garden Apts.	Gaithersburg, MD	540 units
68.	Waverly House Apts.	Bethesda, MD	158 units
69.	Rockville Town Square	Rockville, MD	644 units
		RESIDENTIAL TOTAL	**966 UNITS**

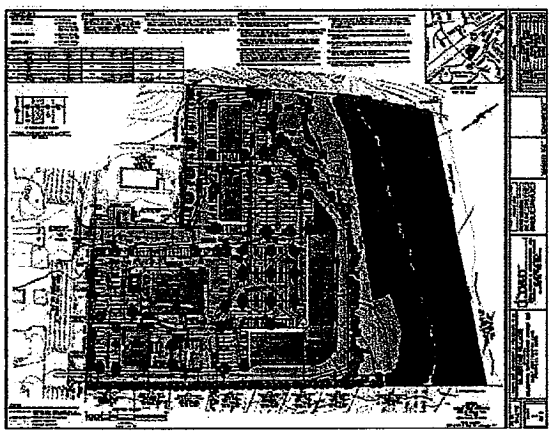
PLANNED OR UNDER CONSTRUCTION

DANAC Stiles Tract	Gaithersburg, MD	669,000

MILESTONE
GROUP OF COMPANIES

INTRODUCTION TO
THE MILESTONE GROUP OF COMPANIES



MILESTONE CAPITAL CORPORATION
MILESTONE HOTEL PARTNERS, LLC
MILESTONE HOSPITALITY MANAGEMENT, LLC
MILESTONE DEVELOPMENT GROUP, LLC

2600 N. MILITARY TRAIL, SUITE 349
BOCA RATON, FLORIDA 33431
TELEPHONE 561-981-8828
TELECOPIER 561-981-8827

Boca Raton, FL Washington, D.C. Louisville, KY Los Angeles, CA

Hospitality Experience

Milestone's Principals have combined for over 50 years of experience in the real estate and hospitality management industries.

Property	Location	Date of Acquisition	# of Rooms	Mortgage Holder	Date of Disposition	Involvement
Hilton Garden Inn	Grantville, PA	Dec 2006	159	To Be Determined	In development	SM, LK, MW
Hampton Inn/Homewood Suites	Silver Spring, MD	Sep 2006	241	To Be Determined	In development	SM, LK, MW
Lancaster Host Resort	Lancaster, PA	Sep 2005	330	Marathon Structured Finance Fund L.P.	Currently Owned	SM, LK, MW
Sturbridge Host Hotel	Sturbridge, MA	Sep 2005	233	Marathon Structured Finance Fund L.P.	Currently Owned	SM, LK, MW
Chateau Resort	Tannersville, PA	Jul 2005	152	Marathon Structured Finance Fund L.P.	Currently Owned	SM, LK, MW
Holiday Inn	Harrisburg, PA	Aug 2004	276	RockBridge Real Estate Fund II	Currently Owned	SM, LK, MW
Hilton Hotel	Silver Spring, MD	Dec 2000	263	RockBridge Real Estate Fund II	Currently Owned	SM, LK, MW
Holiday Inn	DeLand, FL	Apr 2000	148	UBS Real Estate Investments Inc.	Currently Owned	SM, LK, MW
Best Western Inn	Utica, NY	Sep 1999	89	UBS Real Estate Investments Inc.	Currently Owned	SM, LK, MW
Holiday Inn	Grantville, PA	Sep 1999	200	UBS Real Estate Investments Inc.	Currently Owned	SM, LK, MW
Holiday Inn	New Hartford, NY	Sep 1999	100	UBS Real Estate Investments Inc.	Currently Owned	SM, LK, MW
Microtel Inn	Sulphur, LA	Nov 1998	100	J.P. Morgan / Morgan Guaranty	Currently Owned	SM, LK, MW
Best Western Inn	Hershey, PA	Oct 1998	123	Paine Webber	Currently Owned	SM, LK, MW
Days Inn	Fort Wright, KY	Jul 1998	115	Paine Webber	Currently Owned	SM, LK, MW
Days Inn	Frankfort, KY	Jul 1998	122	Paine Webber	Currently Owned	SM, LK, MW
Days Inn	Shepherdsville, KY	Jul 1998	120	Paine Webber	Currently Owned	SM, LK, MW
Days Inn	LaGrange, KY	Jul 1998	86	Paine Webber	Jul 2006	SM, LK, MW
Days Inn	Richwood, KY	Jul 1998	137	Paine Webber	Dec 2002	SM, LK, MW
Days Inn	Fort Myers, FL	Apr 1998	125	Paine Webber	Sep 2005	SM, LK, MW
Days Inn	Tampa, FL	Oct 1997	175	Daiwa Securities	Sep 2005	SM, LK, MW
Days Inn	Ft. Lauderdale, FL	Oct 1997	144	Daiwa Securities	Oct 2004	SM, LK, MW

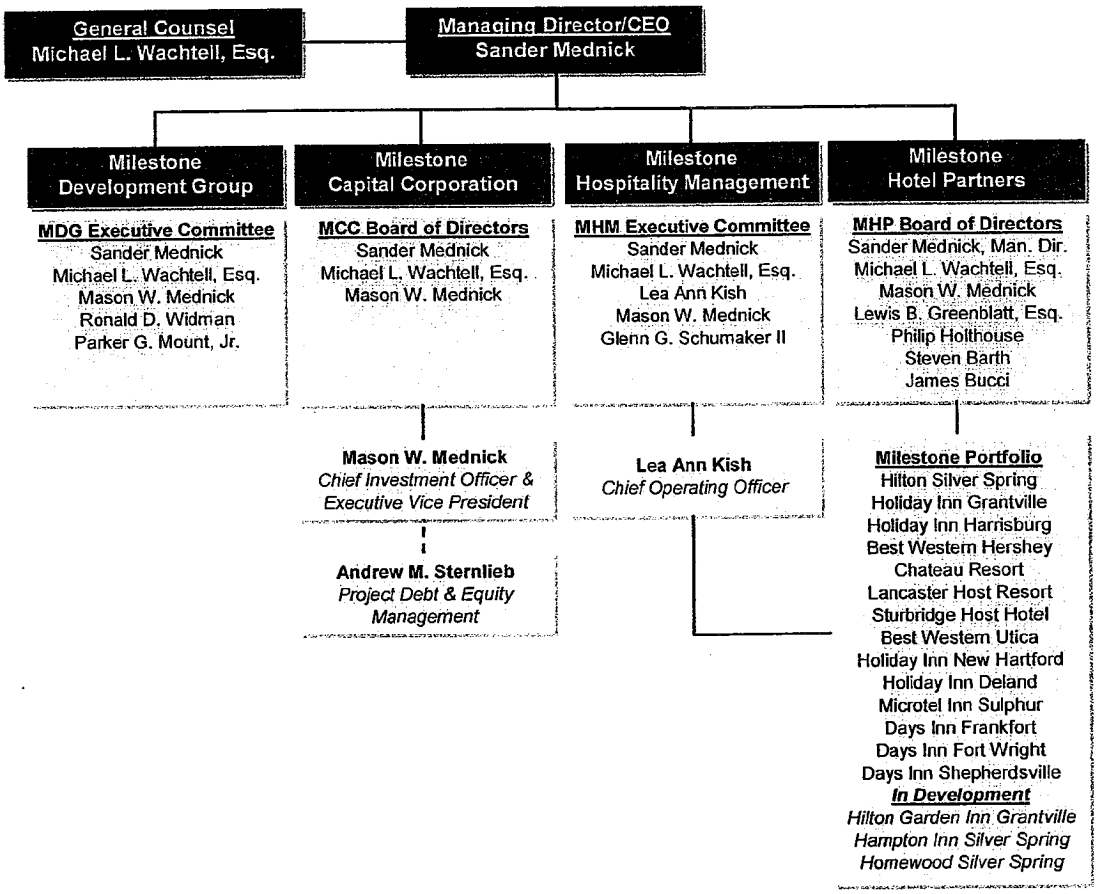
Property	Location	Date of Acquisition	# of Rooms	Mortgage Holder	Date of Disposition	Involvement
Mayfair Hotel	St. Louis, MO	Jun 1997	184	Patriot American	Third Party Mgmt.	LK
The General Morgan Inn	Greeneville, TN	Mar 1997	53	(Private)	Third Party Mgmt.	SM, LK
The Georgian Terrace	Atlanta, GA	Mar 1997	319	Urdang & Associates	Sale of Grand Heritage	SM, LK, MW
The Redmont	Birmingham, AL	Jun 1996	112	Patriot American	Third Party Mgmt.	LK
The Broadview	Wichita, KS	Feb 1996	262	Midland Bank	Sale of Grand Heritage	SM, LK, MW
Barnaby's	Los Angeles, CA	Jan 1996	123	Eastland Corporation	Third Party Mgmt.	SM, LK, MW
Hotel Galvez	Galveston, TX	Jan 1996	228	(Private)	Third Party Mgmt.	LK
Tremont House	Galveston, TX	Jan 1996	117	(Private)	Third Party Mgmt.	LK
Biltmore Hotel	Providence, RI	Jul 1995	295	Urdang & Associates	Dec 2000	SM, LK, MW
Clift Hotel	San Francisco, CA	Mar 1995	320	Apollo Real Estate Advisors	Dec 1995	SM, LK, MW
The Stanley Hotel	Estes Park, CO	Jun 1994	133	Urdang & Associates	Dec 2000	SM, LK, MW
Riverplace Hotel	Detroit, MI	May 1994	108	Detroit Police & Firemen's Pension	Aug 1998	SM, LK, MW
Ambassador West Hotel	Chicago, IL	Apr 1994	220	Burrus Investment Group	Jan 1998	SM, LK, MW
U.S. Grant Hotel	San Diego, CA	Dec 1993	280	Burrus Investment Group	Jan 1998	SM, LK, MW
Great Southern	Columbus, OH	May 1993	196	Ocwen Financial	Third Party Mgmt.	SM, LK
Knickerbocker Hotel	Chicago, IL	Apr 1993	220	Ocwen Financial	Third Party Mgmt.	SM, LK
The Phillip's House	Kansas City , MO	Mar 1993	241	(Private)	Third Party Mgmt.	LK
The Georgian	Santa Monica, CA	Dec 1992	84	(Private)	Third Party Mgmt.	SM, LK, MW
The Tutwiler Hotel	Birmingham, AL	Oct 1992	147	AmSouth Bank	Aug 1997	SM, LK
The Horton Grand	San Diego, CA	Feb 1992	132	(Private)	Third Party Mgmt.	SM
Jefferson Hotel	Richmond, VA	Jun 1991	274	(Private)	Third Party Mgmt.	SM
The Ponchartrain Hotel	New Orleans, LA	Mar 1991	101	Burrus Investment Group	Sale of Grand Heritage	SM
The Peabody Court	Baltimore, MD	Jan 1991	104	Bank of America	Third Party Mgmt.	SM, LK
Brazilian Court Hotel	Palm Beach, FL	Nov 1990	134	Resolution Trust Corporation	Third Party Mgmt.	SM
Union Station Hotel	Nashville, TN	Feb 1990	126	Heller Financial	Aug 1997	SM, LK
Historic Inns of Annapolis	Annapolis, MD	Oct 1989	137	(Private)	Third Party Mgmt.	SM
Grand Heritage Europe	Involved in the formation and management of a Marketing Consortia of 68 Hotels throughout Europe from 1993-1998					SM

MILESTONE
GROUP OF COMPANIES

FOIA CONFIDENTIAL TREATMENT REQUESTED

The Milestone Group

The Milestone Group of Companies consists of 4 principal affiliated operating entities: Milestone Capital Corporation, Milestone Hotel Partners, LLC, Milestone Hospitality Management, LLC, and Milestone Development Group, LLC.



MILESTONE
GROUP OF COMPANIES

FOIA CONFIDENTIAL TREATMENT REQUESTED

Sander Mednick, Esq.

Chairman, CEO & Managing Member of the Milestone Group

Mr. Mednick is an attorney, licensed to practice law in the States of Florida and Maryland, and in the District of Columbia. He received degrees in business administration from American University (B.S.B.A., 1970) and the University of Maryland (M.B.A., 1974); and in law from the University of Maryland (J.D., 1974) and Georgetown University (L.L.M., Taxation, 1979). During the past twenty five years, Mr. Mednick has provided legal and business consultative services, with an emphasis on the hospitality industry and complex real estate transactions, to both private enterprise and governmental entities. He has also represented a host of financial institutions and merchant banks. For a period of three years, Mr. Mednick served as a consultant to the Federal Savings and Loan Corporation ("FSLIC") and the Resolution Trust Corporation ("RTC") with regard to complex real estate financing and loan "work-out" matters.

In 1987, Mr. Mednick assisted with the formation of Grand Heritage Hotels, Inc., a hotel acquisition, management and operating company headquartered in Annapolis, Maryland, subsequently acquired by Patriot American Hospitality, Inc. in 1997. During the period 1989 through 1996, Mr. Mednick served as Senior Vice President and General Counsel of that company. He helped oversee the development of Grand Heritage into a company which ultimately owned and operated and/or managed a portfolio of 17 historic hotel properties located throughout the United States, and which served as the worldwide sales and marketing representative of nearly 80 historic hotel properties located throughout the United Kingdom, Spain, France, Germany, Austria, Italy and the Middle East. In particular, during this period, Mr. Mednick interacted extensively with banks and institutional lenders, and their management and legal counsel throughout the United States and Europe. From 1987-1996, Mr. Mednick fulfilled his responsibilities to Grand Heritage through service at its corporate offices located in Annapolis, Maryland; London, England; and Paris, France.

In 1996, Mr. Mednick, along with Michael L. Wachtell, formed Milestone Capital Corporation, and in 1999 its management and operating affiliate, Milestone Hospitality Management, LLC. Milestone and its affiliates have acquired interests in the Clift Hotel (San Francisco, CA); the Biltmore Hotel (Providence, RI); the Stanley Hotel (Estes Park, CO); the Broadview Hotel (Wichita, KS); the Belleview Biltmore Hotel (Clearwater, FL); a consortium of three (3) Days Inns located throughout the State of Florida and five (5) Days Inns located throughout the Commonwealth of Kentucky; the Microtel Inn and Suites (Sulphur, LA); the Best Western Inn (Hershey, PA); the Best Western Gateway Adirondack Inn (Utica, NY); the Holiday Inn (New Hartford, NY); the Holiday Inn Harrisburg-Hershey (Grantville, PA); the Holiday Inn (Deland, FL); the Hilton Washington D.C./Silver Spring (Silver Spring, MD); the Holiday Inn East (Harrisburg, PA); the Chateau Resort & Conference Center (Tannersville, PA); the Lancaster Host Resort & Conference Center (Lancaster, PA); and the Sturbridge Host Hotel & Conference Center (Sturbridge, MA).

During his career and presently through the Milestone Group, Mr. Mednick has been involved in all aspects of financing, tax and transactional matters involving real estate with a value in excess of One Billion Dollars. He has served as the chief strategic planner and project coordinator for numerous commercial and residential real estate projects located throughout the United States. Mr. Mednick has lectured extensively in his areas of specialization to members of the legal community, and other professional and educational organizations. Mr. Mednick has served since 2001 on the Board of Directors of the University of Maryland Foundation, the authority that oversees fundraising and asset management for the 13 colleges comprising the University System of the State of Maryland. He is a member of several of its committees, and further serves as Chairman of the "Special Transfers Committee".

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008922

Michael L. Wachtell, Esq.

General Counsel and Tax Matters Member of MHP/MHM

Mr. Wachtell is a senior shareholder and former director and member of the management committee of the Los Angeles, California, based law firm of Buchalter, Nemer, a Professional Corporation. He specializes in commercial litigation, mergers and acquisitions, and intellectual property, and has an extensive background in real estate, banking, commercial and secured transactions, insurance, proprietary rights, patent and trademark law, domestic and international trade regulation matter, and debtor-creditor representation. Mr. Wachtell is a Los Angeles Superior Court Appointed Receiver, Referee, Provisional Director, Arbitrator and Settlement Officer as well as a panel member of ARC Mediation Services and serves in those capacities in connection with complex commercial matters. He is also a member of the Board of Directors of the California Receivers Forum and is a licensed real estate broker. Mr. Wachtell formerly served as Judge Pro Tem in the Beverly Hills and Los Angeles Municipal and Small Claims Courts and was an arbitrator for the American Arbitration Association for complex patent and commercial disputes.

Mr. Wachtell received his undergraduate education from the City College of New York, where he graduated with a Bachelor of Electrical Engineering degree in 1964. He earned his law degree (J.D., with honors) from the George Washington University School of Law in 1968. While at law school, Mr. Wachtell served as a member of the George Washington University Law Review, and was affiliated with the Delta Theta Phi honor society.

Mr. Wachtell is admitted to practice before the bars of the States of California, Nevada, and Virginia, the District of Columbia, and the United States Patent and Trademark Office. Mr. Wachtell lectures extensively in his areas of specialization and has served on the faculty of the University of San Fernando Law School as an Associate Professor. He is a member of the Los Angeles County and American Bar Associations.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008923

Mason W. Mednick

Executive Vice President of MHP and MHM; Principal of MDG

Mr. Mednick serves as Executive Vice President and principal assistant to the offices of the Chief Executive Officer and Chief Operating Officer of Milestone Hospitality Management, LLC. His responsibilities include development, financial underwriting, operational audits, investor relations, and special projects. Since 2002, Mr. Mednick has overseen the acquisition of 5 hotel properties in 3 states with an aggregate value in excess of One Hundred Million Dollars ($100,000,000), the sale of 3 hotel properties in the State of Florida with an aggregate value in excess of Ten Million Dollars ($10,000,000), the placement and replacement of more than One Hundred Seventy-Five Million Dollars ($175,000,000) of real estate financing, and the acquisition of more than 100 acres of vacant land in the states of Pennsylvania, Tennessee and Kentucky for future commercial development purposes.

In October, 2005, Mr. Mednick helped direct the formation of Milestone Development Group, LLC, a commercial, residential and industrial development firm, affiliated with the Milestone Group of Companies. As a Principal of "MDG", Mr. Mednick directs the capital projects of the Milestone Group of Companies (along with Ronald Widman and Parker Mount). Mr. Mednick is responsible for the development of property renovation plans, budgets, and capital improvement strategies, directing the efforts of architects, construction trades, and service suppliers. He is also responsible for the strategic planning associated with the firm's commercial developments that are primarily focused in the eastern United States and that involve such branded operations as Walgreens, CVS Pharmacy, Ruby Tuesday, and others. Since 2002, Mr. Mednick has overseen the placement of more than Fifty Million Dollars ($50,000,000) of construction and renovation projects on behalf of MHP and MDG, with additional capital projects of more than Forty Million Dollars ($40,000,000) planned for calendar year 2007.

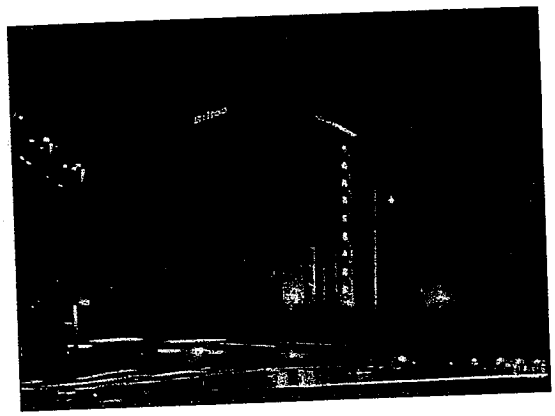
Prior to joining MHM, Mr. Mednick served as investment banking Analyst in the Media & Telecommunications Department of Banc of America Securities LLC. From 1998-1999, Mr. Mednick worked at the Yale Office of Finance, Capital Management Division with responsibility over capital project reports, research and financial analysis. He received a B.A. in Economics from Yale University in 2000, and is currently pursuing his M.B.A. at the Wharton School of the University of Pennsylvania. Mr. Mednick is a registered mortgage broker in the State of Florida.

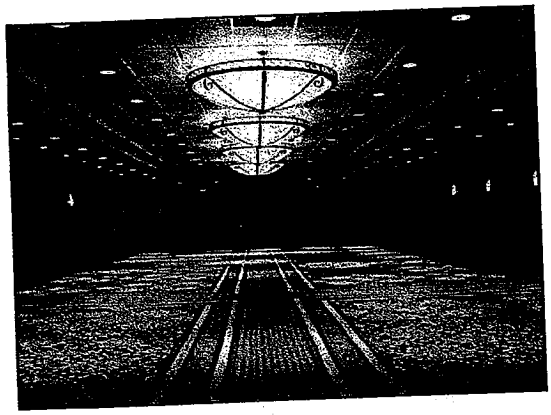
FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008924

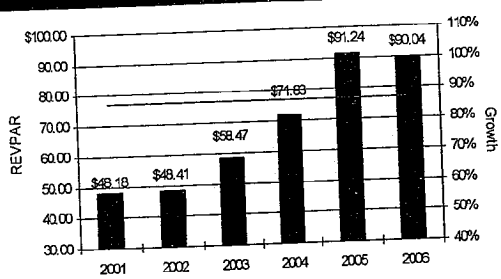
Hilton Hotel

Washington D.C./Silver Spring, Maryland

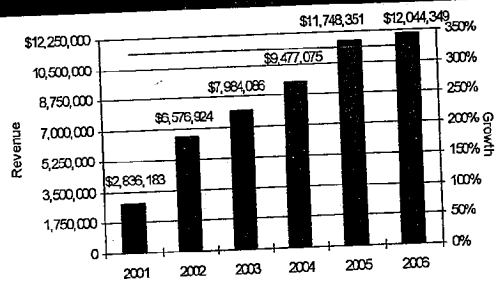




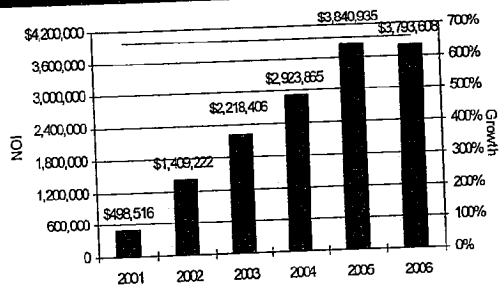
REVPAR



Revenue



NOI



Key Statistics

- Led due diligence and transition of this acquisition in December 1999
- Total revenue growth from 2001-2006 of 324%
- NOI growth from 2001-2006 of 661%
- Acquired for $9 Million (independent property owned and operated by Lodgian)
- Core renovation from Jan.-Dec. 2001 of $9.1 Million
- Obtained Hilton flag in November 2001
- Repositioned in government and corporate markets

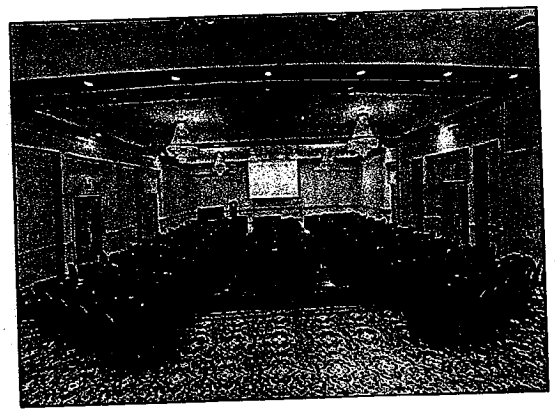
Milestone Hospitality Management

MILESTONE GROUP OF COMPANIES

FOIA CONFIDENTIAL TREATMENT REQUESTED

Holiday Inn Hotel

Harrisburg-Hershey, Pennsylvania



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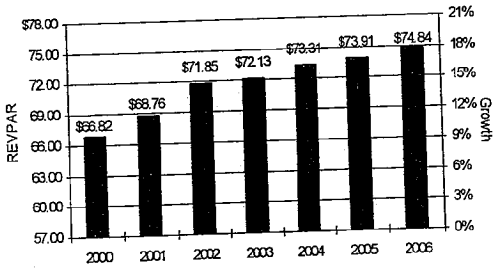
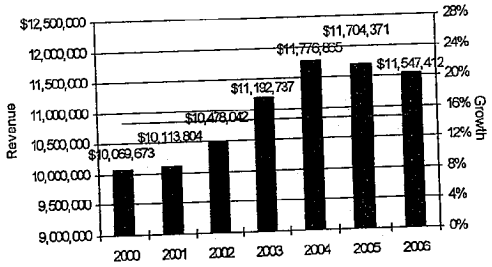
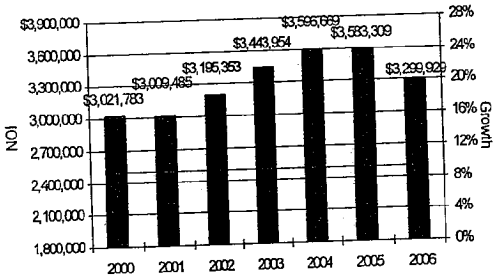


Revenue



NOI



Key Statistics

- Led due diligence and transition of this acquisition in September 1999
- Total revenue growth from 2000-2006 of 15%
- NOI growth from 2000-2006 of 9%
- Holiday Inn award winner 12 consecutive years (Torchbearer and Quality Excellence)
- Ranks as the 48th highest scoring hotel (quality assurance) in the entire brand
- $1.8 Million expansion of ballroom and meeting facilities in 2002 (11,000 additional square feet)

Milestone Hospitality Management

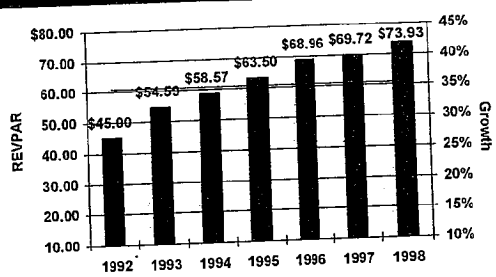
MILESTONE GROUP OF COMPANIES

FOIA CONFIDENTIAL TREATMENT REQUESTED

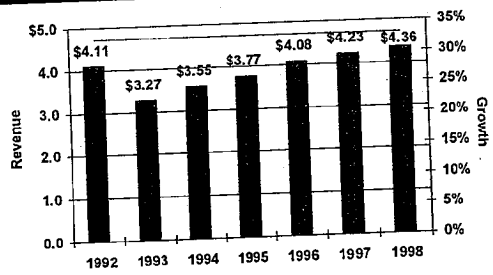
The Tutwiler Hotel

Birmingham, Alabama

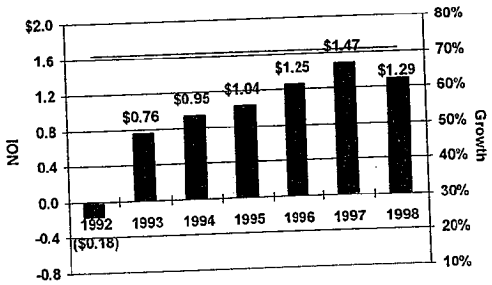
REVPAR



Revenue ($MM)



NOI ($MM)



Prior Management

Grand Heritage

Key Statistics

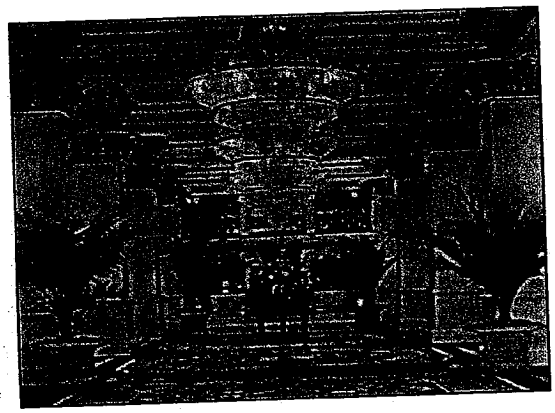
- Led due diligence and transition of this acquisition in October 1992
- Total revenue growth from 1993-1998 of 33%
- NOI growth from 1993-1998 of 71%
- Repositioned in legal, corporate, and social group markets
- Lease of 4-star restaurant and catering
- 1998 NOI reduction due to Wyndham/Grand Heritage hotel conversion

MILESTONE GROUP OF COMPANIES

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008927

The U.S. Grant Hotel

San Diego, California



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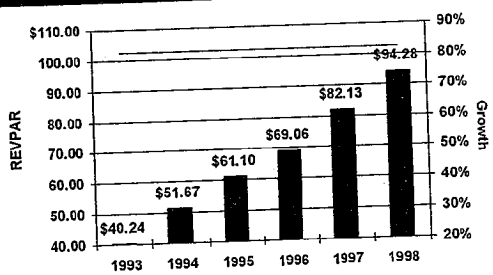
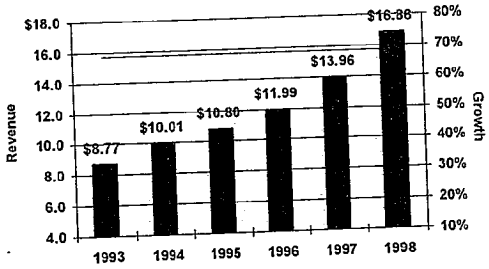
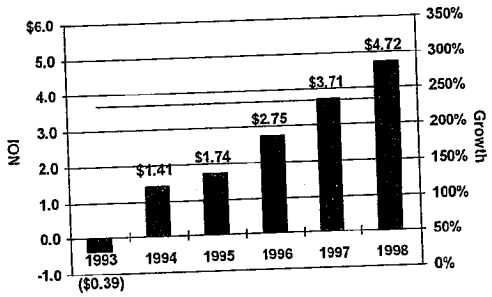


Revenue ($MM)



NOI ($MM)



Prior Management

Grand Heritage

Key Statistics

- Led due diligence and transition of this acquisition in December 1995
- Total revenue growth from 1994-1998 of 68%
- NOI growth from 1994-1998 of 235%
- Direct sales focus on corporate, government, and military group
- Emphasis on wedding and military catering market
- Lease of 10,000 square foot mixed-use space with restaurant, office and retail operations

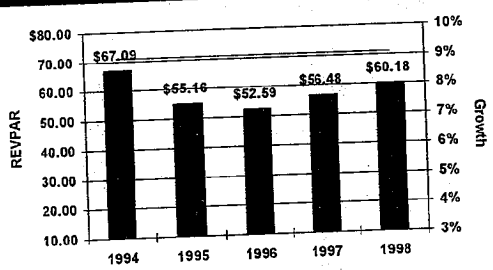
MILESTONE GROUP OF COMPANIES

FOIA CONFIDENTIAL TREATMENT REQUESTED

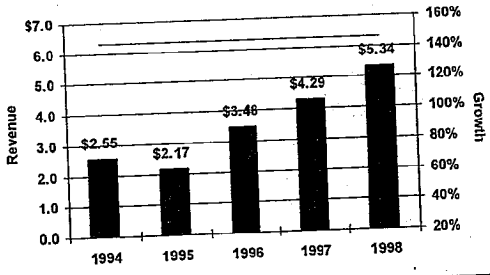
The Stanley Hotel

Estes Park, Colorado

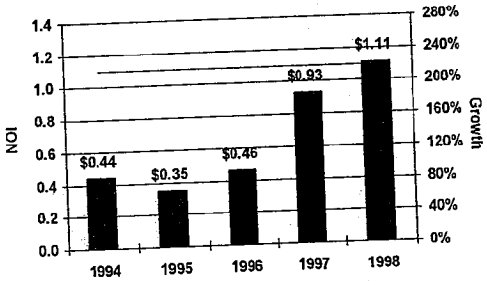
REVPAR



Revenue ($MM)



NOI ($MM)



Prior Management

Grand Heritage

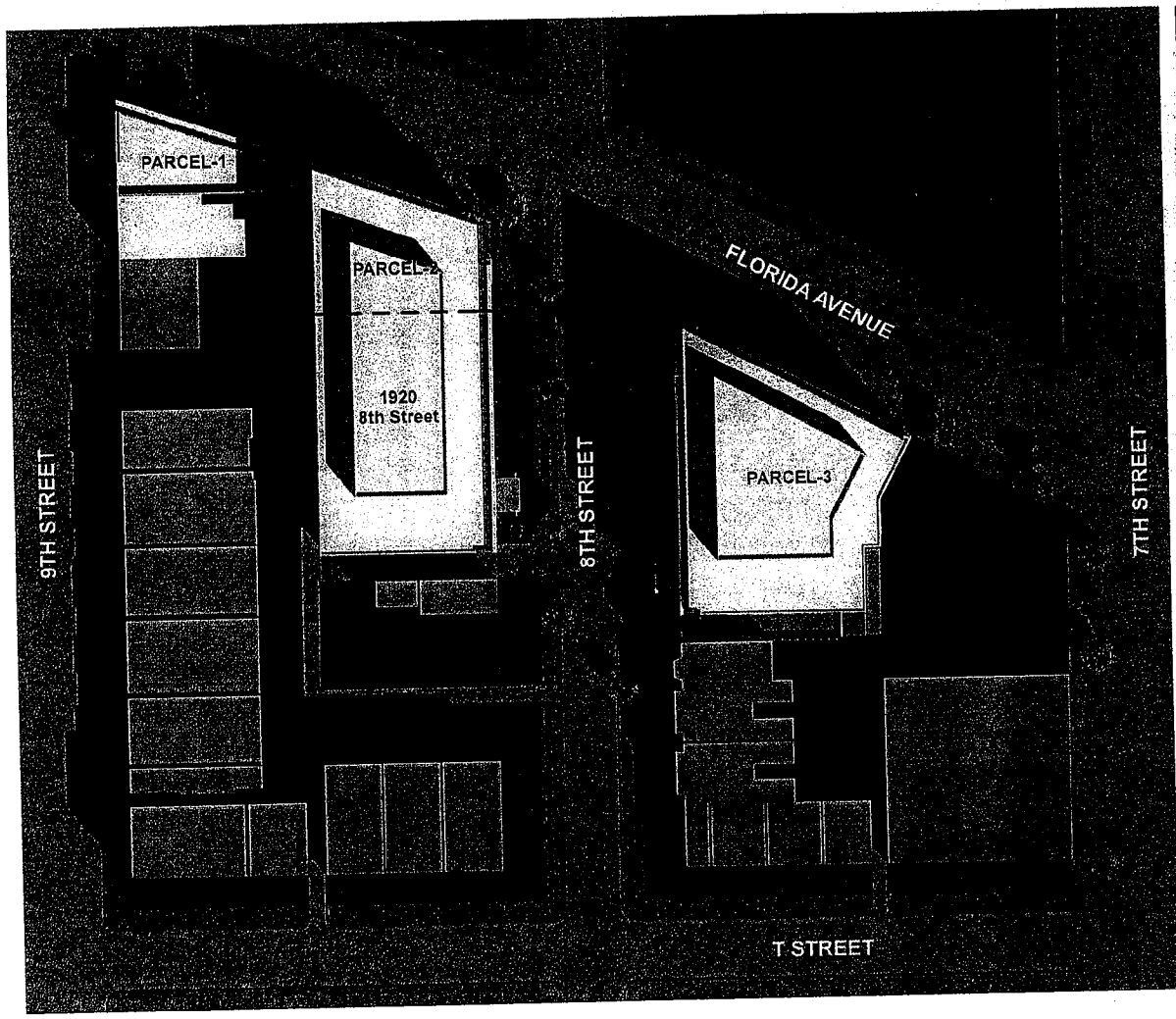
Key Statistics

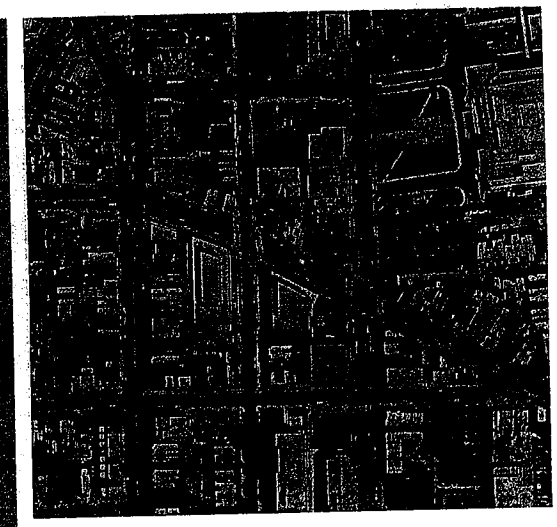
- Led due diligence and transition of this acquisition in May 1994
- Total revenue growth from 1995-1998 of 146%
- NOI growth from 1995-1998 of 219%
- Product renovation in 1997 (43 rooms added)
- Repositioned in corporate, state association, government group markets
- Increased food & beverage by targeting local and regional wedding market

MILESTONE GROUP OF COMPANIES

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED





AREA PLAN

	Use	Height	Stories
Parcel - 1	Retail	30'-0"	1 Story + Mezzanine
Parcel - 2	Retail + Office	65'-0"	5 Stories
Parcel - 3	Retail + Hotel	65'-0"	6 Stories
Parcel - 3	(alternate) Retail + Office	65'-0"	5 Stories

SITE PLAN

N

WMATA-INV 008930

FOIA CONFIDENTIAL TREATMENT REQUESTED

Overall View - **Parcel 3 - Hotel & Retail Scheme**
Parcel 2 - Office & Retail
Parcel 1 - Retail

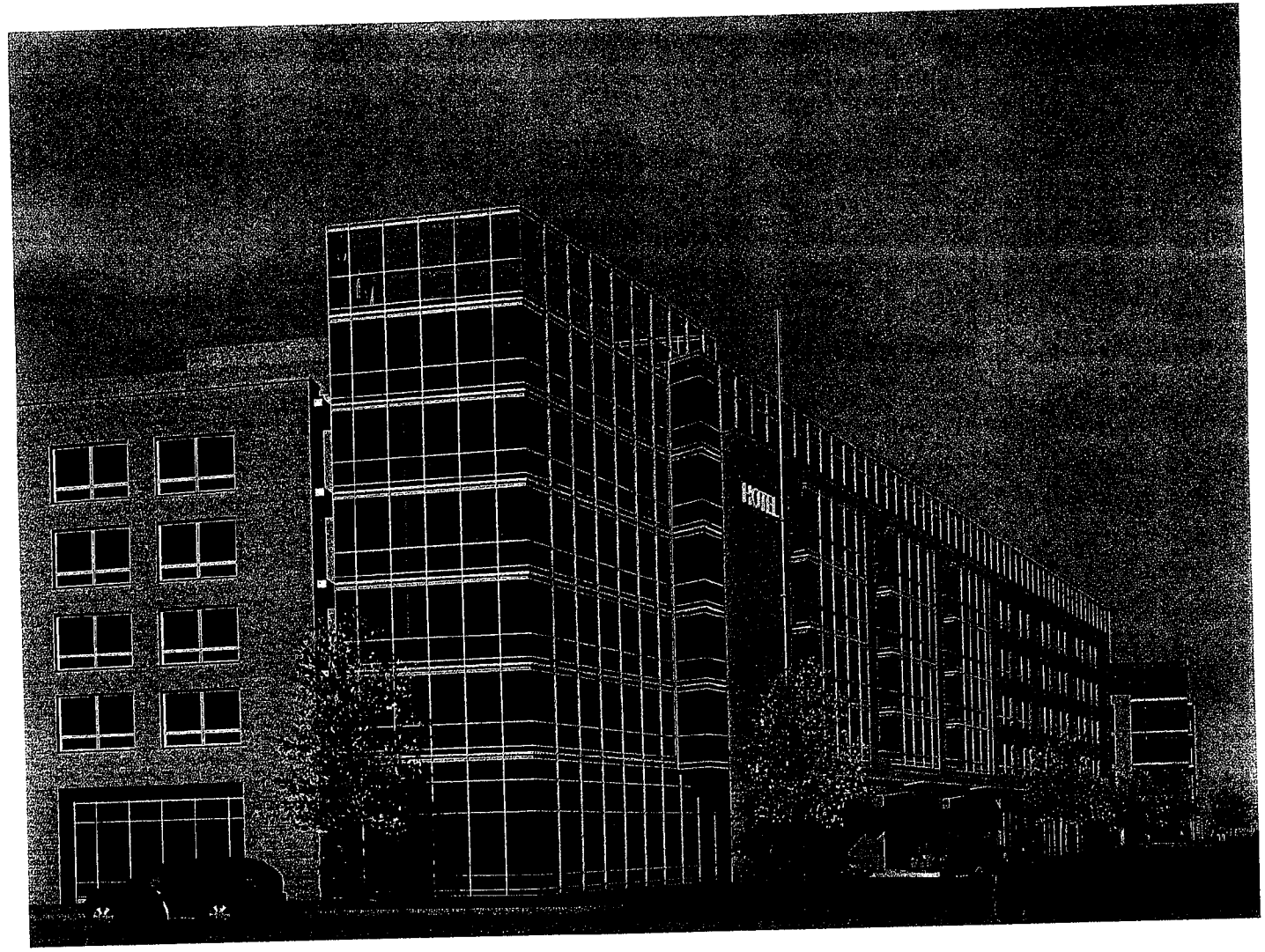
WMATA-INV 008931

FOIA CONFIDENTIAL TREATMENT REQUESTED

Overall View - Parcel 3 - Office & Retail Scheme
Parcel 2 - Office & Retail
Parcel 1 - Retail

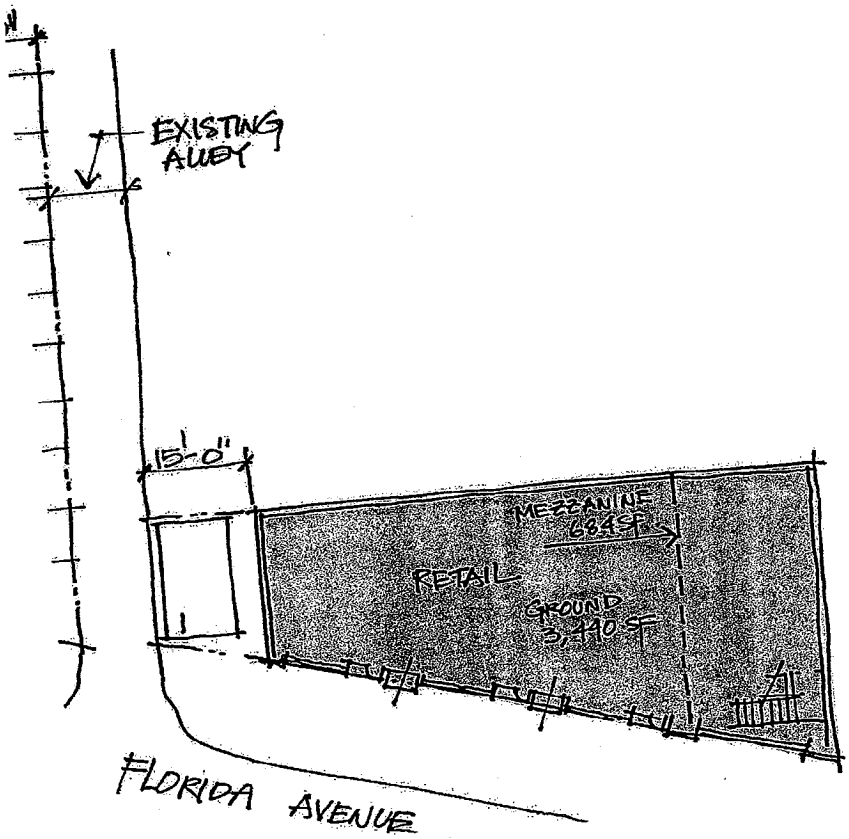
WMATA-INV 008932

FOIA CONFIDENTIAL TREATMENT REQUESTED



View - Parcel 3 - Hotel & Retail Scheme

WMATA-INV 008933

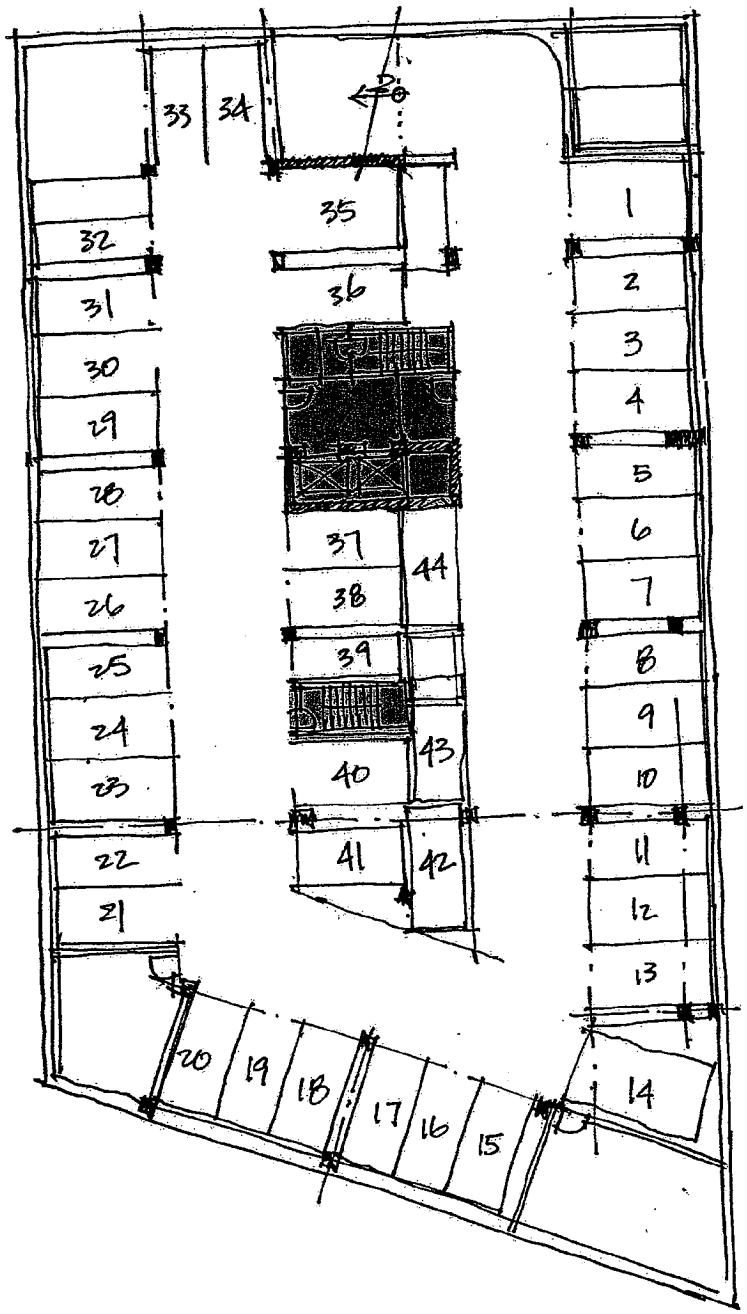


Parcel 1
Ground Floor Plan

Proposal for Shaw Howard / Florida Avenue JDS

LAKRITZ | ADLER

CORE

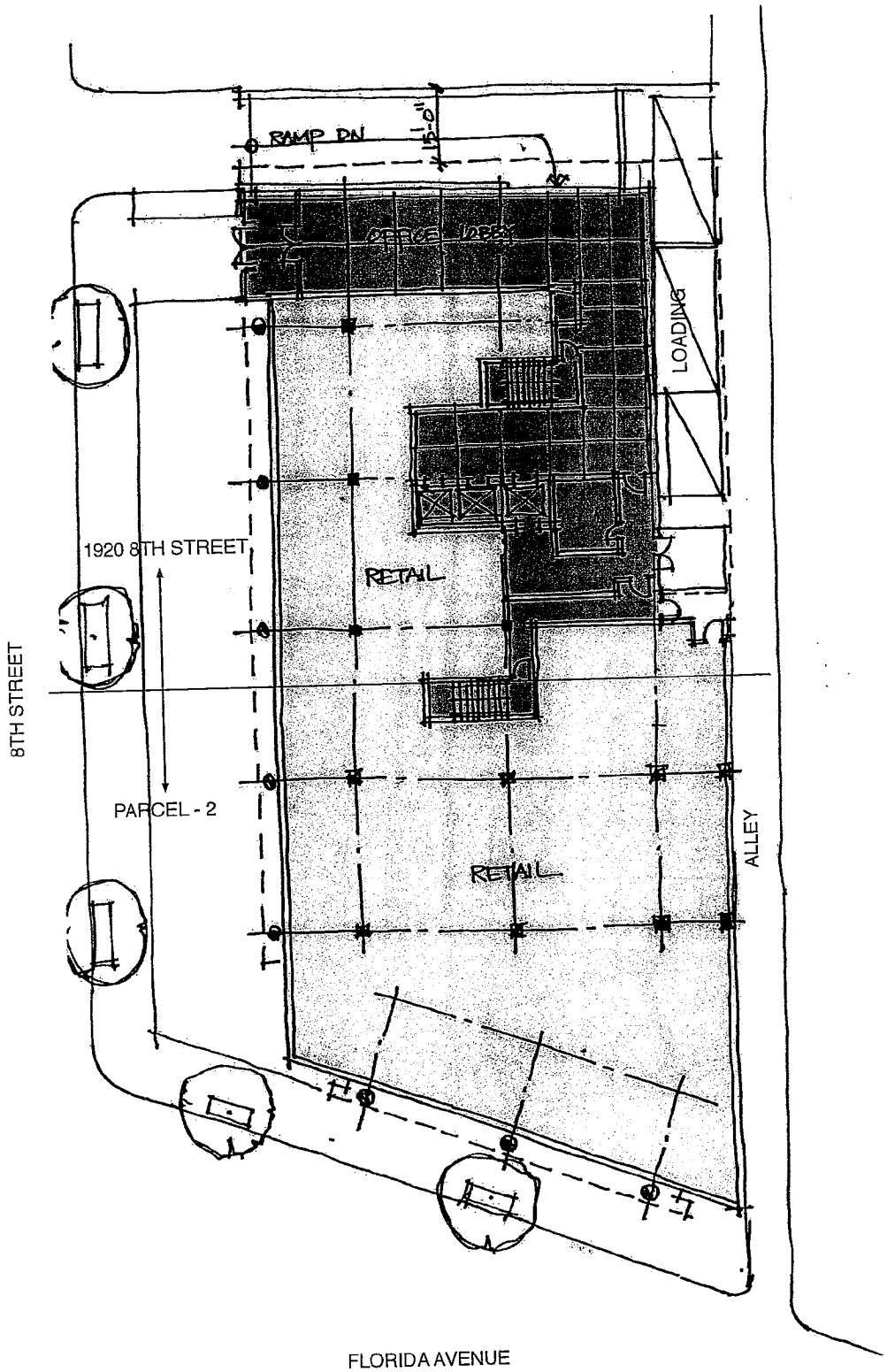


Parcel 2 & 1920 8th Street
Parking Level Plan

Proposal for Shaw Howard / Florida Avenue JDS

CORE

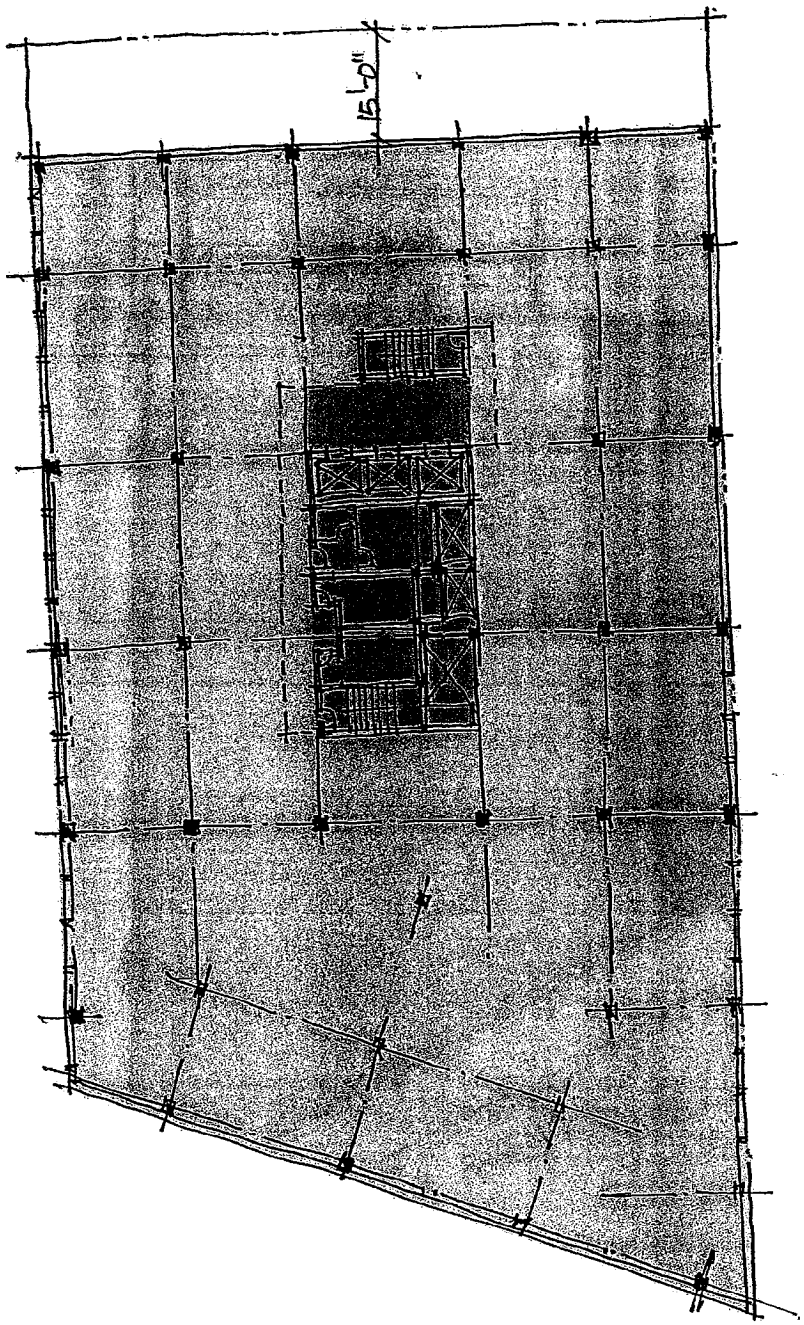
LAKRITZ | ADLER



Proposal for Shaw Howard / Florida Avenue JDS

CORE

LAKRITZ | ADLER

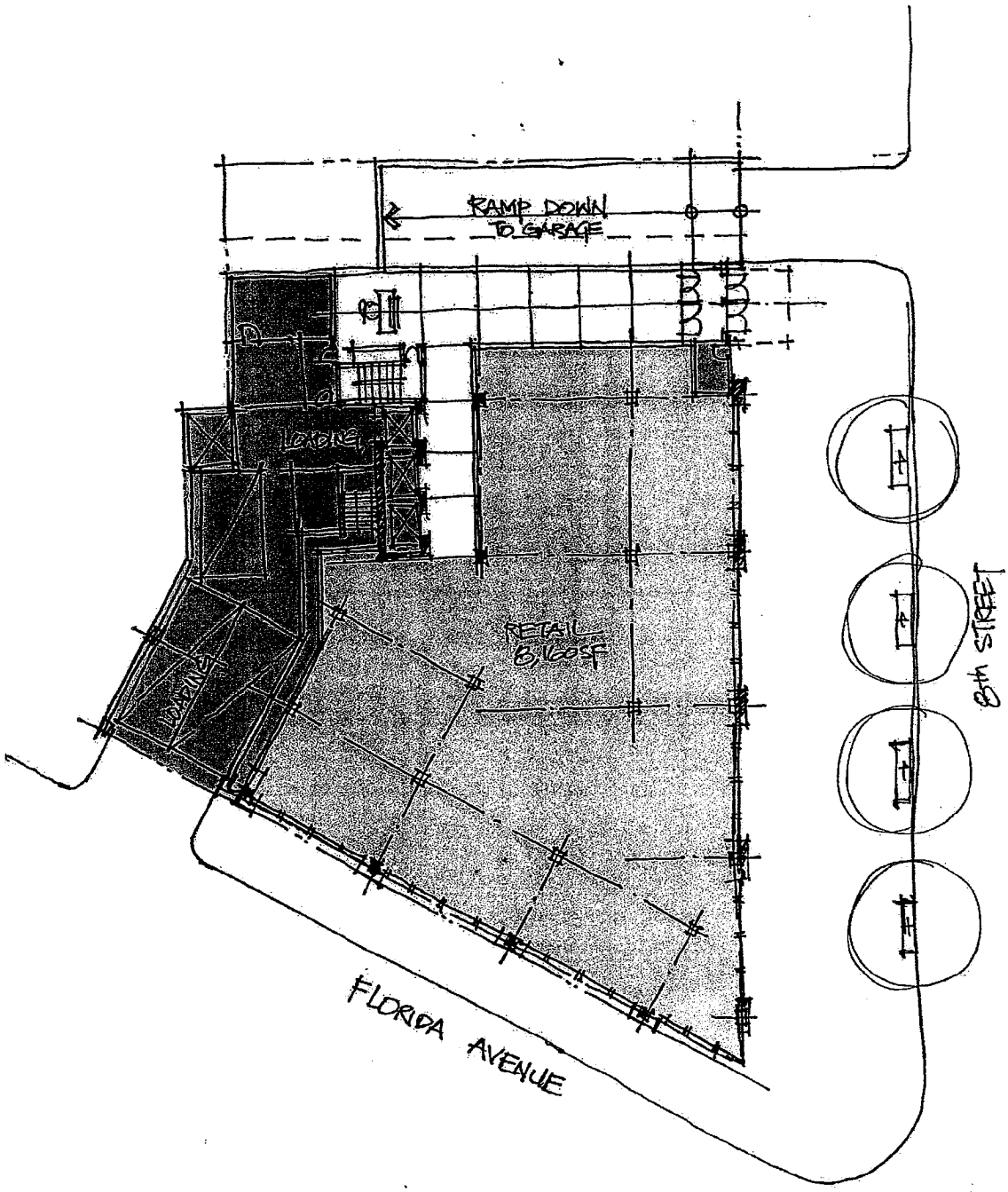


Parcel 2
Typical Floor Plan (2-5)

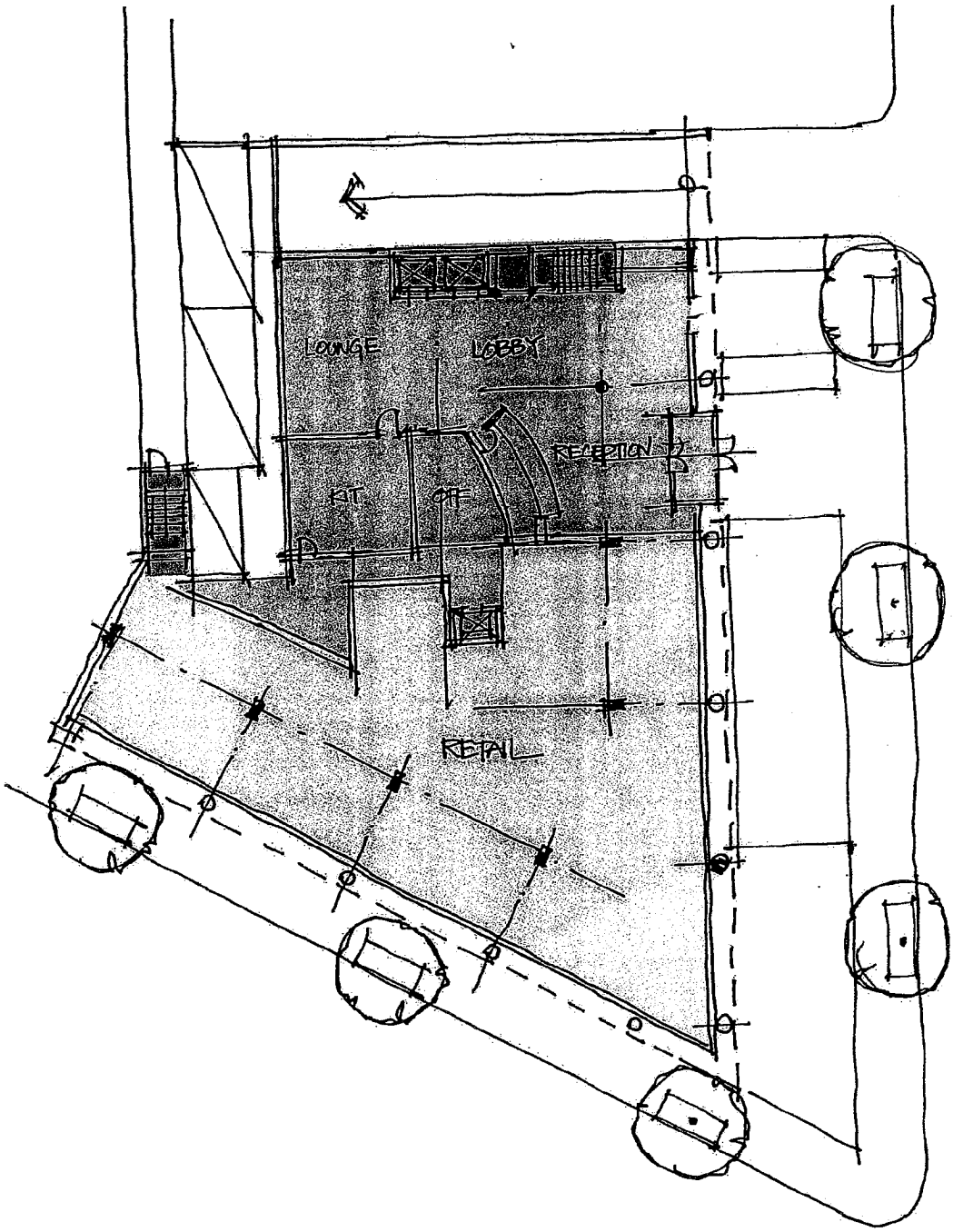
Proposal for Shaw Howard / Florida Avenue JDS

CORE

LAKRITZ | ADLER



Parcel 3
Ground Floor Plan - Office Scheme

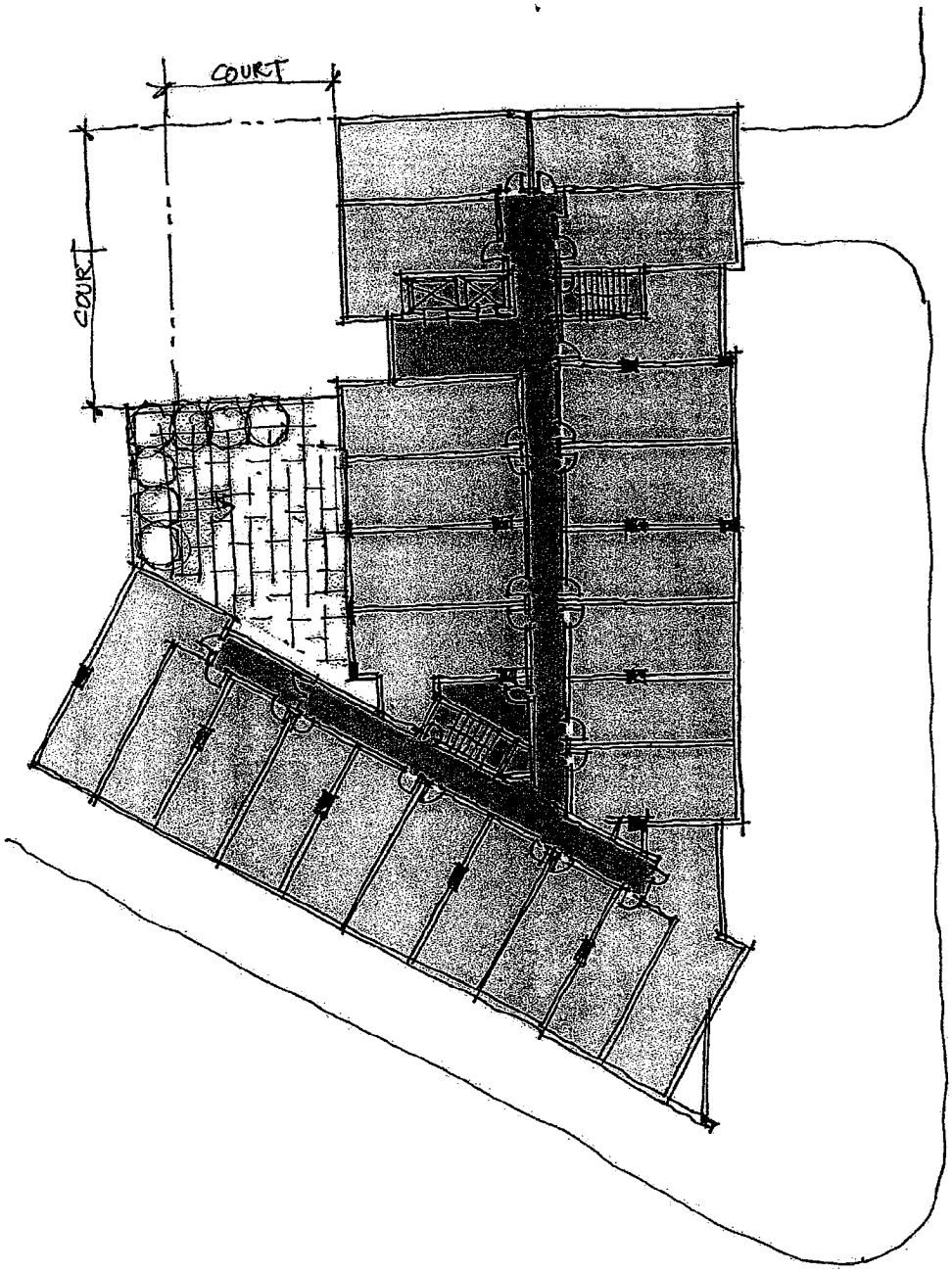


Parcel 3
Ground Floor Plan - Hotel Scheme

Proposal for Shaw Howard / Florida Avenue JDS

CORE

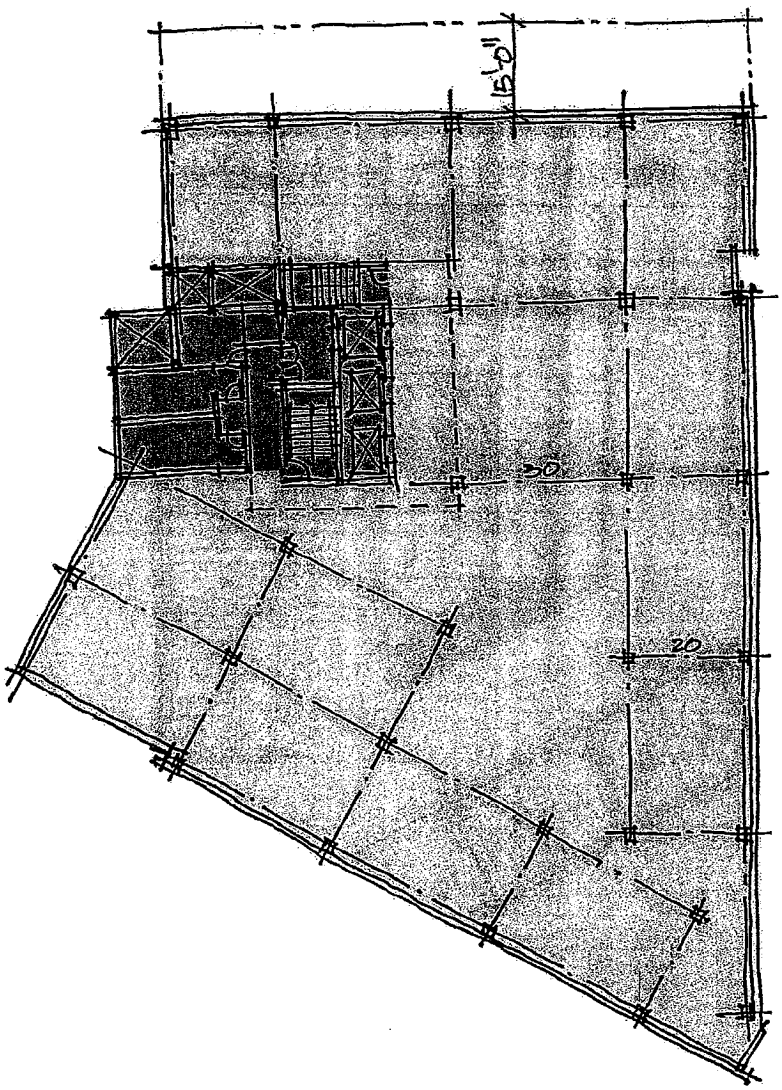
LAKRITZ | ADLER



Typical 1Floor Plan - Hotel Scheme

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008940

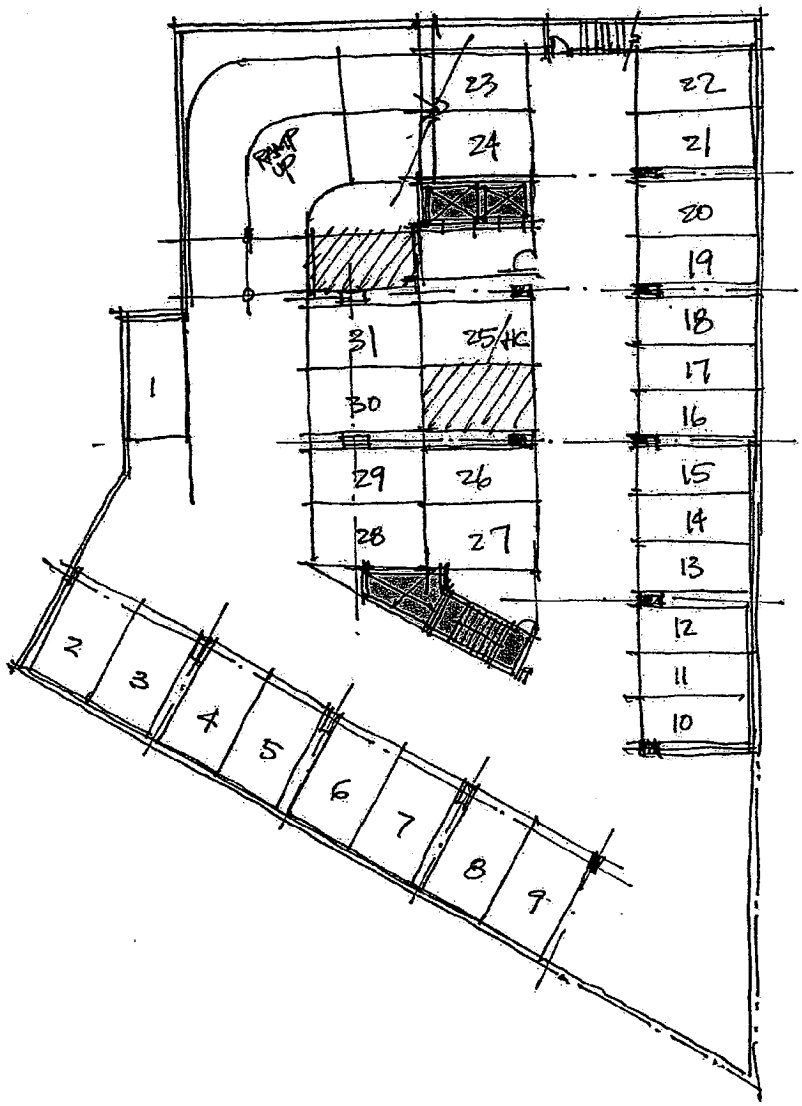


Parcel 3
Typical Floor Plan - Office Scheme

Proposal for Shaw Howard / Florida Avenue JDS

CORE

LAKRITZ | ADLER

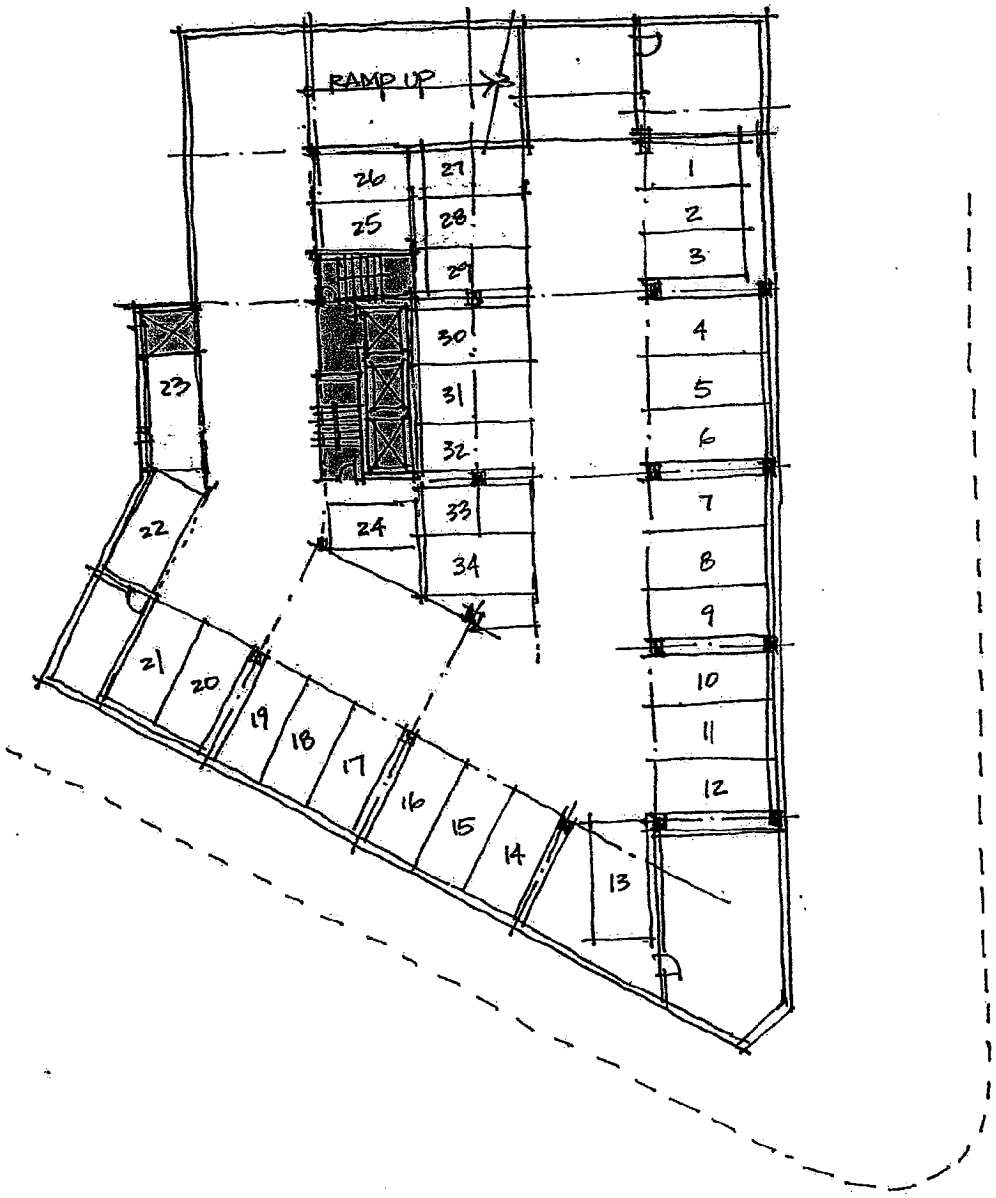


Parcel 3
Parking Level Plan - Hotel Scheme

Proposal for Shaw Howard / Florida Avenue JDS

CORE

LAKRITZ | ADLER

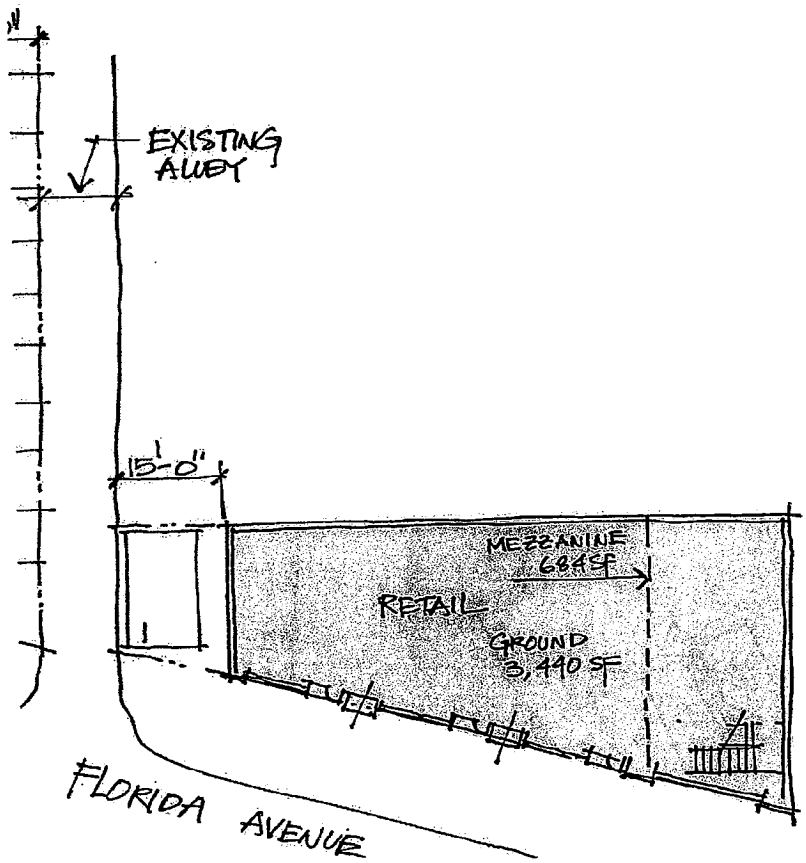


Parcel 3
Parking Level Plan - Office Scheme

Proposal for Shaw Howard / Florida Avenue JDS

CORE

LAKRITZ | ADLER

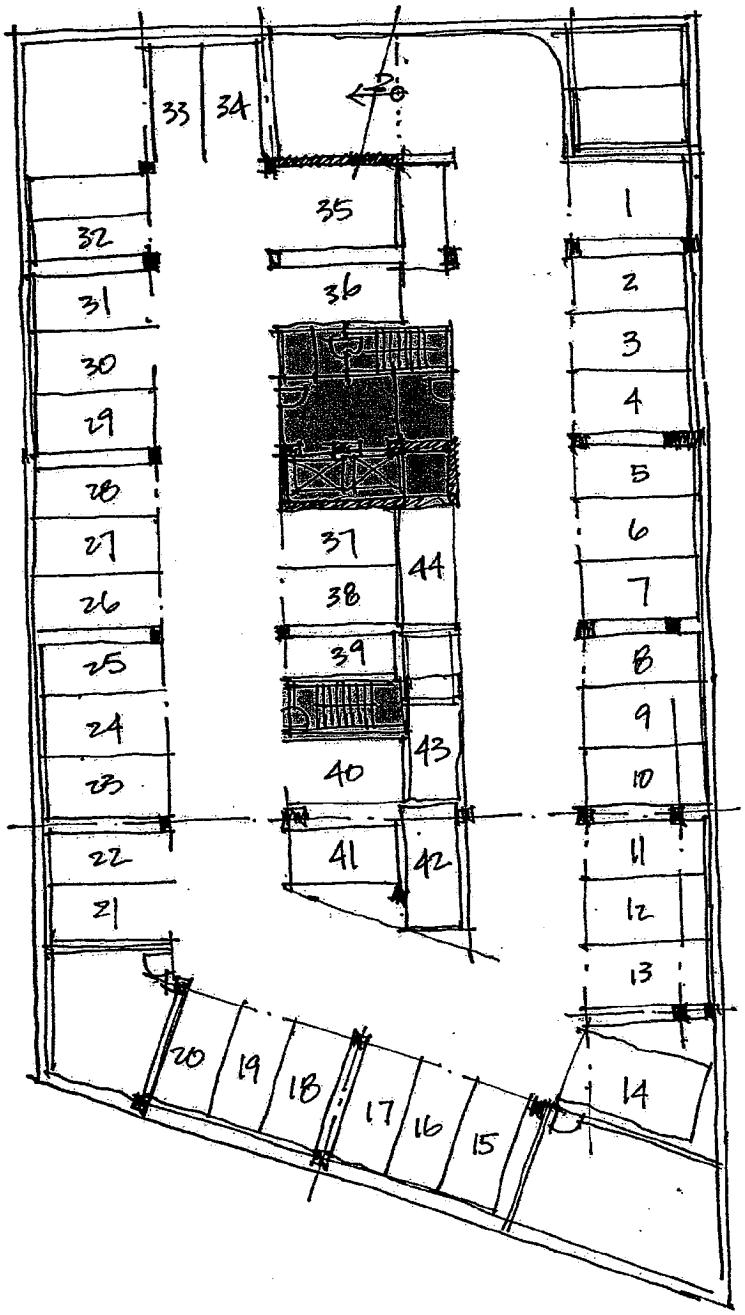


Parcel 1

Ground Floor Plan

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008944

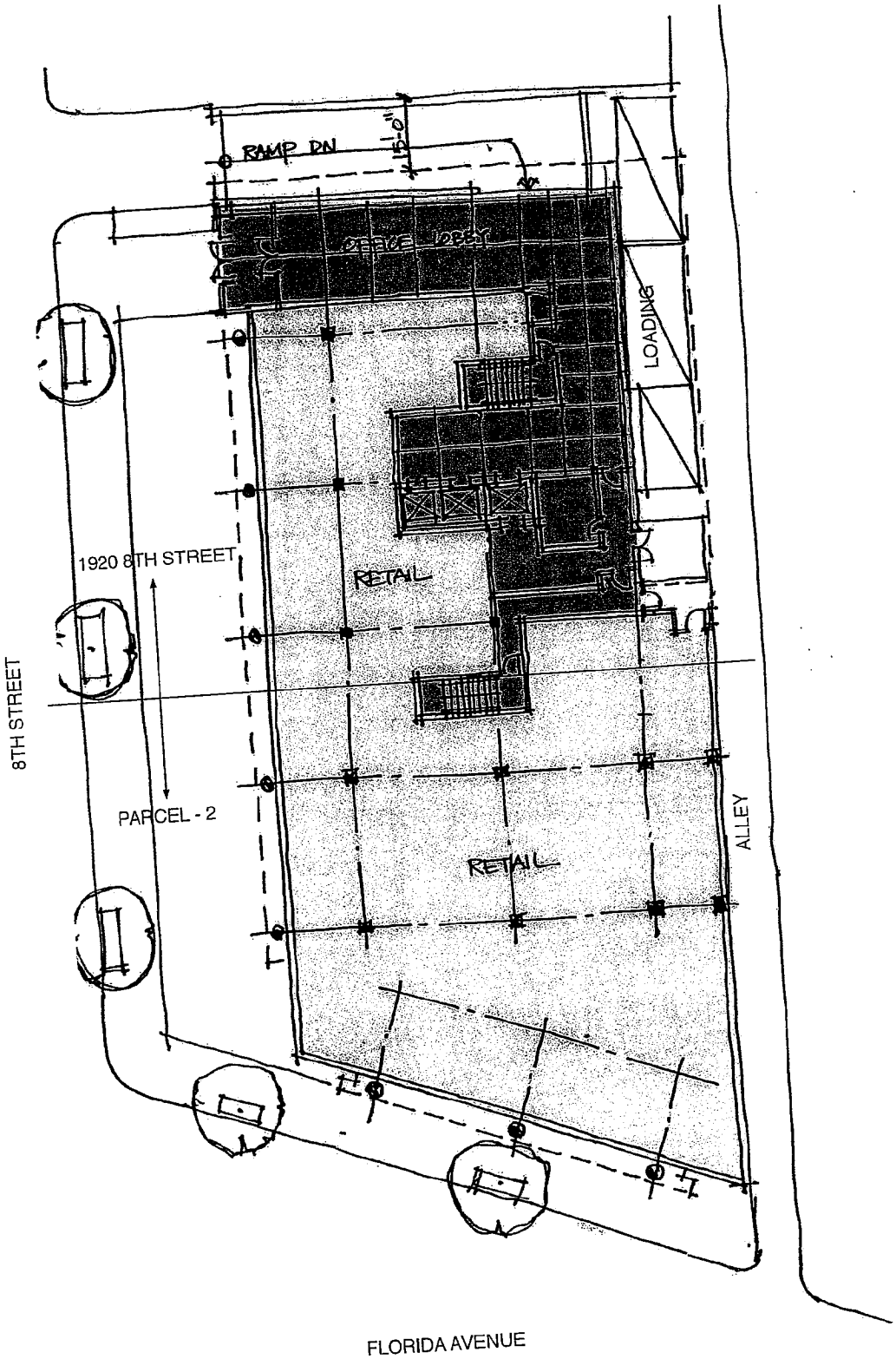


Parcel 2 & 1920 8th Street
Parking Level Plan

Proposal for Shaw Howard / Florida Avenue JDS

CORE

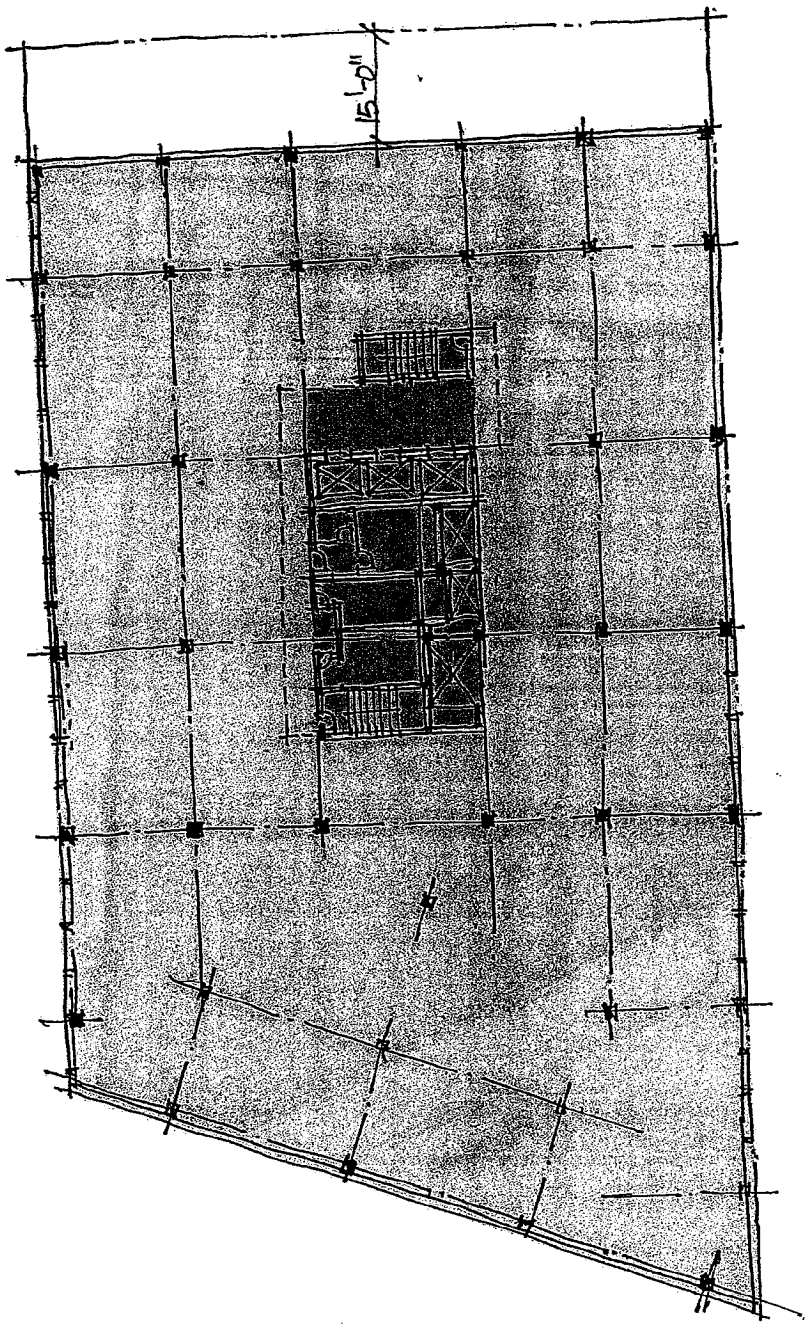
LAKRITZ | ADLER



Proposal for Shaw Howard / Florida Avenue JDS

LAKRITZ | ADLER

CORE

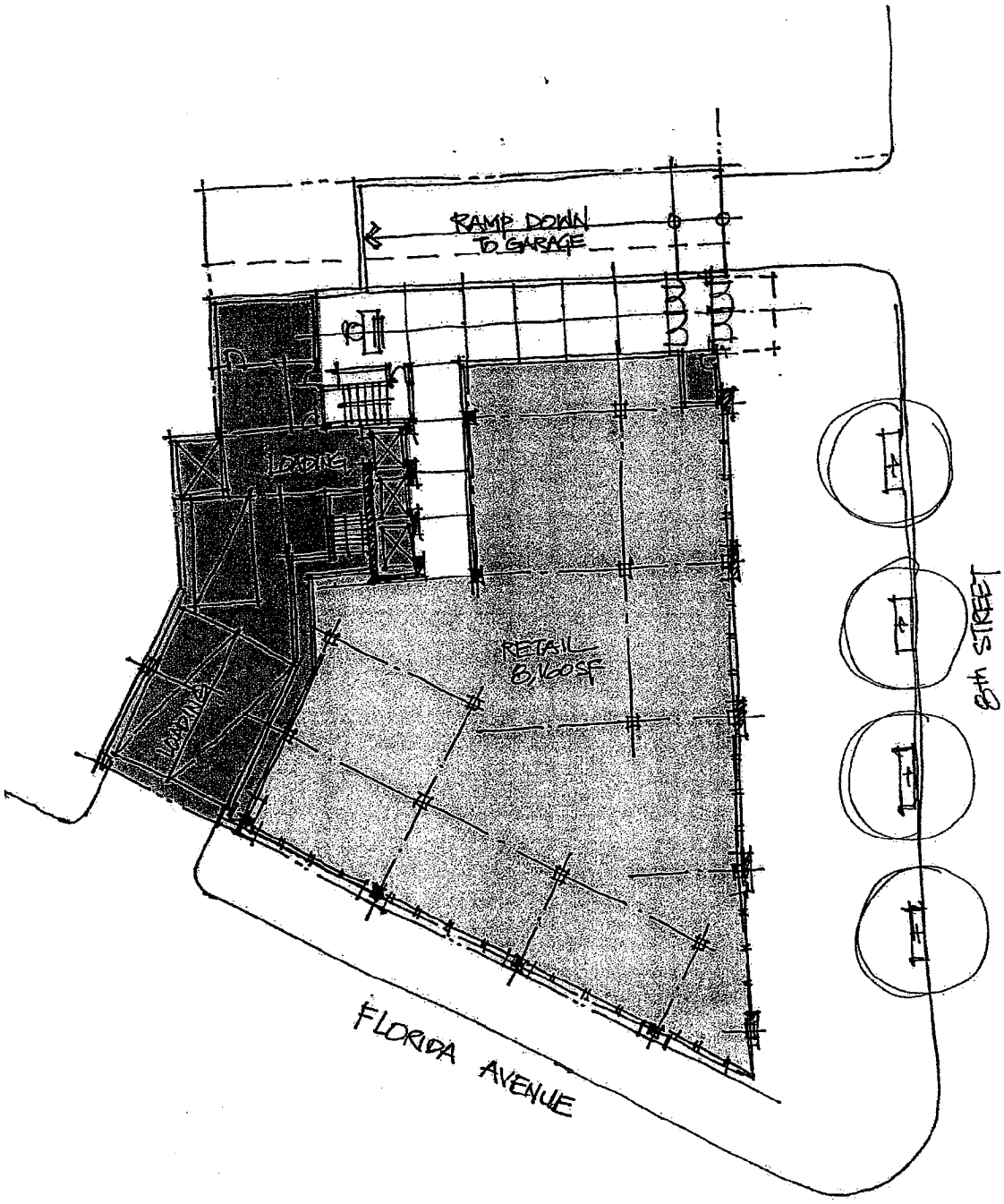


Parcel 2
Typical Floor Plan (2-5)

Proposal for Shaw Howard / Florida Avenue JDS

CORE

LAKRITZ | ADLER

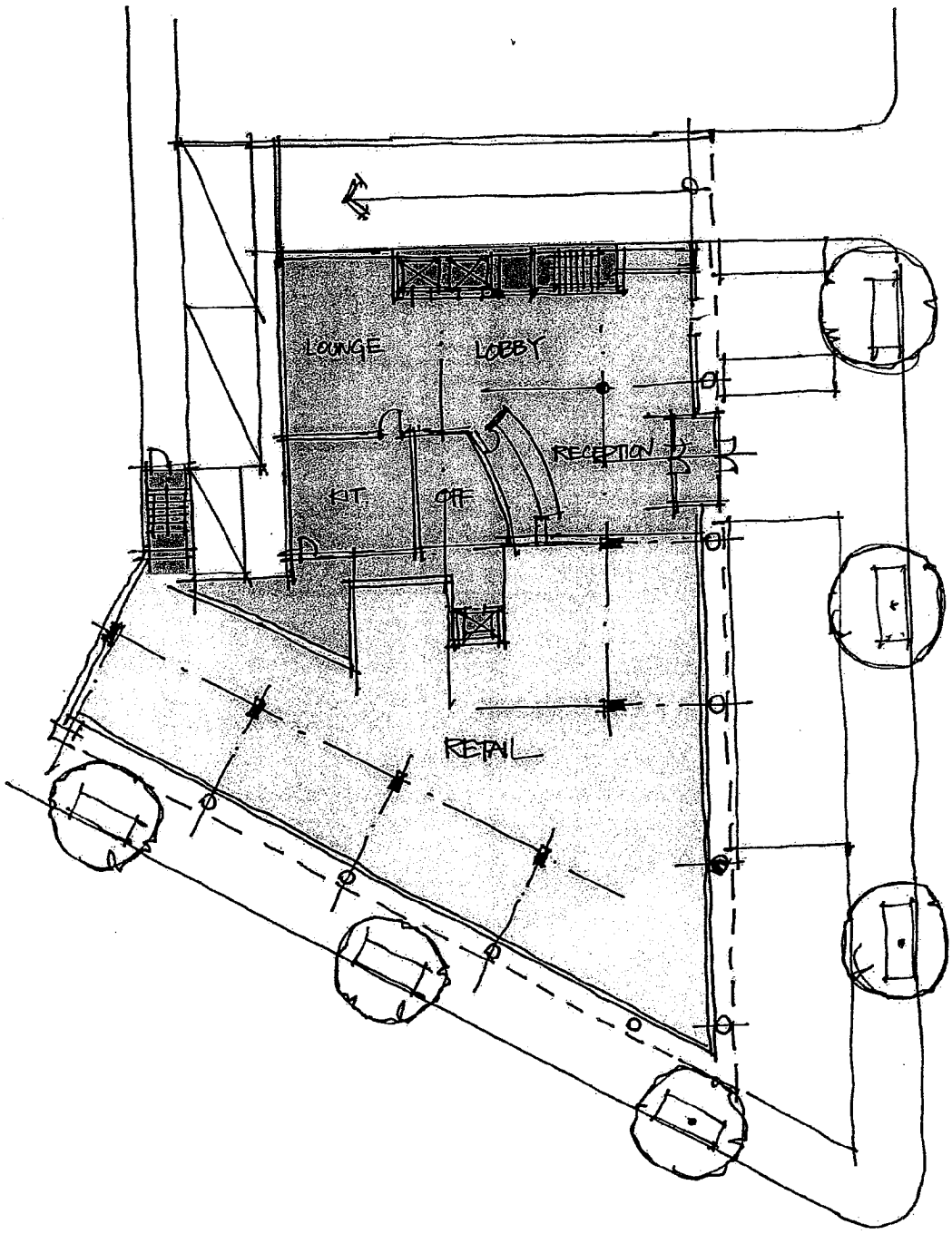


Parcel 3
Ground Floor Plan - Office Scheme

Proposal for Shaw Howard / Florida Avenue JDS

CORE

LAKRITZ | ADLER

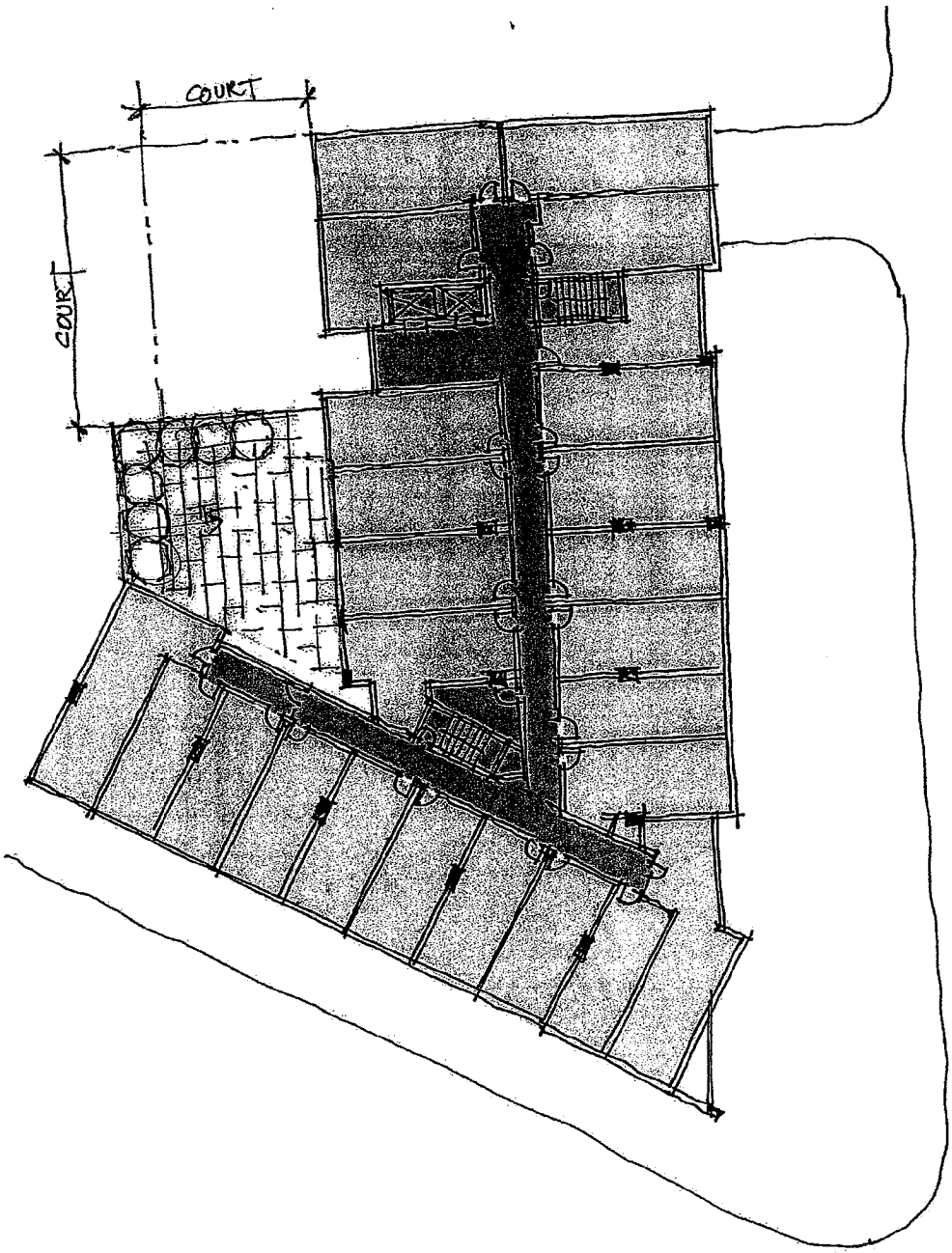


Parcel 3
Ground Floor Plan - Hotel Scheme

Proposal for Shaw Howard / Florida Avenue JDS

CORE architecture design

LAKRITZ | ADLER

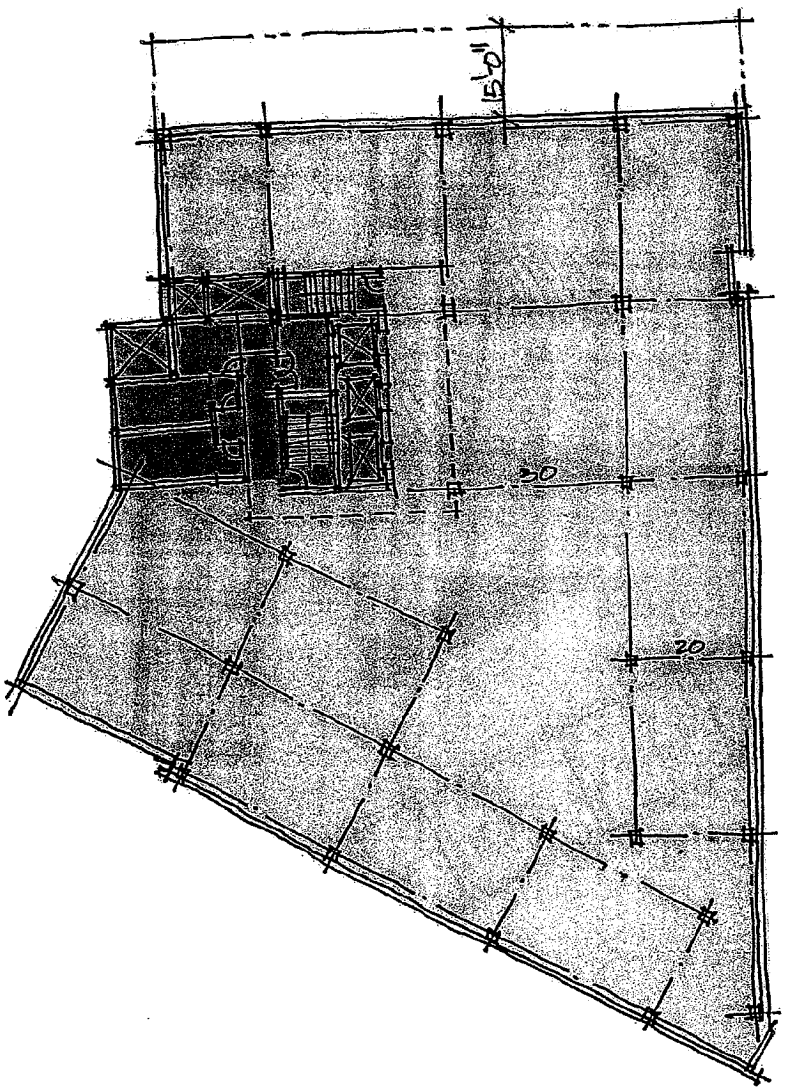


Typical 1 Floor Plan - Hotel Scheme

Proposal for Shaw Howard / Florida Avenue JDS

CORE architecture design

LAKRITZ | ADLER



Parcel 3
Typical Floor Plan - Office Scheme

Proposal for Shaw Howard / Florida Avenue JDS

CORE

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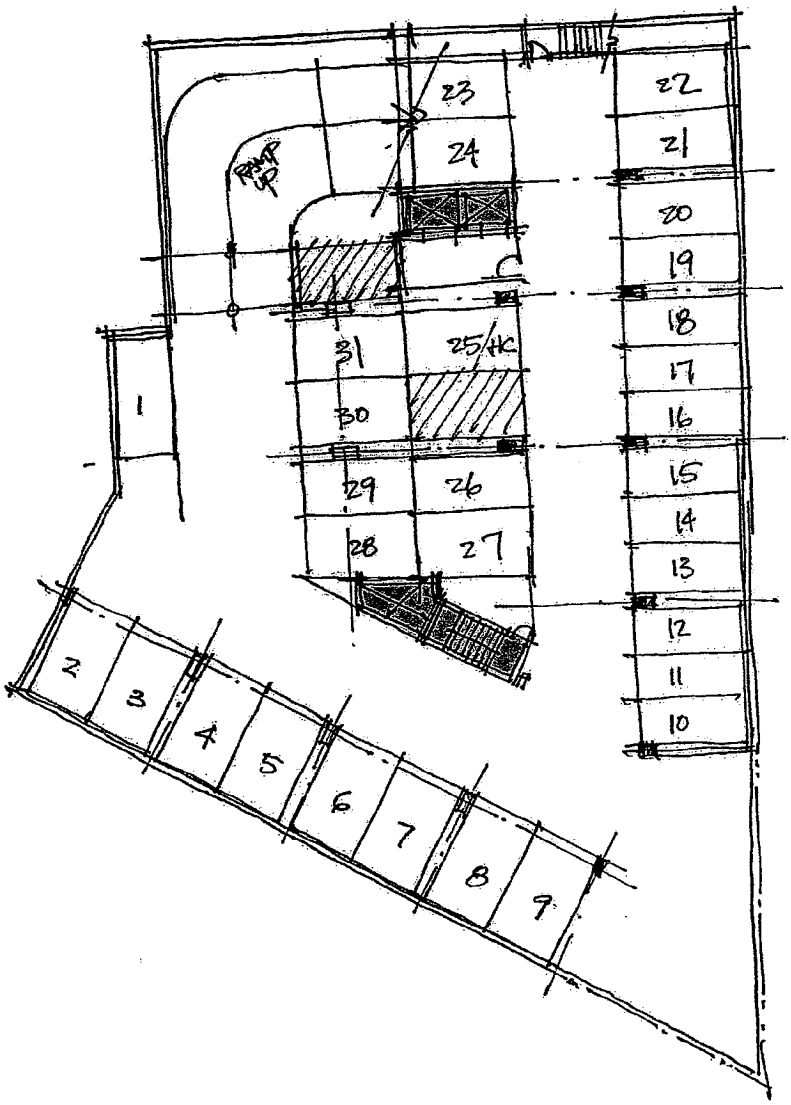

Parcel 3
Parking Level Plan - Hotel Scheme

Proposal for Shaw Howard / Florida Avenue JDS

CORE

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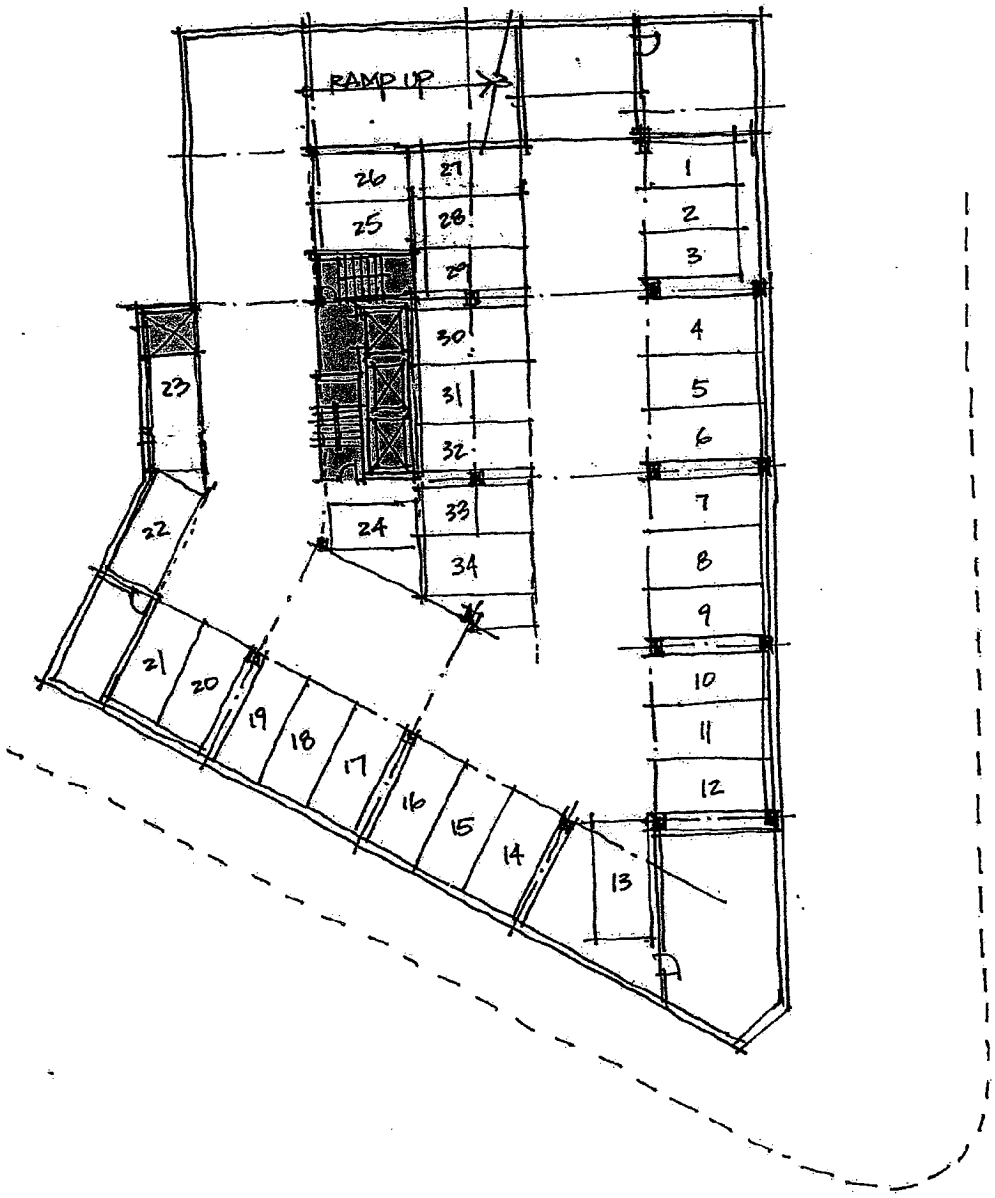


Parcel 3
Parking Level Plan - Office Scheme

Proposal for Shaw Howard / Florida Avenue JDS

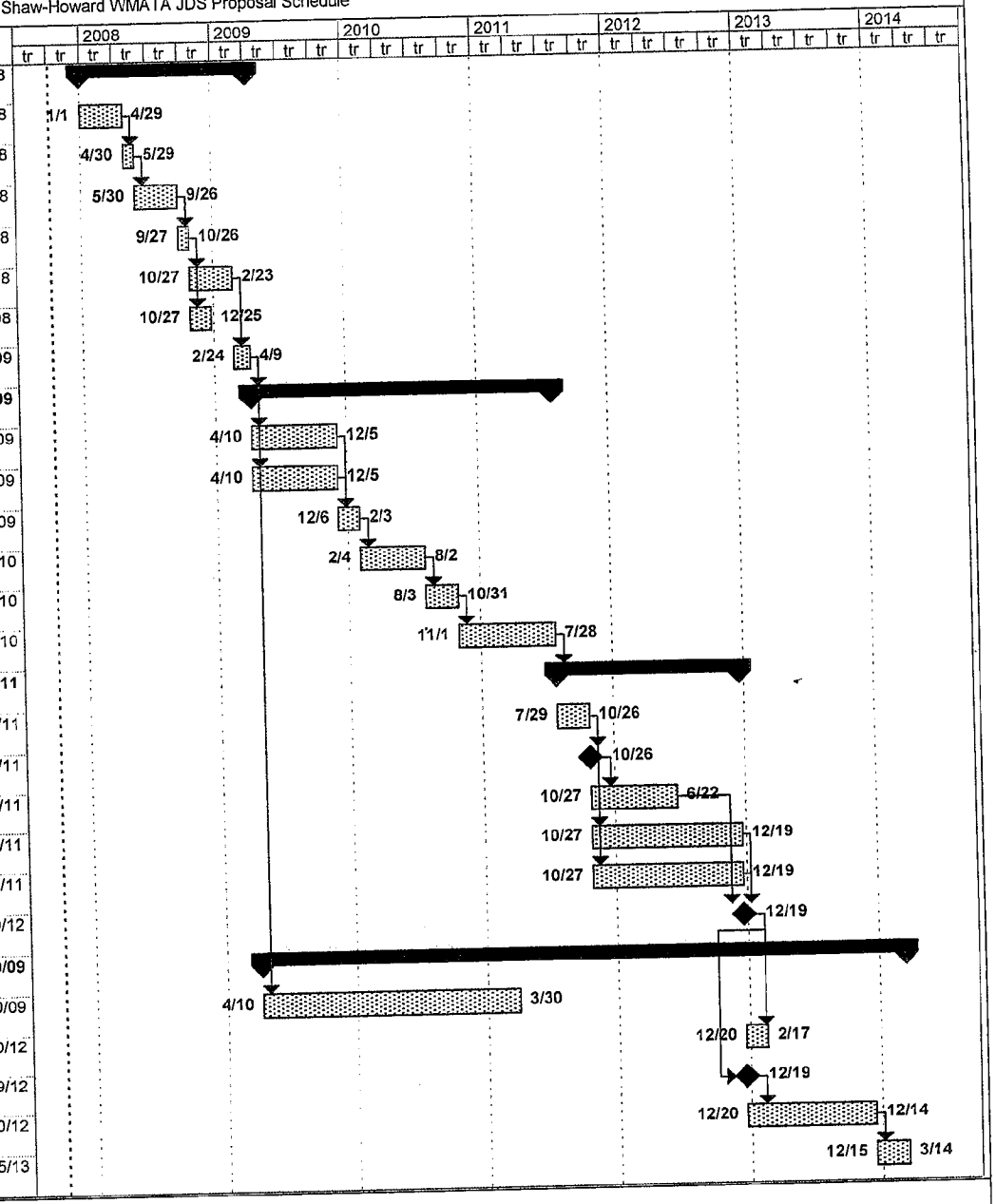
CORE

LAKRITZ | ADLER

FOIA CONFIDENTIAL TREATMENT REQUESTED

LaKirtz Adler Shaw-Howard WMATA JDS Proposal Schedule

ID	Task Name	Duration	Start
1	**WMATA PROCESS**	**465 days**	**Tue 1/1/08**
2	Term Sheet Negotiations	120 days	Tue 1/1/08
3	Approval of Selected Developer	30 days	Wed 4/30/08
4	Development Agreement Negotiations	120 days	Fri 5/30/08
5	Approval of Development Agreement	30 days	Sat 9/27/08
6	Study Period	120 days	Mon 10/27/08
7	Agreements for Assemblage Parcels	60 days	Mon 10/27/08
8	Development Plan Preparation	45 days	Tue 2/24/09
9	**BUILDING PERMITS**	**840 days**	**Fri 4/10/09**
10	HPRB Design & Approval	8 mons	Fri 4/10/09
11	BZA Design & Approval	8 mons	Fri 4/10/09
12	Development Financing Approval	60 days	Sun 12/6/09
13	Schematic Design / Construction Docs	6 mons	Thu 2/4/10
14	WMATA Approval of Design	3 mons	Tue 8/3/10
15	DCRA Building Permit Approval	9 mons	Mon 11/1/10
16	**CONSTRUCTION**	**510 days**	**Fri 7/29/11**
17	Construction Financing Approval	3 mons	Fri 7/29/11
18	Close on Land Purchase	0 days	Wed 10/26/11
19	Construction: Parcel 1	8 mons	Thu 10/27/11
20	Construction: Parcel 2 + 8th St	14 mons	Thu 10/27/11
21	Construction: Parcel 3	14 mons	Thu 10/27/11
22	Substantial Completion	0 days	Wed 12/19/12
23	**LEASING / STABILIZATION**	**1800 days**	**Fri 4/10/09**
24	Marketing	24 mons	Fri 4/10/09
25	Initial Occupancy	2 mons	Thu 12/20/12
26	Commence Lease Payments	0 days	Wed 12/19/12
27	Stabilization / Lease Up	12 mons	Thu 12/20/12
28	Permanent Financing	90 days	Sun 12/15/13



WMATA-INV 008954

7	**Agreements for Assemblage Parcels** Optional
10	**HPRB Design & Approval** 3 rounds with HPRB
11	**BZA Design & Approval** Optional - parallel to HPRB
14	**WMATA Approval of Design** Interspersed with #12
15	**DCRA Building Permit Approval** Current DCRA delay 12 months
18	**Close on Land Purchase** Land purchase only
24	**Marketing** Start at Dev Plan approval
26	**Commence Lease Payments** Ground lease only

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008955

Washington, DC Selected Properties

January 2001 to July 2007

Job Number: 163564_SADUM Staff: SS Created: September 07, 2007

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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008956

Tab 2 - Data by Measure

Washington, DC Selected Properties
Job Number: 163564_SADUM Staff: SS Created: September 07, 2007

Occupancy (%)

	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Jul YTD
2001	58.8	70.3	87.1	83.0	78.2	80.3	77.5	71.8	52.4	70.6	60.6	50.3	70.0	76.7
2002	57.9	67.7	77.4	91.1	82.4	80.2	77.5	70.6	73.2	73.7	57.2	48.0	70.9	75.9
2003	54.4	63.3	77.1	75.7	77.3	79.8	79.7	66.9	80.3	85.9	64.1	48.7	71.1	72.6
2004	52.0	76.3	90.4	90.6	87.2	88.4	83.1	72.6	76.9	88.1	66.6	52.4	77.0	81.1
2005	59.5	78.1	86.9	90.4	84.8	84.0	81.0	75.9	80.8	84.9	61.2	55.2	76.1	80.7
2006	55.3	73.8	84.6	86.4	84.7	84.8	77.2	72.0	75.0	82.4	73.8	54.1	75.3	78.1
2007	59.7	75.2	85.8	89.6	85.3	90.4	85.6							61.7
Avg	56.8	72.3	84.2	86.7	83.0	84.3	80.3	71.7	73.2	81.0	64.2	51.7	73.5	78.2

ADR ($)

	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Jul YTD
2001	151.57	137.24	144.78	143.60	140.94	135.68	117.29	106.76	121.68	118.36	102.18	102.88	127.72	138.17
2002	107.83	114.63	129.00	148.81	141.44	134.60	122.17	113.57	139.82	137.21	115.29	106.91	127.22	129.20
2003	105.69	115.23	137.62	131.42	139.21	136.77	122.84	105.92	140.48	137.94	124.62	117.56	127.77	128.36
2004	122.22	137.20	151.12	148.75	155.48	152.58	135.99	128.60	160.45	168.70	143.99	129.28	146.25	144.95
2005	162.04	150.28	167.34	179.89	172.74	167.66	148.03	141.14	175.05	187.87	172.55	154.58	166.34	165.90
2006	161.80	175.53	197.98	196.35	201.39	201.34	157.68	139.39	190.88	202.75	182.73	154.15	182.21	186.41
2007	167.02	196.48	208.05	210.01	216.08	196.80	173.92							196.68
Avg	141.84	151.96	165.92	168.91	170.74	164.67	142.17	123.81	158.34	161.99	144.77	130.61	148.71	159.12

RevPAR ($)

	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Jul YTD
2001	89.11	98.49	126.09	119.17	110.25	108.95	90.96	76.65	63.74	83.53	61.96	51.78	89.44	108.00
2002	62.46	77.58	99.86	133.71	116.53	107.90	94.67	80.21	102.38	101.19	65.89	51.29	90.22	98.03
2003	57.52	72.97	106.10	99.55	107.65	109.15	97.89	70.87	112.75	118.44	79.86	57.24	90.87	93.15
2004	63.52	104.72	136.65	134.78	135.56	134.84	113.03	93.32	123.45	148.67	95.97	67.72	112.65	117.60
2005	96.41	125.25	145.41	162.64	146.53	140.79	119.88	107.16	141.44	159.52	105.63	85.31	126.60	133.80
2006	69.44	129.52	167.44	169.88	170.59	170.73	121.65	100.35	143.20	167.01	134.87	83.35	137.19	145.57
2007	99.66	146.93	178.52	188.26	184.32	177.88	146.81							160.61
Avg	80.58	109.85	139.71	146.48	141.72	138.77	114.22	88.73	115.86	131.18	92.92	67.50	109.37	124.50

Supply

	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Jul YTD
2001	42,563	38,444	42,663	46,440	47,988	46,440	47,988	47,988	46,440	47,988	46,440	47,988	549,270	312,426
2002	47,988	43,344	47,988	40,920	42,284	40,920	42,284	42,284	40,920	47,802	46,260	47,802	530,796	305,728
2003	47,802	43,176	47,802	46,260	47,802	46,260	47,802	47,802	46,260	47,802	46,260	47,802	562,830	326,904
2004	47,802	43,176	47,802	46,260	47,802	46,260	47,802	47,802	46,260	47,802	46,260	47,802	562,830	326,904
2005	47,802	43,176	47,802	46,260	47,802	46,260	47,802	47,802	46,260	47,802	46,260	47,802	586,254	326,904
2006	59,706	53,928	59,706	57,780	59,706	57,780	59,706	59,706	57,780	59,706	57,780	59,706	702,990	408,312
2007	59,706	53,928	59,706	57,780	59,706	57,780	59,706							408,312
Avg	50,481	45,596	50,481	48,814	50,441	48,814	50,441	48,897	47,320	49,817	50,130	51,801	582,495	345,070

Demand

	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Jul YTD
2001	25,023	27,027	37,068	38,538	37,538	37,290	37,212	34,453	24,326	33,864	28,162	24,154	384,655	239,696
2002	27,798	29,333	37,146	37,269	34,839	32,805	32,765	29,883	29,963	35,251	26,440	22,932	376,404	231,955
2003	26,014	27,342	36,855	35,040	36,964	36,916	38,093	31,982	37,128	41,045	29,844	23,275	400,298	237,224
2004	24,844	32,954	43,224	41,913	41,680	40,879	39,732	34,688	35,592	42,126	30,832	25,041	433,505	265,226
2005	28,441	33,740	41,537	41,825	40,549	38,846	38,712	36,293	37,379	40,588	35,338	32,950	446,198	263,650
2006	33,004	39,792	50,495	49,931	50,576	48,996	46,054	42,985	43,348	49,179	42,647	32,283	529,300	318,858
2007	35,828	40,533	51,232	51,798	50,930	52,226	51,066							333,433
Avg	28,879	32,960	42,508	42,331	41,868	41,137	40,523	35,044	34,623	40,342	32,177	26,773	428,393	270,006

Revenue ($)

	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Jul YTD
2001	3,792,814	3,709,300	5,368,768	5,534,109	5,290,896	5,059,483	4,364,777	3,678,338	2,960,061	4,008,268	2,877,485	2,485,000	49,127,099	33,117,947
2002	2,997,439	3,362,458	4,792,017	5,471,438	4,927,535	4,415,432	4,002,956	3,391,613	4,189,564	4,836,853	3,048,192	2,451,751	47,887,248	29,969,275
2003	2,749,348	3,150,672	5,071,867	4,605,024	5,145,801	5,049,065	4,679,156	3,387,555	5,215,699	5,661,843	3,694,300	2,736,133	51,146,663	30,450,933
2004	3,036,419	4,521,422	6,532,075	6,234,710	6,480,236	6,237,482	5,403,170	4,460,758	5,710,843	7,106,684	4,439,439	3,237,274	63,400,514	38,445,516
2005	4,608,510	5,407,814	6,950,831	7,523,905	7,004,343	6,512,932	5,730,627	5,122,309	6,543,030	7,625,365	6,097,563	5,093,488	74,220,717	43,738,962
2006	5,340,026	6,984,541	9,997,226	9,804,137	10,185,463	9,864,889	7,263,193	5,991,695	8,274,203	9,971,279	7,792,684	4,976,419	96,445,755	59,439,475
2007	5,950,487	7,923,547	10,658,821	10,677,899	11,004,759	10,278,055	8,884,707							65,578,275
Avg	4,067,863	5,008,536	7,052,801	7,150,175	7,148,405	6,773,905	5,761,227	4,338,711	5,482,267	6,535,049	4,658,277	3,496,678	63,704,666	42,962,912

FOIA CONFIDENTIAL TREATMENT REQUESTED

Tab 3 - Percent Change from Previous Year - Detail by Measure

Washington, DC Selected Properties
Job Number: 163564_SADUM Staff: SS Created: September 07, 2007

Occupancy

	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Jul YTD
2002	-1.5	-3.7	-11.1	9.8	5.3	-0.2	-0.1	-1.6	39.8	4.5	-5.7	-4.7	1.3	-1.1
2003	-6.1	-6.4	-0.4	-16.8	-6.1	-0.5	2.8	-5.3	9.6	16.4	12.1	1.5	0.3	-4.4
2004	-4.5	20.5	17.3	19.6	12.8	10.7	4.3	8.5	-4.1	2.6	4.0	7.6	8.3	11.8
2005	14.5	2.4	-3.9	-0.2	-2.7	-5.0	-2.6	4.6	5.0	-3.7	-8.2	5.3	-1.2	-0.6
2006	-7.1	-5.6	-2.7	-4.4	-0.1	1.0	-4.7	-5.2	-7.2	-3.0	20.7	-2.0	-1.1	-3.2
2007	8.0	1.9	1.5	3.7	0.7	6.6	10.9							4.6
Avg	0.6	1.5	0.1	1.9	1.6	2.1	1.8	0.2	8.6	3.4	4.6	1.5	1.5	1.2

ADR

	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Jul YTD
2002	-28.9	-16.5	-10.9	2.2	0.4	-0.8	4.2	6.4	14.9	15.9	12.8	3.9	-0.4	-6.5
2003	-2.0	0.5	6.7	-10.5	-1.6	1.6	0.5	-6.7	0.5	0.5	8.1	10.0	0.4	-0.6
2004	15.6	19.1	9.8	13.2	11.7	11.6	10.7	21.4	14.2	22.3	15.5	10.0	14.5	12.9
2005	32.6	16.8	10.7	20.9	11.1	9.9	8.9	9.8	9.1	11.4	19.8	19.6	13.7	14.4
2006	-0.1	9.5	18.3	9.2	16.6	20.1	6.5	-1.2	9.0	7.9	5.9	-0.3	9.5	12.4
2007	3.2	11.4	5.1	7.0	7.3	-2.3	10.3							5.5
Avg	3.4	6.8	6.6	7.0	7.6	6.7	6.8	5.9	9.5	11.6	12.4	8.6	7.6	6.4

RevPAR

	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Jul YTD
2002	-29.9	-19.6	-20.8	12.2	5.7	-1.0	4.1	4.6	60.6	21.1	6.3	-1.0	0.9	-7.5
2003	-7.9	-5.9	6.3	-25.6	-7.6	1.2	3.4	-11.6	10.1	17.1	21.2	11.6	0.7	-5.0
2004	10.4	43.5	28.8	35.4	25.9	23.5	15.5	31.7	9.5	25.5	20.2	18.3	24.0	26.3
2005	51.8	19.6	6.4	20.7	8.1	4.4	6.1	14.8	14.6	7.3	10.0	26.0	12.4	13.8
2006	-7.2	3.4	15.2	4.3	16.4	21.3	1.5	-6.3	1.2	4.7	27.8	-2.3	8.4	8.8
2007	11.4	13.4	6.6	11.0	8.0	4.2	22.3							10.3
Avg	4.8	9.1	7.1	9.7	9.4	8.9	8.8	6.6	19.2	15.1	17.1	10.5	9.3	7.8

Supply

	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Jul YTD
2002	12.7	12.7	12.7	-11.9	-11.9	-11.9	-11.9	-11.9	-11.9	-0.4	-0.4	-0.4	-3.4	-2.1
2003	-0.4	-0.4	-0.4	13.0	13.0	13.0	13.0	13.0	13.0	0.0	0.0	0.0	6.0	6.9
2004	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2005	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	24.9	24.9	4.2	0.0
2006	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9	0.0	0.0	19.9	24.9
2007	0.0	0.0	0.0	0.0	0.0	0.0	0.0							0.0
Avg	6.2	6.2	6.2	4.3	4.3	4.3	4.3	5.2	5.2	4.9	4.9	4.9	5.3	4.9

Demand

	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Jul YTD
2002	11.1	8.5	0.2	-3.3	-7.2	-12.0	-12.0	-13.3	23.2	4.1	-6.1	-5.1	-2.1	-3.2
2003	-6.4	-6.8	-0.8	-6.0	6.1	12.5	16.3	7.1	23.9	16.4	12.1	1.5	6.3	2.3
2004	-4.5	20.5	17.3	19.8	12.8	10.7	4.3	8.5	-4.1	2.6	4.0	7.6	8.3	11.8
2005	14.5	2.4	-3.9	-0.2	-2.7	-5.0	-2.6	4.6	5.0	-3.7	14.6	31.6	2.9	-0.6
2006	16.0	17.9	21.6	19.4	24.7	26.1	19.0	18.4	18.0	21.2	20.7	-2.0	18.6	20.9
2007	8.0	1.9	1.5	3.7	0.7	6.6	10.9							4.6
Avg	6.4	7.4	6.0	5.5	5.7	6.5	6.0	5.1	12.8	8.1	9.1	6.7	6.8	6.0

Revenue

	January	February	March	April	May	June	July	August	September	October	November	December	Total Year	Jul YTD
2002	-21.0	-9.4	-10.7	-1.1	-6.9	-12.7	-8.3	-7.8	41.5	20.7	5.9	-1.3	-2.5	-9.5
2003	-8.3	-6.3	5.8	-15.8	4.4	14.4	16.9	-0.1	24.5	17.1	21.2	11.6	6.8	1.6
2004	10.4	43.5	28.8	35.4	25.9	23.5	15.5	31.7	9.5	25.5	20.2	18.3	24.0	26.3
2005	51.8	19.6	6.4	20.7	8.1	4.4	6.1	14.8	14.6	7.3	37.3	57.3	17.1	13.8
2006	15.9	29.2	43.8	30.3	45.4	51.5	26.7	17.0	26.5	30.8	27.8	-2.3	29.9	35.9
2007	11.4	13.4	6.6	11.0	8.0	4.2	22.3							10.3
Avg	10.0	15.0	13.5	13.4	14.2	14.2	13.2	11.1	23.3	20.3	22.5	16.7	15.1	13.1

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Tab 4 - Percent Change from Previous Year - Detail by Year

Washington, DC Selected Properties
Job Number: 163564_SADUM Staff: SS Created: September 07, 2007

	Jan 02	Feb 02	Mar 02	Apr 02	May 02	Jun 02	Jul 02	Aug 02	Sep 02	Oct 02	Nov 02	Dec 02	Total Year	Jul YTD
Occ	-1.5	-3.7	-11.1	9.8	5.3	-0.2	-0.1	-1.6	39.8	4.5	-5.7	-4.7	1.3	-1.1
ADR	-28.9	-16.5	-10.9	2.2	0.4	-0.8	4.2	6.4	14.9	15.9	12.8	3.9	-0.4	-6.5
RevPAR	-29.9	-19.6	-20.8	12.2	5.7	-1.0	4.1	4.6	60.6	21.1	6.3	-1.0	0.9	-7.5
Supply	12.7	12.7	12.7	-11.9	-11.9	-11.9	-11.9	-11.9	-11.9	-0.4	-0.4	-0.4	-3.4	-2.1
Demand	11.1	8.5	0.2	-3.3	-7.2	-12.0	-12.0	-13.3	23.2	4.1	-6.1	-5.1	-2.1	-3.2
Revenue	-21.0	-9.4	-10.7	-1.1	-6.9	-12.7	-8.3	-7.8	41.5	20.7	5.9	-1.3	-2.5	-9.5

	Jan 03	Feb 03	Mar 03	Apr 03	May 03	Jun 03	Jul 03	Aug 03	Sep 03	Oct 03	Nov 03	Dec 03	Total Year	Jul YTD
Occ	-6.1	-6.4	-0.4	-16.8	-6.1	-0.5	2.8	-5.3	9.6	16.4	12.1	1.5	0.3	-4.4
ADR	-2.0	0.5	6.7	-10.5	-1.6	1.6	0.5	-6.7	0.5	0.5	8.1	10.0	0.4	-0.6
RevPAR	-7.9	-5.9	6.3	-25.6	-7.6	1.2	3.4	-11.5	10.1	17.1	21.2	11.6	0.7	-5.0
Supply	-0.4	-0.4	-0.4	13.0	13.0	13.0	13.0	13.0	13.0	0.0	0.0	0.0	6.0	6.9
Demand	-6.4	-6.8	-0.8	-6.0	6.1	12.5	16.3	7.1	23.9	16.4	12.1	1.5	6.3	2.3
Revenue	-8.3	-6.3	5.8	-15.8	4.4	14.4	16.9	-0.1	24.5	17.1	21.2	11.6	6.8	1.6

	Jan 04	Feb 04	Mar 04	Apr 04	May 04	Jun 04	Jul 04	Aug 04	Sep 04	Oct 04	Nov 04	Dec 04	Total Year	Jul YTD
Occ	-4.5	20.5	17.3	19.6	12.6	10.7	4.3	8.5	-4.1	2.6	4.0	7.6	8.3	11.8
ADR	15.6	19.1	9.8	13.2	11.7	11.6	10.7	21.4	14.2	22.3	15.5	10.0	14.5	12.9
RevPAR	10.4	43.5	28.8	35.4	25.9	23.5	15.5	31.7	9.5	25.5	20.2	18.3	24.0	26.3
Supply	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Demand	-4.5	20.5	17.3	19.6	12.8	10.7	4.3	8.5	-4.1	2.6	4.0	7.6	8.3	11.8
Revenue	10.4	43.5	28.8	35.4	25.9	23.5	15.5	31.7	9.5	25.5	20.2	18.3	24.0	26.3

	Jan 05	Feb 05	Mar 05	Apr 05	May 05	Jun 05	Jul 05	Aug 05	Sep 05	Oct 05	Nov 05	Dec 05	Total Year	Jul YTD
Occ	14.5	2.4	-3.9	-0.2	-2.7	-5.0	-2.6	4.6	5.0	-3.7	-8.2	5.3	-1.2	-0.6
ADR	32.6	16.8	10.7	20.9	11.1	9.9	8.9	9.8	9.1	11.4	19.8	19.6	13.7	14.4
RevPAR	51.8	19.6	6.4	20.7	8.1	4.4	6.1	14.8	14.6	7.3	10.0	26.0	12.4	13.8
Supply	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	24.9	24.9	4.2	0.0
Demand	14.5	2.4	-3.9	-0.2	-2.7	-5.0	-2.6	4.6	5.0	-3.7	14.6	31.6	2.9	-0.6
Revenue	51.8	19.6	6.4	20.7	8.1	4.4	6.1	14.8	14.6	7.3	37.3	57.3	17.1	13.8

	Jan 06	Feb 06	Mar 06	Apr 06	May 06	Jun 06	Jul 06	Aug 06	Sep 06	Oct 06	Nov 06	Dec 06	Total Year	Jul YTD
Occ	-7.1	-5.6	-2.7	-4.4	-0.1	1.0	-4.7	-5.2	-7.2	-3.0	20.7	-2.0	-1.1	-3.2
ADR	-0.1	9.5	18.3	9.2	16.6	20.1	6.5	-1.2	9.0	7.9	5.9	-0.3	9.5	12.4
RevPAR	-7.2	3.4	15.2	4.3	16.4	21.3	1.5	-6.3	1.2	4.7	27.8	-2.3	8.4	8.8
Supply	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9	0.0	0.0	19.9	24.9
Demand	16.0	17.9	21.6	19.4	24.7	26.1	19.0	18.4	16.0	21.2	20.7	-2.0	18.6	20.9
Revenue	15.9	29.2	43.8	30.3	45.4	51.5	26.7	17.0	26.5	30.8	27.8	-2.3	29.9	35.9

	Jan 07	Feb 07	Mar 07	Apr 07	May 07	Jun 07	Jul 07	Aug 07	Sep 07	Oct 07	Nov 07	Dec 07	Total Year	Jul YTD
Occ	8.0	1.9	1.5	3.7	0.7	6.6	10.9							4.6
ADR	3.2	11.4	5.1	7.0	7.3	-2.3	10.3							5.5
RevPAR	11.4	13.4	6.6	11.0	8.0	4.2	22.3							10.3
Supply	0.0	0.0	0.0	0.0	0.0	0.0	0.0							0.0
Demand	8.0	1.9	1.5	3.7	0.7	6.6	10.9							4.6
Revenue	11.4	13.4	6.6	11.0	8.0	4.2	22.3							10.3

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Tab 5 - Twelve Month Moving Average

Washington, DC Selected Properties
Job Number: 163564_SADUM Staff: SS Created: September 07, 2007

Occupancy (%)

	January	February	March	April	May	June	July	August	September	October	November	December
2002	69.8	69.6	69.0	69.4	69.7	69.6	69.5	69.4	71.1	71.4	71.1	70.9
2003	70.6	70.2	70.2	69.1	*68.8*	68.9	69.1	68.8	69.5	70.5	71.1	71.1
2004	70.9	71.9	73.0	74.3	75.1	75.8	76.1	76.6	76.3	76.5	76.7	77.0
2005	77.7	77.8	77.5	77.5	77.3	76.9	76.7	77.0	77.3	77.1	76.3	76.1
2006	75.4	75.0	75.0	74.9	75.1	75.3	75.1	74.8	74.4	74.3	75.4	75.3
2007	75.7	75.8	75.9	76.1	76.2	76.7	77.4					

ADR ($)

	January	February	March	April	May	June	July	August	September	October	November	December
2002	124.75	123.12	121.62	121.86	121.77	*121.51*	121.99	122.72	124.14	125.87	126.90	127.22
2003	127.17	127.28	128.13	126.56	126.42	126.73	126.73	126.02	126.33	126.57	127.17	127.77
2004	128.87	130.47	132.00	133.72	135.39	136.92	138.08	139.71	141.36	144.36	145.69	146.25
2005	148.64	150.40	151.94	154.93	156.54	157.91	159.04	159.98	161.23	163.00	165.11	166.34
2006	166.28	167.53	170.85	172.74	175.73	178.90	179.34	178.69	179.98	181.51	182.21	182.21
2007	182.46	183.97	184.96	186.32	187.73	187.37	188.62					

RevPAR ($)

	January	February	March	April	May	June	July	August	September	October	November	December
2002	87.13	85.75	*83.91*	84.62	84.84	84.52	84.74	85.11	88.31	89.90	90.25	90.22
2003	89.78	89.41	89.97	87.46	86.97	87.28	87.63	86.75	87.76	89.22	90.37	90.87
2004	91.38	93.82	96.41	99.31	101.68	103.79	105.08	106.99	107.86	110.43	111.76	112.65
2005	115.44	117.01	117.76	120.05	120.98	121.47	122.05	123.23	124.70	125.63	125.99	126.60
2006	125.31	125.68	128.18	129.45	132.00	134.79	134.68	133.60	133.88	134.95	137.36	137.19
2007	138.08	139.40	140.34	141.87	143.03	143.62	145.93					

Supply

	January	February	March	April	May	June	July	August	September	October	November	December
2002	554,695	559,595	565,020	559,500	553,796	548,276	542,572	536,868	531,348	531,162	530,982	530,796
2003	530,610	530,442	*530,256*	535,596	541,114	546,454	551,972	557,490	562,830	562,830	562,830	562,830
2004	562,830	562,830	562,830	562,830	562,830	562,830	562,830	562,830	562,830	562,830	562,830	562,830
2005	562,830	562,830	562,830	562,830	562,830	562,830	562,830	562,830	562,830	562,830	574,350	586,254
2006	598,158	608,910	620,814	632,334	644,238	655,758	667,662	679,566	691,086	702,990	702,990	702,990
2007	702,990	702,990	702,990	702,990	702,990	702,990	702,990					

Demand

	January	February	March	April	May	June	July	August	September	October	November	December
2002	387,430	389,736	389,814	388,545	385,846	381,361	376,914	372,324	377,961	379,348	377,626	376,404
2003	374,620	372,629	372,338	*370,109*	372,234	376,345	381,673	383,792	390,957	396,751	399,955	400,298
2004	399,128	404,740	411,109	417,982	422,698	426,661	428,300	431,006	429,470	430,551	431,739	433,505
2005	437,102	437,888	436,201	436,113	434,982	432,949	431,929	433,534	435,321	433,783	438,289	446,198
2006	450,761	455,813	465,771	473,877	483,904	494,054	501,406	508,098	514,067	522,658	529,967	529,300
2007	531,924	532,665	533,402	535,269	535,623	538,853	543,875					

Revenue ($)

	January	February	March	April	May	June	July	August	September	October	November	December
2002	48,331,724	47,984,882	47,410,131	47,347,460	46,984,299	46,340,248	45,978,427	*45,691,702*	46,921,205	47,749,790	47,920,497	47,887,248
2003	47,639,157	47,427,371	47,707,221	46,640,807	47,059,073	47,692,706	48,368,906	48,364,848	49,391,183	50,216,173	50,862,281	51,146,663
2004	51,433,734	52,804,484	54,264,692	55,894,378	57,228,815	58,417,232	59,141,246	60,214,449	60,709,393	62,154,234	62,899,373	63,400,514
2005	64,972,605	65,858,997	66,277,753	67,566,948	68,091,053	68,366,503	68,693,960	69,355,511	70,187,698	70,706,379	72,364,503	74,220,717
2006	74,952,233	76,528,960	79,575,355	81,855,587	85,036,707	88,388,664	89,921,230	90,790,616	92,521,789	94,887,703	96,562,824	96,445,755
2007	97,056,216	97,995,222	98,656,817	99,730,579	100,549,875	100,963,041	102,584,555					

High value is boxed. Low value is boxed and italicized.

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Tab 6 - Day of Week Analysis

Washington, DC Selected Properties
Job Number: 163564_SADUM Staff: SS Created: September 07, 2007

Occupancy (%)

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Month
Aug - 06	60.4	75.7	80.0	77.6	72.1	65.0	69.8	72.0
Sep - 06	57.9	72.5	88.0	93.4	84.4	63.7	69.6	75.0
Oct - 06	67.4	80.5	84.9	91.8	87.0	80.0	88.6	82.4
Nov - 06	63.0	73.6	75.3	76.9	76.8	73.8	75.7	73.8
Dec - 06	41.8	57.8	63.8	65.2	57.3	50.0	48.1	54.1
Jan - 07	52.5	58.3	68.2	73.4	62.1	46.0	52.0	59.7
Feb - 07	66.2	82.2	87.3	85.6	77.0	61.3	66.6	75.2
Mar - 07	77.9	94.9	97.8	95.1	83.3	73.5	82.6	85.8
Apr - 07	78.8	89.7	94.8	96.4	93.1	87.6	89.6	89.6
May - 07	81.4	84.0	92.2	90.4	82.1	77.7	87.0	85.3
Jun - 07	79.7	95.2	98.0	97.7	92.3	84.8	87.3	90.4
Jul - 07	74.6	90.8	92.9	93.7	84.8	81.1	80.5	85.6
Total Year	66.7	79.8	85.1	85.9	79.3	70.2	74.6	77.4

Occupancy (%)

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Year
Aug 04 - Jul 05	66.4	81.2	86.2	85.7	78.5	68.1	71.4	76.7
Aug 05 - Jul 06	64.0	77.7	84.7	83.9	77.1	66.9	71.4	75.1
Aug 06 - Jul 07	66.7	79.6	85.1	85.9	79.3	70.2	74.6	77.4
Total 3 Yr	65.7	79.4	85.3	85.1	78.3	68.4	72.5	76.4

ADR ($)

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Month
Aug - 06	132.95	146.26	151.87	152.59	139.15	120.53	117.01	139.39
Sep - 06	171.87	210.58	221.39	219.01	200.79	159.10	145.51	190.88
Oct - 06	203.86	224.46	227.54	225.79	203.37	160.80	160.81	202.75
Nov - 06	176.56	200.53	206.17	201.98	180.91	152.76	154.32	182.73
Dec - 06	145.77	188.07	176.12	169.07	152.19	125.22	121.33	154.15
Jan - 07	156.06	181.31	189.36	185.53	167.66	125.54	124.64	167.02
Feb - 07	188.97	210.34	215.18	207.55	195.76	170.04	165.41	195.48
Mar - 07	207.37	237.97	242.31	234.68	205.01	167.65	163.10	208.05
Apr - 07	203.07	228.62	232.47	226.94	211.32	178.80	181.47	210.01
May - 07	205.13	232.83	247.83	235.74	206.13	181.26	185.35	216.08
Jun - 07	191.56	221.82	232.57	224.27	195.16	160.36	158.88	196.80
Jul - 07	167.15	192.30	194.80	184.82	170.13	148.28	142.82	173.92
Total Year	182.54	208.62	213.01	207.09	187.58	156.63	154.35	188.62

ADR ($)

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Year
Aug 04 - Jul 05	151.32	168.89	175.07	173.94	163.63	136.50	134.38	159.04
Aug 05 - Jul 06	172.49	193.87	199.52	196.10	178.55	153.79	150.51	179.34
Aug 06 - Jul 07	182.54	208.62	213.01	207.09	187.58	156.53	154.35	188.62
Total 3 Yr	169.87	191.82	197.33	193.64	177.52	149.81	147.32	176.82

RevPAR ($)

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Month
Aug - 06	80.27	112.26	121.53	118.34	100.26	78.39	81.65	100.35
Sep - 06	99.52	152.66	194.74	204.52	169.39	101.32	101.23	143.20
Oct - 06	137.44	180.58	193.21	207.21	176.87	128.64	142.55	167.01
Nov - 06	111.28	147.64	155.17	155.28	138.90	112.80	116.89	134.87
Dec - 06	60.90	108.65	112.33	110.26	87.27	62.65	58.41	83.35
Jan - 07	81.92	105.73	129.10	136.19	104.20	57.73	64.76	99.66
Feb - 07	125.07	172.87	187.83	177.58	150.74	104.30	110.10	146.93
Mar - 07	161.52	225.84	237.04	223.17	170.74	123.30	134.74	178.52
Apr - 07	160.05	205.16	220.49	218.87	196.85	156.60	162.66	188.26
May - 07	167.06	195.54	228.62	213.14	169.28	140.76	161.28	184.32
Jun - 07	152.68	211.08	227.83	219.11	180.05	135.92	138.78	177.88
Jul - 07	124.78	174.63	180.97	173.25	144.29	120.29	114.95	148.81
Total Year	121.79	166.09	181.30	177.90	148.74	109.89	115.10	145.93

RevPAR ($)

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Year
Aug 04 - Jul 05	100.40	137.17	150.84	148.99	128.47	92.97	95.92	122.05
Aug 05 - Jul 06	110.33	150.71	168.99	164.57	137.63	102.85	107.43	134.68
Aug 06 - Jul 07	121.79	166.09	181.30	177.90	148.74	109.89	115.10	145.93
Total 3 Yr	111.54	152.35	168.27	164.88	139.01	102.53	106.87	135.09

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Tab 7 - Raw Data

Washington, DC Selected Properties
Job Number: 163564_SADUM Staff: SS Created: September 07, 2007

Date	Occupancy		ADR		RevPar		Supply		Demand		Revenue		Census & Sample %		
	This Year	% Chg	This Year	% Chg	This Year	% Chg	This Year	% Chg	This Year	% Chg	This Year	% Chg	Census Props	Census Rooms	% Rooms STAR Participants
Jan 01	58.8		151.57		89.11		42,563		25,023		3,792,814		6	1,373	100.0
Feb 01	70.3		137.24		96.49		38,444		27,027		3,709,300		6	1,373	100.0
Mar 01	87.1		144.78		126.09		42,563		37,068		5,366,768		6	1,373	100.0
Apr 01	83.0		143.60		119.17		46,440		38,538		5,534,109		7	1,548	100.0
May 01	78.2		140.94		110.25		47,988		37,538		5,290,696		7	1,548	100.0
Jun 01	80.3		135.68		108.95		46,440		37,290		5,059,483		7	1,548	100.0
Jul 01	77.5		117.29		90.96		47,988		37,212		4,364,777		7	1,548	100.0
Aug 01	71.8		106.76		76.65		47,988		34,453		3,678,338		7	1,548	100.0
Sep 01	52.4		121.68		63.74		46,440		24,326		2,960,061		7	1,548	100.0
Oct 01	70.6		118.36		83.53		47,988		33,864		4,008,268		7	1,548	100.0
Nov 01	60.6		102.18		61.96		46,440		28,162		2,877,485		7	1,548	100.0
Dec 01	50.3		102.88		51.78		47,988		24,154		2,485,000		7	1,548	100.0
Jan 02	57.9	-1.5	107.83	-28.9	62.46	-29.9	47,988	12.7	27,798	11.1	2,997,439	-21.0	7	1,548	100.0
Feb 02	67.7	-3.7	114.63	-16.5	77.58	-19.6	43,344	12.7	29,333	8.5	3,362,458	-9.4	7	1,548	100.0
Mar 02	77.4	-11.1	129.00	-10.9	99.86	-20.8	47,988	12.7	37,146	0.2	4,792,017	-10.7	7	1,548	100.0
Apr 02	91.1	9.8	146.81	2.2	133.71	12.2	40,920	-11.9	37,269	-3.3	5,471,438	-1.1	6	1,364	100.0
May 02	82.4	5.3	141.44	0.4	116.53	5.7	42,284	-11.9	34,839	-7.2	4,927,535	-6.9	6	1,364	100.0
Jun 02	80.2	-0.2	134.60	-0.8	107.90	-1.0	40,920	-11.9	32,805	-12.0	4,415,432	-12.7	6	1,364	100.0
Jul 02	77.5	-0.1	122.17	4.2	94.67	4.1	42,284	-11.9	32,765	-12.0	4,002,956	-8.3	6	1,364	100.0
Aug 02	70.6	-1.6	113.57	6.4	80.21	4.6	42,284	-11.9	29,863	-13.3	3,391,613	-7.8	6	1,364	100.0
Sep 02	73.2	39.8	139.82	14.9	102.38	60.6	40,920	-11.9	29,963	23.2	4,189,564	41.5	6	1,364	100.0
Oct 02	73.7	4.5	137.21	15.9	101.19	21.1	47,802	-0.4	35,251	4.1	4,836,853	20.7	7	1,542	88.5
Nov 02	57.2	-5.7	115.29	12.8	65.89	6.3	46,260	-0.4	26,440	-6.1	3,048,192	5.9	7	1,542	100.0
Dec 02	48.0	-4.7	106.91	3.9	51.29	-1.0	47,802	-0.4	22,932	-5.1	2,451,751	-1.3	7	1,542	100.0
Jan 03	54.4	-6.1	105.69	-2.0	57.52	-7.9	47,802	-0.4	26,014	-6.4	2,749,348	-8.3	7	1,542	100.0
Feb 03	63.3	-6.4	115.23	0.5	72.97	-5.9	43,176	-0.4	27,342	-6.8	3,150,672	-6.3	7	1,542	100.0
Mar 03	77.1	-0.4	137.62	6.7	106.10	6.3	47,802	-0.4	36,855	-0.8	5,071,867	5.8	7	1,542	100.0
Apr 03	75.7	-16.8	131.42	-10.5	99.55	-25.6	46,260	13.0	35,040	-6.0	4,605,024	-15.8	7	1,542	100.0
May 03	77.3	-6.1	139.21	-1.6	107.65	-7.6	47,802	13.0	36,964	6.1	5,145,801	4.4	7	1,542	100.0
Jun 03	79.8	-0.5	136.77	1.6	109.15	1.2	46,260	13.0	36,916	12.5	5,049,065	14.4	7	1,542	100.0
Jul 03	79.7	2.8	122.84	0.5	97.89	3.4	47,802	13.0	38,093	16.3	4,679,156	16.9	7	1,542	100.0
Aug 03	66.9	-5.3	105.92	-6.7	70.87	-11.6	47,802	13.0	31,982	7.1	3,387,555	-0.1	7	1,542	100.0
Sep 03	80.3	9.6	140.48	0.5	112.75	10.1	46,260	13.0	37,128	23.9	5,215,899	24.5	7	1,542	100.0
Oct 03	85.9	16.4	137.94	0.5	118.44	17.1	47,802	0.0	41,045	16.4	5,661,843	17.1	7	1,542	100.0
Nov 03	64.1	12.1	124.62	8.1	79.86	21.2	46,260	0.0	29,644	12.1	3,694,300	21.2	7	1,542	100.0
Dec 03	48.7	1.5	117.56	10.0	57.24	11.6	47,802	0.0	23,275	1.5	2,736,133	11.6	7	1,542	100.0
Jan 04	52.0	-4.5	122.22	15.6	63.52	10.4	47,802	0.0	24,844	-4.5	3,036,419	10.4	7	1,542	100.0
Feb 04	76.3	20.5	137.20	19.1	104.72	43.5	43,176	0.0	32,954	20.5	4,521,422	43.5	7	1,542	100.0
Mar 04	90.4	17.3	151.12	9.8	136.65	28.8	47,802	0.0	43,224	17.3	6,532,075	28.8	7	1,542	100.0
Apr 04	90.6	19.6	148.75	13.2	134.78	35.4	46,260	0.0	41,913	19.6	6,234,710	35.4	7	1,542	100.0
May 04	87.2	12.8	155.48	11.7	135.56	25.9	47,802	0.0	41,680	12.8	6,480,238	25.9	7	1,542	100.0
Jun 04	88.4	10.7	152.58	11.6	134.84	23.5	46,260	0.0	40,879	10.7	6,237,482	23.5	7	1,542	100.0
Jul 04	83.1	4.3	135.99	10.7	113.03	15.5	47,802	0.0	39,732	4.3	5,403,170	15.5	7	1,542	100.0
Aug 04	72.6	8.5	128.60	21.4	93.32	31.7	47,802	0.0	34,688	8.5	4,460,758	31.7	7	1,542	100.0
Sep 04	76.9	-4.1	160.45	14.2	123.45	9.5	46,260	0.0	35,592	-4.1	5,710,843	9.5	7	1,542	100.0
Oct 04	88.1	2.6	168.70	22.3	148.67	25.5	47,802	0.0	42,126	2.6	7,106,684	25.5	7	1,542	100.0
Nov 04	66.6	4.0	143.99	15.5	95.97	20.2	46,260	0.0	30,832	4.0	4,439,439	20.2	7	1,542	100.0
Dec 04	52.4	7.6	129.28	10.0	67.72	18.3	47,802	0.0	25,041	7.6	3,237,274	18.3	7	1,542	100.0
Jan 05	59.5	14.5	162.04	32.6	96.41	51.8	47,802	0.0	28,441	14.5	4,608,510	51.8			

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FOIA CONFIDENTIAL TREATMENT REQUESTED

Tab 7 - Raw Data

Washington, DC Selected Properties
Job Number: 163564_SADUM Staff: SS Created: September 07, 2007

Date	Occupancy		ADR		RevPar		Supply		Demand		Revenue		Census & Sample %		
	This Year	% Chg	This Year	% Chg	This Year	% Chg	This Year	% Chg	This Year	% Chg	This Year	% Chg	Census Props	Census Rooms	% Rooms STAR Participants
Feb 05	78.1	2.4	160.28	16.8	125.25	19.6	43,176	0.0	33,740	2.4	5,407,814	19.6	7	1,542	100.0
Mar 05	86.9	-3.9	167.34	10.7	145.41	6.4	47,802	0.0	41,537	-3.9	6,950,831	6.4	7	1,542	100.0
Apr 05	90.4	-0.2	179.89	20.9	162.64	20.7	46,260	0.0	41,825	-0.2	7,523,905	20.7	7	1,542	100.0
May 05	84.8	-2.7	172.74	11.1	146.53	8.1	47,802	0.0	40,549	-2.7	7,004,343	8.1	7	1,542	100.0
Jun 05	84.0	-5.0	167.66	9.9	140.79	4.4	46,260	0.0	38,846	-5.0	6,512,932	4.4	7	1,542	100.0
Jul 05	81.0	-2.6	148.03	8.9	119.88	6.1	47,802	0.0	38,712	-2.6	5,730,627	6.1	7	1,542	100.0
Aug 05	75.9	4.6	141.14	9.8	107.16	14.8	47,802	0.0	36,293	4.6	5,122,309	14.8	7	1,542	100.0
Sep 05	80.8	5.0	175.05	9.1	141.44	14.6	46,260	0.0	37,379	5.0	6,543,030	14.6	7	1,542	100.0
Oct 05	84.9	-3.7	187.87	11.4	159.52	7.3	47,802	0.0	40,588	-3.7	7,625,365	7.3	8	1,926	100.0
Nov 05	61.2	-8.2	172.55	19.8	105.53	10.0	57,780	24.9	35,338	14.6	6,097,563	37.3	8	1,926	100.0
Dec 05	55.2	5.3	154.58	19.6	85.31	26.0	59,706	24.9	32,950	31.6	5,093,488	57.3	8	1,926	100.0
Jan 06	55.3	-7.1	161.80	-0.1	89.44	-7.2	59,706	24.9	33,004	16.0	5,340,026	15.9	8	1,926	100.0
Feb 06	73.8	-5.6	175.53	9.5	129.52	3.4	53,928	24.9	39,792	17.9	6,984,541	29.2	8	1,926	100.0
Mar 06	84.6	-2.7	197.98	18.3	167.44	15.2	59,706	24.9	50,495	21.6	9,997,226	43.8	8	1,926	100.0
Apr 06	86.4	-4.4	196.35	9.2	169.68	4.3	57,780	24.9	49,931	19.4	9,804,137	30.3	8	1,926	100.0
May 06	84.7	-0.1	201.39	16.6	170.59	16.4	59,706	24.9	50,576	24.7	10,185,463	45.4	8	1,926	100.0
Jun 06	84.8	1.0	201.34	20.1	170.73	21.3	57,780	24.9	48,996	26.1	9,864,889	51.5	8	1,926	100.0
Jul 06	77.2	-4.7	157.68	6.5	121.65	1.5	59,706	24.9	46,064	19.0	7,263,193	26.7	8	1,926	100.0
Aug 06	72.0	-5.2	139.39	-1.2	100.35	-6.3	59,706	24.9	42,985	18.4	5,991,695	17.0	8	1,926	100.0
Sep 06	75.0	-7.2	190.88	9.0	143.20	1.2	57,780	24.9	43,348	16.0	8,274,203	26.5	8	1,926	100.0
Oct 06	82.4	-3.0	202.75	7.9	167.01	4.7	59,706	24.9	49,179	21.2	9,971,279	30.8	8	1,926	100.0
Nov 06	73.8	20.7	182.73	5.9	134.87	27.8	57,780	0.0	42,647	20.7	7,792,684	27.8	8	1,926	100.0
Dec 06	54.1	-2.0	154.15	-0.3	83.35	-2.3	59,706	0.0	32,283	-2.0	4,976,419	-2.3	8	1,926	100.0
Jan 07	59.7	8.0	167.02	3.2	99.66	11.4	59,706	0.0	35,628	8.0	5,950,487	11.4	8	1,926	100.0
Feb 07	75.2	1.9	195.48	11.4	146.93	13.4	53,928	0.0	40,533	1.9	7,923,547	13.4	8	1,926	100.0
Mar 07	85.8	1.5	208.05	5.1	178.52	6.6	59,706	0.0	51,232	1.5	10,658,821	6.6	8	1,926	100.0
Apr 07	89.6	3.7	210.01	7.0	188.26	11.0	57,780	0.0	51,798	3.7	10,877,899	11.0	8	1,926	100.0
May 07	85.3	0.7	216.08	7.3	184.32	8.0	59,706	0.0	50,930	0.7	11,004,759	8.0	8	1,926	100.0
Jun 07	90.4	6.6	196.80	-2.3	177.88	4.2	57,780	0.0	52,226	6.6	10,278,055	4.2	8	1,926	100.0
Jul 07	85.6	10.9	173.92	10.3	148.81	22.3	59,706	0.0	51,086	10.9	8,884,707	22.3	8	1,926	100.0

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FOIA CONFIDENTIAL TREATMENT REQUESTED

Tab 8 - Classic

Washington, DC Selected Properties
Job Number: 163564_SADUM Staff: SS Created: September 07, 2007

Date	Occupancy		ADR		RevPar		Supply		Demand		Revenue		Census & Sample %		
	This Year	% Chg	This Year	% Chg	This Year	% Chg	This Year	% Chg	This Year	% Chg	This Year	% Chg	Census Props	Census Rooms	% Rooms STAR Participants
Jan 01	58.8		151.57		89.11		42,563		25,023		3,792,814		6	1,373	100.0
Feb 01	70.3		137.24		96.49		38,444		27,027		3,709,300		6	1,373	100.0
Mar 01	87.1		144.78		126.09		42,563		37,068		5,366,768		6	1,373	100.0
Apr 01	83.0		143.60		119.17		46,440		38,538		5,534,109		7	1,548	100.0
May 01	78.2		140.94		110.25		47,988		37,538		5,290,696		7	1,548	100.0
Jun 01	80.3		135.68		108.95		46,440		37,290		5,059,483		7	1,548	100.0
Jul 01	77.5		117.29		90.96		47,988		37,212		4,364,777		7	1,548	100.0
Aug 01	71.8		106.76		76.65		47,988		34,453		3,678,338		7	1,548	100.0
Sep 01	52.4		121.68		63.74		46,440		24,326		2,960,061		7	1,548	100.0
Oct 01	70.6		118.36		83.53		47,988		33,864		4,008,268		7	1,548	100.0
Nov 01	60.6		102.18		61.96		46,440		28,162		2,877,485		7	1,548	100.0
Dec 01	50.3		102.88		51.78		47,988		24,154		2,485,000		7	1,548	100.0
Jul YTD 2001	76.7		138.17		106.00		312,426		239,696		33,117,947				
Total 2001	70.0		127.72		89.44		549,270		384,655		49,127,099				
Jan 02	57.9	-1.5	107.83	-28.9	62.46	-29.9	47,988	12.7	27,798	11.1	2,997,439	-21.0	7	1,548	100.0
Feb 02	67.7	-3.7	114.63	-16.5	77.58	-19.6	43,344	12.7	29,333	8.5	3,362,458	-9.4	7	1,548	100.0
Mar 02	77.4	-11.1	129.00	-10.9	99.86	-20.8	47,988	12.7	37,146	0.2	4,792,017	-10.7	7	1,548	100.0
Apr 02	91.1	9.8	146.81	2.2	133.71	12.2	40,920	-11.9	37,269	-3.3	5,471,438	-1.1	6	1,364	100.0
May 02	82.4	5.3	141.44	0.4	116.53	5.7	42,284	-11.9	34,839	-7.2	4,927,535	-6.9	6	1,364	100.0
Jun 02	80.2	-0.2	134.60	-0.8	107.90	-1.0	40,920	-11.9	32,805	-12.0	4,415,432	-12.7	6	1,364	100.0
Jul 02	77.5	-0.1	122.17	4.2	94.67	4.1	42,284	-11.9	32,765	-12.0	4,002,956	-8.3	6	1,364	100.0
Aug 02	70.6	-1.6	113.57	6.4	80.21	4.6	42,284	-11.9	29,863	-13.3	3,391,613	-7.8	6	1,364	100.0
Sep 02	73.2	39.8	139.82	14.9	102.38	60.6	40,920	-11.9	29,963	23.2	4,189,564	41.5	6	1,364	100.0
Oct 02	73.7	4.5	137.21	15.9	101.19	21.1	47,802	-0.4	35,251	4.1	4,836,853	20.7	7	1,542	88.5
Nov 02	57.2	-5.7	115.29	12.8	65.89	6.3	46,260	-0.4	26,440	-6.1	3,048,192	5.9	7	1,542	100.0
Dec 02	48.0	-4.7	106.91	3.9	51.29	-1.0	47,802	-0.4	22,932	-5.1	2,451,751	-1.3	7	1,542	100.0
Jul YTD 2002	75.9	-1.1	129.20	-6.5	98.03	-7.5	305,728	-2.1	231,955	-3.2	29,969,275	-9.5			
Total 2002	70.9	1.3	127.22	-0.4	90.22	0.9	530,796	-3.4	376,404	-2.1	47,867,248	-2.5			
Jan 03	54.4	-6.1	105.69	-2.0	57.52	-7.9	47,802	-0.4	26,014	-6.4	2,749,348	-8.3	7	1,542	100.0
Feb 03	63.3	-6.4	115.23	0.5	72.97	-5.9	43,176	-0.4	27,342	-6.8	3,150,672	-6.3	7	1,542	100.0
Mar 03	77.1	-0.4	137.62	6.7	106.10	6.3	47,802	-0.4	36,855	-0.8	5,071,867	5.8	7	1,542	100.0
Apr 03	75.7	-16.8	131.42	-10.5	99.55	-25.6	46,260	13.0	35,040	-6.0	4,605,024	-15.8	7	1,542	100.0
May 03	77.3	-6.1	139.21	-1.6	107.65	-7.6	47,802	13.0	36,964	6.1	5,145,801	4.4	7	1,542	100.0
Jun 03	79.8	-0.5	136.77	1.6	109.15	1.2	46,260	13.0	36,916	12.5	5,049,065	14.4	7	1,542	100.0
Jul 03	79.7	2.8	122.84	0.5	97.89	3.4	47,802	13.0	38,093	16.3	4,679,156	16.9	7	1,542	100.0
Aug 03	66.9	-5.3	105.92	-6.7	70.87	-11.6	47,802	13.0	31,982	7.1	3,387,555	-0.1	7	1,542	100.0
Sep 03	80.3	9.6	140.48	0.5	112.75	10.1	46,260	13.0	37,128	23.9	5,215,899	24.5	7	1,542	100.0
Oct 03	85.9	16.4	137.94	0.5	118.44	17.1	47,802	0.0	41,045	16.4	5,661,843	17.1	7	1,542	100.0
Nov 03	64.1	12.1	124.62	8.1	79.86	21.2	46,260	0.0	29,644	12.1	3,694,300	21.2	7	1,542	100.0
Dec 03	48.7	1.5	117.56	10.0	57.24	11.6	47,802	0.0	23,275	1.5	2,736,133	11.6	7	1,542	100.0
Jul YTD 2003	72.6	-4.4	128.36	-0.6	93.15	-5.0	326,904	6.9	237,224	-2.3	30,450,933	1.6			
Total 2003	71.1	0.3	127.77	0.4	90.87	0.7	562,830	6.0	400,298	6.3	51,146,663	6.8			
Jan 04	52.0	-4.5	122.22	15.6	63.52	10.4	47,802	0.0	24,844	-4.5	3,036,419	10.4	7	1,542	100.0
Feb 04	76.3	20.5	137.20	19.1	104.72	43.5	43,176	0.0	32,954	20.5	4,521,422	43.5	7	1,542	100.0
Mar 04	90.4	17.3	151.12	9.8	136.65	28.8	47,802	0.0	43,224	17.3	6,532,075	28.8	7	1,542	100.0
Apr 04	90.6	19.6	148.75	13.2	134.78	35.4	46,260	0.0	41,913	19.6	6,234,710	35.4	7	1,542	100.0
May 04	87.2	12.8	155.48	11.7	135.56	25.9	47,802	0.0	41,680	12.8	6,480,238	25.9	7	1,542	100.0
Jun 04	88.4	10.7	152.58	11.6	134.84	23.5	46,260	0.0	40,879	10.7	6,237,482	23.5	7	1,542	100.0
Jul 04	83.1	4.3	135.99	10.7	113.03	15.5	47,802	0.0	39,732	4.3	5,403,170	15.5	7	1,542	100.0
Aug 04	72.6	8.5	128.60	21.4	93.32	31.7	47,802	0.0	34,688	8.5	4,460,758	31.7	7	1,542	100.0
Sep 04	76.9	-4.1	160.45	14.2	123.45	9.5	46,260	0.0	35,592	-4.1	5,710,843	9.5	7	1,542	100.0
Oct 04	88.1	2.6	168.70	22.3	148.67	25.5	47,802	0.0	42,126	2.6	7,106,684	25.5	7	1,542	100.0
Nov 04	66.6	4.0	143.99	15.5	95.97	20.2	46,260	0.0	30,832	4.0	4,439,439	20.2	7	1,542	100.0

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Tab 8 - Classic

Washington, DC Selected Properties
Job Number: 163564_SADUM Staff: SS Created: September 07, 2007

Date	Occupancy		ADR		RevPar		Supply		Demand		Revenue		Census & Sample %		
	This Year	% Chg	This Year	% Chg	This Year	% Chg	This Year	% Chg	This Year	% Chg	This Year	% Chg	Census Props	Census Rooms	% Rooms STAR Participants
Dec 04	52.4	7.6	129.28	10.0	67.72	18.3	47,802	0.0	25,041	7.6	3,237,274	18.3	7	1,542	100.0
Jul YTD 2004	81.1	11.8	144.95	12.9	117.60	26.3	326,904	0.0	265,226	11.8	38,445,516	26.3			
Total 2004	77.0	8.3	146.25	14.5	112.65	24.0	562,830	0.0	433,505	8.3	63,400,514	24.0			
Jan 05	59.5	14.5	162.04	32.6	96.41	51.8	47,802	0.0	28,441	14.5	4,608,510	51.8	7	1,542	100.0
Feb 05	78.1	2.4	160.28	16.8	125.25	19.6	43,176	0.0	33,740	2.4	5,407,814	19.6	7	1,542	100.0
Mar 05	86.9	-3.9	167.34	10.7	145.41	6.4	47,802	0.0	41,537	-3.9	6,950,831	6.4	7	1,542	100.0
Apr 05	90.4	-0.2	179.89	20.9	162.64	20.7	46,260	0.0	41,825	-0.2	7,523,905	20.7	7	1,542	100.0
May 05	84.8	-2.7	172.74	11.1	146.53	8.1	47,802	0.0	40,549	-2.7	7,004,343	8.1	7	1,542	100.0
Jun 05	84.0	-5.0	167.66	9.9	140.79	4.4	46,260	0.0	38,846	-5.0	6,512,932	4.4	7	1,542	100.0
Jul 05	81.0	-2.6	148.03	8.9	119.88	6.1	47,802	0.0	38,712	-2.6	5,730,627	6.1	7	1,542	100.0
Aug 05	75.9	4.6	141.14	9.8	107.16	14.8	47,802	0.0	36,293	4.6	5,122,309	14.8	7	1,542	100.0
Sep 05	80.8	5.0	175.05	9.1	141.44	14.6	46,260	0.0	37,379	5.0	6,543,030	14.6	7	1,542	100.0
Oct 05	84.9	-3.7	187.87	11.4	159.52	7.3	47,802	0.0	40,588	-3.7	7,625,365	7.3	8	1,926	100.0
Nov 05	61.2	-8.2	172.55	19.8	105.53	10.0	57,780	24.9	35,338	14.6	6,097,563	37.3	8	1,926	100.0
Dec 05	55.2	5.3	154.58	19.6	85.31	26.0	59,706	24.9	32,950	31.6	5,093,488	57.3			
Jul YTD 2005	80.7	-0.6	165.90	14.4	133.80	13.8	326,904	0.0	263,650	-0.6	43,738,962	13.8			
Total 2005	76.1	-1.2	166.34	13.7	126.60	12.4	586,254	4.2	446,198	2.9	74,220,717	17.1			
Jan 06	55.3	-7.1	161.80	-0.1	89.44	-7.2	59,706	24.9	33,004	16.0	5,340,026	15.9	8	1,926	100.0
Feb 06	73.8	-5.6	175.53	9.5	129.52	3.4	53,928	24.9	39,792	17.9	6,984,541	29.2	8	1,926	100.0
Mar 06	84.6	-2.7	197.98	18.3	167.44	15.2	59,706	24.9	50,495	21.6	9,997,226	43.8	8	1,926	100.0
Apr 06	86.4	-4.4	196.35	9.2	169.68	4.3	57,780	24.9	49,931	19.4	9,804,137	30.3	8	1,926	100.0
May 06	84.7	-0.1	201.39	16.6	170.59	16.4	59,706	24.9	50,576	24.7	10,185,463	45.4	8	1,926	100.0
Jun 06	84.8	1.0	201.34	20.1	170.73	21.3	57,780	24.9	48,996	26.1	9,864,889	51.5	8	1,926	100.0
Jul 06	77.2	-4.7	157.68	6.5	121.65	1.5	59,706	24.9	46,064	19.0	7,263,193	26.7	8	1,926	100.0
Aug 06	72.0	-5.2	139.39	-1.2	100.35	-6.3	59,706	24.9	42,985	18.4	5,991,695	17.0	8	1,926	100.0
Sep 06	75.0	-7.2	190.88	9.0	143.20	1.2	57,780	24.9	43,348	16.0	8,274,203	26.5	8	1,926	100.0
Oct 06	82.4	-3.0	202.75	7.9	167.01	4.7	59,706	24.9	49,179	21.2	9,971,279	30.8	8	1,926	100.0
Nov 06	73.8	20.7	182.73	5.9	134.87	27.8	57,780	0.0	42,647	20.7	7,792,684	27.8	8	1,926	100.0
Dec 06	54.1	-2.0	154.15	-0.3	83.35	-2.3	59,706	0.0	32,283	-2.0	4,976,419	-2.3			
Jul YTD 2006	78.1	-3.2	186.41	12.4	145.57	8.8	408,312	24.9	318,858	20.9	59,439,475	35.9			
Total 2006	75.3	-1.1	182.21	9.5	137.19	8.4	702,990	19.9	529,300	18.6	96,445,755	29.9			
Jan 07	59.7	8.0	167.02	3.2	99.66	11.4	59,706	0.0	35,628	8.0	5,950,487	11.4	8	1,926	100.0
Feb 07	75.2	1.9	195.48	11.4	146.93	13.4	53,928	0.0	40,533	1.9	7,923,547	13.4	8	1,926	100.0
Mar 07	85.8	1.5	208.05	5.1	178.52	6.6	59,706	0.0	51,232	1.5	10,658,821	6.6	8	1,926	100.0
Apr 07	89.6	3.7	210.01	7.0	188.26	11.0	57,780	0.0	51,798	3.7	10,877,899	11.0	8	1,926	100.0
May 07	85.3	0.7	216.08	7.3	184.32	8.0	59,706	0.0	50,930	0.7	11,004,759	8.0	8	1,926	100.0
Jun 07	90.4	6.6	196.80	-2.3	177.88	4.2	57,780	0.0	52,226	6.6	10,278,055	4.2	8	1,926	100.0
Jul 07	85.6	10.9	173.92	10.3	148.81	22.3	59,706	0.0	51,086	10.9	8,884,707	22.3	8	1,926	100.0
Jul YTD 2007	81.7	4.0	196.68	5.5	160.61	10.3	408,312	0.0	333,433	4.6	65,578,275	10.3			

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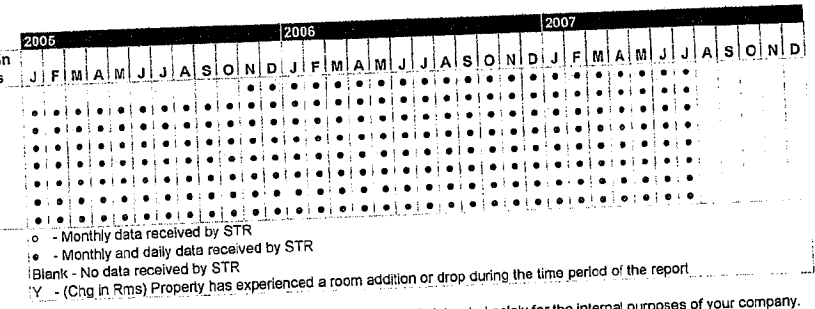
Tab 9 - Response Report

Washington, DC Selected Properties
Job Number: 163564_SADUM Staff: SS Created: September 07, 2007

STR Code	Name of Establishment	City & State	Zip Code	Aff Date	Open Date	Rooms	Chg in Rms
53607	Embassy Suites Washington Convention Ctr	Washington, DC	20001	Nov 2005	Nov 2005	384	
4000	Holiday Inn Washington DC On The Hill	Washington, DC	20001	Jun 1995	May 1970	343	
37375	Courtyard Washington Convention Center	Washington, DC	20004	Jun 1999	Jun 1999	188	
39594	Hilton Garden Inn Washington DC Franklin Square	Washington, DC	20005	Jan 2000	Jan 2000	300	
41569	Homewood Suites Washington DC Convention Ctr	Washington, DC	20005	Apr 2001	Apr 2001	175	
7621	Hotel Helix	Washington, DC	20005	Oct 2002	Oct 1979	178	Y
36494	Residence Inn Vermont Avenue	Washington, DC	20005	Feb 1999	Feb 1999	202	
36386	Courtyard Washington Embassy Row	Washington, DC	20036	Oct 1998	Oct 1998	156	
			Total Properties:		8	1926	



o - Monthly data received by STR
• - Monthly and daily data received by STR
Blank - No data received by STR
Y - (Chg in Rms) Property has experienced a room addition or drop during the time period of the report

No representation is made as to the completeness or accuracy of the information in this report. The information is in no way to be construed as a recommendation by Smith Travel Research of any industry standard and is intended solely for the internal purposes of your company. It should not be published in any manner unless authorized by Smith Travel Research. A blank row indicates insufficient data. Copyright © 2007 Smith Travel Research, Inc. All rights reserved.

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ab 10 - Help

ethodology

While virtually every chain in the United States provides STR with data on almost all of their properties, there are still some hotels that don't submit data. But we've got you covered.

Every year we examine guidebook listings and hotel directories for information on hotels that don't provide us with data. We don't stop there. We call each hotel in our database every year to obtain "published" rates for multiple categories. Based on this information we group all hotels - those that report data and those that don't - into groupings based off of price level and geographic proximity. We then estimate the non-respondents based off of nearby hotels with similar price levels.

Similarly, we sometimes obtain monthly data from a property, but not daily data. We use a similar process. We take the monthly data that the property has provided, and distribute it to the individual days based on of the revenue and demand distribution patterns of similar hotels in the same location.

We believe it imperative to perform this analysis in order to provide interested parties with our best estimate of total lodging demand and room revenue on their areas of interest. Armed with this information a more informed decision can be made.

Glossary

ADR (Average Daily Rate)
Room revenue divided by rooms sold.

Affiliation Date
Date the property affiliated with current chain/flag

Census (Properties and Rooms)
The number of properties and rooms that exist (universe)

Change in Rooms
Indicator of whether or not an individual hotel has had added or deleted rooms.

Demand (Rooms Sold)
The number of rooms sold (excludes complimentary rooms).

Full Historical TREND
Data on selected properties or segments starting in 1987.

Occupancy
Rooms sold divided by rooms available.

Open Date
Date the property opened

Percent Change
Amount of growth, up, flat, or down from the same period last year (month, ytd, three months, twelve months). Calculated as ((TY-LY)/LY) * "100".

Revenue (Room Revenue)
Total room revenue generated from the sale or rental of rooms.

RevPAR - Revenue Per Available Room
Room revenue divided by rooms available (occupancy times average room rate will closely approximate RevPAR).

Sample % (Rooms)
The % of rooms STR receives data from. Calculated as (Sample Rooms/Census Rooms) * "100".

Standard Historical TREND
Data on selected properties or segments starting in 1997.

STR Code
Smith Travel Research's proprietary numbering system. Each hotel in the lodging census has a unique STR code.

Supply (Rooms Available)
The number of rooms times the number of days in the period.

Twelve Month Moving Average
The value of any given month is computed by taking the value of that month and the values of the eleven preceiding months, adding them together and dividing by twelve.

Year to Date
Average or sum of values starting January 1 of the given year.

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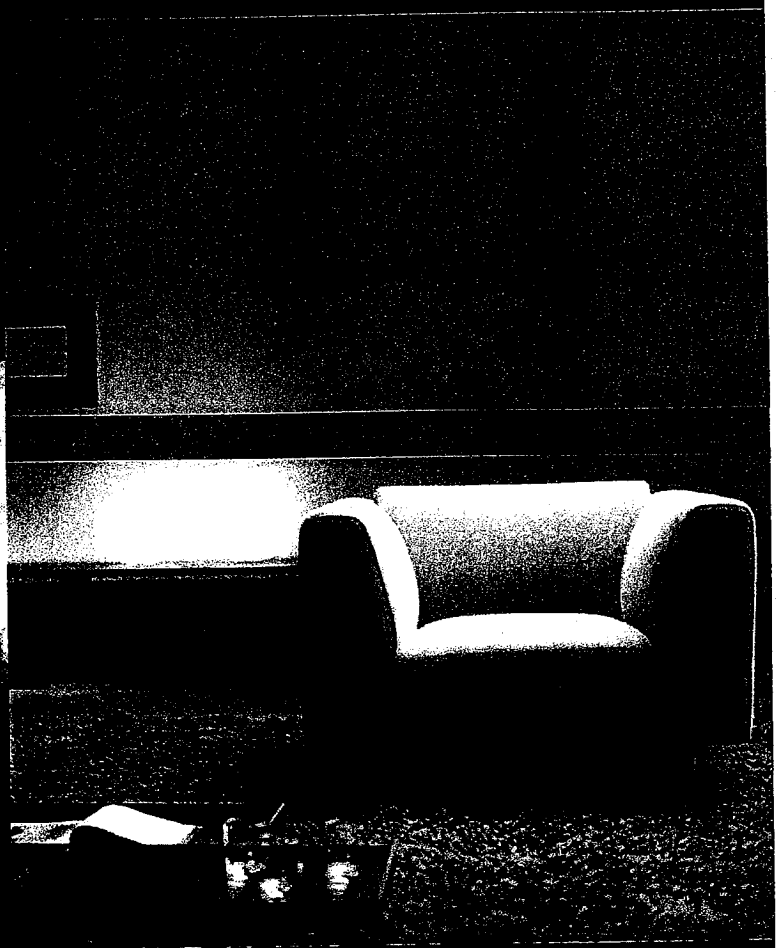
You appreciate modern design. Its clean lines. Its simplicity. Your life is an expression of that style. You live for design. You will love Moderno. Visit LoveModerno.com to learn more about this collection of 19 stylish residences at U & 12th streets.

UILDING

NEIGHBORHOOD

LIVING AREAS

KITCHENS



MODERNO.10&12 / FLOOR PLANS

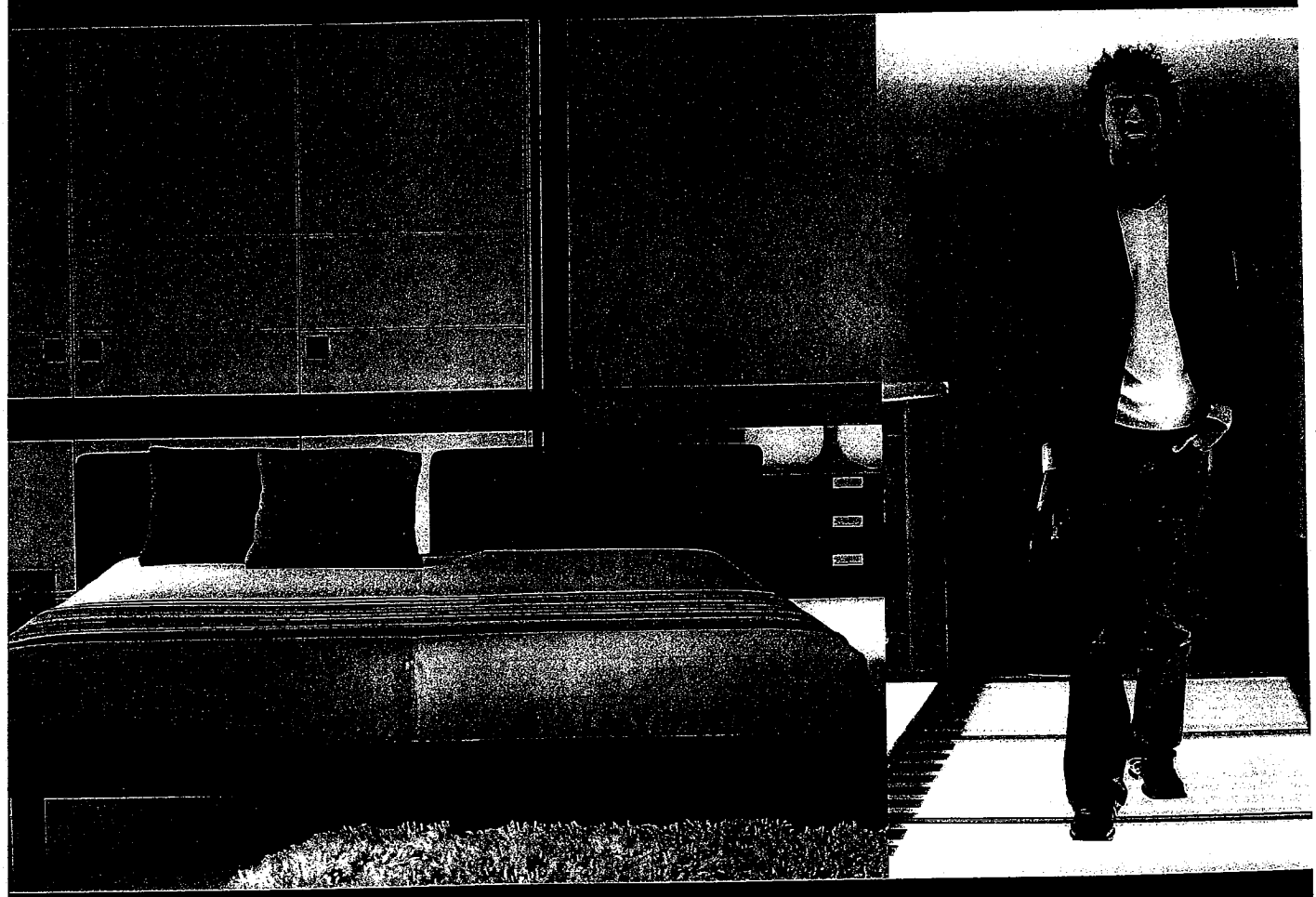
BATHROOMS

LIGHTING

MECHANICALS

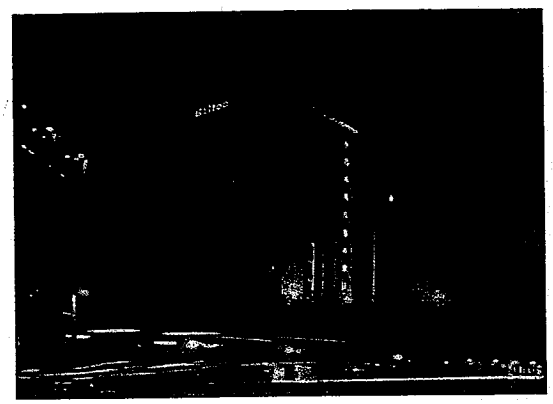
COMMUNICATIONS

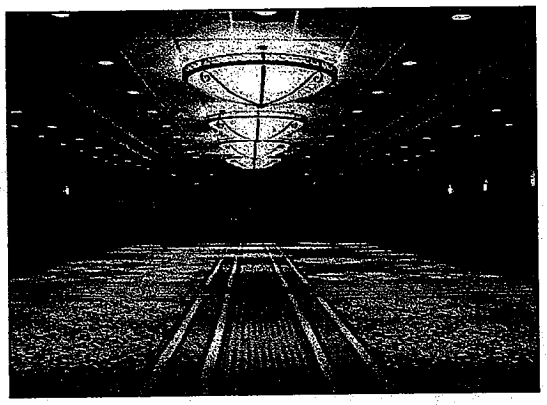
OUTDOOR SPACE



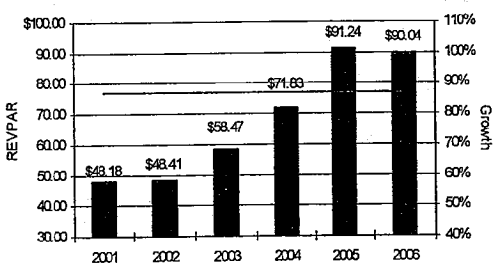
Hilton Hotel

Washington D.C./Silver Spring, Maryland

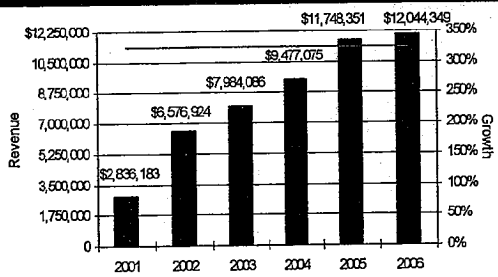




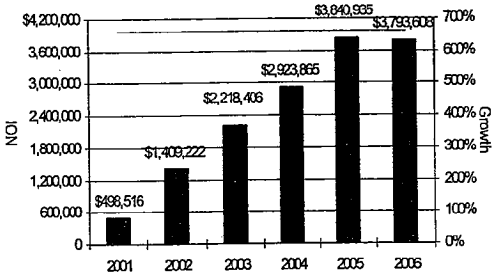
REVPAR



Revenue



NOI



Key Statistics

- Led due diligence and transition of this acquisition in December 1999
- Total revenue growth from 2001-2006 of 324%
- NOI growth from 2001-2006 of 661%
- Acquired for $9 Million (independent property owned and operated by Lodgian)
- Core renovation from Jan.-Dec. 2001 of $9.1 Million
- Obtained Hilton flag in November 2001
- Repositioned in government and corporate markets

Milestone Hospitality Management

MILESTONE
GROUP OF COMPANIES

FOIA CONFIDENTIAL TREATMENT REQUESTED

ROCKVILLE TOWN SQUARE

Rockville, Maryland

EXECUTIVE SUMMARY

The residential component of the development consists of 644 luxury residential units (apartments and condominiums) and 970 parking spaces located in four buildings. The buildings also contain approximately 174,000 square feet of ground-level retail space that the Owner has sold to Federal Realty Investment Trust (one of the largest and most successful REITs focused on retail properties), plus an additional 977 parking spaces that the Owner will turned over to the City of Rockville for public use. Pursuant to the Owner's redevelopment agreement with the City, 94 of the 644 residential units are designated as moderately priced dwelling units ("MPDUs") and will be sold or rented at moderate discounts to market rates.

Building Name	*The Fenestra*	*The Lunette*	*The Venetian*	*The Palladian*	*Total*
Block(s)	1 and 2	3B	4	5	—
Projected Opening Date	May 2007	March 2007	July 2007	March 2007	—
# of Stories	5	5	5	6	—
Gross Building Square Feet					
Residential	267,654	182,811	126,451	206,386	783,302
Retail	71,907	35,973	19,665	46,137	173,682
Parking	240,076	105,478	326,056	113,730	785,340
Total	579,637	324,262	472,172	366,253	1,742,324
# of Residential Units					
Market-rate	207	122	92	129	550
Moderate-rate	34	20	17	23	94
Total	241	142	109	152	644
Net Residential Square Feet					
Apartment Space					
Market-rate	191,643	134,914	93,517	134,790	554,864
Moderate-rate	27,148	17,052	11,886	19,223	75,309
Subtotal Apartment Space	218,791	151,966	105,403	154,013	630,173
Storage Space	0	0	0	2,160	2,160
Total	218,791	151,966	105,403	156,173	632,333
# of Parking Spaces					
Residential Spaces	324	250	164	232	970
Public Spaces	225	0	630	122	977
Total	549	250	794	354	1,947

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Based on a strong condominium market when the development was conceived, the Owner initiated a sales program for the residential units in all four buildings during 2005 and, as of November 30, 2006, a total of 182 units were under contract to individual buyers (170 market-rate units and 12 moderate-rate units). The average sales price for the market-rate units under contract is $507 per square foot and the average price for the moderate-rate units is $195 per square foot (with the sales price for each moderate-rate unit type set by the City of Rockville).

Of the 182 units under contract, 96 units (53%) are in The Palladian, which has a total of 152 units and is scheduled to be the first building to be completed (in March 2007). The Owner's current plan is to close on the contracts for the units in The Palladian and to continue to market the remaining units in this building for sale. Due to a weakening "for-sale" market and a very strong rental market, the Owner is considering marketing the units in The Fenestra, The Lunette, and The Venetian for rent. However, the Owner has complete flexibility to proceed with any other program that includes the sale and/or rental of any of the units.

ADDITIONAL COMPONENTS OF ROCKVILLE TOWN SQUARE

The four residential / retail / parking buildings are key components of Rockville Town Square, which has been planned as a classic, mixed-use urban development that is the new focal point of the City. At the center of the development is an open-air plaza about the size of a football field, which will serve as a meeting place and as a host to community events and concerts. Wide sidewalks with extensive plantings, benches, restaurant seating, and artwork will border the two streets that traverse the site. In addition to the four residential / retail / parking buildings, Rockville Town Square also includes:

- A new 100,000 square foot flagship Montgomery County Library, a four-story, state-of-the-art facility constructed by Montgomery County that opened in November 2006.
- A new 40,000 square foot community center located adjacent to the library, to be known as the Arts & Innovation Center, that will serve as the new home of the Metropolitan Center for the Visual Arts at Rockville. This building, which is being constructed by the City and is scheduled to open during the second quarter of 2007, will feature teaching studios, artist studios, art galleries, a rooftop facility, and an events room for lectures and meetings.
- Metro Plaza, a Class A office complex that is being developed and is owned by Foulger-Pratt Development. The first office building (Metro Plaza I) was completed in 2002 and it contains 228,000 rentable square feet and 600 parking spaces on eight above-ground levels and three below-ground levels. Major tenants in the building include Ferris Baker Watts, the Montgomery County Department of Economic Development, SAS, and the NIH Federal Credit Union. Two additional 10- to 12-story buildings (one of which may be developed as a hotel) are planned to complete Metro Plaza.

More extensive information on Rockville Town Square (including an interactive video tour) can be found on the development's website: www.rockvilletownsquare.com.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 008976

INVESTMENT HIGHLIGHTS

- ***Well Conceived Master Plan:*** Rockville Town Square is the result of an extensive, focused effort by a public/private partnership comprised of RD Rockville, the City of Rockville, and Federal Realty Investment Trust to create a high quality mixed-use development that will serve as a new focal point of the City.

- ***Highly Desirable and Accessible Location:*** Rockville Town Square is located in the heart of Rockville, which is the fifth largest city in Maryland and the seat of Montgomery County. The development is just one mile east of both Exits 5 and 6 on the Dwight D. Eisenhower Highway (I-270), which intersects with the Capital Beltway (I-495) five miles to the south. It is adjacent to the Rockville train station, which services the Red Line of the Washington-area MetroRail system, the Brunswick Line of MARC (the Maryland regional commuter rail service), and several Amtrak routes. In addition, three major airports -- Reagan National, Dulles International, and Baltimore-Washington International -- are within 30- to 45-minute drives from Rockville Town Square.

- ***High Quality Construction:*** As a part of the planning process, the public/private partnership created a Master Plan and Design Guidelines that govern the development of the entire Town Square development and the individual buildings within it. In accordance with these plans and guidelines, the four residential / retail / parking buildings are high quality concrete and steel structures with appealing aesthetics, distinctive embellishments, and state-of-the-art technologies that make them extremely attractive to potential residents and businesses.

- ***Luxurious Living Units:*** The individual units incorporate numerous features that place them at the top of the Washington-area residential market, including: nine-foot ceilings; oversized double-pane insulated windows; individually-controlled HVAC units; hardwood flooring; granite countertops; stainless steel appliances and finishes; washer/dryers in each unit; and wiring for high-speed Internet. Approximately 40% of the units have outdoor balconies or terraces.

- ***Numerous In-building Amenities:*** Amenities in each of the four residential buildings for the exclusive use of residents include: fitness centers; club rooms with TV, entertainment bar, and kitchenette; and designated parking spaces. In addition, The Lunette has a swimming pool for the exclusive use of its residents, and residents of the three other buildings will have exclusive use of a swimming pool within The Venetian. Each of the buildings features high security, with controlled tenant access to the parking, lobby, and common areas.

- ***Numerous On-site Amenities:*** As a large-scale, mixed-use development, Rockville Town Square will offer residents numerous shopping, dining, and entertainment options to satisfy their daily requirements. The retail component of the development will feature a mix of national and local establishments and will include, among others, a supermarket (negotiations currently underway with several interested chains), a drug store (CVS), a bank (Chevy Chase Bank), a gym (Gold Gym's new high-end format), a spa (Aveda),

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008977

a dry cleaners, a toy store, a jeweler, a stationary store, and several restaurants (including fine dining, casual restaurants, delis, and specialty shops). In addition, the new Montgomery County Library, the Arts & Innovation Center, and the Town Square will be major draws to Rockville Town Center.

- ***Numerous Other Nearby Attractions and Facilities:*** Rockville Town Square is at the center of a larger (approximately 60 acres) area that is known as Rockville Town Center, which includes many other office, retail, and civic buildings, in addition to the train station. Within a few blocks of Rockville Town Square are a 13-screen Regal movie theatre with stadium seating; several City, County, and Federal office buildings and court houses; and numerous restaurants and shops. In addition to the adjacent Metro Plaza office tenants, major companies like Westat, Inc., Lockheed Martin and Booz Allen Hamilton have a strong presence in Rockville. In total, the City has approximately six million square feet of office space.

- ***Significant Public Investment:*** Rockville Town Square includes approximately $100 million of public investments made by the City, County, State, and Federal governments, including the Library, the Arts & Innovation Center, the public parking, and the utility infrastructure, roads and sidewalks within and around the perimeter of the property.

- ***Strong Multi-family Rental Market:*** The Washington metropolitan area has one of the strongest multi-family rental markets in the country, due to a healthy and stable economy with substantial regular annual job growth and significant constraints on new supply. According to Delta Associates, the vacancy rate for investment-grade (Class A and B) apartments in the metropolitan area as of September 30, 2006 was just 1.4%, the lowest of any metro area in the nation.

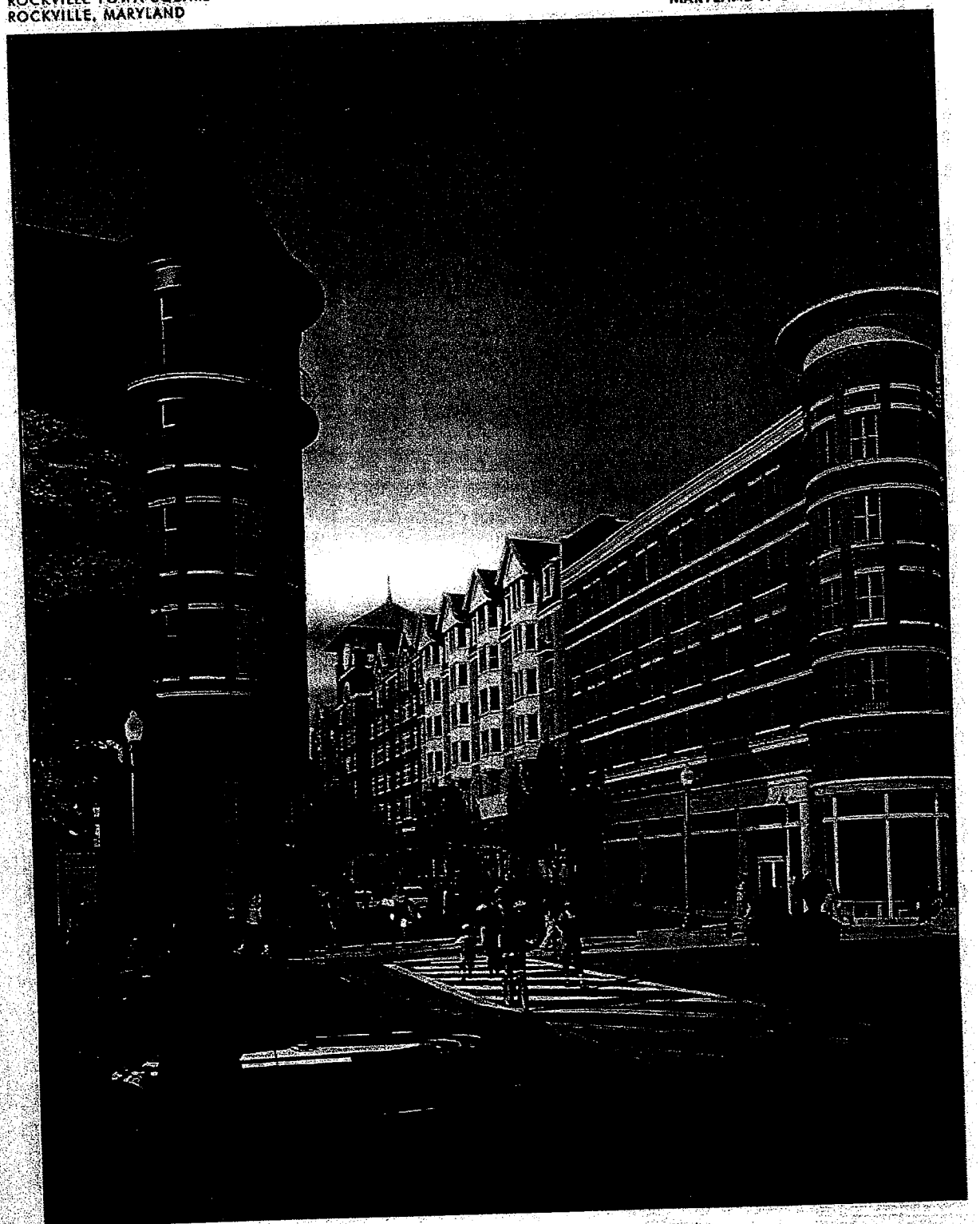
- ***High Replacement Costs:*** Land and construction costs have increased substantially since the development was initiated. Prime in-fill locations in the Washington metropolitan area, particularly ones adjacent to MetroRail stations, would cost not less than $450 per buildable square foot.

- ***Potential Condominium Exit Strategy:*** The sale of individual apartment units is a strong potential exit strategy for any investor because the buildings were developed as condominiums and because the Owner has already achieved a significant number of sales at an average price of over $500 per square foot (at an early stage in the sale process).

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 008978

ROCKVILLE TOWN SQUARE
ROCKVILLE, MARYLAND

MARYLAND AVENUE PERSPECTIVE



AMENDED AND RESTATED GROUND LEASE

This Amended and Restated Ground Lease (the "Lease"), is dated as of the 28th day of September, 2007 ("New Effective Date"), by and between MEDAL, INC., a Virginia corporation, having an address of 9210 Pegasus Court, Potomac, Maryland 20854 ("Landlord"), and 1920 8th STREET LLC, a Delaware limited liability company, having its office at 4326 8th Street, NW, Washington, D.C. 20011 ("Tenant").

WHEREAS, Landlord and Tenant entered into that certain Ground Lease ("Original Lease") dated as of August 3, 2007 ("Effective Date").

WHEREAS, Landlord and Tenant wish to amend and restate the Original Lease on the terms and conditions set forth herein.

All exhibits hereto are incorporated herein by this reference.

WITNESSETH

In consideration of Ten Dollars ($10.00), other good and valuable consideration, and the mutual covenants contained herein, and intending to be legally bound hereby, Landlord and Tenant hereby agree with each other to amend and restate the Original Lease in its entirety as of the New Effective Date as follows:

Section 1 Premises.

Landlord hereby leases and lets to Tenant, and Tenant hereby takes and hires from Landlord, upon and subject to the terms, conditions, covenants and provisions of this Lease, all that certain parcel of land, known as Lot 46 in Square 393, N.W., Washington, D.C. containing approximately 11,330 square feet, and, subject to the terms of this Lease, including all appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto, improvements existing thereon from time to time, and development or other rights created therefrom (all the foregoing hereinafter referred to as the "Premises"). The Premises are depicted on **Exhibit A** hereto.

The rights granted to Tenant under this Lease are referred to herein as the "Leasehold Estate." The rights of Landlord in the Premises after giving effect to the Leasehold Estate are referred to herein as the "Reversionary Estate." The "Reversionary Estate" includes all of Landlord's rights pursuant to this Lease.

Section 2 Delivery of Premises; Term.

Subsection 2.1

(a) The Premises were delivered to Tenant on the Effective Date in their as-is condition. Tenant acknowledges and agrees that Tenant has had full, ample, unrestricted opportunity to conduct Tenant's due diligence with respect to the Premises and the Leasehold Estate and that tenant has completed such due diligence and is satisfied with the results of such due diligence, without exception, or that Tenant has waived such rights.

(b) Tenant has made the following deliveries prior to the date hereof:

(i) A check in the amount of $35,000.00 for attorneys fees to Landlord;

(ii) A check in the amount of the Fixed Rent for the Initial Term ("Initial Prepaid Rent"), to be deposited in escrow with Regional Title, Incorporated ("Escrow Agent") on the terms and conditions set forth in an Escrow Agreement by and among Landlord, Tenant and Escrow Agent dated on or about the date hereof ("Escrow Agreement"); and

(iii) A check in the amount of $15,000.00 for attorneys fees to Landlord to be deposited in escrow with Escrow Agent on the terms and conditions set forth in the Escrow Agreement ("Attorney Fee Escrow").

(c) Landlord agrees:

(i) Landlord has delivered to Tenant all due diligence materials in Landlord's possession, including without limitation, surveys, reports and studies.

(ii) Landlord has delivered to Tenant a standard form of Owner's Title Affidavit in the form attached hereto as **Exhibit B** sufficient to delete any exceptions from Tenant's title commitment and subsequent title policy, excluding only those encumbrances existing as of the Effective Date ("Permitted Encumbrances), and any documents reasonably required by Tenant's title insurance company to remove the standard title exceptions for parties in possession and mechanics' or materialman's liens; and

(iii) Landlord shall deliver to Tenant within fifteen (15) days after receipt of Tenant's request therefor any documents reasonably required by Tenant's title company evidencing Landlord's authority to enter into this Lease, including, without limitation, certifications, votes and other documentation relating to Landlord's organizational structure.

(d) The Financing Contingency set forth in Section 2.1(d) of the Original Lease is hereby waived.

(e) In addition to the deliveries set forth in Section 2.1(b), Tenant hereby agrees to deliver to Landlord at time of execution of this Lease an additional check for $15,000, for attorneys fees.

(f) Tenant hereby authorizes Escrow Agent to release the Attorney Fee Escrow and the Initial Prepaid Rent to Landlord.

Subsection 2.2

(a) The term of this Lease shall commence on the Effective Date and shall expire one (1) year from the Effective Date (the "Initial Term" and together with each Renewal Period, as defined in Subsection 2.2(b) below, the 'Term").

(b) Following the conclusion of the Initial Term, Tenant may extend the Term of this Lease for nine (9) consecutive extension periods of one (1) year each (each, a "Renewal Period"),

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upon the terms set forth in this Lease in existence at the end of the preceding Initial Term or Renewal Period, as applicable. Tenant may extend the Lease by giving Landlord written notice of Tenant's election ("Extension Notice") not later than sixty (60) days prior to the expiration of the then current Initial Term or Renewal Period, as applicable. Tenant may exercise more than one Renewal Period at any given time. An Extension Notice shall not be valid if Tenant is in Default of this Lease (as defined in Section 17.1) at the time the Extension Notice is given. Notwithstanding anything to the contrary contained herein, including, without limitation, the preceding provisions of this Subsection 2.2(b), Tenant's right to extend the Term of this Lease shall not terminate or be extinguished due to Tenant's failure to give Landlord an Extension Notice as herein provided, unless and until (i) Landlord shall have notified the Leasehold Mortgagee (as defined below), if any, of such failure; and (ii) the Leasehold Mortgagee shall have failed to exercise the Renewal Option on behalf of Tenant within thirty (30) days following such notice from Landlord.

Section 3 Prepaid Rent; Rent

(a) On the first day of each Renewal Period Tenant shall deliver to Landlord prepaid rent for such Renewal Period in an amount equal to three (3) monthly installments of the Annual Fixed Rent for such Renewal Period (for first and last 2 months of such Renewal Term), (prepaid rent for the last 2 months of a Renewal Period shall be referred to as the "Renewal Period Prepaid Rent"). The Renewal Period Prepaid Rent shall be held by Landlord in an interest bearing bank account of Landlord's choosing. The Renewal Period Prepaid Rent, plus any interest thereon accrued, shall be applied to Tenant's obligation to pay the last two (2) monthly installments of Annual Fixed Rent for the current Renewal Period.

(b) Commencing as of the expiration of the Financing Contingency Period, Tenant shall pay to Landlord, at the business address of Landlord specified on Page 1 hereof, or at such other address as Landlord shall have designated, from time to time, by notice to Tenant, the Fixed Rent set forth below, payable to Landlord as set forth below, in advance, without demand or set-off ("Fixed Rent"), as set forth below in this Section 3(b). In addition to the Fixed Rent, Tenant shall pay all utilities, taxes, real estate taxes, insurance, maintenance and repair costs, and other optional or required expenses including, without limitation, the items set forth in Section 6 of this Lease. The Fixed Rent shall be determined as follows:

PERIOD	ANNUAL FIXED RENT	MONTHLY INSTALLMENTS
Initial Term	$150,000.00, which has been released to Landlord as of the New Effective Date	N/A
First Renewal Period	$150,000.00, payable in monthly installments	$12,500.00
Second Renewal Period	$150,000.00, payable in monthly installments	$12,500.00

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Third Renewal Period	$150,000.00, payable in monthly installments	$12,500.00
Fourth Renewal Period	$150,000.00, payable in monthly installments	$12,500.00
Fifth Renewal Period	$200,000.00, payable in monthly installments	$16,666.67
Sixth Renewal Period	$200,000.00, payable in monthly installments	$16,666.67
Seventh Renewal Period	$200,000.00, payable in monthly installments	$16,666.67
Eighth Renewal Period	$200,000.00, payable in monthly installments	$16,666.67
Ninth Renewal Period	$200,000.00, payable in monthly installments	$16,666.67

(c) In addition to Fixed Rent, Tenant shall pay, as additional rent, all sums of money required to be paid to Landlord pursuant to the terms of this Lease (collectively, "Additional Rent") without deduction or offset, whether or not such fee, charge or other amount is referred to herein as Fixed Rent or Additional Rent. Fixed Rent and Additional Rent are sometimes referred to in this Lease as "Rent."

(d) If Tenant fails to pay any installment of Rent or make any payment of Fixed Rent or Additional Rent due hereunder within five (5) days from the date upon which said installment or payment is due, Tenant agrees to pay a late charge equal to five percent (5%) of each delinquent installment. The late charge shall be deemed Additional Rent and shall be payable immediately when due.

(e) Upon Landlord's receipt of any check from Tenant which is dishonored for payment, Landlord shall have the right, in addition to any other remedy at law or equity, to require Tenant to make all future payments due to Landlord hereunder by cash, or by certified or cashier's check. All bank charges for such dishonored checks shall be the responsibility of Tenant, due and payable under this Lease as Additional Rent.

Section 4 Rent to be Net to Landlord.

The Rent payable hereunder shall be net to Landlord, so that this Lease shall yield to Landlord the net annual Fixed Rent specified herein during the Term of this Lease.

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Section 5 Use of Premises.

(a) Subject to the provisions of Section 7, below, the Premises may be used for any lawful uses, specifically including without limitation, rental or for-sale mixed-use housing, retail, institutional and/or office uses. Nothing contained in this Lease shall be deemed to impose upon Tenant, either directly, indirectly, constructively or implicitly, an obligation to construct improvements upon the Premises, open for business, or remain open and operating for any period.

(b) With respect to the use of the Premises, Tenant shall:

(i) Give Landlord prompt written notice of any accident, fire, loss, or damage occurring on or to the Premises;

(ii) Provide a timely copy to Landlord of any notice Tenant receives with respect to the Premises from any government authority, lender, construction company, or insurer.

(iii) Not to undertake, permit, authorize, or suffer, or permit the use or occupancy on the Premises or any part thereof at any time during the Term, the presence, use, manufacture, handling, generation, storage, treatment, discharge, release or disposal of, under or about the Premises or any part thereof of any hazardous substance, or the transportation to or from the Premises or any part thereof of any hazardous substances, except in compliance with applicable law.

Section 6 Taxes and Utility Expenses.

(a) Tenant shall, commencing as of the Effective Date and thereafter during the Term of this Lease, be responsible for paying and discharging punctually, as and when the same shall become due and payable, all real property taxes and special and general assessments (hereinafter referred to as "Taxes") and each and every installment thereof which shall or may become due and payable after the Effective Date, together with any interest and penalties thereon (all of which shall also be included in the term "Taxes" as heretofore defined) and all water and sewer, gas, electricity, telephone, and other services, furnished to the Premises or the occupants thereof during the Term of this Lease (hereinafter referred to as "Utility Expenses"). Tenant shall be deemed to have complied with the covenants of this paragraph if Tenant shall produce and exhibit to Landlord upon written request satisfactory evidence of such payment and confirmation from the applicable utility provider, taxing authority, etc. that such obligation has been satisfied in full. In no event shall Tenant be entitled to claim that it is not obligated to pay any Taxes, Utility Expenses or other expenses of operating the Premises, or that Landlord is obligated to pay the same, on the grounds that any such expense is an obligation of the Landlord. In the event Tenant fails to satisfy any one or more of such payment(s), then Landlord shall have the right but not the obligation, in addition to all other rights and remedies available at law or equity, to make such payment and demand and receive payment therefor pursuant to Section 17.3 of this Lease.

(b) Tenant or its designees shall have the right to contest or review timely all Taxes by legal proceedings, or in such other manner as may be permitted by applicable law (which, if instituted, Tenant or its designees shall conduct promptly at Tenant's or its designee's sole cost and expense, and free of any expense to Landlord, and, if necessary, in the name of and with the cooperation of Landlord, which shall be limited to Landlord executing all documents reasonable

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and necessary to accomplish the foregoing). If required, Tenant shall post an appropriate bond as may be required by the applicable taxing authority. If there shall be any refunds or rebates on account of the Taxes paid by Tenant under the provisions of this Lease, such refund or rebate shall belong to the party who paid the Taxes for the applicable period. Landlord shall, upon the request of Tenant, sign any receipts which may be necessary to secure the payment of any such refund or rebate, and will pay over to Tenant any such refund or rebate as received by Landlord and applicable to any period for which Tenant paid the applicable Taxes. Any costs, fees, penalties, and/or expenses incurred by Landlord with respect to any action under this Section 6(b) shall be paid by Tenant to Landlord as provided in Section 17.3.

Section 7 Improvements, Alterations, Surrender

(a) (i) Tenant shall have the right, at its own cost and expense, to construct, install, maintain and replace on any part or all of the Premises, at any time and from time to time, such buildings, parking areas, fences, driveways, walks, signs, satellite dishes, and other similar and dissimilar improvements as Tenant shall from time to time determine, including, without limiting the generality of the foregoing, rental or for-sale mixed-use housing, retail, institutional and/or office uses; provided that the same shall be in compliance with all then applicable building codes and ordinances. Tenant may not demolish existing completed structures or perform excavations except pursuant to plans and specifications approved by Landlord pursuant to Section 7(a)(ii) or as otherwise approved by Landlord in writing. Such improvements may, to the extent permitted by law, abut, be attached to or be integrated structurally with buildings constructed by Tenant or its affiliates on neighboring parcels; provided, however, that such improvements on or in conjunction with neighboring or adjacent parcels may not adversely affect the value of the Premises. Notwithstanding the foregoing in this Section 7(a), Tenant shall not have the right to use the Premises for any corrupt, noxious or immoral purpose, nor cause or suffer a waste of the property or to make any improvements or alterations that would reduce, upon completion, the overall value of the Premises. Tenant must construct all improvements and alterations in a first class manner and conformity with any and all applicable laws and regulations.

(ii) Landlord's prior written approval shall be required for Tenant's design/development plans and specifications for the construction of any building or site improvements at the Premises and upon any material change in any such plans and specifications; provided that:

(A) Tenant shall provide a complete set of design/development plans and specifications for Landlord's review;

(B) Landlord shall have fifteen (15) business days to review any initial plans and specifications and provide in writing its approval or its disapproval, describing with specificity the defect in question and Landlord's proposal for correcting the same, provided that Landlord may base its disapproval only on its showing of a structural defect, non-compliance with law or a violation of Section 7(a)(i), and Tenant is not obligated to address or make changes with respect to any comments or objections made on any other basis. If Landlord does not provide its written notice of disapproval within the fifteen (15) business day period described above, Landlord's approval shall be deemed given. If Tenant shall submit any amendments to

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previously-submitted plans and specifications to Landlord for approval, such changes shall be subject to the approval process above, but Landlord shall respond to the same within ten (10) business days.

(iii) Subject to the foregoing in this 7(a), Tenant may, at its option and at its own cost and expense, at any time and from time to time, make such alterations, changes, replacements, improvements and additions in and to the Premises, and the buildings and improvements thereon, as it may deem desirable, subject to Landlord's consent or approval as provided above. Tenant shall not demolish improvements on the property without Landlord's prior written consent, which consent shall not be withheld unreasonably.

(iv) Landlord agrees to reasonably cooperate with Tenant (including, without limitation, by signing applications) in obtaining any necessary Permits for any work (including, without limitation, initial construction, alterations, site improvements and sign installations) which Tenant is permitted to perform pursuant to this Lease, all at no cost to Landlord. In connection therewith Landlord shall execute applications, plats, subdivisions, site plans, certifications, documents and recordable instruments as may be required for any Permits, including without limitation, subdivisions, zoning variances and planned unit developments, which include the Premises. Landlord shall also cooperate with Tenant's efforts in providing for joint development of the Premises with adjoining and nearby properties for the allocation of development rights among such properties, including without limitation by executing joint development agreements, provided that such agreements or the improvements contemplated thereby do not reduce the value of the Premises.

(v) Tenant may subject the Premises to a condominium regime; provided that, (A) Landlord shall not have any declarant liability under the condominium regime; (B) Landlord shall execute such documents necessary or appropriate to subordinate its Reversionary Interest to the condominium regime; and (C) Tenant shall provide Landlord with condominium documents for review and Landlord shall have ten (10) days from the receipt of any such documents to object to the same, which may be based only on non-compliance with law. Landlord shall cooperate with Tenant's efforts to register and apply for such condominium and obtain all necessary approvals therefor.

(b) Tenant shall, at all times during the Term of this Lease, and at its own cost and expense, keep and maintain or cause to be kept and maintained in repair and good condition (ordinary wear and tear and damage by fire or other casualty and taking by eminent domain excepted), all buildings and improvements at any time erected on the Premises, and shall use all reasonable precaution to prevent waste, damage or injury.

(c) On the last day or sooner termination of the Term of this Lease, Tenant shall quit and surrender the Premises, and the buildings and permanent improvements then thereon, ordinary wear and tear excepted. In the event that any buildings shall be partially built at the time of termination, Tenant shall at Tenant's option either make provision to complete all building structures to shell condition at its expense or demolish the same to a safe, level condition, all at Tenant's expense.

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(d) Except as otherwise specifically provided in this Lease, Tenant hereby agrees to be fully liable for the payment of, and to cause to be paid, the entire cost of all buildings and improvements commenced on the Premises after the Effective Date. Title to the buildings and improvements when erected, constructed, installed or placed upon the Premises, shall automatically pass to, vest in and belong to Tenant until the expiration or sooner termination of the Term of this Lease, whereupon title to all buildings and improvements erected and/or installed upon the Premises shall automatically pass to, vest in and become the absolute property of the Landlord.

Section 8 Requirements of Public Authority.

(a) During the Term of this Lease, Tenant shall, at its own cost and expense, promptly observe and comply with all laws, ordinances, requirements, orders, directives, rules and regulations of the Federal and District of Columbia Governments and of all other governmental authorities affecting the Premises or the appurtenances thereto or any part thereof (collectively, "Requirements") whether such Requirements are in force at the commencement of the Term of this Lease or may in the future be passed, enacted or directed, and Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed with respect to the Premises as a result of the Requirements or because of the failure of Tenant to comply with any such Requirements (collectively, "Requirement Costs"); provided, however, that nothing in this Section 8 shall impose any liability on Tenant in connection with any costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of any failure by Landlord to comply with its obligations under this Lease

(b) Tenant shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of the Tenant or Landlord (if legally required), without cost or expense to Landlord, the validity or application of any Requirements and, if by the terms of any such Requirements, compliance therewith may legally be delayed pending the prosecution of any such proceeding, Tenant may delay such compliance therewith until the final determination of such proceeding.

(c) Landlord agrees to execute and deliver any appropriate papers or other instruments which may be necessary or proper to permit Tenant so to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement and to fully cooperate with Tenant in such contest; provided, however, that Tenant shall reimburse Landlord as Additional Rent, for reasonable out-of-pocket costs that Landlord incurs with respect to any such contest.

Section 9 Covenant Against Liens.

If, because of any act or omission of Tenant, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Landlord or any portion of the Premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after notice from Landlord to Tenant of the filing thereof; and Tenant shall indemnify and save harmless Landlord against and from all costs, liabilities, suits, penalties,

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claims and demands, including reasonable counsel fees, resulting therefrom. Tenant or its designees shall have the right to contest any such liens by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant or its designees shall conduct promptly at its own cost and expense, and free of any expense to Landlord).

Section 10 Access to Premises.

Landlord or Landlord's agents and designees shall have the right to enter upon the Premises at all reasonable times upon reasonable notice to examine same; provided that no such entry shall unreasonably interfere with construction or operation thereof or the conduct of business by Tenant and its tenants on the Premises.

Section 11 Assignment, Transfer and Subletting.

(a) Tenant may assign, transfer or sublease (in any such event, "Transfer") Tenant's interest in this Lease and Tenant's purchase option hereunder without Landlord's consent. Tenant's right to Transfer during the Term shall not be exhausted by a single exercise. Upon any such Transfer, Tenant shall not be relieved of its obligations hereunder. Tenant shall give written notice to Landlord not less than fifteen (15) days prior to such transfer of the identity of the transferee, and if construction has commenced on the Premises, evidence reasonably satisfactory to Landlord that the transferee has sufficient financial resources to undertake and complete the development. Landlord shall be entitled to reimbursement of its reasonable attorneys' fees incurred in connection with each such Transfer in an amount not to exceed $5,000.00.

(b) Subject to Tenant's rights in Section 33 below, Landlord may sell, transfer or assign its fee interest in the Premises or its Reversionary Estate, subject to the terms and conditions of this Lease; provided that Landlord may not sell, transfer, assign, encumber or grant any interests in or to the Premises to a competitor of Tenant, to any person owning or attempting to gain an interest in any land within one (1) mile of the Premises, or to any person who has expressed opposition to Tenant's project or is affiliated with a group which has expressed such opposition; and provided further that there shall be no such sale, transfer or assignment during the time the Subordination Agreement (defined in Section 12(e)) is in effect. Landlord shall give Tenant thirty (30) days prior written notice of any such sale, transfer or assignment and the name and address of the proposed assignee so as to verify the foregoing.

Section 12 Mortgaging of Leasehold Estate and Reversionary Estate.

(a) Tenant may, without the consent of Landlord, record a mortgage or deed of trust or otherwise encumber the Leasehold Estate (which mortgage, deed of trust or other encumbrance is referred to as the "Leasehold Mortgage"), if the holders of the indebtedness secured by the Leasehold Mortgage (the "Leasehold Mortgagee") shall give written notice to Landlord of the Leasehold Mortgage and the name and place for service of notice upon such Leasehold Mortgagee and expressly agree to the terms and conditions applicable to Leasehold Mortgages contained in this Section 12. Tenant acknowledges its understanding that, except as expressly provided in this Section 12, any such mortgage or financing shall be subordinate to Landlord's fee simple estate in the Premises. Tenant shall notify Landlord, by writing in advance,

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of the amount of any such Leasehold Mortgage and the amortization term and maturity date thereof.

(b) In the event that Landlord mortgages or otherwise financially encumbers the Reversionary Estate, Landlord shall be required to deliver to Tenant a Subordination and Non-Disturbance Agreement containing standard terms and conditions of subordination to this Lease reasonably acceptable to Tenant and any Leasehold Mortgagee, duly executed by the mortgagee or other individual or entity encumbering the Reversionary Estate.

(c) When giving notice to Tenant with respect to any breach or default, including any Default, arising from this Lease, Landlord must also serve a copy of such notice upon the Leasehold Mortgagee (of whose existence Landlord has been notified in writing by Tenant). Each Leasehold Mortgagee shall have the same period after its receipt of such written notice to remedy the alleged default or to cause the same to be remedied as is given to Tenant in this Lease. Leasehold Mortgagee also shall have an additional period of 15 days to remedy such alleged default or to cause the same to be remedied beyond that given to Tenant in this lease. Upon the occurrence of any default, each Leasehold Mortgagee shall have the right to cure such default, whether the same consists of failure to pay Fixed Rent, Additional Rent, or to perform any other matter which Tenant is required to do or perform pursuant to this Lease and Landlord shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by Tenant. Any Leasehold Mortgagee may become the legal owner of the Leasehold Estate created by this Lease by foreclosure of its Leasehold Mortgage against Tenant, as a result of the assignment of the Leasehold Estate created by this Lease in lieu of foreclosure, or by any other means. If Lender determines to foreclose the Leasehold Mortgage, the cure periods set forth above shall be extended by any period during which foreclosure proceedings are conducted, as the case may be. Any such proceedings shall be commenced promptly after the notice of default is delivered to Lender and shall be diligently prosecuted. Promptly after Lender or a designee of Lender acquires the Leasehold pursuant to foreclosure proceedings, Lender or its designee shall cure said breach or default. Notwithstanding anything provided to the contrary in the Lease, for so long as the Leasehold Mortgage is outstanding, the Lease shall not be terminated because of a default or breach thereunder on the part of Tenant which cannot be cured if Lender provides written notice to Landlord of its intent to exercise its remedies under the Leasehold Mortgage or appoint a receiver, and Lender diligently pursues such remedy to completion. The foregoing provisions notwithstanding, Tenant shall not be excused for the obligation to pay Rent under the terms of this Lease. Nothing in this Lease shall operate to deprive Landlord of its rights, if any, under any Leasehold Mortgage to cure a Tenant default.

(d) Notwithstanding any provision to the contrary contained herein, the following provisions shall apply to each and every Leasehold Mortgage which the Tenant obtains with in connection with the improvement, construction, development and/or permanent financing of the Premises:

(i) Except as expressly provided for in this Lease below, Landlord will acknowledge and consent to Tenant's grant of all liens necessary to secure Tenant's financing of the Premises as permitted by this Lease, provided such liens are subordinate to Landlord's fee simple interest in the Premises; and

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(ii) Landlord shall confirm to the Leasehold Mortgagee that Landlord has consented to the financing, that the Lease is in full force and effect, that no default has occurred which remains uncured, and that there have been no amendments to the Lease except as noted and such other matters as the Leasehold Mortgagee may reasonably request (or shall specify with particularity why any of the foregoing are not true); and

(iii) Landlord will agree to mail to the Leasehold Mortgagee (at an address provided to Landlord in writing) copies of all notices, suits, pleadings or other written communications with Tenant; and

(iv) If at any time the Leasehold Mortgagee forecloses under any deed of trust, assignment of lease or any other security documents securing financing for the development of the Premises or otherwise divests Tenant of Tenant's rights in and to the Premises, by any other remedy for a default of the Leasehold Mortgage set forth therein or by applicable law, then the Leasehold Mortgagee shall at its option cause the Lease to be assigned to the Leasehold Mortgagee, a purchaser at a foreclosure or other party designated by Tenant's lender (a "Successor Tenant"), and such Successor Tenant shall be entitled to any and all of the rights and privileges of Tenant under the Lease in the Successor Tenant's own name or in the name of a nominee and such Successor Tenant shall take possession of the Premises subject to this Lease and shall be required to perform all obligations of Tenant under this Lease. Leasehold Mortgagee's liability shall end upon assignment to any such Successor Tenant, provided that all defaults in the payment of Rent accrued during Leasehold Mortgagee's possession of the Premises are cured at or before the effective date of foreclosure: and

(v) Landlord shall not accept a voluntary surrender or cancellation of Tenant's interest in the Lease, nor shall any future modification or amendment of the lease terms hereof be effective without the written consent of Leasehold Mortgagee, with such attempted modification without written consent being void; and

(vi) Notwithstanding the default by Tenant in the terms of this Lease which cannot be cured by the Leasehold Mortgagee's obtaining possession, including but not limited to, bankruptcy of Tenant, Landlord agrees that it either will offer to the Successor Tenant a new lease upon the same terms and for the remaining Term and priority as this Lease, or allow this Lease to continue during the period of any non-curable default by Tenant as long as no other Default then exists or continues under the Lease.

(e) Provided that Tenant is not in Default of any provision under this Lease, Landlord shall from time to time enter into a deed of trust and other security instruments ("Subordination Agreement") in connection with any loan to be secured by the Premises, including without limitation, for the improvement, construction, development and/or permanent financing of the Premises, as typically required by lenders in similar loans, in form reasonably acceptable to Landlord and Leasehold Mortgagee, subordinating its fee interest in the Premises to the Leasehold Mortgage. Landlord agrees that the form attached hereto as **Exhibit D** is hereby agreed to be reasonable and acceptable. Such subordination shall be on commercially reasonable terms typically used by lenders for real estate loans and shall be consistent with the terms and conditions of this Section 12. In the event that after entering into a Subordination Agreement, Tenant from time to time replaces its Leasehold Mortgage with a new loan after Tenant reaches

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substantial completion of the initial improvements thereon as reasonably defined in the loan documents, (i) subordination of Landlord's fee interest in the Premises to the refinanced loan shall continue, and (ii) Landlord shall execute a new Subordination Agreement or confirmation of the existing Subordination Agreement as required by the lender within ten (10) days after receipt thereof, provided that in connection with the first such new loan, Tenant shall pay a subordination fee of $175,000.00 ("Subordination Fee") upon closing of such new loan. As additional consideration for Landlord's agreement to subordinate as provided in this Section 12(e), Tenant shall pay to Landlord an additional subordination fee of $75,000.00 ("Additional Subordination Fee"), payable in 12 monthly installments of $6,250.00 each, commencing on November 1, 2007. The Subordination Fee and Additional Subordination Fee shall be earned upon execution of this Lease and shall be payable to Landlord, in accordance with the provisions of this paragraph (e) and paragraph 34(i), regardless of whether Tenant replaces its Leasehold Mortgage with a new loan or whether Landlord is required by any lender to subordinate its fee interest to a refinanced loan or execute any new Subordination Agreement or confirmation of an existing Subordination Agreement.

(f) Tenant shall provide to Landlord, contemporaneously with the execution of the Subordination Agreement (or, if later, upon commencement of construction) and from time to time thereafter, a completion guaranty ("Completion Guaranty") in the same form and with the same guarantors as the completion guaranty provided to the Construction Lender, which shall at a minimum guarantee completion of the improvements to the Premises; provided that there may be an additional term which provides that if permitted by the Lender, Tenant may at its option instead demolish and remove partially built improvements and return the Premises to safe, level condition as provided in Section 7(c). The Completion Guaranty shall automatically terminate upon any of the following events: Substantial Completion, the ending of the subordination under the then-current Subordination Agreement, or as to a then-existing Completion Guaranty, upon the providing of a subsequent Completion Guaranty meeting the requirements of this Section 12(f). Tenant shall use commercially reasonable, diligent efforts to have Landlord named as a co-obligee subordinate to the Construction Lender (or any subsequent construction lender) on any bond obtained for the Project.

(g) Tenant shall provide to Landlord, contemporaneously with the execution of the Subordination Agreement and from time to time thereafter, a signed guaranty from the same parties as are obligated to provide the Completion Guaranty in the form attached hereto as **Exhibit C** as to certain losses suffered by Landlord in the event of foreclosure (the "Foreclosure Guaranty"). The Foreclosure Guaranty shall be subordinated to a Construction Lender's rights pursuant to a Subordination Agreement entered into pursuant to Section 12(e). The Foreclosure Guaranty shall automatically terminate upon any of the following events: the ending of the subordination under the then-current Subordination Agreement, or as to a then-existing Foreclosure Guaranty, upon the providing of a subsequent Foreclosure Guaranty meeting the requirements of this Section 12(g). A Foreclosure Guaranty shall also be acceptable if given by Robb M. LaKritz and Joshua A. Adler, or by any other credit-worthy person or entity acceptable to Landlord in its commercially reasonable discretion, in lieu of or in addition to the parties who give the Completion Guaranty.

(h) Without limiting the effect of Section 7(a)(iv), Landlord agrees that Tenant may from time to time require Landlord to enter into a Subordination Agreement or Leasehold

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Mortgage that secures a loan or loans that also have collateral on adjacent properties or properties within a 1000-foot radius of the Premises (and Landlord shall join in or consent to same and the associated subdivision plats and joint development agreements as provided above within ten (10) days after receipt thereof), provided that in the first such instance, Tenant shall pay to Landlord a "Combination Fee" of $30,000.00 upon its receipt of the executed Subordination Agreement or Leasehold Mortgage, subdivision plats, joint development agreements and associated land use documents.

Section 13 Landlord's Warranties and Representations.

Landlord represents and warrants to Tenant as follows:

(a) Tenant shall, upon paying all Rent due under this Lease and observing and performing all of the terms, covenants and conditions on Tenant's part to be observed and performed, peaceably and quietly have and hold, the Premises, without hindrance or molestation by Landlord, subject, however, to the terms of this Lease;

(b) Landlord has full right and authority to enter into this Lease and perform Landlord's obligations under this Lease, and has title to the Premises in fee simple, free and clear of all restrictions, leases, tenancies, and easements except as disclosed in the Leasehold title policy referred to in Subsection 2.1 above; Landlord has not entered into, and the Premises is not subject to, any leases, licenses, possessory rights, options or rights to purchase, lease or occupy or sale contracts or agreements other than this Lease;

(c) Landlord has not received any notice, nor is it aware of any pending action to take by condemnation all or any portion of the Premises;

(d) There is no litigation and no other proceedings are pending or, to Landlord's knowledge, threatened relating to the Premises or their use;

(e) This Lease is and shall be binding upon and enforceable against Landlord in accordance with its terms, and the transaction contemplated hereby will not result in a breach of any agreement to which Landlord or the Premises are subject or by which Landlord or the Premises are bound; and

Landlord shall indemnify, protect, defend and hold Tenant forever harmless from and against any and all claims, actions, liabilities, liens, damages, costs and expenses, including but not limited to reasonable attorneys' fees and expert/consultant fees, and increased costs of construction suffered or incurred by Tenant (or the Premises) directly or indirectly arising out of or in connection with Landlord's breach of the foregoing representations and warranties. Consummation of this Lease by Tenant with knowledge of any such breach shall constitute a waiver or release by Tenant of any such claims arising out of or in connection with such breach.

The foregoing representations, warranties and indemnity of Landlord contained in this Section shall survive the expiration or sooner termination of this Lease.

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Section 14 Indemnify.

(a) Tenant shall indemnify, protect and hold Landlord forever harmless from and against any and all liability, damage, penalties or judgments, any and all actions, suits, proceedings, claims, liens, damages, demands, assessments, costs and expenses, including, without limitation, reasonable legal and attorneys' fees, expenses and expert/consultant fees, incurred by Landlord with respect to Tenant's breach of this Lease or incurred by Landlord in enforcing the terms of this Lease and/or this indemnity, arising from injury to person or property sustained by anyone in and about the Premises resulting from any act or acts or omission or omissions of Tenant and/or Tenant's officers, agents, employees, contractors, or sublessees. Tenant shall, at its own cost and expense, defend or at Landlord's option, pay the costs of defense of any and all suits or actions, just or unjust, which may be brought against Landlord or in which Landlord may be impleaded with others with respect to this Lease and/or the Premises, except as may result from the acts set forth in paragraph (b) of this Section 14.

(b) Except for Landlord's affirmative acts or negligence after the Effective Date, or the affirmative acts or negligence of Landlord's officers, agents, servants, employees or contractors after the Effective Date, Landlord shall not be responsible or liable for any damage or injury to the Premises or any property, fixtures, buildings or other improvements, or to any person or persons, at any time on the Premises, including any damage or injury to Tenant or to any of Tenant's officers, agents, employees, contractors, customers or sublessees.

Section 15 Insurance.

(a) Tenant shall provide, at Tenant's expense and as Additional Rent under this Lease, and Tenant shall keep in force during the Term of this Lease, (i) commercial general liability insurance purchased from a good and solvent insurance company or companies licensed to do business in the District of Columbia with a minimum Best's Rating of A- / VIII or equivalent rating by a recognized national rating organization, selected by Tenant, such insurance to have a minimum combined single limit of not less than three million dollars ($3,000,000) per occurrence and subject to a five million dollar ($5,000,000) general aggregate, providing coverage for the benefit of Tenant and Landlord for death, for bodily injury and for property damage occurring on or with respect to the Premises; and (ii) all-risk commercial property insurance in an amount equal not less than the full replacement value with respect to loss or destruction of, or damage to the Premises and all of Tenant's improvements and other property located on the Premises. In addition, Tenant shall, during the period in which construction activities are being performed in connection with the development of the Premises, maintain or cause its contractor to maintain (A) builder's risk insurance in an amount equal to the full replacement value of such improvements; (B) workers compensation insurance, with statutory limits, and Employer's Liability coverage of at least $500,000.00; and (C) rental value insurance, which shall provide for the payment to Landlord of an amount equal to the Fixed Rent payable to Landlord under the Lease for a period of not less than twelve (12) months (or the remaining Term, if less). Such policy or policies (except for workers compensation) shall name Landlord as an additional insured.

(b) All proceeds payable at any time and from time to time by any insurance company under such policies shall be payable as follows: (i) first, as required by any Leasehold

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Mortgagee; (ii) second towards the completion of any improvements then under construction at the Premises, or in case of a termination of this Lease, to such completion or demolition of improvements to a safe and level condition; (iii) third to Landlord (A) in the event no restoration or reconstruction of the Premises are then occurring, in an amount equal to Landlord's residual interest in the improvements (in excess of the value of the land in any condemnation proceeding); or (B) to cure any Default by Tenant; and (iv) with the excess thereof, if any, to be paid to Tenant. Landlord shall not carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by Tenant hereunder if the effect of such separate insurance would be to reduce the protection or the payment to be made under Tenant's insurance.

(c) Any insurance required to be provided by Tenant pursuant to this Lease may be provided by blanket insurance covering the Premises and other locations of Tenant and affiliates of Tenant, provided all such blanket insurance complies with all of the other requirements of the foregoing in this Section 15 and this Lease, is acceptable to Landlord and any Leasehold Mortgagee, and names Landlord as an additional insured. Portions of the coverages required above may be covered by umbrella or excess coverages as long as the coverages are not reduced in scope or amount thereby and Landlord is named as an additional insured thereon.

Section 16 Condemnation

(a) If the use, occupancy, or title of the Premises or any part thereof is taken, requisitioned or sold in, by or on account of any actual or threatened eminent domain proceeding or other action by any person having the power of eminent domain (a "Condemnation"), Landlord and Tenant agree that any award or compensation on account thereof will be allocated as follows:

(i) First, as required by any Leasehold Mortgagee; and

(ii) Second, if this Lease shall be terminated, towards the cost of repairing damage to the improvements to the Premises or demolishing same to a safe and level condition, as determined by the court; and

(iii) Third, to Landlord to the extent of the fair market value of the Reversionary Estate, as determined by the court; and

(iv) Fourth, to Tenant to the extent of the fair market value of the Leasehold Estate, as determined by the court.

(b) Each of Landlord and Tenant may appear in any such proceeding or action, to negotiate, prosecute and adjust any claim for any award or compensation on account of any Condemnation as it relates to their respective interest in the Premises. All amounts paid in connection with any Condemnation of the Premises shall be applied pursuant to Section 16(a), above, and all such amounts (minus the expense of collecting such amounts as hereinafter provided) are herein called the "Net Proceeds." Landlord and Tenant shall each pay such party's own reasonable costs and expenses in connection with each such proceeding, action, negotiation, prosecution and adjustment for which costs and expenses Landlord and Tenant shall be reimbursed out of any award, compensation or insurance payment to which it is entitled.

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Section 17 Defaults

Subsection 17.1 Defaults of Tenant.

(a) Tenant shall be in "Default" if (i) Tenant shall not have paid Rent or any other amount payable by Tenant pursuant to this Lease within fifteen (15) days following Tenant's receipt of written notice from Landlord stating that such payment was not received when due (a "Monetary Default"); or (ii) Tenant shall not have performed any of the other covenants, terms, conditions or provisions of this Lease within thirty (30) days after Tenant's receipt of written notice from Landlord specifying such failure; provided, however, that with respect to those failures that cannot with due diligence be cured within such thirty (30) day period, Tenant shall not be deemed to be in default hereunder if Tenant diligently commences to cure such default within such thirty (30) day period and thereafter continues best efforts to cure such default with all due diligence to cure such default within the time period agreed to by Landlord, in Landlord's reasonable discretion (a "Non-Monetary Default"). Any assignee or lender may cure any default of Tenant hereunder. "Default" as used in this Lease shall mean a breach beyond the notice and cure periods set forth above.

(b) If Landlord shall claim that Tenant is in Default, Landlord shall have the right, to institute from time to time an action or actions (i) to recover damages, (ii) for specific performance, or (iii) only in the event of Monetary Default to recover possession of the Premises and terminate this Lease. If the Default is not cured, Landlord's rights and Tenant's obligations shall be resolved by the final determination made by the court in which Landlord's proceedings were initiated. For the purpose hereof, a "final determination" shall occur where the judgment or order entered can be enforced by execution, issuance of a writ of restitution, judicial sale or specific enforcement and no such judgment or order shall be considered final for purposes hereof during the pendency of a stay of execution in connection with an appeal.

(c) In the event of any termination of this Lease, Tenant shall pay to Landlord all Rent, and other sums required to be paid by Tenant to and including the date of such termination, reentry or repossession; and, thereafter, Tenant shall, until the end of what would have been the Term of this Lease in the absence of such termination, reentry or repossession, and whether or not the Premises shall have been relet, be liable to Landlord for, and shall pay to Landlord, as agreed current damages: (i) all Rent and other sums that would be payable under this Lease by Tenant in the absence of such termination, reentry or repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of Tenant, after deducting from such proceeds all of Landlord's expenses in connection with such reletting (including, but not limited to, repossession costs, brokerage commissions, reasonable attorneys fees and expenses, alteration costs and expenses of preparation for such reletting). Tenant shall pay such current damages on the days on which Rent would be payable under this Lease in the absence of such termination, reentry or repossession, and Landlord shall be entitled to recover the same from Tenant on each such day. Alternatively, at Tenant's option, Tenant shall, whether or not the Premises shall have been relet, be liable to Landlord for, and shall pay to Landlord, as liquidated damages, an amount equal to the excess, if any, of (i) the Rent required herein during the period from the date of such expiration, termination, reentry or repossession to and including the end of what would have been the Term of this Lease in the absence of such termination, reentry or repossession, discounted at the current Prime Rate over (ii) the then fair market rental value of the Land for the

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same period, also discounted at the said Prime Rate. "Prime Rate" shall mean the rate (or the average of rates, if more than one rate appears) inserted in the blank of the "Money Rate" section of the Wall Street Journal (Eastern Edition) in the Section reading "Prime Rate ____%."

(d) In the event Landlord is required under the provisions of any deed of trust or loan document, entered into by Tenant and agreed to by Landlord, to refrain from the exercise or enforcement of any rights or remedies under this Lease ("Forbearance Period"), Tenant agrees that any statute of limitations applicable to such rights or remedies shall, to the extent permitted by law, automatically be tolled for a period equal to the Forbearance Period, plus 120 days.

Subsection 17.2 Defaults of Landlord

(a) If Landlord shall fail to observe or perform any provision hereof and such failure shall continue for thirty (30) days after notice to Landlord of such failure, then a default of Landlord ("Landlord's Default") shall exist under this Lease, provided, however, that in the case of any such failure which cannot with diligence be cured within such thirty (30) day period, if Landlord shall commence promptly to cure the same and thereafter prosecute the curing thereof with diligence, the time within which such failure may be cured shall be extended for such period as is necessary to complete the curing thereof with diligence.

(b) If a Landlord's Default shall have occurred and be continuing, Tenant shall have the right to one or more of the following remedies: injunctive or other equitable relief, specific performance of the terms and conditions of this Lease or Tenant may terminate this Lease by giving Landlord notice of termination. In the event of such termination, Landlord shall refund to Tenant on demand any prepaid Rent allocable to the period after termination of the Lease.

Subsection 17.3 Rights to Cure

Each party shall have the right, but shall not be required, to pay such sums or do any act, which requires the expenditure of monies, which may be necessary or appropriate by reason of the Default or Landlord's Default of the other party to perform any of the provisions of this Lease. In the event of the exercise of any such right by Landlord, Tenant agrees to pay to Landlord forthwith upon demand all such sums, as Additional Rent. In the event of the exercise of any such right by Tenant, Landlord agrees to pay to Tenant forthwith upon demand all such sums.

Subsection 17.4 Attorneys Fees

Should either party employ an attorney or attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Lease, or to recover damages for the breach hereof, the non-prevailing party in any action pursued in courts of competent jurisdiction including appellate and bankruptcy courts (the finality of which action is not legally contested) agrees to pay to the prevailing party all reasonable costs, damages and expenses, including attorneys' fees, expended or incurred in connection therewith. The terms and provisions of this Subsection 17.4 shall survive the termination of this Lease and shall remain in full force and effect as of the Purchase Closing Date. Any costs due to Landlord by Tenant pursuant to this Subsection 17.4 shall be deemed Additional Rent due under this Lease.

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Section 18 Waivers.

Failure of Landlord or Tenant to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but such payment shall only be deemed a partial payment on account. Landlord and Tenant hereby waive trial by jury in any action, proceeding, or counterclaim or cross claim brought by either against the other as to any matters arising out of or in connection with this Lease or Tenant's use or occupancy of the Premises.

Section 19 REDACTED.

Section 20 Force Majeure.

In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder, other than the payment of Rent, by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, unreasonable delays by governmental authorities in issuing permits, riots, insurrection, the act, failure to act or default of the other party, war or other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, a force majeure event shall not excuse or delay the payment of Rent under this Lease.

Section 21 Notices.

Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties or their assignees by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Premises, each such notice or demand shall be in writing, and any laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served by mailing the same to the other party by registered or certified mail, return receipt requested, or by overnight nationally-recognized courier service provided a receipt is required, at its Notice Address set forth below, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

Notices shall be sent:

If to Landlord, to:
Medal, Inc.
9210 Pegasus Court
Potomac, Maryland 20854
Attn: Dr. Abraham Medhane

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with a copy (which shall not constitute notice) to:

The Chavers Law Firm, P.C.
1250 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
Attn: Clayborne E. Chavers, Sr., Esq.
Facsimile No.: (301) 596-9442

or, if to Tenant, to:

1920 8th Street LLC
4326 8th Street, N.W.
Washington, D.C. 20011

with a copy (which shall not constitute notice) to:

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
Attn: Curtis L. Sano, Esq.
Facsimile No.: (202) 955-5564

Section 22 Certificates.

Either party shall, without charge, at any time and from time to time hereafter, within thirty (30) days, or sooner if reasonably feasible, after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended (and, if it shall have been supplemented or amended, specifying the manner in which it has been supplemented or amended); (b) as to whether this Lease is in full force and effect (and, if it is alleged that this Lease is not in full force and effect, specifying the reasons therefor); (c) as to the date to which Rent has been paid; (d) as to whether any condition exists which constitutes a Default or Landlord's Default hereunder or which, but for the passage of time or the giving of notice or both, would result in a Default or Landlord's Default hereunder (and, if such condition exists, specifying the nature thereof); (e) as to whether there exist any offsets, counterclaims or defenses thereto on the part of the other party; (f) as to the Effective Date and expiration dates of the Initial Term and the then current and next Renewal Period of this Lease, as applicable; and (g) as to such other matters as reasonably may be requested. Any such certificate may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same.

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Section 23 Governing Law; Venue.

This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the District of Columbia. In the event of any dispute or legal action under or relating to this Lease, the parties hereto and their respective and permitted heirs, assigns, agents, representatives, successors and subtenants, agree that any such matter shall be brought in the federal or local courts in and for the District of Columbia having subject matter jurisdiction over such action and such parties further consent to the personal jurisdictions of and venue in such courts and waive any and all defenses to such jurisdiction and venue.

Section 24 Holdover.

If Tenant shall hold the Premises after the expiration of the Term hereof, such holding over shall, in the absence of a written agreement on the subject, be deemed to have created a month-to-month tenancy terminable upon thirty (30) days written notice by either party to the other, or earlier in the event of Tenant's Default under the Lease. During such month-to-month tenancy, the Annual Fixed Rent and the Monthly Installments shall be equal one hundred twenty-five percent (125%) of the Annual Fixed Rent and Monthly Installment for the Initial Term or Renewal Period then ended and Landlord shall retain the Initial Term Security Deposit or Renewal Period Security Deposit then in Landlord's possession until Tenant vacates the Premises. Tenant's right, if any, to (a) commence new development or improvements on the Premises and (b) exercise Tenant's option to purchase the Premises from Landlord, shall terminate at the expiration of the Term and shall not be exercisable by Tenant during any hold-over or month-to-month tenancy without the express, written consent of Landlord.

Section 25 REDACTED

Section 26 Cumulative Remedies.

Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease shall not preclude Landlord from exercising any other right or remedies provided for in this Lease.

Section 27 Severability.

If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remaining terms, covenants, conditions and provisions shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 28 Memorandum of Lease.

Each party shall at any time, at the request of the other party, promptly execute and deliver duplicate originals of an instrument, in recordable form, which will constitute a Memorandum of Lease, setting forth a description of the Premises, the Term of this Lease, the

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right of purchase and right of first refusal, and any other portions thereof, excepting the rental provisions, as such other party may request. Tenant shall be solely responsible for any and all costs with respect to the filing, recordation or release of the same, which costs shall be deemed Additional Rent under this Lease.

Section 29 Interpretation.

Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

Section 30 Integration.

This Lease, the exhibits attached hereto and the Escrow Agreement, represent the complete agreement between Landlord and Tenant, and supersede all prior agreements between the parties. Neither Landlord nor Tenant has made any representations, warranties or covenants except as expressly set forth in this Lease. No modification or amendment of or waiver under this Lease shall be binding upon Landlord or Tenant unless in writing signed by Landlord and Tenant.

Section 31 Parties.

Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, administrators and assigns.

Section 32 Brokers' Commissions.

Tenant and Landlord represent and warrant to each other that neither has had any dealings or discussions with any broker or agent, licensed or otherwise in connection with this Lease. Landlord and Tenant each covenants to protect, defend, hold harmless and indemnify the other from and against any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with any other claim by any brokers or agents for brokerage commissions relating to this Lease alleged to be due because of dealings or discussions with the indemnifying party.

Section 33 Right of First Refusal.

Landlord hereby grants to Tenant the right to purchase all of the Premises on the terms and conditions set forth in this Section 33 (the "Right of First Refusal"). Tenant shall not have the right to exercise its Right of First Refusal under this Lease at any time Tenant is in Default of this Lease.

(a) If Landlord should at any time during the Term elect to sell or transfer its interest in the Premises, Landlord shall deliver to Tenant a notice (the "Offer Notice") setting forth the terms and conditions upon which Landlord intends to offer the Premises, or the applicable part

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thereof, for sale. For a period of fifteen (15) days after Landlord delivers the Offer Notice to Tenant ("Offer Period"), Tenant shall have the right of first refusal, exercisable upon delivery of written acceptance to Landlord within the Offer Period, to purchase the Premises, or the applicable part thereof, from Landlord upon the terms and conditions set forth in the Offer Notice. In the event Tenant timely exercises Tenant's right of first refusal in accordance with this Section 33(a), then such purchase and sale transaction shall take place promptly and in strict accord with the terms of the Offer Notice. To the extent that Tenant is entitled to any Rent Credit pursuant to Section 34, such amounts shall be credited to Tenant at closing of such transaction. In the event Tenant fails to timely exercise Tenant's right of first refusal pursuant to this Section 33(a), then Landlord may proceed to offer the Premises, or the applicable part thereof, for sale in accordance with the term of the Offer Notice and pursuant to Section 33(b) below.

(b) If Tenant fails to timely exercise Tenant's right of first refusal pursuant to Section 33(a) above and Landlord elects to offer the Premises, or the applicable part thereof, for sale to the public in accordance with the Offer Notice, then in the event Landlord enters into a purchase and sale agreement with any third-party, such purchase and sale agreement must be contingent on (i) Landlord providing written notice to Tenant of the terms of such purchase and sale agreement (the "Pending Sale Notice") and (ii) Tenant having the option for a period of fifteen (15) days after Landlord delivers the Pending Sale Notice to Tenant ("Pending Sale Notice Period") to elect to purchase the Premises, or the applicable part thereof, in accordance with the terms of the Pending Sale Notice, exercisable upon delivery of written acceptance to Landlord within the Pending Sale Notice Period; provided, however, that the purchase price to be paid by Tenant in such purchase and sale transaction shall be the purchase price stated in the Pending Sale Notice. In the event Tenant timely exercises Tenant's right of refusal in accordance with this Section 33(b), then such purchase and sale transaction shall take place promptly and in strict accord with the terms of the Pending Sale Notice. In the event Tenant fails to timely exercise Tenant's right of refusal pursuant to this Section 33(b), then Landlord may proceed to complete the sale referenced in the Pending Sale Notice in strict accordance with the Pending Sale Notice.

(c) If Landlord does not close on the applicable contract of sale pursuant to the terms and conditions thereof within ninety (90) days following the expiration of the Offer Period or the Pending Sale Notice Period, as applicable, then Landlord will again be obligated to comply with all of the provisions of this Section 33 prior to any subsequent sale of the Premises. If after exercising its right to purchase the Premises, or the applicable part thereof, Tenant does not close on the applicable contract of sale pursuant to the terms and conditions thereof, then Tenant shall be liable to Landlord for any and all costs, expenses, penalties, and damages including, without limitation, Landlord's loss of the benefit of the bargain and reasonable attorneys' fees, incurred by Landlord as a result of Landlord agreeing to sell the Premises, or the applicable part thereof, to Tenant in accordance with the terms of this Lease.

Section 34 Right to Purchase.

(a) Grant of Purchase Option. Provided that Tenant is not then in Default under this Lease, then Landlord grants Tenant an option to purchase the Premises (the "Purchase Option") on the terms and conditions set forth herein. Tenant may exercise the Purchase Option upon delivery of written notice to Landlord (the "Purchase Option Notice") not less than sixty (60)

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days prior to the expiration of the Term (i.e., Tenant may not exercise the Purchase Option during the last sixty (60) days of the Term of the Lease, as the same may be extended by the due exercise of the Renewal Terms). The sale of the Premises will be closed on a date specified by Tenant, but not later than sixty (60) days after Landlord's receipt of the Purchase Option Notice (the "Purchase Closing Date"). The purchase and sale shall be on the terms and conditions set forth in this Section 34.

(b) Purchase Price of Premises. In the event Tenant timely delivers the Purchase Option Notice, the purchase price of the Premises (the "Purchase Price") shall be as follows:

If exercised during:	The Purchase Price shall be:
The First Lease Year	$4,800,000.00
Renewal Term 1	$4,872,000.00
Renewal Term 2	$4,945,080.00
Renewal Terms 3-9	$5,019,256.20

(c) Credit Against Purchase Price. Certain amounts of Fixed Rent, but not of Additional Rent, previously paid by Tenant to Landlord as of the Purchase Closing Date shall be credited towards the Purchase Price Tenant shall pay to Landlord for the Premises (the "Rent Credit"), which Rent Credit shall be the sum of the rent credits described below:

For Fixed Rent paid during:	There shall be a rent credit equal to:
The Initial Term	Fixed Rent paid by Tenant in excess of $50,000.00 during the Initial Term.
Renewal Period 1	Fixed Rent paid by Tenant in excess of $50,000.00 during the first Renewal Period.
Renewal Period 2	Fixed Rent paid by Tenant in excess of $50,000.00 during the second Renewal Period.
Renewal Periods 3-9	100% of the monthly installments of Fixed Rent paid during such Renewal Term.

For purposes of an example only, in the event Tenant is eligible and elects to exercise Tenant's Purchase Option one-half (1/2) of the way through the second Renewal Period (i.e., having paid $150,000.00 of Fixed Rent for the Initial Term, $150,000.00 of Fixed Rent for the first Renewal

YH.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009002

Period, and $75,000.00 of Fixed Rent through the Purchase Closing Date for the second Renewal Period), then Tenant would receive a Rent Credit equal to Two Hundred Twenty-Five Thousand Dollars ($225,000.00) calculated as follows:

Fixed Rent Period	Total Amount Paid	Amount in Excess of $50,000	Rent Credit
Initial Term	$150,000.00	$100,000.00	$100,000.00
1st Renewal Period	$150,000.00	$100,000.00	$100,000.00
2nd Renewal Period	$ 75,000.00	$ 25,000.00	$ 25,000.00
TOTAL:			$225,000.00

In the event Tenant has paid Fifty Thousand Dollars ($50,000.00) or less to Landlord for the Initial Term, the first Renewal Period or the second Renewal Period, as is in effect as of the date of the Purchase Option Notice, then Tenant shall not receive any Rent Credit with respect to such then existing Initial Term, first Renewal Period or second Renewal Period. Tenant shall be eligible to receive the Rent Credit only after such time as Landlord has received all Rent due up to and including the Purchase Closing Date.

(d) Settlement on Purchase Option. The sale of the Premises to Tenant shall take place at a real estate title and settlement company reasonably acceptable to Landlord and Tenant ("Settlement Agent"). If the Purchase Option has been duly exercised and Tenant cannot close by the Purchase Closing Date due to matters outside the reasonable control of Tenant, including without limitation, delays by its lenders, Tenant shall have the right to extend the Purchase Closing Date by a reasonable period not to exceed sixty (60) days, and if the Term would otherwise expire before such extended date, the Term shall be extended to be one day after the Purchase Closing Date as so extended; provided, however, that Tenant shall continue to pay Rent at the rate specified in Section 24 for the period of any such extension and such Rent for the extension period shall not be credited to the purchase price.

(e) Deposits in Escrow. On or before the Purchase Closing Date, Tenant shall deposit into escrow with the Settlement Agent (i) the Purchase Price less the Rent Credit; and (ii) all other documents required by this Lease, the Settlement Agent or applicable law to be deposited by Tenant as of the Purchase Closing Date. On or before the Purchase Closing Date, Landlord shall deposit into Escrow: (i) a special warranty deed, duly executed, acknowledged and in recordable form, subject to all easements, covenants, conditions and restrictions of record applicable to the Premises; (other than those created by Landlord after the Effective Date without Tenant's written consent); and (ii) all other documents required by this Lease, the Settlement Agent or applicable law to be deposited by Landlord to sell the Premises, including without limitation a Non-Foreign Affidavit.

(f) Conditions to Closing. Landlord's obligation to close the sale of the Premises is expressly conditioned on Tenant having deposited with Escrow Holder all sums and documents required in Section 34(e). Tenant's obligation to close the purchase of the Premises is expressly

YH.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009003

conditioned on Landlord having deposited with Escrow Holder all documents required in Section 34(e) and being in a position to convey title in the state described in Section 34(e)(i).

(g) Costs of Escrow. Tenant shall pay all costs of the closing on the purchase and sale of the Premises including, without limitation, any and all costs for escrow services, any transfer taxes, excise taxes, recording fees, deed or documentary stamps, document taxes, intangible taxes and similar taxes and charges with respect to the transaction contemplated herein, all costs for Tenant's financing and all recordation taxes on any documents recorded in connection with Tenant's financing; the cost of title insurance and endorsements thereto; and the cost of any of Tenant's other obligations hereunder. Notwithstanding the foregoing, Landlord shall pay (i) one-half (1/2) of the cost of any transfer and recordation taxes and recording fees with respect to the transaction contemplated herein (excluding recordation taxes on any documents recorded in connection with Tenant's financing); (ii) all costs and expenses to pay off and release the Premises from the lien of any deed of trust or other lien or security interest created by or levied against Landlord; and (iii) and the cost of any of Landlord's s other obligations hereunder.

(h) Conveyance. Landlord shall convey the Premises to Tenant by Special Warranty Deed, subject to all easements, covenants, conditions and restrictions of record as of the Purchase Closing Date, other than those created by or through Landlord on or after the Effective Date. Landlord shall execute such other instruments of conveyance, assignment or other transfer reasonably requested by Tenant to transfer all of the Premises and all property located on, associated with or created from the Premises.

(i) Subordination Fee. If for any reason any portion of the Subordination Fee and Additional Subordination Fee have not been paid by Tenant as of the Purchase Closing Date, Tenant shall pay the entire amount of the unpaid portion of the Subordination Fee and Additional Subordination Fee to Landlord on the Purchase Closing Date as an increase in the Purchase Price.

Section 35 Non-Merger.

The leasehold estate shall not merge with the fee estate in the event that the same person or entity acquires, owns or holds, directly or indirectly, the fee estate and the leasehold estate in the Property.

Section 36 Execution in Counterparts.

This Lease may be executed by both parties in counterparts; each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same agreement.

Section 37 Further Acts.

In addition to the acts and deeds recited herein and contemplated to be performed, executed, and/or delivered by the parties hereto, the parties hereto agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts, deeds, and assurances as may be reasonably required to consummate the transaction contemplated hereby.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009004

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LANDLORD:
MEDAL, INC.,
a Virginia corporation

By: _____

Name: Abraham Medhane
Title: President

TENANT:
1920 8TH STREET LLC,
a Delaware limited liability company

By: _____
Name: Joshua Adler
Title: Co-Managing Member

By: _____
Name: Robb Lattkite
Title: Co-Managing Member

ZM.

FOIA CONFIDENTIAL TREATMENT REQUESTED

EXHIBIT A

Depiction of the Premises

FOIA CONFIDENTIAL TREATMENT REQUESTED

EXHIBIT B

Owners Title Affidavit

FIRST AMERICAN TITLE INSURANCE COMPANY

REGIONAL TITLE INCORPORATED

OWNER'S/SELLER'S AFFIDAVIT

(To Induce Sale and/or Loan on Premises and Title Insurance)

DISTRICT OF COLUMBIA :

The undersigned owner(s) being first duly sworn on oath, deposes and says, that they are the owners of property known and described as:

SEE ATTACHED EXHIBIT "A"

and as further described in First American Title Insurance Company's Commitment No. _____.

That, as owner(s), they have personal knowledge of the facts sworn to in this Affidavit and has the power and authority to execute this Affidavit.

[For a Corporation] That the owner is a corporation and said corporation is in Good Standing in its state of origin and _____ and is qualified to do business in same and that the Articles of Incorporation and By-Laws are still in full force and effect with no changes to the original Articles except by amendments already disclosed to this Company and no proceeding is pending for Owner's dissolution or annulment.

[For a Limited Partnership] That the Owner is a limited partnership and said limited partnership is in Good Standing in its state of origin and _____ and is qualified to do business in the said jurisdiction and that the Partnership Agreement is in full force and effect with no changes to the original Articles except by amendments already disclosed to this Company and no proceeding is pending for Owner's dissolution or annulment.

[For a Limited Liability Company] That the Owner is a limited liability company and said limited liability company is in Good Standing in its state of origin and _____ and is qualified to do business in said jurisdiction; that the Articles of Organization and Operating Agreement are in full force and effect with no changes to the original Articles or Agreement except for amendments already disclosed to this Company; that there have been no filings which contradict the valid existence of the LLC; there have been no changes in membership; and that all annual reports have been filed and no proceedings are pending for Owner's dissolution or annulment.

That all license, state franchise, and city and corporation taxes, if applicable, due and payable by Owner have been paid in full.

YH.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009007

That no proceedings in Bankruptcy or receivership have been instituted by or against Owner and the Owner has never made an assignment for the benefit of creditors.

That there is no action or proceeding now pending in any state or federal court in the United States to which the Owner is a party and which affects the Premises; nor is there any state or federal court judgment, state or federal tax lien, or any other state or federal lien of any nature against Owner which may constitute a lien charge upon the Premises.

That Owner is fee simple [leasehold] owner of the Premises and has owned the property for approximately _____ (_____) years.

That the Owner's possession of the Premises has been peaceable and undisturbed, and that title to the Premises has never been disputed or questioned.

That there is no pending litigation or dispute regarding the lines and corners of the Premises.

That there are no delinquent real estate taxes or unpaid current real estate taxes; nor any pending or levied assessments on the Premises, including but not limited to those for sidewalks, streets, sewers and water lines, or any liens or charges of any kind which could cause a tax sale of the premises.

That no time within 125 days of the date hereof has any work, services, or labor been done, or any fixtures, apparatus or material been furnished or contracted for, in connection with, or to, the said premises, except such material, fixtures, work, apparatus, labor or services as have been fully and completely paid for; that there is no claim or indebtedness to anyone for any labor, fixtures, apparatus, material services, or work done to, upon, or in connection with the said premises; that there is no mechanics lien claim against said premises, whether of record or otherwise.

Except as set forth in the aforesaid Commitment, there are no recorded or unrecorded mortgages, improvement loans, chattel mortgages, conditional bills of sale, contracts of sale, (except that in connection with which this affidavit is given), written leases, retention agreement, security agreements, agreements not to sell or encumber, financing statements or personal property leases which affect the Premises or which affect any fixtures, appliances, or equipment now installed in or on the Premises.

That all tenants or parties who have leasehold or tenancy rights to occupy any portion of the Premises are those listed on Exhibit "B", attached hereto, and none of such parties has any right to the Premises other than its right as Tenant, nor any optional right of first refusal to purchase the Premises.

[For DC Only] That there are no tenant rights to be exercised under Title IV of the District of Columbia Law 3-86, "RENTAL HOUSING AND SALE ACT OF 1980", as amended.

That there are no pending suits or judgments affecting the Premises.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009008

That all charges for water or sewer services provided to the Premises by the county and/or city in which the Premises are located which are currently due have been paid.

That there are no present violations on the land of any enforceable covenants, conditions or restrictions.

That the survey referred to in Schedule B of the aforesaid Commitment depicts all of the improvements located on the Premises as of the date of the survey, and there have been no structural changes to the exterior of the buildings shown on said survey since the date of said survey.

[For Sale Only] That the Owner is not a foreign person, foreign trust or other foreign entity as those terms are defined in or contemplated by Section 1445 of the Internal Revenue Code of 1986, as amended, and regulations promulgated pursuant thereto.

That the federal taxpayer identification number of the Owner is _____.

The address of the principal place of business of the Owner is

THIS AFFIDAVIT is given this _____ day of _____, 2007 to induce First American Title Insurance Company and Regional Title Incorporated to make settlement and issue its Title Insurance Policy insuring the interest in real estate created by this transaction without exception as to possible unfiled Judgments, Tax Liens, or Adjudications.

_____

By:_____
Name:_____
Title:_____

DISTRICT OF COLUMBIA) to-wit:

SUBSCRIBED and SWORN TO before me this _____ day of _____, 2007 by _____ of _____, a _____.

_____

Notary Public

My commission expires:_____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009009

EXHIBIT "A"

LEGAL DESCRIPTION

FOIA CONFIDENTIAL TREATMENT REQUESTED

EXHIBIT "B"

TENANTS

SEE ATTACHED RENT ROLL

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009011

EXHIBIT C

Foreclosure Guaranty

GUARANTY

THIS GUARANTY is made and executed this _____ day of August, 2007, by (i) _____ ("Guarantor") in favor of (ii) _____ ("Landlord").

WITNESSETH:

WHEREAS, Landlord and Tenant have entered that certain Lease (the "Lease"), dated on or about the date hereof, whereby Landlord has leased to _____ ("Tenant") the premises known as _____, N.W., Washington, D.C. (hereinafter referred to as the "Premises"), as described in the Lease, and

WHEREAS, Guarantor desires to induce Landlord to execute and deliver the Lease to Tenant and Landlord is willing to execute and deliver the Lease to Tenant only if Guarantor guarantees to Landlord certain losses in the event of a foreclosure of a deed of trust following Landlord's subordination of its fee interest in the Premises to such deed of trust.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual promises hereinafter set forth, the parties hereto hereby agree as follows:

1. Following the execution by Landlord of a Subordination Agreement as described in the Lease whereby the Landlord subjects its fee interest in the Premises to a deed of trust ("Deed of Trust"), in the event that there is a foreclosure of the Deed of Trust which results in a loss of Landlord's fee interest in the Premises, the Guarantor hereby jointly and severally guarantees to Landlord the following payment: Guarantor shall pay to Landlord on demand an amount equal to (a) the lesser of (i) the Fair- Market Value (as defined below), or (ii) the then applicable Purchase Price under the Lease, less (b) the sum of (i) the net proceeds distributed to Landlord from the foreclosure, plus (ii) the Rent Credit to which Tenant is entitled pursuant to Section 34 of the Lease.

2. Upon foreclosure as aforesaid, either party may provide the other with written notice of its desire to determine such Fair Market Value by the method provided in this Section 2, and in such notice such party shall designate the commercial sales broker appointed by it. Within fifteen (15) days thereafter, the other party shall, by written notice to the original party, designate a second commercial sales broker. If the second commercial sales broker is not designated within such fifteen (15) day period, the first commercial sales broker appointed shall proceed to make its valuation, in which case the Fair Market Value shall be the amount determined by such broker. If the two (2) commercial sales brokers so appointed do not agree on the Fair Market Value, and the values as determined by the brokers are within ten percent (10%) of each other, the Fair Market Value shall be the arithmetic average of the Fair Market Values determined by the commercial

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009012

sales brokers. If the two (2) commercial sales brokers so appointed do not agree on the Fair Market Value, and the values as determined by the brokers is ten percent (10%) or more apart from each other, the two commercial sales brokers shall mutually agree on a third commercial sales broker, in which case the third commercial sales broker shall conduct an independent analysis of the Fair Market Value and the Fair Market Value shall be the original Fair Market Value as determined by one of the two original commercial sales brokers which is closest to the third broker's determination of Fair Market Value. Additional terms:

a. Each commercial sales broker appointed pursuant to Section 2 shall be a licensed real estate broker of recognized competence who has had a minimum of ten (10) years experience as a commercial sales broker in Washington, D.C. and shall be a disinterested person. A disinterested person shall mean a commercial sales broker who is not affiliated with a commercial real estate brokerage house that (1) has or had a listing agreement for the Premises, (2) received a commission for this Lease or the Premises, or (3) handles or handled the primary real estate work for Landlord or Guarantor or an affiliate or principal of Landlord or Guarantor or any company of which a principal of Landlord or Guarantor owns more than ten percent (10%) of the stock or other ownership interests. All valuations of the Fair Market Value shall be in writing. Each commercial sales broker shall determine the fair market value for the Premises, as a whole, as of the date of foreclosure, on the basis of the use of the Land and the building and improvements thereon in their then-current state, taking into consideration the cost and all relevant factors affecting current market sales prices, such as but not limited to, any necessary repairs to the building and improvements, rent or sales concessions then typical in the market for like product types (if any), The party appointing such commercial sales broker shall be obligated, promptly after receipt of the valuation report prepared by the commercial sales broker appointed by such party, to deliver a copy of such valuation report to the other party.

b. The fees and expenses of each of the two (2) commercial sales brokers appointed pursuant to Section 2 shall be borne by the party appointing such commercial sales broker. If a third broker is appointed, the parties shall each be responsible for one-half of such broker's fees and expenses.

3. Guarantor's liability hereunder shall in no way be affected by any indulgence, extension, or forbearance which Landlord may grant to Tenant with respect to the payment or performance of any obligation of Tenant, or any waiver, on the part of Landlord of any breach of the Lease by Tenant; and Guarantor waives any requirement that Guarantor be notified of any such indulgence, extension, forbearance or waiver, and Guarantor waives notice of such matters and of any default by Tenant under the Lease. In the event Landlord is required under the provisions of any Deed of Trust or loan document, entered into by Tenant or Guarantor, to refrain from the exercise or enforcement of any rights or remedies under the Lease or this Guaranty ("Forbearance Period"), Guarantor agrees that

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009013

any statute of limitations applicable to such rights or remedies shall, to the extent permitted by law, automatically be tolled for a period equal to the Forbearance Period, plus 120 days.

4. No reasonable delay of the Landlord in exercising any rights and/or powers hereunder or in taking any action to enforce the performance of Tenant's obligations under the Lease shall operate as a waiver as to such rights or powers or in any manner prejudice any or all of Landlord's rights and powers hereunder against Guarantor.

5. This Guaranty may not be modified, altered or terminated except pursuant to an instrument in writing executed by Guarantor and Landlord. No waiver of any provision of this Guaranty shall be valid unless in writing and signed by Landlord. A failure of Landlord to insist upon strict performance of any obligation or covenant of Guarantor under this Guaranty in any one or more instances shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of such obligation or covenant in the future.

6. This Guaranty is being made, executed and delivered in the District of Columbia and shall be construed and enforced in accordance with the laws of the District of Columbia.

7. Guarantor shall pay to Landlord all costs, including without limitation attorneys' fees, court costs and other disbursements, incurred by Landlord in connection with enforcing any provision of this Guaranty, whether or not any action or lawsuit is actually instituted by Landlord.

8. This Guaranty shall automatically terminate upon any of the following events: the release of Landlord from the Deed of Trust dated as of _____ by and among Landlord, _____ [lender] and Tenant, or upon the providing of a subsequent Foreclosure Guaranty meeting the requirements of Section 12(g) of the Lease.

IN WITNESS WHEREOF, the undersigned have executed this Guaranty on the day and year first above written.

GUARANTOR:

_____

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009014

EXHIBIT D

Subordination Agreement

FOIA CONFIDENTIAL TREATMENT REQUESTED

RETURN TO:

_____
_____
_____
_____

Tax Parcel ID No: _____

Title Insurer: _____

FEE AND LEASEHOLD DEED OF TRUST

This Fee and Leasehold Deed of Trust (this "Deed of Trust"), is dated as of September ___, 2007 (the "Effective Date"), by and among MEDAL, INC., a Virginia corporation, having an address of 9210 Pegasus Court, Potomac, Maryland 20854 ("Fee Owner") and _____, a _____, having an address of _____ _____ ("Borrower") (Fee Owner and Borrower, hereinafter collectively and individually referred to as "Trustor") to _____, TRUSTEE ("Trustee") in favor of _____, a _____, and its successors and assigns ("Beneficiary"):

RECITALS:

A. Fee Owner is the holder of the fee simple title to that certain parcel of land, known as Lot 46 in Square 393, N.W., Washington, D.C. containing approximately 11,330 square feet, (defined below as the "Premises").

B. Pursuant to the terms of that certain Ground Lease, dated August 3, 2007 (the "Ground Lease"), Fee Owner has leased and let to 1920 8th Street LLC, a Delaware limited liability company [reference assignments, if any] ("Borrower"), and Borrower has taken and hired from Fee Owner, all of the Premises and Fee Owner has granted to Borrower a right of purchase and a right of first refusal on the Premises, all as more particularly set forth therein.

C. Contemporaneously with the execution of this Deed of Trust, Robb M. LaKritz and Joshua A. Adler (collectively, the "Guarantors") are executing and delivering to Fee Owner a completion guaranty guaranteeing to Fee Owner the completion of the improvements on the Premises (the "Completion Guaranty") and a foreclosure guaranty guaranteeing to Fee Owner reimbursement of certain losses suffered by Fee Owner in the event of a foreclosure of the Premises under this Deed of Trust (the "Foreclosure Guaranty") (the "Ground Lease, the Completion Guaranty and the Foreclosure Guaranty, together with any extensions, modifications and substitutions thereof, are collectively referred to as the "Lease Documents"). [If the loan is not a construction loan, references to the Completion Guaranty will be deleted. If the loan is not subordinated, references to the Foreclosure Guaranty will be deleted,]

D. Beneficiary has agreed to make a [improvement / construction / development / permanent] loan in the principal amount of _____ (the "Loan") to Borrower for the Premises [and certain other land adjoining or about the Premises / and the construction of improvements thereon] evidenced by (i) a Promissory Note, dated as of the Effective Date, payable to the order of Beneficiary, executed by Borrower (including any extensions, modifications, amendments and substitutions thereof, the "Note"); (ii) a [Construction] Loan Agreement, dated as of the Effective Date, executed by Borrower (including any extensions, modifications, amendments and substitutions thereof, the "Loan Agreement"); and (iii) and all other documents now or hereinafter executed in favor or for the benefit of Lender which evidence, secure or are otherwise executed in connection with the Loan (collectively, the "Loan Documents"). [Will be adjusted per actual loan documents.]

E. It is a condition precedent to Beneficiary making the Loan that (a) Fee Owner grants and conveys its fee ownership interest in the Premises to Trustee to secure Beneficiary in the payment of the Loan and performance of the Loan Documents, (b) Borrower grants and conveys its leasehold ownership interest in the Premises to Trustee to secure Beneficiary in the payment of the Loan and performance of the Loan Documents, (c) the payment and performance of all obligations with respect to the Loan remain at all times prior and superior to the payment and performance of all obligations with respect to the Lease Documents, with respect to both Borrower's and Guarantors' obligations thereunder, (d) upon the occurrence of an Event of Default (as defined below) Fee Owner shall have no right to receive or accept any payment with respect to the Completion Guaranty unless and until the Event of Default is cured or the Loan is paid and performed in full,

except as otherwise expressly permitted hereunder, and (e) Fee Owner enters into the agreements with Beneficiary set forth herein.

F. Fee Owner is entering into this Deed of Trust in consideration of the Ground Lease and the rents and other charges payable thereunder. [For improvement, development or construction loan: Fee Owner may benefit from the making of the loan in that improvements to be constructed are expected to increase the value of the Premises and the loan will allow Borrower to meet its obligations under the Ground Lease.]

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor agrees as follows:

In order to secure the payment of the indebtedness hereinafter referred to and the performance of the obligations, covenants, agreements, warranties and undertakings of Trustor hereinafter described, Trustor hereby GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, ASSIGNS, MORTGAGES, WARRANTS AND SETS OVER to Trustee for the benefit of Beneficiary, its successors and assigns, and grants to Beneficiary a security interest in, the following described property, rights and interest (referred collectively herein as the "Premises") all of which property, rights and interest are hereby granted and pledged primarily and on parity with the real estate (as defined below) and not secondarily:

THE REAL ESTATE located in the District of Columbia and legally described on Exhibit "A" attached hereto and made a part hereof ("Real Estate");

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Trustor and located on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Trustor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Borrower or on Borrower's behalf or by Fee Owner, if any ("Improvements");

TOGETHER WITH all easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, mineral rights, air rights, development rights and all estates, rights, titles, interests, privileges, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Trustor of, in and to the same;

TOGETHER WITH all interest of Fee Owner in all leases or subleases now or hereafter of all or a portion of the Premises, whether written or oral including, without limitation, the Ground Lease ("Leases"), together with all security therefor and all monies payable thereunder, all of which Fee Owner hereby absolutely and unconditionally assigns to Beneficiary; provided, however, that Fee Owner, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Trustor and forming a part of or used in connection with the Real Estate or the Improvements, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Trustor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness (as hereinafter defined); notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Deed of Trust and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code as adopted in the District of Columbia in effect from time to time ("Code"), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Beneficiary, as a secured party, and Trustor, as Debtor, all in accordance with the Code; and

TOGETHER WITH all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof.

TO HAVE AND TO HOLD the Premises unto Trustee, and its successors and substitutes in this trust and to its and their successors and assigns, in trust, WITH POWER OF SALE AND THE RIGHT OF RE-ENTRY AND

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009017

POSSESSION, for the benefit of Beneficiary and its successors and assigns, upon the terms, provisions and conditions herein set forth.

FOR THE PURPOSE OF SECURING THE FOLLOWING (collectively referred to herein as the "Indebtedness"): (i) the payment of the Loan and all interest, late charges, prepayment premium (if any), exit fee (if any), reimbursement obligations, fees and expenses for letters of credit issued by Beneficiary for the benefit of Trustor, if any, and other indebtedness evidenced by or owing under the Note, any of the other Loan Documents, any interest rate swap or hedge agreement now or hereafter entered into between Trustor and Beneficiary and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, or renewals of any of the foregoing; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Trustor or any guarantor or indemnitor of the Loan to or benefiting Beneficiary which are evidenced or secured by or otherwise provided in the Note, this Deed of Trust or any of the other Loan Documents except for the obligations of Robb M. LaKritz and Joshua A. Adler (collectively "Guarantor") under that certain Guaranty of Payment and Completion ("Guaranty") dated on or about the Effective Date and the obligations of Borrower and Guarantor under that certain Environmental Indemnity Agreement ("Indemnity"), dated on or about the Effective Date which obligations, notwithstanding anything to the contrary in this Deed of Trust, shall not be secured by this Deed of Trust; and (iii) the reimbursement to Beneficiary of any and all sums incurred, expended or advanced by Beneficiary pursuant to any term or provision of or constituting additional indebtedness under or secured by this Deed of Trust, any of the other Loan Documents, any interest rate swap or hedge agreement or any application for letters of credit and master letter of credit agreement, with interest thereon as provided herein or therein. No indebtedness under a loan, other than the Loan or loans for properties adjacent to the Premises or properties within a 1000-foot radius of the Premises, for which Guarantor or Borrower may be liable to Beneficiary (whether by cross-default or cross-collateralization) shall be deemed to be Indebtedness hereunder.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title. (a) Trustor represents, warrants and covenants that Fee Owner is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of Beneficiary and as otherwise described on Exhibit "B" attached hereto ("Permitted Exceptions"); (b) Borrower represents, warrants and covenants that Borrower is the holder of the leasehold interest in the Premises pursuant to the terms of the Ground Lease, free and clear of all liens and encumbrances, except for the Permitted Exceptions and (c) Trustor has legal power and authority to mortgage and convey the Premises. Trustor acknowledges that any sale made under or by virtue of this Deed of Trust purporting to transfer all the right, title and interest therein to the purchaser, will divest all right, title and interest of Trustor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Trustor retains possession of the Premises or any part thereof subsequent to such sale, Trustor will be considered a tenant at sufferance of the purchaser, and will, if Trustor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law. In the event Borrower acquires the fee simple title to the Premises, such acquisition will not merge with the leasehold estate, but such other estate or interest will remain discrete and immediately become subject to the lien of this Deed of Trust, and Borrower shall execute, acknowledge and deliver any instruments requested by Beneficiary to confirm the lien of this Deed of Trust and pay any and all conveyance or mortgage taxes and filing or similar fees in connection with the execution, delivery, filing or recording of any such instrument.

2. Condemnation. If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Indebtedness, is hereby assigned to Beneficiary, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Trustor and the same shall be paid forthwith to Beneficiary. Such award or monies shall be applied on account of the Indebtedness, irrespective of whether such Indebtedness is then due and payable and, at any time from and after the taking Beneficiary may declare the whole of the balance of the Indebtedness to be due and payable.

3. Effect of Extensions of Time and Other Changes. If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Trustor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof

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shall continue in full force, any right of recourse against all such persons being expressly reserved by Beneficiary, notwithstanding such extension, variation, release or change. Beneficiary shall provide notice to Fee Owner in advance of any such extension, variation, release or change; provided however, that Beneficiary's failure to provide such notice shall not be a default hereof or invalidate such extension, variation, release or change; and provided further, Fee Owner shall not be charged with notice of such extension, variation, release or change until it receives written notice thereof.

4. Events of Default; Acceleration. Each of the following shall constitute an "Event of Default" for purposes of this Deed of Trust:

(a) Borrower fails to pay (i) any installment of principal or interest payable pursuant to the Note on the date when due, or (ii) any other amount payable to Beneficiary under the Note, this Deed of Trust or any of the other Loan Documents within five (5) days after the date Borrower receives notice that any other payment was not paid when due in accordance with the terms hereof or thereof (a "Monetary Default");

(b) Borrower fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Borrower under the Note, or Trustor under this Deed of Trust or any of the other Loan Documents to which either Borrower or Fee Owner is a party ("Borrower Event of Default"); provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the liens created by the Deed of Trust or any of the other Loan Documents and the value of the Premises are not impaired, threatened or jeopardized, then Borrower shall have a period ("Cure Period") of thirty (30) days after Borrower obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period; provided further that if such failure by its nature reasonably requires longer than thirty (30) days to cure and Borrower commences to cure such failure during the original Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than ninety (90) days in the aggregate;

(c) Fee Owner fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Fee Owner under this Deed of Trust beyond the Fee Owner Cure Period (defined below); provided, however, that if such failure by Fee Owner by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the liens created by the Deed of Trust or any of the other Loan Documents and the value of the Premises are not impaired, threatened or jeopardized, then Fee Owner shall have a period ("Fee Owner Cure Period") of thirty (30) days after Fee Owner obtains actual knowledge of such failure by Fee Owner or receives written notice of such failure by Fee Owner to cure the same and an Event of Default shall not be deemed to exist during the Fee Owner Cure Period; provided further that if such failure by its nature reasonably requires longer than thirty (30) days to cure and Fee Owner commences to cure such failure during the original Fee Owner Cure Period and is diligently and in good faith attempting to effect such cure, the Fee Owner Cure Period shall be extended for thirty (30) additional days, but in no event shall the Fee Owner Cure Period be longer than ninety (90) days in the aggregate;

(d) the existence of any inaccuracy or untruth in any material respect in any material representation or warranty contained in this Deed of Trust or any of the other Loan Documents or of any statement or certification as to facts delivered to Beneficiary by Fee Owner, Borrower or any Guarantor;

(e) Borrower, Fee Owner or any Guarantor files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Fee Owner, Borrower or any Guarantor or of all or any substantial part of the property of Fee Owner, Borrower or any Guarantor or any of the Premises or all or a substantial part of the assets of Fee Owner, Borrower or any Guarantor are attached, seized, subjected to a writ or distress warrant or are levied upon unless the same is released or located within thirty (30) days;

(f) the commencement of any involuntary petition in bankruptcy against Fee Owner, Borrower or any Guarantor or the institution against Fee Owner, Borrower or any Guarantor of any reorganization,

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arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Fee Owner, Borrower or any Guarantor which shall remain undismissed or undischarged for a period of sixty (60) days;

(g) the dissolution, insolvency or winding-up of Fee Owner or Borrower or the occurrence of death or legal incompetency of all individual Guarantors;

(h) Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of all or any portion of the Premises or the membership interests in Borrower; or

(i) Subject to Fee Owner's right to cure in Paragraph 4.(c), the occurrence of any default or event of default, after the expiration of any applicable periods of notice or cure, under the Ground Lease.

In the event of a Monetary Default or other default of Borrower that by its nature can be cured by the payment of money, the Fee Owner shall have ten (10) business days after Fee Owner obtains actual knowledge of such Monetary Default or receives written notice of such Monetary Default to cure the same and an Event of Default shall not be deemed to exist during such 10-business day period.

5. Remedies and Application of Proceeds.

Upon the occurrence of an Event of Default, Beneficiary may at any time, at its option and in its sole discretion, declare all Indebtedness to be due and payable and the same shall thereupon become immediately due and payable under the terms of the Indebtedness; with interest accruing thereon from the date of the Event of Default until paid, at the Default Rate (as defined in the Loan Documents). In addition to exercising any other remedy available at law, in equity and/or under the other Loan Documents, Beneficiary may also do any or all of the following, concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, although it shall have no obligation to do any of the following

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of Beneficiary's security, enter with or without process of law upon and take possession of the Premises, or any part thereof, and do any acts which Beneficiary deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or to increase the income therefrom or to protect the security hereof and, with or without taking possession of any of the Premises, sue for or otherwise collect all rents and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees and expenses, upon the Indebtedness, all in such order as Beneficiary may determine. The collection of rents and profits and the application thereof shall not cure or waive any Event of Default or notice thereof or invalidate any act done in response thereto or pursuant to such notice. In furtherance of the foregoing, to the fullest extent permitted by applicable law, following the occurrence of an Event of Default and during the continuance thereof, Beneficiary shall have the right to apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Premises as a matter of strict right and without regard to the value of the Premises or the adequacy of the security for the Indebtedness, the existence of a declaration that the Indebtedness are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment;

(b) Bring an action in any court of competent jurisdiction to foreclose this instrument or to enforce any of the covenants hereof; provided, however, that Beneficiary shall have no recourse against Fee Owner under this Deed of Trust or any other Loan Document, except for Beneficiary's rights to lawfully foreclosure upon Fee Owner's fee interest in the Premises, and except in case of fraud, gross negligence or willful misconduct of Fee Owner;

(c) Elect to sell by power of sale the Premises and, upon such election, such notice of Event of Default and election to sell shall be given as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, at the time and place specified in the notice of sale, Trustee shall sell such Premises, or any portion thereof specified by Beneficiary, at public auction to the highest bidder for cash in lawful money of the United States. Trustee may, and upon request of Beneficiary shall, from time to time, postpone the sale by public announcement thereof at the time and place noticed therefor. If the Premises consists of several lots, parcels or interests, Beneficiary may designate the order in which the same shall be offered for sale or sold. Trustor waives all rights to direct the order in which any of the Premises will be sold in the event of any sale under this Deed of Trust, and also any of right to have any of the Premises marshaled

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upon any sale. In the case of a sale under this Deed of Trust, the said property, real, personal and mixed, may be sold in one parcel or more than one parcel. Should Beneficiary desire that more than one such sale or other disposition be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Beneficiary may deem to be in its best interest. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. Upon any sale, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the Premises so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession. Beneficiary, from time to time before the trustee's sale pursuant to this section, may rescind any notice of Event of Default and of election to cause to be sold the Premises by executing and delivering to Trustee a written notice of such rescission, which notice, shall also constitute a cancellation of any prior Event of Default and demand for sale. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other declarations of default and demand for sale, and notices of breach or default, nor otherwise affect any provision, covenant or condition of the Loan Agreement, the Note and/or of this Deed of Trust or any of the rights, obligations or remedies of the parties thereunder or hereunder. In furtherance of the foregoing, Beneficiary hereby directs and empowers the Trustee to take possession of any or all of the Premises and to sell the Premises, in whole or in part, and in the case of default of any purchaser or purchasers, resell all the Premises as an entirety, or in such parcels as Beneficiary shall in writing request, or, in the absence of such request, as the Trustee may determine, at public auction at some convenient place in the District of Columbia, at such time, in such manner and upon such terms as the Trustee may fix. The notice of sale shall state the time and place of the sale, shall contain a brief general description of the Premises to be sold, and shall be sufficiently given if published in either The Washington Post or other publications where such notices are customarily published or in the place(s) where such sale is to take place, such advertisement of sale to be published five (5) times every other day (excluding Sundays and holidays) over a ten business day period prior to the day of said sale, subject to compliance with Section 42-815(b) of the D.C. Code, and Beneficiary or Trustee shall cause further public advertisement to be made as they deem advisable. Any such sale may be adjourned by the Trustee by announcement at the time and place appointed for such sale or for such adjourned sale(s), and, without further notice or publication, such sale may be made at the time and place to which same shall be so adjourned. Upon the completion of any sale, the Trustee shall execute and deliver to the purchaser(s) a good and sufficient deed of conveyance, or assignment and transfer, lawfully conveying, assigning and transferring, without warranty, the property sold.

(d) Exercise each of its other rights and remedies under this Deed of Trust or any other Loan Documents.

(e) Except as otherwise required by law, apply the proceeds of any foreclosure or disposition hereunder to payment of the following: (i) the expenses of such foreclosure or disposition, including, without limitation, reasonable and customary fees of Trustee, (ii) the cost of any search or other evidence of title procured in connection therewith and revenue stamps on any deed or conveyance, (iii) all sums expended under the terms hereof, not then repaid, with accrued interest in the amount provided herein, (iv) all other sums secured hereby, and (v) the remainder, if any, to the person or persons legally entitled thereto.

(f) Upon any sale or sales made under or by virtue of this section, whether made under the power of sale or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Beneficiary may bid for and acquire the Premises or any part thereof. In lieu of paying cash for the Premises, Beneficiary may make settlement for the purchase price by crediting against the Indebtedness the sales price of the Premises, as adjusted for the expenses of sale and the costs of the action and any other sums for which Trustor is obligated to reimburse Trustee or Beneficiary under this Deed of Trust.

(g) In the event that Trustor has an equity of redemption and the Premises is sold pursuant to the power of sale or otherwise under or by virtue of this paragraph, the purchaser may, during any redemption period allowed, make such repairs or alterations (but not additions) on said Premises as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditures at the Default Rate, which is defined in the Note as being ____% [default rate not to exceed 24%] (if not prohibited by law, otherwise at the highest lawful contract rate) shall be added to and become a part of the amount required to be paid for redemption from such sale.

6. Beneficiary's Right of Possession in Case of Default. At any time after an Event of Default has occurred, Trustor shall, upon demand of Beneficiary, surrender to Beneficiary possession of the Premises. Beneficiary, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude Trustor and its employees, agents or servants therefrom, and Beneficiary may then hold, operate, manage and

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control the Premises, either personally or by its agents. Beneficiary shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent.

7. Application of Income Received by Beneficiary. To the extent permitted by applicable law, Beneficiary, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Beneficiary may determine:

(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to Beneficiary and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), third party claims for property damage, death or personal injury at or concerning the Premises for which a judgment has been reached or for which Beneficiary has determined that settlement is appropriate in its reasonable judgment, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

8. Rights Cumulative. Each right, power and remedy herein conferred upon Beneficiary is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Beneficiary, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Beneficiary in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

9. Release Upon Payment and Discharge of Borrower's Obligations. Beneficiary shall release this Deed of Trust and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by Beneficiary in connection with the execution of such release.

10. Waiver of Rights. Trustor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisement of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) To the extent permitted by law, Trustor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Deed of Trust, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Trustor and of all other persons are and shall be deemed to be hereby waived; and

(b) Trustor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to Beneficiary but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted.

(c) To the full extent Trustor may do so, Trustor agrees that Trustor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisement,

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valuation, stay, extension or redemption, and Trustor, for Trustor, Trustor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Premises, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisement, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of assets of Trustor, including the Premises, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Trustor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatever to defeat, reduce or affect the right of Beneficiary under the terms of this Deed of Trust to a sale of the Premises for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Beneficiary under the terms of this Deed of Trust to the payment of the secured indebtedness out of the proceeds of sale of the Premises in preference to every other claimant whatever.

11. Additional Indebtedness Secured. All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Deed of Trust secures more than the stated principal amount of the Note and interest thereon; this Deed of Trust secures any and all other amounts which may become due under the Note or any other documents evidencing or securing the Indebtedness.

12. Subordination of Lease Documents. The Lease Documents and any other document evidencing or securing any indebtedness of Borrower or Guarantor to Fee Owner, and all of the terms, covenants and conditions contained therein with respect to both Borrower's and Guarantors' obligations thereunder, are, and shall continue to be, subject and subordinate in all respects, including payments and priority, to the lien of the Deed of Trust and the other Loan Documents and all advances now or hereafter made thereunder without regard to the application of such proceeds, together with all interest, late fees, default interest and all other sums now or hereafter due under the Deed of Trust, the Note, and the other Loan Documents. The foregoing shall apply, notwithstanding the availability of other collateral to Beneficiary or the actual date and time of execution, delivery, recordation, filing or perfection of the Deed of Trust, this Agreement, the Lease Documents, or the lien or priority of payment thereof; provided, however, in the absence of a monetary default on payment of the Note by Borrower, Fee Owner may continue to collect rents due under the Ground Lease.

13. Payments Under the Lease Documents. Upon the receipt of written notice from Beneficiary to Fee Owner of the occurrence of an Event of Default (or any subsequent written notice of an Event of Default following the cure of a prior Event of Default) under this Deed of Trust, unless and until the receipt of written notice from Beneficiary to Fee Owner that such Event of Default is cured or the Indebtedness has been paid and performed in full, Fee Owner shall not receive or accept any payment with respect to the Lease Documents and shall not take any action to enforce any rights or remedies with respect to the Lease Documents.

14. Recognition of Beneficiary. Fee Owner and Borrower each acknowledge and agree that:

(a) Beneficiary is a "Leasehold Mortgagee" as defined under the terms of the Ground Lease and shall receive the benefit of all of the rights and privileges of the Leasehold Mortgagee, and may enforce in its name the obligations, covenants and agreements of Fee Owner and Borrower to the Leasehold Mortgagee, under the terms of the Ground Lease, the terms of which are incorporated herein by reference;

(b) Beneficiary is an intended third party beneficiary of the Ground Lease; and

(c) In addition to any rights and protection afforded Beneficiary under the terms of the Ground Lease, Fee Owner shall not accept a voluntary surrender or cancellation of Borrower's interest in the Ground Lease, nor shall any future modification or amendment of the lease terms hereof be effective without the written consent of Beneficiary.

15. Miscellaneous.

(a) Successors and Assigns. This Deed of Trust and all provisions hereof shall be binding upon and enforceable against Trustor and their assigns and other successors. This Deed of Trust and all provisions hereof shall inure to the benefit of Beneficiary, its successors and assigns and any holder or holders, from time to time, of the Note.

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(b) Invalidity of Provisions; Governing Law. In the event that any provision of this Deed of Trust is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Trustor and Beneficiary shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Deed of Trust and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Deed of Trust is to be construed in accordance with and governed by the laws of the District of Columbia.

(c) Municipal Requirements. Trustor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Deed of Trust to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Trustor hereby assigns to Beneficiary any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Deed of Trust or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by Trustor which would result in a violation of any of the provisions of this subparagraph shall be void.

(d) Option of Beneficiary to Subordinate. At the option of Beneficiary, this Deed of Trust shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to the Ground Lease and/or any subleases of all or any part of the Premises upon the execution by Beneficiary of a unilateral declaration to that effect and the recording thereof in the Land Records of the District of Columbia.

(e) Beneficiary in Possession. Nothing herein contained shall be construed as constituting Beneficiary a mortgagee in possession in the absence of the actual taking of possession of the Premises by Beneficiary pursuant to this Deed of Trust.

(f) Relationship of Beneficiary and Trustor. Beneficiary shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Trustor or of any lessee, operator, concessionaire or licensee of Trustor in the conduct of their respective businesses, and, without limiting the foregoing, Beneficiary shall not be deemed to be such partner, joint venturer, agent or associate on account of Beneficiary becoming a mortgagee in possession or exercising any rights pursuant to this Deed of Trust, any of the other Loan Documents, or otherwise. The relationship of Borrower and Beneficiary hereunder is solely that of debtor/creditor.

(g) Time of the Essence. Time is of the essence of the payment by Borrower of all amounts due and owing to Beneficiary under the Note and the other Loan Documents and the performance and observance by Trustor and Beneficiary of all terms, conditions, obligations and agreements contained in this Deed of Trust and the other Loan Documents.

(h) No Merger. The parties hereto intend that the Deed of Trust and the lien hereof shall not merge in fee simple title to the Premises, and if Beneficiary acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Beneficiary as evidenced by an express statement to that effect in an appropriate document duly recorded, this Deed of Trust and the lien hereof shall not merge in the fee simple title and this Deed of Trust may be foreclosed as if owned by a stranger to the fee simple title.

(i) Consent to Jurisdiction TO INDUCE BENEFICIARY TO ACCEPT THE NOTE, TRUSTOR IRREVOCABLY AGREES THAT, SUBJECT TO BENEFICIARY'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS DEED OF TRUST WILL BE LITIGATED IN COURTS HAVING SITUS IN THE DISTRICT OF COLUMBIA. TRUSTOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THE DISTRICT OF COLUMBIA, WAIVES PERSONAL SERVICE OF PROCESS UPON TRUSTOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO TRUSTOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

(j) Waiver of Jury Trial. TRUSTOR AND BENEFICIARY (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND

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ANY RIGHTS (a) UNDER THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS DEED OF TRUST OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS DEED OF TRUST, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. TRUSTOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST BENEFICIARY OR ANY OTHER PERSON INDEMNIFIED UNDER THIS DEED OF TRUST ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

(k) Complete Agreement. This Deed of Trust, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both Trustor and Beneficiary.

(l) References to State. The word "state" or "jurisdiction" shall include the District of Columbia.

IF LOAN IS A CONSTRUCTION LOAN, THEN (m) SHALL APPLY:

(m) Construction Loan. This Deed of Trust constitutes a "construction loan deed of trust" as defined in the D.C. Code to the extent that it secures an obligation incurred for the construction of the Improvements, including (if applicable) the acquisition cost of the real estate. The Note evidences a debt created by one or more disbursements made by Beneficiary to Borrower to finance the cost of the construction of certain improvements upon the Real Estate in accordance with the provisions of the Loan Agreement, and this Deed of Trust is a construction deed of trust as such term is defined in Section 9-334(h) of the Code. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this deed of trust and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute a default hereunder. Upon the occurrence of any such Event of Default, the holder of the Note may at its option declare the Indebtedness immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional Indebtedness and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate. In the event of a conflict between the terms of the Loan Agreement and this Deed of Trust, the provisions of the Loan Agreement shall apply and take precedence over the Deed of Trust; provided however, that as to Fee Owner's rights, obligations and liabilities hereunder, the terms of this Deed of Trust shall prevail over any contrary provisions of any other Loan Document.

16. Additional Agreements.

(a) Beneficiary may substitute Trustee hereunder in any manner now or hereafter provided by law or, in lieu thereof, Beneficiary may from time to time, by an instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the Recorder of Deeds of the District of Columbia, shall be conclusive proof of proper substitution of such successor Trustee, who shall thereupon and without conveyance from the predecessor Trustee, succeed to all its title, estate, rights, powers and duties.

(b) Beneficiary shall furnish any statement required by law regarding the obligations secured hereby or regarding the amounts held in any trust or reserve fund hereunder. For any such statement, Beneficiary may charge a reasonable fee, not to exceed the maximum amount permitted by law at the time of the request thereof.

(c) It is expressly stipulated and agreed to be the intent of Beneficiary and Trustor, at all times to comply with applicable District of Columbia law governing the highest lawful rate or amount of interest payable on the Loan (or applicable United States federal law to the extent that it permits Beneficiary to contract for, charge, take, reserve or receive a greater amount of interest than under District of Columbia law).

17. Future Advances. This Deed of Trust shall secure not only existing Indebtedness, but also such future advances of Indebtedness, whether such advances are obligatory or to be made at the option of Beneficiary, or otherwise, to the same extent as if such future advances were made on the date of the execution of this Deed of Trust. Any such future advances of Indebtedness, whether obligatory or to be made at the option of Beneficiary, or otherwise, may be made either prior to or after the due date of the Note or any other notes secured by this Deed of Trust. This

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009025

Deed of Trust is given for the specific purpose of securing the Indebtedness in whatever manner the Indebtedness may be evidenced or represented, until this Deed of Trust is satisfied of record. All covenants and agreements contained in this Deed of Trust shall be applicable to all further advances of Indebtedness made by Beneficiary to Trustor under this future advance clause.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGE FOLLOWS]

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009026

IN WITNESS WHEREOF, Trustor has executed under seal and delivered this Fee and Leasehold Deed of Trust as of the Effective Date.

FEE OWNER:

MEDAL, INC.
a Virginia corporation

By: _____(seal)
Name:
Title:

STATE OF _____)
COUNTY OF _____)

Before me in the jurisdiction aforesaid, the undersigned, a Notary Public, on this ___ day of _____, 20___, personally appeared _____, to me known personally, and whom, being by me duly sworn, depose and say that he is the _____ of Medal, Inc., a Virginia corporation and that said instrument was signed in such capacity and acknowledged said instrument to be the free act and deed of Medal, Inc.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

_____
Notary Public

_____
Notary Registration Number

(Notarial Seal)
My commission expires: _____

BORROWER:

_____,
a _____

By: _____(seal)
Name:
Title:

STATE OF _____)
COUNTY OF _____)

Before me in the jurisdiction aforesaid, the undersigned, a Notary Public, on this ___ day of _____, 20___, personally appeared _____, to me known personally, and whom, being by me duly sworn, depose and say that he is the _____ of _____, a _____ and that said instrument was signed in such capacity and acknowledged said instrument to be the free act and deed of 1920 8th Street, LLC.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

_____
Notary Public

_____
Notary Registration Number

(Notarial Seal)
My commission expires: _____

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009027

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

FOIA CONFIDENTIAL TREATMENT REQUESTED

EXHIBIT B

PERMITTED EXCEPTIONS

4796382_v6

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009029

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

AGREED TO BY THE PARTIES BELOW:

BANNEKER VENTURES, LLC

By: _____
Name: Omar Kalam
Title: Principal

DISTRICT DEVELOPMENT GROUP, INC.

By: _____
Name:
Title:

METROPOLIS DEVELOPMENT COMPANY, LLC

By: _____
Name: MERRICK T. MALONE
Title: Principal and Executive Vice President

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

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

WMATA-INV 009043

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 009044

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,

/s/

Joel R. Washington, Director
Station Area Planning and Asset Management

Attachment

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

MTC
Moddie Turay Company

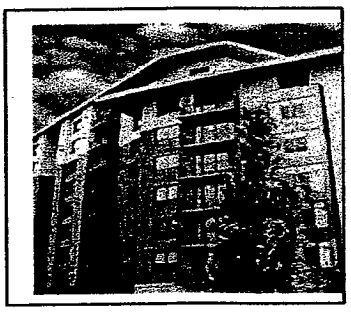
Fort Totten Park Apartments
308-Unit, Transit-Oriented Development

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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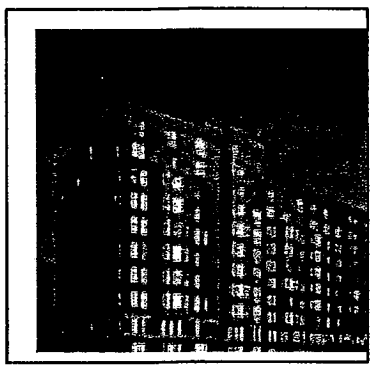
MTC
Moddie Turay Company

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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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.**

FOIA CONFIDENTIAL TREATMENT REQUESTED

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.** WMATA prefers 3% /year

   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.

Original

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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.

   Fixed Outside Date. Possible? yes.

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.**

   Not to Deal Refi/Sale

   Fit Tiffin as example

   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

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Washington, DC 20007

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(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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COMMERCIAL REAL ESTATE SERVICES

Maury E. Zanoff
Managing Director

CB Richard Ellis, Inc.
Capital Markets

CBRE
CB RICHARD ELLIS

750 9th Street, NW
Suite 900
Washington, DC 20001-4516

202 585 5645 Tel
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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

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

FOIA CONFIDENTIAL TREATMENT REQUESTED

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009058

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	$28,208,283	
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%	

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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%

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	$ 11,562
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/Year
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

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL 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	[redacted]	-	-	-	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%	168%
Avg 15 year ROE	15.88%															

WMATA-INV 009061

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

FOIA CONFIDENTIAL 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

FOIA CONFIDENTIAL TREATMENT REQUESTED

CLARK ENTERPRISES, INC.

CONFIDENTIAL

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

CONFIDENTIAL

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.

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.

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

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

Joel R. Washington, Director
Station Area Planning and Asset Management

Attachment

LAKRITZ ADLER

real estate development

December 18, 2007

Office of Property Development and Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001
Attention: Joel Washington, Director, Station Area Planning and Asset Management

Re: Shaw-Howard Florida Avenue Joint Development Site, Dec. 4 clarification request

Dear Mr. Washington:

This letter addresses the questions raised in your request for clarifications dated December 4, 2007, in preparation for our presentation to WMATA, now scheduled for December 19, 2007, at 2 p.m.

Below, we repeat and number each question and provide our response.

Technical Information

1) Within the schedule you presented, please indicate the outside, firm date by which a purchase or lease would occur.

We are willing to make the dates presented on page 22 of Volume 1 firm outside dates (rounding to the closest first of the month). Therefore outside date for land purchase would be November 1, 2011, or ground lease start date would be January 1, 2013. Note that it is quite possible closing will occur much sooner, if the WMATA selection process takes less than the ten-plus months advised by WMATA, and if the developer selection process is sufficiently certain at an early stage for us to start our study period and early approvals process – plan preparation, HPRB and BZA submissions, etc. – concurrent with the developer selection process.

2) What, if any, zoning approvals or variances will you be seeking for Parcels 1 or 3?

LaKritz | Adler Development, LLC
4326 8th Street, NW • Washington, DC 20011
(202) 882-0808 • Fax (202) 882-0809

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009068

As stated on page 23, Volume I, of our submission, Section J.1., "Zoning": "All projects proposed are by-right, with the exception of a parking reduction to be sought for the hotel proposed for Parcel 3 (the alternative plan for Parcel 3 of office and retail would not require any zoning relief at all.)" The same is indicated in Sections D and G of our submission, in the description of our plans for each parcel.

To clarify further: in order to keep the parking garage on Parcel 3 to a single level below grade, and thereby avoid any interference with the Metro tunnel easement, if we proceed with a hotel rather than office/retail on Parcel 3, we would expect to seek a zoning variance to reduce the C2B zone parking requirement for hotel use by 50%. The base C2B hotel requirement is 1 space per 2 rooms.

The plans proposed for Parcels 1 and 2 do not require any zoning approvals or variances, nor does the office and retail alternative plan for Parcel 3. This presumes that the bulk of the retail uses on Parcel 2 will be "evening uses" (principally restaurant and entertainment uses, as suggested in our submission) as described in D.C. Zoning Code Section 1901.5(a). In the unlikely event that the retail leasing market cannot produce restaurant and entertainment-related tenants for the bulk of the ground floor of Parcel 2 (and Parcel 3 if an office/retail plan is pursued), we would seek a special exception from the BZA to reduce parking requirements by 25%, thereby keeping the parking to a single level below grade.

Of course, given the rapidly changing nature of today's real estate market and the unknown time period until a final agreement with WMATA is approved, we must reserve the right to seek additional zoning exceptions, variances and other approvals as necessary to maintain the marketability and financial viability of the proposed projects.

3) Do you expect that Parcel 3 loading from Florida Avenue will be acceptable to DDOT?

The placement of loading access on Florida Avenue for Parcel 3 was an error in the preliminary design, as such access is prohibited by Section 1903.2 of the D.C. Zoning Code. Parcel 3 loading access will be relocated to 8th Street.

4) 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?

(Prepared by Max Mednick, Milestone Hotels)

Our research indicates that the market immediately surrounding the subject property is severely underserved by hotel properties. We believe that this particular neighborhood has the ability to absorb the supply of several additional hotels. By way of example, in 2006, the supply of hotel rooms in the identified competitive set grew by 24.9%

LaKritz | Adler Development, LLC
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(202) 882-0808 • Fax (202) 882-0809

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009069

(reflected by the opening of the 384-room Embassy Suites Washington Convention Center in November 2005). Despite the additional supply, the comp set increased its average rate and REVPAR (revenue per available room) by 9.5% and 8.4% respectively in 2006 versus 2005. Furthermore, it is our strong belief that any commercial development in the immediate surrounding market, whether hospitality-related or otherwise, will only benefit the entire neighborhood and continue to pull critical mass up the U Street Corridor as has been occurring the past several years. In short, we would not only welcome additional supply to the market, but would also be interested in constructing additional supply ourselves if the right opportunity presented itself. In an environment of ever-increasing construction costs, newly built properties always benefit existing properties by pushing room rates higher in the market to compensate for the initial costs of development.

The proposed hotel is in no way reliant on Howard University as the sole demand generator. The subject property will benefit from a wide range of primary and overflow generators based on its close proximity to the Washington Convention Center, central business core, and major tourist attractions, in much the same manner as is already occurring at management's Hilton Hotel in Silver Spring, Maryland, located five (5) miles to the north.

(LaKritz Adler adds): Our contacts at Howard University have indicated, and current public plans for Howard Town Center show, that there are no plans for a hotel at Howard Town Center as of the date of this letter, and they have further indicated, in response to our query, that there is "no chance" of a hotel at Howard Town Center. Howard does, however, continue to express interest in developing a hotel as a joint venture that combines Parcel 3 and the adjacent CVS site, as described in our Volume 1 submission.

5) Please relate your experience with office condominiums.

(Prepared by Douglas Bream, DANAC Corp.)

Condominiumizing a building provides an opportunity for commercial and/or residential clients to purchase property and share in the long term benefit of ownership. Recently, DANAC Corporation developed a 72,000 SF building, condominiumized it into three units, and sold two of the units to Metropolitan Regional Information Systems, Inc (MRIS). The third condominium unit, which is the ground floor level, is currently for sale or lease. Another recent example is the development of the Rockville Town Square, where as the master developer DANAC sold the retail space to Federal Realty Investment Trust, developed the parking directly for the City of Rockville, and condominiumized the residential area into 648 units, which we sold to third parties.

For certain projects a condominium structure provides more flexibility and a stronger client interest with a long term benefit to the surrounding community. This is particularly true for the likely tenants or office condo owners of 800 Florida Avenue, many of whom

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are non-profit organizations that can obtain below-market financing for ownership through tax exempt bonds, New Market Tax Credits, and tax-deductible capital campaigns, but cannot use these low cost capital sources for paying rent.

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. Likewise, the percentage of rent to value falls below WMATA appraisal thresholds and needs to be raised. These are FTA requirements.

It is difficult to answer this question without knowing the date and content of the WMATA appraisal. Our valuations were derived using widely accepted methods for calculating market land residuals based on the proposed development plans for the sites. We would need to consider whether the WMATA appraisal takes into account the decline in FAR values in the vicinity of the parcels since summer 2005; further, how does the WMATA appraisal adjust the land values for the time and cost impacts of the Metro tunnel running beneath the parcels? Does the WMATA appraisal account for ongoing double-digit construction cost inflation, and the impact on development land values? Does it reflect realistic by-right construction yields for the site based on actual architectural and engineering studies of the sites, and not just hypothetical, unachievable zoning envelopes?

We would hope that WMATA appreciates these nuances, and is willing to update its appraisal to reflect current market values and site conditions if the appraisal is found to be unrealistic.

In fact, we have in our possession an actual, complete MAI commercial appraisal of Parcel 3 which puts the value at $2.3 million in 2004 – our current offer of $2.7 million for this parcel is 17% higher than the appraisal value. And land values in this vicinity have been falling since mid-2005, so a 2004 appraisal is probably not far off from today's value.[1]

Regardless of the appraisal, we also understand that WMATA's intent is that we raise our offer price. Our economic calculations for the site have not changed since our

[1] The drop in land values is well-known, even if it is reflected more in a slowdown in land settlements and increased contract cancellations than in settled sales at lower prices. For example, when the DC Housing Finance Authority publicly offered for sale its 29,000 square foot Arts/C2B-zoned parcel at 815 Florida Avenue, directly across the street from Parcels 1 and 2 (but outside the Historic Preservation overlay and also without a Metro tunnel underneath, and therefore of superior value on both counts), in summer 2005, it reportedly received over a dozen offers in the approximate range of $10 million to $12 million. One year later, after two consecutive sale contracts fell through, DCHFA reoffered the site to the public, and received offers reportedly in the range of $5 million to $6 million – a 50% decline in land value in a single year.

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submission of our Volume 2 on October 5, 2007. If anything, the decline in both residential and commercial land values has accelerated since this time, owing to the widely-reported ongoing global credit crisis, which has caused a sharp increase in commercial and residential financing costs and reduced the availability of most forms of leverage, thereby reducing the value of real estate assets and increasing risk on development projects. Cap rates have been rising, pressuring commercial real estate values downward, even in the best markets.

Nonetheless, we would consider adding our estimated Metro tunnel-related site work costs for each parcel back into the parcel prices for Parcels 2 and 3 (Parcel 1 assumes no special site work), less $250,000 for each parcel for general site work, provided that WMATA will reduce the actual sale price at settlement (or reimburse us after settlement, as the parties may agree) by the amount that a qualified site work contractor and structural engineer determine, in a Guaranteed Maximum Price form of contract, will be required to address Metro-tunnel specific costs in the projects as designed, not to exceed our original site work estimates. In other words, we will increase our offer price on Parcel 2 by $538,408 (43% of the $1.5 million budget less $250,000, since Parcel 2 is 43% of the area of the Parcel 2 and 1920 8th combination), to $2,138,408, provided that Metro will reduce sale price or reimburse us up to $538,408 for our actual site work, excavation and foundation (and related soft) costs in the project to be built on Parcel 2 caused specifically by the presence of the Metro tunnel and systems under and about Parcel 2.

Similarly, we could increase our offer price on Parcel 3 by $1.589 million, to $4,289,000, provided that Metro will reduce our sale price or reimburse us up to $1.589 million for our actual site work, excavation and foundation (and related soft) costs in the project to be built on the Parcel 3 caused specifically by the presence of the Metro tunnel and systems under and about Parcel 3.

We are already assuming there will be no Metro-tunnel related costs on Parcel 1, so we are unable to adjust this price.[2]

Ground lease rates could be adjusted accordingly, as 4.77% in the first year of the new sale prices, after adjusting for the site work cost. (In fact, since the date of our offer, long-term interest rate indexes have fallen, suggesting that the ground lease rate should be reduced.)

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[2] Parcel 1, along with Parcel 2, is a good example of a site where an appraiser who has not performed an architectural and engineering study could very easily make wrong estimates about the site valuation, since a simple FAR calculation would suggest that the site has 17,100 residential square feet available, but in fact, owing to the small, irregular size, underground tunnel and parking constraints, only a single story retail building with mezzanine (about 4,100 square feet) is achievable under zoning requirements and with a modicum of cost-effectiveness and efficiency.

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2) WMATA expects escalation in 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.

As shown in Volume 2, our offer prices have been derived assuming purchase settlement occurs on October 26, 2011, or ground lease payments start on December 19, 2012, and as stated on pages 6 and 7 of Volume 2, we will increase purchase price by 3% and rent rate by 2% annually, pro rated monthly, for each year that settlement or lease start is delayed beyond those dates (provided that the delay is the fault of the developer, and not WMATA). Since our calculations assume that we are not paying debt costs or equity returns on land value prior to the project settlement or lease start dates, if purchase or lease were to start sooner than these dates, the purchase price or ground rent would have to be adjusted downward to derive the same returns, which are the minimum acceptable returns for this project. In other words, our offer prices are not today's values – they are higher than today's values.

At this time, Metro has received a $100,000 earnest money deposit for our contract on the parcels. In addition, we will be spending over $2 million during the contract period, investing in an entitlement process that adds great value to these Metro-owned properties, including HPRB, BZA and DCRA permit processes. If we were holding a passive land option on the properties for a period of time until deciding whether or not the develop the land, an option fee would make sense, but we are expediting the development process, at our time and expense, adding value to the Metro land and making it possible for us (or another purchaser) to purchase the land from Metro at the proposed values (without these entitlements, the land is worth less than the offer prices). We believe option fees are not appropriate for this situation.

3) 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).

We presume this question is only applicable in a ground lease scenario, since in a sale WMATA has no ongoing interest in the properties. We would appreciate further clarification of what WMATA has in mind for participation. We can then run a net present value analysis of the ground lease taking the additional payments to WMATA into account, and reduce the base ground rent rate accordingly, to achieve the same minimum required return for the investor equity and debt. Alternatively, we are open to a percentage ground rent, where ground rent payments are calculated on the net rental income from the improved properties, and are increased or reduced as a fixed percentage of that net rent. This would be an alternative to a base ground rent rate.

Having made this offer, we nonetheless urge WMATA to make these transactions as simple as possible, through fee simple sales on all three parcels, without complicating

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and therefore handicapping the transactions and potential developments by adding options, recapitalization and revaluation distribution formulas and percentage rent calculations to an already complex situation on three relatively small parcels in a transitional location and a downward-trending real estate market.

4) 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.

We are most interested in a sale on all three parcels, first and foremost, because a fee simple sale is the simplest type of transaction, and would give the developer the greatest range of development, financing and ownership structure options, thereby giving the project the greatest likelihood of success in an uncertain and rapidly changing market environment. On pages 29-32 of our Volume 1 submission, we go into great detail as to the reasons we prefer a fee simple sale on all three parcels. It is true, as described on page 31 and cited in your question above, that multiple and different land ownership structures beneath a single building will be difficult to accomplish and will needlessly complicate the transaction, and therefore make it less likely to succeed. This is not only a reason to sell Parcels 1 and 2 fee simple, it is also a reason to sell Parcel 3 fee simple, because there is a good probability that Parcel 3 will be combined with Howard University's adjacent CVS parcel in the ultimate development, and this will entail the same problems as combining Parcel 2 on an unsubordinated WMATA ground lease with 1920 8th Street.

To restate our argument on pages 31-32, our market feedback is that many prospective commercial tenants for these location will want at least a purchase option or right of first refusal on sales of their office spaces, if not an outright purchase of an office condominium, to induce them to locate to this pioneering office location. This would be very hard to accomplish if the land underlying the buildings is on a ground lease (especially a ground lease with multiple lots and owners.) Again, the key to success in this project, for any developer, will be flexibility – best achieved through a fee simple sale with no strings attached.

As to how we could combine 1920 8th with Parcel 2 if Parcel 2 is on a ground lease – our ground lease and option terms for 1920 8th Street explicitly allow us to combine the lot with adjacent lots for zoning and building purposes during our ground lease period. We would have a single building lot for zoning purposes with multiple tax lots for ownership and taxation purposes. Of course, WMATA would have to agree to this arrangement as well. If we owned Parcel 2 in fee simple this would not be an issue.

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5) It appears you are valuing the property adjacent to Parcel 2 at $94/FAR sf, whereas you value Parcel 2 at $42/FAR sf. Please explain the disparity and assure WMATA that it is not subsidizing the adjacent property deal.

We appreciate your concern. Therefore, it is important for us to better explain the terms of our 1920 8th ground lease and purchase option contract. To review, the essential terms of the 1920 8th ground lease are:

- Commenced August 3, 2007, with a one year base term and nine one-year renewal options
- Ground rent of $225,000/year in the first year, $150,000/year for renewal terms 1-4, and $200,000/year for renewal terms 5-9.
- Purchase option exercisable at any time during base term and renewals. Exercise price of $4,800,000 in the base term, increasing by 1.5% in each of the first three renewal terms and then remaining fixed at $5,019,256.20 for the remainder of the renewal terms.
- $100,000 of ground rent, once paid, credited toward the purchase option in the base term and in each of the first two renewal terms, with 100% of ground rent paid following the second renewal term and in every renewal term thereafter credited toward the option price. Therefore the purchase option balance due (*i.e.*, the purchase price) at the end of the last renewal term (August 3, 2017) shall be **$3,419,256.20.**
- Landlord is obliged under the ground lease to subordinate its unencumbered fee interest in the Property to Tenant's Construction Lender (and subsequent lenders), meaning that Tenant has full use of the land value of the Property as collateral to secure its construction financing, in place of a cash equity investment of equal value.

Under our agreement, we will be paying $3.42 million to buy 1920 8th in August 2017, a price of $67/FAR-sf. Let us assume we would close on the WMATA land at $42/FAR-sf on November 1, 2011, our firm outside closing date. Rounding to a six-year interval between the two settlements, and assuming an 8% discount rate, the Net Present Value (NPV) of a $42/sf number in 2011 is equivalent to the NPV of a $67/sf number in 2017. In other words, the values are identical.

Moreover, during the ten-year 1920 8th ground lease period, we are carrying 100% of the $3.42 million purchase price at an interest-only rate of 4.39% over the next four years ($150,000/year), increasing to a rate of 5.89% over the following five years ($200,000/year). This rate is superior to the bank financing terms we would receive on the land purchase today.

But the biggest difference between our deal on the 1920 8th parcel and the proposal for the WMATA parcels is that the 1920 8th ground lease is a fee-subordinated ground lease. The landlord has to pledge 100% of his fee interest in the property as collateral to our

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development, construction and permanent financing. This means that lenders will count the land value as the equivalent of cash invested in the deal, yet we and our investors do not have to invest this cash, and we are not compensating the cash beyond the low carry cost rates described above (an average of 5.2% over the next nine years). The minimum return for cash invested in a real estate development project today is 20%, compounding annually (and in most cases it is more). Assuming that 1920 8th appraises for $3.42 million and thus replaces an equal amount of cash equity in our project, the correct discount rate to apply to the future cash flows (ground lease payments) and eventual (2017) purchase price is 20%. We can compare this NPV to the NPV of purchasing the WMATA Parcel 2 for $1.6 million in 2011 at an 8% cost-of-funds (discount) rate, and then paying an 8% interest-only rate on 100% debt financing on that purchase until 2017. The end result is an NPV of $1.2 million for the 1920 8th Street deal, versus $1.5 million for Parcel 2.

Therefore, we are offering to pay WMATA 25% more for Parcel 2 than we are paying for the adjacent property at 1920 8th Street. It is not WMATA Parcel 2 that is subsidizing the purchase of 1920 8th, it is 1920 8th subsidizing WMATA. There are other ways to analyze this differential, but the gap would be even larger if we considered the full near-term benefits of the land equity available to us from the subordinated ground lease. We would happily make the same deal on the same proportionate price and terms with WMATA, but WMATA has stated that it will not subordinate its fee interest in a ground lease.

A final point of distinction between the two parcels is that at 1920 8th Street, we have a by-right, 47,600 square foot office building plan that meets zoning code parking requirements without any underground garage, saving us the entire cost of both Metro tunnel site work and underground garage construction if we build 1920 8th on its own. Anyone building on Parcel 2 on its own would either have to obtain a zoning variance for a large (50%) parking reduction, impairing the marketability of the building, or would have to incur relatively large underground garage and metro-tunnel specific costs to construct a by-right building on Parcel 2, which even then would not come close to the full FAR potential of the site because of the parking requirements (without going an unfeasible two floors underground for parking). Thus the Parcel 2 sale price must be reduced by the costs imposed by the Metro tunnel running beneath it, whereas 1920 8th on its own does not need to be discounted by this cost (although it does need to be discounted if combined with Parcel 2, since both sites will then incur the special site work costs over a larger area.)

6) Note that WMATA standard leases require annual minimum escalations of rent (as opposed to the once every 10 years 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.

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We will agree to change our ground rent escalation rate to 1.8% per year, rather than 20% every ten years.

Eliminating the right of first refusal on future sale of the property eliminates one of the inducements for a developer to enter a ground lease for the parcels, rather than a purchase. As a trade off, we believe the ground rent rate should be reduced, which would also bring the rate more into line with current market trends.

We look forward to further discussion on December 19th, and reaching an agreement with WMATA to acquire these parcels.

Sincerely,

Joshua Adler
Co-Managing Member

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Balance Sheet
As of December 31, 2005

ASSETS

Current assets:

Cash and Cash Equivalents		$ 736,194.12	4.9%
Accounts Receivable		$ 23,456.62	0.2%
Prepaid Expenses		$ 10,162.79	0.1%
Mortgage Escrow Accts		$ 4,214.84	0.0%
Settlement Funds Receivable		$ -	0.0%
Inventory (Real Estate Held for Resale)		$ 194,346.61	1.3%
Investments in Pending Projects		$ 149,722.31	1.0%
		1,118,097.29	7.4%

Fixed Assets

Land		$ 7,597,026.62	50.1%
Buildings		$ 3,509,936.91	23.2%
Improvements		$ 1,985,693.32	13.1%
Capitalized Acquisition Settlement Costs		$ 302,033.14	2.0%
Capitalized Zoning Costs		$ 119,854.24	0.8%
Capitalized Lease Buyout Costs		$ 22,236.38	0.1%
Fixtures, Furnishings & Equipment		$ 73,860.91	0.5%
Leasehold Improvements		$ 33,835.85	0.2%
Less Accumulated Depreciation		$ (131,028.72)	-0.9%
		13,513,448.65	89.2%

Other assets:

Amounts Due from Affiliated Companies		$ (0.00)	0.0%
Deposits w/Vendors		$ 25,770.00	0.2%
Receivables Due from Members and Other Affiliates		$ 58,948.70	0.4%
Notes Receivable from Investors		$ 368,499.21	2.4%
Deferred Loan Costs	$ 106,243.40		0.7%
Accumulated Amortization, Deferred Loan Coss	$ (40,547.40)	$ 65,696.00	-0.3%
Amounts Due from Other Related Parties		$ -	0.0%
Capitalized Organizational Costs	$ 1,663.50		0.0%
Accumulated Amortization, Capitalized Org Costs	$ (756.75)	$ 906.75	0.0%
		$ 519,820.66	3.4%
Total assets		$ 15,151,366.60	100.0%

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WMATA-INV 009078

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LaKritz Adler Development
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Balance Sheet
As of December 31, 2005

LIABILITIES AND PARTNERS CAPITAL

Current liabilities:

Accounts Payable	$ 117,919.26	0.8%
Accrued Interest Expense	$ 43,416.21	0.3%
Accrued Expenses	$ 50,588.14	0.3%
Lines of Credit	$ 125,000.00	0.8%
Construction/Short-Term Real Estate Loans	$ 7,742,735.84	51.1%
	$ 8,079,659.45	53.3%

Long Term liabilities:

First Mortgages	$ 2,504,006.92	16.5%
Second Mortgages	$ 931,640.28	6.1%
Notes Payable	$ 111,436.70	0.7%
Warranty Repair Liability	$ -	0.0%
	$ 3,547,083.90	23.4%

Other liabilities:

Amounts Due to Affiliated Companies	$ -	0.0%
Tenant Security Deposits	$ 41,453.45	0.3%
Customer Deposits	$ 280,000.00	1.8%
Amounts Due Members	$ 14,231.85	0.1%
	$ 335,685.30	2.2%
Total liabilities	$ 11,962,428.65	79.0%

Partners capital

Contributed Capital, LaKritz & Adler	$ 348,094.85	2.3%
Contributed Capital, Investors	$ 1,805,999.21	11.9%
Retained Earnings	$ 1,034,843.89	6.8%
	3,188,937.95	21.0%
Total liabilities and partners capital	$ 15,151,366.60	100.0%

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WMATA-INV 009079

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LaKritz Adler Development
(consolidated holdings of LaKritz Adler Development LLC and affiliates)

Income Statement
Year Ended December 31, 2005

Revenues:				
Gross Rents		$486,176.37		5.1%
Property Sales		$7,113,000.00		74.1%
Construction Billings		$1,822,789.61		19.0%
Development Fees		$145,000.00		1.5%
Property Management Fees		$4,895.85		0.1%
Interest income		$22,885.81		0.2%
Total Revenues			$ 9,594,747.64	100.0%
Direct Expenses				
Rental Properties				
Operating Expenses	$91,330.48			
Depreciation / Amortization	$141,152.07			
Total Rental Property Operating Expenses		$232,482.55		2.4%
Property Sales				
Cost of Sales	$5,511,890.28			
Other Direct Expenses	$42,304.89			
Total Direct Expenses of Property Sales		$5,554,195.17		57.9%
Construction Operations				
Direct Costs	$1,534,514.75			
Construction Management	$105,397.01			
Total Construction Operating Expenses		$1,639,911.76		17.1%
Interest Expense				
Rental Properties	$524,551.86			
Properties Pending Sale	$27,026.22			
General Financing	$28,988.45			
Guaranteed Payments to Investors	$88,579.10			
Total Interest Expense		$669,145.63		7.0%
Prospective Development				
Current Expenses		$12,611.85		0.1%
Total Direct Expenses			$8,108,346.96	84.5%
Gross Profit before G&A			$1,486,400.68	15.5%
General and administrative expenses:				
Employee Expenses			$208,979.97	2.2%
Promotional			$24,536.13	0.3%
Office Expenses			$102,425.22	1.1%
Contributions			$21,564.00	0.2%
Legal fees			$180,153.54	1.9%
Other Gen & Admin Exps			$81,870.35	0.9%
Income Taxes			$86,524.35	0.9%
			$706,053.56	7.4%
Net income			$780,347.12	8.1%

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009080

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LaKritz Adler Development
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Balance Sheet
As of December 31, 2006

ASSETS

Current assets:

Cash and Cash Equivalents		$ 2,996,595.70	23.9%
Accounts Receivable		$ 39,763.54	0.3%
Amounts Due from Affiliated Companies		$ (0.00)	0.0%
Prepaid Expenses		$ 3,859.48	0.0%
Mortgage Escrow Accts		$ 2,095.57	0.0%
Settlement Funds Receivable		$ -	0.0%
Investments in Pending Projects		$ 76,078.87	0.6%
		3,118,393.16	24.9%

Fixed Assets

Land		$ 1,202,963.14	9.6%
Buildings		$ 1,279,802.56	10.2%
Improvements		$ 1,370,477.58	10.9%
Capitalized Acquisition Settlement Costs		$ 106,760.72	0.9%
Capitalized Zoning Costs		$ 1,268.43	0.0%
Capitalized Lease Buyout Costs		$ 379,515.24	3.0%
Fixtures, Furnishings & Equipment		$ 48,076.80	0.4%
Leasehold Improvements		$ 33,835.85	0.3%
Less Accumulated Depreciation		$ (202,016.14)	-1.6%
		4,220,684.18	33.6%

Other assets:

Inventory (Real Estate Held for Resale)		$ 4,699,117.66	37.5%
Deposits w/Vendors		$ 29,472.00	0.2%
Receivables Due from Members and Other Affiliates		$ 41,241.32	0.3%
Notes Receivable from Investors		$ 368,499.21	2.9%
Deferred Loan Costs	$ 95,321.40		0.8%
Accumulated Amortization, Deferred Loan Coss	$ (28,490.87)	$ 66,830.53	-0.2%
Capitalized Organizational Costs	$ 2,513.50		0.0%
Accumulated Amortization, Capitalized Org Costs	$ (1,059.47)	$ 1,454.03	0.0%
		$ 5,206,614.75	41.5%
Total assets		$ 12,545,692.09	100.0%

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LaKritz Adler Development
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Balance Sheet
As of December 31, 2006

LIABILITIES & PARTNERS' EQUITY

Current liabilities:			
Accounts Payable	$	150,870.38	1.2%
Accrued Interest Expense	$	59,975.25	0.5%
Accrued Expenses	$	4,549.44	0.0%
Amounts Due to Affiliated Companies	$	-	0.0%
Lines of Credit	$	295,000.00	2.4%
Short-Term Real Estate Loans & Construction Financing	$	-	0.0%
	$	510,395.07	4.1%
Long Term liabilities:			
First Mortgages & Long Term Construction Financing	$	7,585,256.01	60.5%
Second Mortgages	$	196,914.07	1.6%
Notes Payable	$	-	0.0%
Warranty Repair Liability	$	16,853.40	0.1%
	$	7,799,023.48	62.2%
Other liabilities:			
Tenant Security Deposits	$	27,751.32	0.2%
Customer Deposits	$	-	0.0%
Amounts Due Members	$	-	0.0%
	$	27,751.32	0.2%
Total liabilities	$	8,337,169.87	66.5%
Partners capital			
Contributed Capital, LaKritz & Adler	$	(99,896.80)	-0.8%
Contributed Capital, Investors	$	1,555,999.21	12.4%
Retained Earnings	$	2,752,419.81	21.9%
		4,208,522.22	33.5%
Total liabilities and partners capital	$	12,545,692.09	100.0%

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LaKritz Adler Development
(consolidated holdings of LaKritz Adler Development LLC and affiliates)

Statement of Income
Year Ended December 31, 2006

Revenues:				
Gross Rents		$412,394.54		4.2%
Property Sales		$9,449,900.00		95.5%
Construction Billings		-$54,011.67		-0.5%
Property Management Fees		$2,188.81		0.0%
Interest Income		$80,257.56		0.8%
Other Income		$6,732.65		0.1%
Total Revenues			$ 9,897,461.89	100.0%
Direct Expenses				
Rental Properties				
Operating Expenses	$174,811.75			
Depreciation / Amortization	$146,041.35			
Total Rental Property Operating Expenses		$320,853.10		3.2%
Property Sales				
Cost of Sales	$6,310,823.69			
Other Direct Expenses	$159,483.33			
Total Direct Expenses of Property Sales		$6,470,307.02		65.4%
Construction Operations				
Direct Costs	$301.82			
Construction Management	$1,095.36			
Total Construction Operating Expenses		$1,397.18		0.0%
Interest Expense				
Rental Properties	$443,783.68			
Properties Pending Sale	$0.00			
General Financing	$14,946.81			
Guaranteed Payments to Investors	$106,294.92			
Total Interest Expense		$565,025.41		5.7%
Prospective Development				
Current Expenses		$211,850.37		2.1%
Total Direct Expenses			$7,569,433.08	76.5%
Gross Profit before G&A			$2,328,028.81	23.5%
General and administrative expenses:				
Employee Expenses			$199,007.38	2.0%
Promotional			$47,975.69	0.5%
Office Expenses			$104,293.64	1.1%
Contributions			$0.00	0.0%
Legal fees			$9,698.88	0.1%
Other Gen & Admin Exps			$29,418.05	0.3%
Income Taxes			$21,410.32	0.2%
			$411,803.96	4.2%
Net income			$1,916,224.85	19.4%

LaKritz Adler Development
(consolidated holdings of LaKritz Adler Development LLC and affiliates)

CONFIDENTIAL

Balance Sheet
As of July 31, 2007

ASSETS

Current assets:

Cash and Cash Equivalents		$ 1,024,298.55	4.6%
Accounts Receivable		$ 100,671.86	0.5%
Prepaid Expenses		$ 19,927.67	0.1%
Mortgage Escrow Accts		$ 122,922.54	0.6%
Investments in Pending Projects		$ 292,265.91	1.3%
		1,560,086.53	7.0%

Fixed Assets

Land		$ 4,794,585.61	21.6%
Buildings		$ 7,969,982.56	35.9%
Improvements		$ 1,300,573.27	5.9%
Capitalized Acquisition Settlement Costs		$ 634,438.00	2.9%
Fixtures, Furnishings & Equipment		$ 97,380.31	0.4%
Leasehold Improvements		$ 33,835.85	0.2%
Less Accumulated Depreciation		$ (276,008.14)	-1.2%
		14,554,787.46	65.5%

Other assets:

Inventory (Real Estate Held for Resale)		$ 5,226,697.22	23.5%
Deposits w/Vendors		$ 16,780.00	0.1%
Receivables Due from Members and Other Affiliates		$ 66,825.54	0.3%
Notes Receivable from Investors		$ 368,499.21	1.7%
Deferred Loan Costs	$ 533,544.99		2.4%
Accumulated Amortization, Deferred Loan Costs	$ (113,145.58)	$ 420,399.41	-0.5%
Capitalized Organizational Costs	$ 1,513.50		0.0%
Accumulated Amortization, Capitalized Org Costs	$ (857.83)	$ 655.67	0.0%
		$ 6,099,857.05	27.5%
Total assets		$ 22,214,731.04	100.0%

LaKritz Adler Development
(consolidated holdings of LaKritz Adler Development LLC and affiliates)

CONFIDENTIAL

Balance Sheet
As of July 31, 2007

LIABILITIES & PARTNERS' EQUITY

Current liabilities:			
Accounts Payable	$	328,694.52	1.5%
Accrued Interest Expense	$	145,092.47	0.7%
Accrued Expenses	$	2,752.32	0.0%
	$	476,539.31	2.1%
Long Term liabilities:			
First Mortgages & Long Term Construction Financing	$	16,209,509.70	73.0%
Second Mortgages	$	1,195,966.19	5.4%
Warranty Repair Liability	$	15,339.53	0.1%
	$	17,420,815.42	78.4%
Other liabilities:			
Tenant Security Deposits	$	93,321.75	0.4%
Customer Deposits	$	1,826.00	0.0%
	$	95,147.75	0.4%
Total liabilities	$	17,992,502.48	81.0%
Partners capital			
Contributed Capital, LaKritz & Adler	$	242,041.71	1.1%
Contributed Capital, Investors	$	1,555,999.21	7.0%
Retained Earnings	$	2,424,187.64	10.9%
		4,222,228.56	19.0%
Total liabilities and partners capital	$	22,214,731.04	100.0%

CONFIDENTIAL

LaKritz Adler Development
(consolidated holdings of LaKritz Adler Development LLC and affiliates)

Statement of Income
Six Months Ended July 31, 2007

Revenues:				
Gross Rents		$516,498.95		16.2%
Property Sales		$2,630,000.00		82.3%
Interest Income		$45,897.99		1.4%
Other Income		$2,705.77		0.1%
Total Revenues			$ 3,195,102.71	100.0%
Direct Expenses				
Rental Properties				
Operating Expenses	$163,091.45			
Depreciation / Amortization	$120,021.67			
Total Rental Property Operating Expenses		$283,113.12		8.9%
Property Sales				
Cost of Sales	$1,899,840.50			
Other Direct Expenses	$6,227.70			
Total Direct Expenses of Property Sales		$1,906,068.20		59.7%
Interest Expense				
Rental Properties	$388,714.81			
Properties Pending Sale	$0.00			
General Financing	$4,027.53			
Guaranteed Payments to Investors	$78,455.74			
Total Interest Expense		$471,198.08		14.7%
Prospective Development				
Current Expenses		$1,291.50		0.0%
Total Direct Expenses			$2,661,670.90	83.3%
Gross Profit before G&A			$533,431.81	16.7%
General and administrative expenses:				
Employee Expenses			$81,549.10	2.6%
Promotional			$27,825.91	0.9%
Office Expenses			$49,292.79	1.5%
Contributions			$2,250.00	0.1%
Legal fees			$16,395.01	0.5%
Other Gen & Admin Exps			$51,160.03	1.6%
Income Taxes			-$15,393.22	-0.5%
			$213,079.62	6.7%
Net income			$320,352.19	10.0%

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?

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 CONFIDENTIAL TREATMENT REQUESTED

BSA Table 1

Florida Avenue / Shaw - Mid December 2007 Proposals

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	60
		2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	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																
	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 $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	$16,968,012	(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	$2,435,951
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 009089

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 partner this is bigger than what they've done 5	10	65
Donatelli	described only 20	10	not given 0**	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 expansion Cert 5	never headed up needs Cert 10	50
P N Hoffman	too low 0	too low 0	15	10	20	35
SED Center	too low, limited use 0	10	10	needs partner 5	5	30
Symmetry	20	25	5	did other needed 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

FOIA CONFIDENTIAL TREATMENT REQUESTED

4:15 PM
10/25/06
Accrual Basis

Metropolis Development Company
Balance Sheet Condensed

CONFIDENTIAL

	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 CInc	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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009091

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 one was 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

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 a difference in experience. The Banneker team members (led by Omar Karim) include the District Development Group and, tentatively, the Ball Street Fund, which has replaced Donatelli Development as a team member. Team members have not built a project of this size though they have successfully built a residential project in Silver Spring of the size of any one of the buildings on the separate parcels. Nor have they completed retail projects of modest scope, as these are, though they have participated in larger teams where this has been accomplished. Because the retail is not extensive, it is anticipated that Banneker can acquire the expertise to do the leasing. Their architect, Torti Gallas, is experienced in residential and retail design on nearby U Street. 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. Arrangements are yet to be made. 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

_____

Marc Biondi

_____

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

WMATA-INV 009096

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%

notify lower bidders to raise —

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009097

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.

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?

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

Eric Smart 1.
10/11

LaKrisz Adler is ~~wading~~ wordy but doesn't amount to anything

Circumvent DC tax law with 29 years

Moddie Turay / Bannaker are remarkably close

* Hard to figure out whether the inclusion of a condo with the smaller side (Parcel 1) is of any benefit
Doesn't enhance

*

Bannaker is straightforward; they've left participation as a possibility
Go with them.

Moddie takes a similar base rent & jumps it up every 10 years. Bannaker does it every year
* Eric discounted Moddie two ways
*

Bannaker's threshold 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

Florida Avenue Proposals

Bolan Smart Associates

October 2007

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Recommendations / Next Steps

1. TBD

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009104

GM	GMGR CEO (Not Yet Approved)
BOARD	BOARD WMATA (Not Yet Approved)

SUPPORTING DOCUMENTATION	
DESCRIPTION	FILE
	99972-MEAD-ENC-BAIS-REVISION 3.doc

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009105

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009106

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 WMATA-INV 009107

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 Development Group, LLC and Metropolis Development Company 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	$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
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

T:\Doggett\ShawHoward\Shaw-Howard FL AVE Confidential.wpd

WMATA-INV 009108

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 Development Group, LLC and Metropolis Development Company LLC**
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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	NPV to WMATA over Term of Lease $14 million
Appraisal by Integra Realty 8/07	

WMATA-INV 009109

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 CONFIDENTIAL 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 CONFIDENTIAL TREATMENT REQUESTED

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 CONFIDENTIAL TREATMENT REQUESTED

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009113

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009114

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009115

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 CONFIDENTIAL 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 CONFIDENTIAL TREATMENT REQUESTED

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 CONFIDENTIAL TREATMENT REQUESTED

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 CONFIDENTIAL TREATMENT REQUESTED

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 CONFIDENTIAL TREATMENT REQUESTED

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009121

6	CHAMBLISS, HOPE-LEEN'DA	Approver				
7	CEO, GMGR	Approver				
8	WMATA, BOARD	Approver				
9						

Return to previous screen

CMIS

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 009122

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 team
exec
street to Committee on Hzf

Lokuts has not done office + hotel in the past

Lokuts Networth - 7/31/07 = $4.2 M (including $1.6 M from investors)
Milestone Hotels 12/31/06 = -$7.5M
Dance = no info.

Checked Bank References
all soft - but all OK

Banneker 11/31/07 = $430K Net Worth

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

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

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 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 009131

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 009132

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009133

SOURCE SELECTION PLAN
JOINT DEVELOPMENT PROPOSALS
JDS ISSUED AUGUST 2007

APPROVE: _____ _____

Joel R. Washington
Director
Station Area Planning and Asset Management
Contracting Officer
Source Selection Authority

Date

CONCUR: _____ _____

Nat Bottigheimer
Assistant General Manager
Planning and Joint Development

Date

FOIA CONFIDENTIAL 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

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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

FOIA CONFIDENTIAL TREATMENT REQUESTED

will be 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 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: (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 CONFIDENTIAL TREATMENT REQUESTED

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009140

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** **(10 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. **Innovation and Creativity of Project** **(5 points)**
WMATA will evaluate the degree to which the Project incorporates innovative development concepts.

Compatibility of Project with Local Transit-Oriented **(5 points)**

Development Plans and Land Use Policies
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.

6. **Benefits Accruing to the Local Jurisdiction** **(10 points)***
WMATA will consider the tax revenue, job and any related benefits such as new public facilities.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009141

7. **[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.

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009142

Moddie Turay Co., LLC
Clark Enterprises Inc.

Renaissance Row

VOLUME II

ECONOMIC INFORMATION

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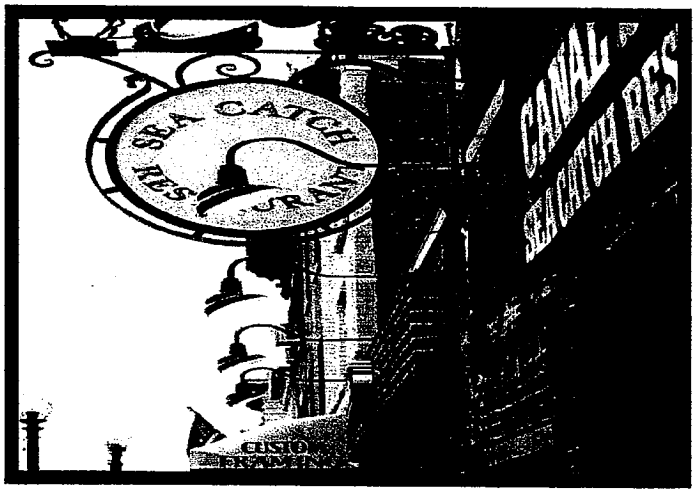


"Good thoughts are no better than good dreams, unless they be executed."

~Ralph Waldo Emerson

VOLUME II: ECONOMIC INFORMATION

A. TABLE OF CONTENTS
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

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.

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.

   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.

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.

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.

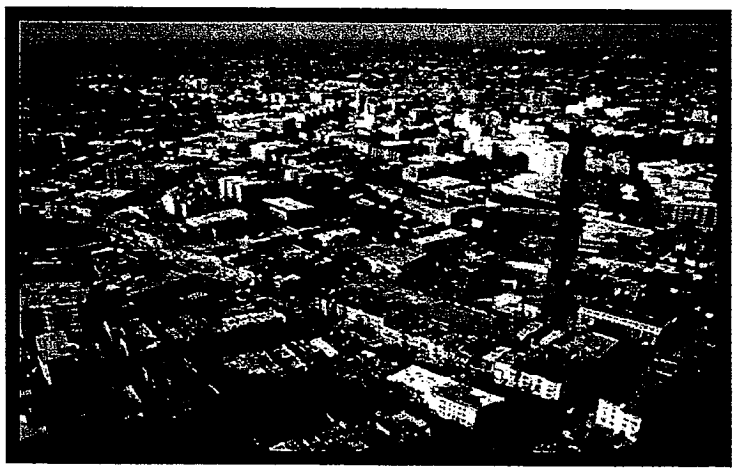
6. MTC/Clark anticipates paying WMATA 8% of fair market value annually; therefore, we do not intend to give WMATA a participating share of the gross income from the Project. We explored a participating ground lease where WMATA would receive 5% of the fair market value and 10% of their pro-rata share

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.

    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	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

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

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

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%

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**

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WMATA-INV 009159

FOIA CONFIDENTIAL 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	$ 254,196										
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	$ 761,880	$ 23,295,315	$ 16,500,496										
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	$ 17,606,101	-	-	-	-	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	6,566,573

WMATA-INV 009160

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	(22,843,215)	-	-	-	-	(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)
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	(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	11,438,585	-	-	-	-	-	-	-	-	-	-
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	-	-	-	-	-	-	-	-	-	-	-	-	-	-	8,916,407
Disposition Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
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	12,901,906
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)		0%	0%	0%	0%	4%	8%	7%	8%	8%	8%	8%	9%	9%	9%	30%
Avg 15 year ROI	6.61%															
Return on Equity (ROE)		0%	0%	0%	0%	8%	28%	8%	9%	10%	11%	12%	13%	14%	14%	118%
Avg 15 year ROE	16.17%															

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WMATA 15 Yr Cash Flow

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 009161

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	$ -	$ -	$ -	$ -	$ 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

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 009162

15 Year Cash Flow Backup
Ground Lease Scenario.

Month / Year	ALL MONTHS 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
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													
Average Retail Rent/SF													
Average Parking Rent/Space													
NET REVENUES													
Rental Revenues	$ 35,992,866	$ -	$ 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	1,202,459	-	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	(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	12,706,345	-	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	$ 5,195,918	$ 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
Operating Expense/Unit/Year												$ -	$ -
Operating Expenses	(16,096,116)	-	(772,892)	(1,723,195)	(1,774,890)	(1,828,137)	(1,862,981)	(1,939,471)	(1,997,655)	(2,057,584)	(2,119,312)	(2,182,891)	(2,248,378)
Replacement Reserves			(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 - 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	$ 3,246,985	$ 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	$ 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
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
CONSTRUCTION DEBT													
Beginning Balance		-	19,327,641	32,674,512	-	-	-	-	-	-	-	-	-
Loan Draw	30,096,464	18,657,878	11,438,586	-	-	-	-	-	-	-	-	-	-
Interest	2,578,048	669,763	1,908,285	-	-	-	-	-	-	-	-	-	-
Principal		-	-	-	-	-	-	-	-	-	-	-	-
Total Amount Due to Loan		19,327,641	32,674,512	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 (% 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	$ 3,246,985	$ 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	$ 10,891,504	$ 10,891,504	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
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

Month / Year (2010)	0	1 Jan	2 Feb	3 Mar	4 Apr	5 May	6 June	7 July	8 Aug	9 Sep
Available Units at BOP	130	130	130	130	130	130	130	130	130	130
Total Units Rented	-	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP	130	130	130	130	130	130	130	130	130	130
Cumulative Units Rented	-	-	-	-	-	-	-	-	-	-
Remaining Parking Spaces to Sell at BOP	62	62	62	62	62	62	62	62	62	62
Total Rented in Period	-	-	-	-	-	-	-	-	-	-
Remaining to Remt at EOP	62	62	62	62	62	62	62	62	62	62
Cumulative Spaces Rented	-	-	-	-	-	-	-	-	-	-
Remaining Retail SF	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Total SF Rented in Period	-	-	-	-	-	-	-	-	-	-
Remaining to Remt at EOP	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Cumulative SF Rented	-	-	-	-	-	-	-	-	-	-
Average Residential Rent/SF	$	$ 2.90	$ 2.90	$ 2.91	$ 2.92	$ 2.92	$ 2.93	$ 2.94	$ 2.95	$ 2.95
Average Retail Rent/SF	$	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06
Average Parking Rent/Space	$	$ 163.91	$ 164.31	$ 164.72	$ 165.12	$ 165.53	$ 165.94	$ 166.35	$ 166.76	$ 167.17
Rental Revenues	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Parking Revenues	-	-	-	-	-	-	-	-	-	-
General MF Rental and Parking Vacancy Allowance	-	-	-	-	-	-	-	-	-	-
Retail Revenues	-	-	-	-	-	-	-	-	-	-
General Retail Vacancy Allowance	-	-	-	-	-	-	-	-	-	-
Total Revenues	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Operating Expenses	-	12,326	12,356	12,387	12,417	12,448	12,479	12,509	12,540	12,571
NET RENTAL INCOME	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Gross Loan Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less- Cost of Refinance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Gross Sale Price	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Sales	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Beginning Balance	-	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	1,496,570	9,394,934								
Ending Balance (Profit)	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 (construction debt)	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
Loan Draw	-	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	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	68,530	77,270
Total Amount Due to Loan	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 (permanent debt)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Monthly Payment	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
0% WMATA Participation (% of Cash Flow after Debt Service)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available From Operations	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available From Sale / Refinance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available After Debt Service	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Contributions	$ (5,499,127)	$ 9,394,934	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Loan Paydown	-	-	-	-	-	-	-	-	-	-
Refinance Cash Flow	-	-	-	-	-	-	-	-	-	-
Disposition Cash Flow	-	-	-	-	-	-	-	-	-	-
Operating Cash Flow	-	-	-	-	-	-	-	-	-	-
Total	$ (5,499,127)	$ 9,394,934	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -

FOIA CONFIDENTIAL TREATMENT REQUESTED

15 Year Cash Flow Backup
Ground Lease Scenario

Month / Year	ALL MONTHS TOTAL	10 Oct 2010	11 Nov	12 Dec	Jan	Feb	Mar	Apr	May	June
Available Units at BOP		130	130	130	130	130	130	130	130	130
Total Units Rented		-	-	-	-	-	-	-	-	-
Total Remaining Available EOP		130	130	130	130	130	130	130	130	130
Cumulative Units Rented		-	-	-	-	-	-	-	-	-
Remaining Parking Spaces to Sell at BOP		62	62	62	62	62	62	62	62	62
Total Rented in Period		-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP		62	62	62	62	62	62	62	62	62
Cumulative Spaces Rented		-	-	-	-	-	-	-	-	-
Remaining Retail SF		26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Total SF Rented in Period		-	-	-	-	-	-	-	-	-
Remaining to Rent at EOP		26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282	26,282
Cumulative SF Rented		-	-	-	-	-	-	-	-	-
Average Residential Rent/SF		$ 2.96	$ 2.97	$ 2.98	$ 2.98	$ 2.99	$ 3.00	$ 3.00	$ 3.01	$ 3.02
Average Retail Rent/SF		$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06
Average Parking Rent/Space		$ 167.58	$ 168.00	$ 168.41	$ 168.83	$ 169.24	$ 169.66	$ 170.08	$ 170.50	$ 170.92
NET REVENUES										
Rental Revenues	$ 35,992,866	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Parking Revenues	1,202,458	-	-	-	-	-	-	-	-	-
General MF Rental and Parking Vacancy Allowance	(1,849,661)	-	-	-	-	-	-	-	-	-
Retail Revenues	12,706,346	-	-	-	-	-	-	-	-	-
General Retail Vacancy Allowance	(622,052)	-	-	-	-	-	-	-	-	-
Total Revenues	$ 47,430,958	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Operating Expense/Unit/Year		12,602	12,633	12,664	12,696	12,727	12,758	12,790	12,821	12,853
Operating Expenses	(16,096,116)	-	-	-	-	-	-	-	-	-
Replacement Reserves					(2,564)	(2,564)	(2,564)	(2,564)	(2,564)	(2,564)
8.00% Ground Lease - WMATA		-	-	-	-	-	-	-	-	-
NET RENTAL INCOME	$ 29,329,409	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
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
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
CONSTRUCTION DEBT		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	17,794,019	19,327,641	20,870,209	22,421,775	23,982,392	25,552,112	27,130,990
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
Interest	2,578,048	86,062	94,904	103,798	112,745	121,743	130,794	139,897	149,054	158,264
Principal		-	-	-	-	-	-	-	-	-
Total Amount Due to Loan		16,269,292	17,794,019	19,327,641	20,870,209	22,421,775	23,982,392	25,552,112	27,130,990	28,719,077
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		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available After Debt Service		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
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	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -

Month / Year	July	Aug	Sep	Oct	Nov	Dec
Available Units at BOP	130	94	78	62	46	30
Total Units Rented	36	16	16	16	16	16
Total Remaining Available EOP	94	78	62	46	30	14
Cumulative Units Rented	36	52	68	84	100	116
Remaining Parking Spaces to Sell at BOP	62	52	42	32	22	12
Total Rented in Period	10	10	10	10	10	10
Remaining to Rent at EOP	52	42	32	22	12	2
Cumulative Spaces Rented	10	20	30	40	50	60
Remaining Retail SF	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	20,282	14,282	8,282	2,282	-	-
Cumulative SF Rented	6,000	12,000	18,000	24,000	26,282	26,282
Average Residential Rent/SF	$ 3.03	$ 3.03	$ 3.04	$ 3.05	$ 3.06	$ 3.06
Average Retail Rent/SF	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06	$ 53.06
Average Parking Rent/Space	$ 171.34	$ 171.76	$ 172.19	$ 172.61	$ 173.04	$ 173.46
NET REVENUES						
Rental Revenues	$ 87,962	$ 127,370	$ 166,972	$ 206,768	$ 246,759	$ 286,947
Parking Revenues	1,713	3,435	5,166	6,904	8,652	10,408
General MF Rental and Parking Vacancy Allowance	-	-	-	-	-	-
Retail Revenues	26,530	53,060	79,591	106,121	116,211	116,211
General Retail Vacancy Allowance	-	-	-	-	(5,811)	(5,811)
Total Revenues	$ 116,206	$ 183,866	$ 251,728	$ 319,793	$ 365,812	$ 407,755
Operating Expense/Unit/Year	12,885	12,916	12,948	12,980	13,012	13,044
Operating Expenses	(69,792)	(139,928)	(140,273)	(140,619)	(140,966)	(141,314)
Replacement Reserves	(2,564)	(2,564)	(2,564)	(2,564)	(2,564)	(2,564)
8.00% Ground Lease - WMATA	-	-	-	-	-	-
NET RENTAL INCOME	$ 46,414	$ 43,938	$ 111,455	$ 179,174	$ 224,846	$ 266,442
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
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
CONSTRUCTION DEBT	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
Beginning Balance	28,719,077	30,316,428	31,923,097	32,109,315	32,296,619	32,485,016
Loan Draw	1,429,823	1,429,823	-	-	-	-
Interest	167,528	176,846	186,218	187,304	188,397	189,496
Principal	-	-	-	-	-	-
Total Amount Due to Loan	30,316,428	31,923,097	32,109,315	32,296,619	32,485,016	32,674,512
PERMANENT DEBT						
Beginning Balance	$ -	$ -	$ -	$ -	$ -	$ -
Monthly Payment	$ -	$ -	$ -	$ -	$ -	$ -
0% WMATA Participation (% of Cash Flow after Debt Service)	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available From Operations	$ 116,206	$ 183,866	$ 251,728	$ 319,793	$ 365,812	$ 407,755
Cash Flow Available From Sale / Refinance	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available After Debt Service	116,206	183,866	251,728	319,793	365,812	407,755
EQUITY CASH FLOW						
Contributions	$ -	$ -	$ -	$ -	$ -	$ -
Loan Paydown	-	-	-	-	-	-
Refinance Cash Flow	-	-	-	-	-	-
Disposition Cash Flow	-	-	-	-	-	-
Operating Cash Flow	116,206	183,866	251,728	319,793	365,812	407,755
Total	$ 116,206	$ 183,866	$ 251,728	$ 319,793	$ 365,812	$ 407,755

Month / Year	25 Jan	26 Feb	27 Mar	28 Apr	29 May	30 June 2012	31 July	32 Aug
Available Units at BOP	14	-	-	-	-	-	-	-
Total Units Rented	14	-	-	-	-	-	-	-
Total Remaining Available EOP	-	-	-	-	-	-	-	-
Cumulative Units Rented	130	130	130	130	130	130	130	130
Remaining Parking Spaces to Sell at BOP	2	-	-	-	-	-	-	-
Total Rented in Period	2	-	-	-	-	-	-	-
Remaining to Rent at EOP	-	-	-	-	-	-	-	-
Cumulative Spaces Rented	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
Average Residential Rent/SF	$ 3.07	$ 3.08	$ 3.09	$ 3.09	$ 3.10	$ 3.11	$ 3.12	$ 3.13
Average Retail Rent/SF	$ 54.12	$ 54.12	$ 54.12	$ 54.12	$ 54.12	$ 54.12	$ 54.12	$ 54.12
Average Parking Rent/Space	$ 173.89	$ 174.32	$ 174.75	$ 175.18	$ 175.61	$ 176.05	$ 176.48	$ 176.92
NET REVENUES								
Rental Revenues	$ 322,371	$ 323,166	$ 323,963	$ 324,762	$ 325,563	$ 326,366	$ 327,171	$ 327,976
Parking Revenues	10,781	10,808	10,834	10,861	10,888	10,915	10,942	10,969
General MF Rental and Parking Vacancy Allowance	(17,091)	(17,133)	(17,175)	(17,217)	(17,260)	(17,303)	(17,345)	(17,388)
Retail Revenues	118,535	118,535	118,535	118,535	118,535	118,535	118,535	118,535
General Retail Vacancy Allowance	(5,927)	(5,927)	(5,927)	(5,927)	(5,927)	(5,927)	(5,927)	(5,927)
Total Revenues	$ 428,670	$ 429,450	$ 430,231	$ 431,015	$ 431,800	$ 432,587	$ 433,376	$ 434,167
Operating Expense/Unit/Year	13,077	13,109	13,141	13,173	13,206	13,239	13,271	13,304
Operating Expenses	(141,662)	(142,011)	(142,362)	(142,713)	(143,065)	(143,418)	(143,771)	(144,126)
Replacement Reserves	(2,959)	(2,959)	(2,959)	(2,959)	(2,959)	(2,959)	(2,959)	(2,959)
8.00% Ground Lease - WMATA								
NET RENTAL INCOME	$ 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
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
CONSTRUCTION DEBT	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
Beginning Balance	32,674,512							
Loan Draw								
Interest								
Principal								
Total Amount Due to Loan	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
Monthly Payment	$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	$ 428,670	$ 429,450	$ 430,231	$ 431,015	$ 431,800	$ 432,587	$ 433,376	$ 434,167
Cash Flow Available From Sale / Refinance	$ 1,742,829	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available After Debt Service	1,975,946	233,897	234,678	235,462	236,247	237,034	237,823	238,614
EQUITY CASH FLOW								
Contributions	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Loan Paydown	-	-	-	-	-	-	-	-
Refinance Cash Flow	-	-	-	-	-	-	-	-
Disposition Cash Flow	-	-	-	-	-	-	-	-
Operating Cash Flow	233,117	233,897	234,678	235,462	236,247	237,034	237,823	238,614
Total	$ 233,117	$ 233,897	$ 234,678	$ 235,462	$ 236,247	$ 237,034	$ 237,823	$ 238,614

FOIA CONFIDENTIAL TREATMENT REQUESTED
WMATA-INV 009164

15 Year Cash Flow Backup
Ground Lease Scenario

Month	ALL MONTHS TOTAL	33 Sep	34 Oct	35 Nov	36 Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	37 Jan	38 Feb	39 Mar	40 Apr	41 May	42 June	43 July
Year																		2014						
Available Units at BOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Units Rented		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented		150	130	150	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
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
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	$ 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		$ 54.12	$ 54.12	$ 54.12	$ 54.12	$ 55.20	$ 55.20	$ 55.20	$ 55.20	$ 55.20	$ 55.20	$ 55.20	$ 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		$ 177.35	$ 177.79	$ 178.23	$ 178.67	$ 179.11	$ 179.55	$ 179.99	$ 180.44	$ 180.88	$ 181.33	$ 181.77	$ 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	$ 35,992,866	$ 328,787	$ 330,508	$ 330,411	$ 331,226	$ 332,043	$ 332,861	$ 333,682	$ 334,505	$ 335,330	$ 336,157	$ 336,986	$ 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	1,202,458	10,986	11,043	11,050	11,077	11,105	11,132	11,160	11,187	11,215	11,242	11,270	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	(10,848,661)	(17,431)	(17,474)	(17,217)	(17,560)	(17,603)	(17,647)	(17,690)	(17,734)	(17,778)	(17,822)	(17,866)	(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	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	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	(622,052)	(5,927)	(5,927)	(5,927)	(5,927)	(6,045)	(6,045)	(6,045)	(6,045)	(6,045)	(6,045)	(6,045)	(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	$ 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	$ 446,066	$ 446,881	$ 447,702	$ 448,523	$ 449,346	$ 452,468	$ 453,293	$ 454,129	$ 454,965	$ 455,788	$ 456,623	$ 457,461
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	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	(16,096,116)	(144,481)	(144,638)	(145,195)	(145,553)	(145,912)	(146,272)	(146,633)	(146,994)	(147,357)	(147,720)	(148,084)	(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		(2,989)	(2,989)	(2,989)	(2,989)	(3,048)	(3,048)	(3,048)	(3,048)	(3,048)	(3,048)	(3,048)	(3,048)	(3,048)	(3,048)	(3,048)	(3,048)	(3,048)	(3,048)	(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)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)
NET RENTAL INCOME	$ 29,329,499	$ 290,479	$ 290,918	$ 268,039	$ 268,479	$ 271,174	$ 271,617	$ 272,061	$ 272,506	$ 272,952	$ 273,400	$ 273,848	$ 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	$ 2,050,479	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Refinance	$ 347,650	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ 1,702,829	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
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																								
Beginning Balance		#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	7.00%	7.00%	7.00%	7.00%	7.00%	7.00%
Loan Draw	30,055,464																							
Interest	2,896,048																							
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
Monthly Payment		$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$195,553	$196,553	$196,553	$196,553	$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		$ 434,961	$ 435,756	$ 436,553	$ 437,351	$ 440,405	$ 441,207	$ 442,012	$ 442,819	$ 443,628	$ 444,439	$ 445,252	$ 446,066	$ 446,881	$ 447,702	$ 448,523	$ 449,346	$ 452,468	$ 453,293	$ 454,129	$ 454,965	$ 455,788	$ 456,623	$ 457,461
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	$ 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	$ 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	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	$ 32,253,670	$ 239,407	$ 240,202	$ 240,999	$ 241,798	$ 244,851	$ 245,654	$ 246,459	$ 247,266	$ 248,075	$ 248,886	$ 249,699	$ 250,513	$ 251,330	$ 252,149	$ 252,970	$ 253,793	$ 256,915	$ 257,742	$ 258,571	$ 259,402	$ 260,235	$ 261,070	$ 261,907

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 009165

15 Year Cash Flow Backup
Ground Lease Scenario

Month / Year	ALL MONTHS TOTAL	56 Aug	57 Sep	58 Oct	59 Nov	60 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	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		$ 3.32	$ 3.32	$ 3.33	$ 3.34	$ 3.35	$ 3.36	$ 3.37	$ 3.37	$ 3.38	$ 3.39	$ 3.40	$ 3.41
Average Retail Rent/SF		$ 56.31	$ 56.31	$ 56.31	$ 56.31	$ 56.31	$ 57.43	$ 57.43	$ 57.43	$ 57.43	$ 57.43	$ 57.43	$ 57.43
Average Parking Rent/Space		$ 187.69	$ 188.15	$ 188.62	$ 189.08	$ 189.55	$ 190.02	$ 190.48	$ 190.95	$ 191.42	$ 191.90	$ 192.37	$ 192.84
NET REVENUES													
Rental Revenues	$ 35,992,866	$ 347,952	$ 348,810	$ 349,670	$ 350,533	$ 351,397	$ 352,264	$ 353,133	$ 354,004	$ 354,877	$ 355,752	$ 356,629	$ 357,509
Parking Revenues	1,202,456	11,637	11,665	11,694	11,723	11,752	11,781	11,810	11,839	11,868	11,898	11,927	11,956
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)
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
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)
Total Revenues	$ 47,430,958	$ 458,300	$ 459,141	$ 459,985	$ 460,830	$ 461,678	$ 464,871	$ 465,722	$ 466,576	$ 467,432	$ 468,290	$ 469,150	$ 470,013
Operating Expense/Unit/Year		14,114	14,149	14,184	14,219	14,254	14,289	14,324	14,360	14,395	14,431	14,466	14,502
Operating Expenses	(16,096,116)	(152,903)	(153,280)	(153,658)	(154,037)	(154,417)	(154,798)	(155,180)	(155,562)	(155,946)	(156,331)	(156,716)	(157,103)
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)
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	$ 29,329,409	$ 282,078	$ 282,542	$ 283,007	$ 283,474	$ 283,942	$ 286,754	$ 287,224	$ 287,695	$ 288,167	$ 288,641	$ 289,115	$ 289,591
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
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	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	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
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		$ 458,300	$ 459,141	$ 459,985	$ 460,830	$ 461,678	$ 464,871	$ 465,722	$ 466,576	$ 467,432	$ 468,290	$ 469,150	$ 470,013
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
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
Total	$ 32,553,670	$ 262,747	$ 263,588	$ 264,432	$ 265,277	$ 266,125	$ 269,317	$ 270,169	$ 271,023	$ 271,879	$ 272,737	$ 273,597	$ 274,460

Month / Year	Aug	Sep	Oct	Nov	Dec	73 Jan	74 Feb	75 Mar	76 Apr	77 May	2016 78 June	79 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	$ 3.42	$ 3.42	$ 3.43	$ 3.44	$ 3.45	$ 3.46	$ 3.47	$ 3.47	$ 3.48	$ 3.49	$ 3.50	$ 3.51
Average Retail Rent/SF	$ 57.43	$ 57.43	$ 57.43	$ 57.43	$ 57.43	$ 58.58	$ 58.58	$ 58.58	$ 58.58	$ 58.58	$ 58.58	$ 58.58
Average Parking Rent/Space	$ 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	$ 358,391	$ 359,274	$ 360,161	$ 361,049	$ 361,939	$ 362,832	$ 363,727	$ 364,624	$ 365,523	$ 366,424	$ 367,328	$ 368,234
Parking Revenues	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	(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	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	(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	$ 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	14,538	14,573	14,609	14,645	14,682	14,718	14,754	14,790	14,827	14,863	14,900	14,937
Operating Expenses	(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	(3,234)	(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)
NET RENTAL INCOME	$ 290,066	$ 290,546	$ 291,026	$ 291,506	$ 291,988	$ 294,861	$ 295,345	$ 295,830	$ 296,317	$ 296,804	$ 297,293	$ 297,783
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	$ 470,877	$ 471,744	$ 472,613	$ 473,483	$ 474,356	$ 477,622	$ 478,499	$ 479,378	$ 480,260	$ 481,144	$ 482,030	$ 482,918
Cash Flow Available From Sale / Refinance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Cash Flow Available After Debt Service	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	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Loan Paydown	-	-	-	-	-	-	-	-	-	-	-	-
Refinance Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-
Disposition Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-
Operating Cash Flow	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	$ 275,324	$ 276,191	$ 277,059	$ 277,930	$ 278,803	$ 282,069	$ 282,946	$ 283,825	$ 284,707	$ 285,591	$ 286,477	$ 287,365

FOIA CONFIDENTIAL TREATMENT REQUESTED

15 Year Cash Flow Backup
Ground Lease Scenario

Month	ALL MONTHS TOTAL	80 Aug	81 Sep	82 Oct	83 Nov	84 Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	97 Jan	98 Feb	99 Mar	100 Apr	101 May	102 June	103 July
Year																									2018
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		62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62	62
Cumulative Spaces Rented		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining Retail SF		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total SF Rented in Period		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Remaining to Remt at EOP		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
Cumulative SF Rented		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Average Residential Rent/SF		$ 3.52	$ 3.53	$ 3.54	$ 3.54	$ 3.55	$ 3.56	$ 3.57	$ 3.58	$ 3.59	$ 3.60	$ 3.61	$ 3.61	$ 3.62	$ 3.63	$ 3.64	$ 3.65	$ 3.66	$ 3.67	$ 3.68	$ 3.69	$ 3.70	$ 3.70	$ 3.71	$ 3.72
Average Retail Rent/SF		$ 58.58	$ 58.58	$ 58.58	$ 58.58	$ 58.58	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 59.75	$ 60.95	$ 60.95	$ 60.95	$ 60.95	$ 60.95	$ 60.95	$ 60.95
Average Parking Rent/Space		$ 199.12	$ 199.61	$ 200.10	$ 200.60	$ 201.09	$ 201.59	$ 202.08	$ 202.58	$ 203.08	$ 203.58	$ 204.09	$ 204.59	$ 205.09	$ 205.60	$ 206.11	$ 206.61	$ 207.12	$ 207.64	$ 208.15	$ 208.66	$ 209.18	$ 209.69	$ 210.21	$ 210.73
NET REVENUES																									
Rental Revenues	$ 25,992,166	$ 369,142	$ 370,653	$ 372,165	$ 371,880	$ 372,797	$ 373,717	$ 374,638	$ 375,562	$ 376,489	$ 377,417	$ 378,348	$ 379,281	$ 380,217	$ 381,154	$ 382,094	$ 383,037	$ 383,981	$ 384,928	$ 385,878	$ 386,829	$ 387,783	$ 388,740	$ 389,698	$ 390,660
Parking Revenues	1,202,458	12,345	12,376	12,408	12,437	12,468	12,498	12,529	12,560	12,591	12,622	12,653	12,685	12,716	12,747	12,779	12,810	12,842	12,873	12,905	12,937	12,969	13,001	13,033	13,065
General MF Rental and Parking Vacancy Allowance	(1,848,661)	(19,570)	(19,619)	(19,667)	(19,715)	(19,764)	(19,813)	(19,862)	(19,911)	(19,960)	(20,009)	(20,058)	(20,108)	(20,157)	(20,207)	(20,257)	(20,307)	(20,357)	(20,407)	(20,458)	(20,508)	(20,559)	(20,609)	(20,660)	(20,711)
Retail Revenues	12,706,346	128,306	128,306	128,306	128,306	128,306	130,873	130,873	130,873	130,873	130,873	130,873	130,873	130,873	130,873	130,873	130,873	130,873	133,490	133,490	133,490	133,490	133,490	133,490	133,490
General Retail Vacancy Allowance	(622,652)	(6,415)	(6,415)	(6,415)	(6,415)	(6,415)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,544)	(6,675)	(6,675)	(6,675)	(6,675)	(6,675)	(6,675)	(6,675)
Total Revenues	$ 47,430,558	$ 483,808	$ 484,701	$ 485,595	$ 486,493	$ 487,392	$ 490,731	$ 491,635	$ 492,541	$ 493,449	$ 494,359	$ 495,272	$ 496,187	$ 497,104	$ 498,023	$ 498,945	$ 499,869	$ 500,795	$ 504,210	$ 505,141	$ 506,074	$ 507,009	$ 507,947	$ 508,887	$ 509,829
Operating Expense/Unit/Year		14,974	15,011	15,048	15,085	15,122	15,159	15,197	15,234	15,272	15,309	15,347	15,385	15,423	15,461	15,499	15,537	15,576	15,614	15,653	15,691	15,730	15,769	15,808	15,847
Operating Expenses	(16,096,116)	(162,212)	(162,615)	(163,016)	(163,418)	(163,821)	(164,225)	(164,630)	(165,036)	(165,443)	(165,851)	(166,260)	(166,670)	(167,081)	(167,493)	(167,907)	(168,321)	(168,736)	(169,152)	(169,569)	(169,987)	(170,407)	(170,827)	(171,248)	(171,670)
Replacement Reserves		(3,331)	(3,331)	(3,331)	(3,331)	(3,331)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(3,431)	(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)	(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	$ 29,329,409	$ 298,225	$ 298,757	$ 299,261	$ 299,756	$ 300,252	$ 303,187	$ 303,686	$ 304,186	$ 304,687	$ 305,189	$ 305,683	$ 306,197	$ 306,703	$ 307,211	$ 307,719	$ 308,229	$ 308,740	$ 311,739	$ 312,253	$ 312,768	$ 313,284	$ 313,801	$ 314,320	$ 314,840
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 Inflation	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
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																									
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%	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	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	$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		$ 483,809	$ 484,701	$ 485,596	$ 486,493	$ 487,392	$ 490,731	$ 491,635	$ 492,541	$ 493,449	$ 494,359	$ 495,272	$ 496,187	$ 497,104	$ 498,023	$ 498,945	$ 499,869	$ 500,795	$ 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		288,256	289,148	290,043	290,940	291,839	295,178	296,082	296,988	297,896	298,806	299,719	300,634	301,551	302,470	303,392	304,316	305,242	308,657	309,588	310,521	311,456	312,394	313,334	314,276
EQUITY CASH FLOW																									
Contributions	$ 10,891,504	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Loan Payoffs	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Refinance Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Disposition Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Operating Cash Flow	28,657,863	288,255	289,148	290,043	290,940	291,839	295,178	296,082	296,988	297,896	298,806	299,719	300,634	301,551	302,470	303,392	304,316	305,242	308,657	309,588	310,521	311,456	312,394	313,334	314,276
Total	$ 39,553,670	$ 288,255	$ 289,148	$ 290,043	$ 290,940	$ 291,839	$ 295,178	$ 296,082	$ 296,988	$ 297,896	$ 298,806	$ 299,719	$ 300,634	$ 301,551	$ 302,470	$ 303,392	$ 304,316	$ 305,242	$ 308,657	$ 309,588	$ 310,521	$ 311,456	$ 312,394	$ 313,334	$ 314,276

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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 009167

15 Year Cash Flow Backup
Ground Lease Scenario

Month	ALL MONTHS TOTAL	104 Aug	105 Sep	106 Oct	107 Nov	108 Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July
Year																									
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		$ 3.73	$ 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
Average Retail Rent/SF		$ 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
Average Parking Rent/Space		$ 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	$ 219.10	$ 219.74	$ 220.28	$ 220.82	$ 221.37	$ 221.91	$ 222.46	$ 223.01	$ 223.56
NET REVENUES																									
Rental Revenues	$ 25,997,866	$ 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
Parking Revenues	1,202,458	13,097	13,130	13,162	13,194	13,227	13,259	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
General MF Rental and Parking Vacancy Allowance	(3,640,661)	(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)
Retail Revenues	12,706,346	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
General Retail Vacancy Allowance	(622,052)	(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)
Total Revenues	$ 47,630,955	$ 510,774	$ 511,721	$ 512,670	$ 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
Operating Expense/Unit/Year		15,886	15,925	15,964	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
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)
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)	(3,749)	(3,749)	(3,749)	(3,749)	(3,749)	(3,749)
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	$ 29,529,409	$ 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
REFINANCE CASH FLOW																									
Gross Loan Proceeds	$ 2,090,475	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Less- Cost of Refinance	$ 347,650	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ 1,742,825	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
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																									
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%	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	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	$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		$ 510,774	$ 511,721	$ 512,670	$ 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
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
EQUITY CASH FLOW																									
Contributions	$ 10,891,504	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Loan Paydown		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Refinance Cash Flow		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Disposition Cash Flow		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Operating Cash Flow	28,657,863	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
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							

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 009168

15 Year Cash Flow Backup
Ground Lease Scenario

Month	ALL MONTHS TOTAL	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Year													
Available Units at BOP		-	-	-	-	-	-	-	-	-	-	-	-
Total Units Rented		-	-	-	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP		-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented		-	-	-	-	-	-	-	-	-	-	-	-
Remaining Parking Spaces to Sell at BOP		130	130	130	130	130	130	130	130	130	130	130	130
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
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
Average Retail 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
Average Parking Rent/Space		$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17
		$ 224.11	$ 224.66	$ 225.22	$ 225.77	$ 226.33	$ 226.89	$ 227.45	$ 228.01	$ 228.57	$ 229.14	$ 229.70	$ 230.27
NET REVENUES													
Rental Revenues	$ 35,892,866	$ 415,473	$ 416,498	$ 417,525	$ 418,554	$ 419,587	$ 420,622	$ 421,659	$ 422,699	$ 423,741	$ 424,785	$ 425,834	$ 426,884
Parking Revenues	1,202,458	13,895	13,929	13,964	13,998	14,032	14,067	14,102	14,137	14,171	14,206	14,241	14,277
General MP Rental and Parking Vacancy Allowance	(1,848,663)	(22,027)	(22,081)	(22,135)	(22,190)	(22,245)	(22,300)	(22,355)	(22,410)	(22,465)	(22,520)	(22,576)	(22,632)
Retail Revenues	12,708,348	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)
Total Revenues	$ 47,430,958	$ 536,693	$ 537,698	$ 538,705	$ 539,714	$ 540,726	$ 541,741	$ 542,758	$ 543,778	$ 544,800	$ 545,824	$ 546,851	$ 547,881
Operating Expenses/Unit/Year		16,852	16,895	16,936	16,978	17,020	17,062	17,104	17,146	17,188	17,231	17,273	17,316
Operating Expenses	(16,096,116)	(182,574)	(183,025)	(183,476)	(183,929)	(184,382)	(184,837)	(185,293)	(185,750)	(186,208)	(186,667)	(187,127)	(187,589)
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)
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	$ 29,329,909	$ 330,800	$ 331,354	$ 331,910	$ 332,467	$ 333,025	$ 333,585	$ 334,146	$ 334,709	$ 335,273	$ 335,838	$ 336,405	$ 336,973
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
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
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	30,096,464	-	-	-	-	-	-	-	-	-	-	-	-
Interest	2,578,948	-	-	-	-	-	-	-	-	-	-	-	-
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		$ 536,693	$ 537,698	$ 538,705	$ 539,714	$ 540,726	$ 541,741	$ 542,758	$ 543,778	$ 544,800	$ 545,824	$ 546,851	$ 547,881
Cash Flow Available From Sale / Refinance		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
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
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												

Month	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Year												
Available Units at BOP	-	-	-	-	-	-	-	-	-	-	-	-
Total Units Rented	-	-	-	-	-	-	-	-	-	-	-	-
Total Remaining Available EOP	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Units Rented	-	-	-	-	-	-	-	-	-	-	-	-
Remaining Parking Spaces to Sell at BOP	130	130	130	130	130	130	130	130	130	130	130	130
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
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
Average Retail Rent/SF	$ 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 Parking Rent/Space	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17	$ 62.17
	$ 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	$ 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	14,312	14,347	14,382	14,418	14,453	14,489	14,525	14,561	14,597	14,633	14,669	14,705
General MP Rental and Parking Vacancy Allowance	(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	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	(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	$ 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 Expenses/Unit/Year	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	(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	(3,861)	(3,861)	(3,861)	(3,861)	(3,861)	(3,977)	(3,977)	(3,977)	(3,977)	(3,977)	(3,977)	(3,977)
8.00% Ground Lease - WMATA	(23,319)	(23,319)	(23,319)	(23,319)	(23,319)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)	(29,850)
NET RENTAL INCOME	$ 339,646	$ 338,714	$ 338,786	$ 339,260	$ 339,304	$ 363,731	$ 364,309	$ 364,888	$ 365,469	$ 366,051	$ 366,635	$ 367,220
REFINANCE CASH FLOW												
Gross Loan Proceeds	$ -	$ -	$ -	$ -	$ -	$ 363,731	$ 364,309	$ 364,888	$ 365,469	$ 366,051	$ 366,635	$ 367,220
Less: Cost of Refinance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ 363,731	$ 364,309	$ 364,888	$ 365,469	$ 366,051	$ 366,635	$ 367,220
DISPOSITION CASH FLOW												
Gross Sale Price	$ -	$ -	$ -	$ -	$ -	$ 9,357,634	$ -	$ -	$ -	$ -	$ -	$ -
Less: Cost of Sales	$ -	$ -	$ -	$ -	$ -	$ 441,226	$ -	$ -	$ -	$ -	$ -	$ -
Net Proceeds	$ -	$ -	$ -	$ -	$ -	$ 8,916,407	$ -	$ -	$ -	$ -	$ -	$ -
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	$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	$195,553	$195,553	$195,553	$195,553	$293,549	$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	$ 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	353,360	354,395	355,432	356,472	9,175,926	305,923	306,970	308,021	309,073	310,129	311,187	312,247

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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 009169

15 Year Cash Flow Backup
Ground Lease Scenario

	ALL MONTHS TOTAL																								
Month																			169	170	171	172	173	174	175
Year																								15	
		Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	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 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		$ 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)	(24,549)	(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	$ 562,556	$ 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 Expences	(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	30,096,464	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest	2,578,098	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Principal		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
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																								

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	$ 282,523
Direst Sales Tax	$ 1,891,241
Indirect Sales Tax	
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
			3090.12	

Total Earnings Impacts

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

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

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 Financial Creditworthiness

"The world has the habit of making room for the man whose actions show that he knows where he is going."

~Napoleon Hill

J. Credit Worthiness

Enclosed are credit references demonstrating our credit worthiness.

CLARK ENTERPRISES, INC.

Jessica M. Hubley
Assistant General Counsel
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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

7500 Old Georgetown Road · 15th Floor · Bethesda, Maryland 20814-6195
T: 301-657-7100 · F: 301-657-7263 · WWW.CLARKENTERPRISESINC.COM

CLARK

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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

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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

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MODDIE
TURAY
COMPANY

CLARK
ENTERPRISES

PROPOSAL FOR SHAW/U STREET DISTRICT WASHINGTON, DC

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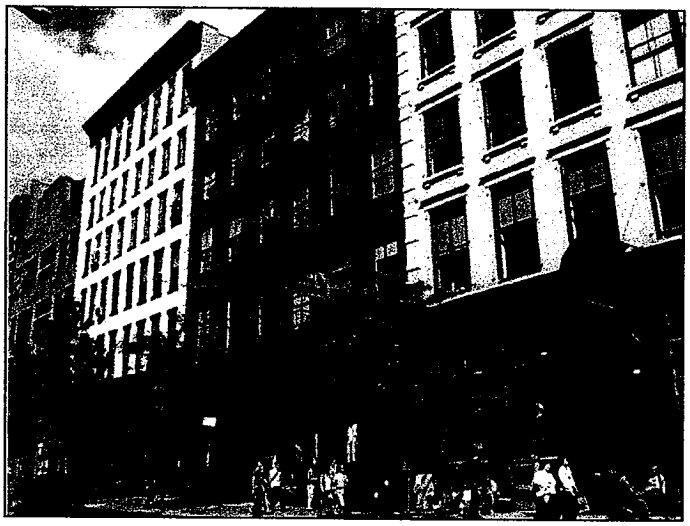
FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009183

Executive Summary



Let us not be content to wait and see what will happen, but give us the determination to make the right things happen.

~Peter Marshall

Executive Summary

Founded in 2005, the Moddie Turay Company (MTC) is a full service minority-owned real estate development company and 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 retail and mixed-use development experience has influenced his vision for this development project. 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 will explain why MTC is the right company for this important project.

Our development, Renaissance Row, along with the various other projects planned and/or under construction have the power to truly transform this historic neighborhood. The Shaw neighborhood is drastically changing with the new Radio One/NCRC mixed-use development planned 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 with 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 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 now is the time to bridge the gap between the established U Street Corridor and extend it along Florida Avenue and 7th Street with the development of a new retail, entertainment and residential project. The WMATA parcels are not only vital to providing the much needed connectivity between the Shaw and U Street communities but also have the potential to spur similar growth further east toward New York Avenue.

Our vision, included in this proposal, and active history 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 parcel 1 owned by WMATA. This parcel is critical to any development plan and enables us to leverage a site owned by WMATA that is currently undevelopable by itself into a mixed-used project that maximizes street frontage along Florida Avenue. MTC has had numerous meetings 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 requirement. The development team headed by Moddie Turay Company includes our equity/development partner Clark Enterprise Inc. (CEI). Established in 1972, CEI is the parent company to Clark Construction, one the largest construction companies 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 Washington, DC Metro area, with holdings in real estate, commercial, heavy and residential construction and venture capital, private equity and other investments. Our team also includes, Hellmuth, Obata & Kassabum, Inc. (HOK), global provider of design and project delivery services. HOK is consistently ranked among the world leading design firms by industry surveys.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009186

Executive Summary

Our development program, which includes ground floor retailers (such as a specialty food market, coffee shop, local small shops, unique restaurant concepts, book store) and over 200 residential units will enliven the neighborhood and provide the needed services which Shaw currently lacks. 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.

Renaissance Row offers an opportunity to reinterpret how people live, work, and play in the Shaw community including:

- Improving the quality of the 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 exciting retail destinations between Shaw-Howard metro station and 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 on budget.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Vision

You never change things by fighting the existing reality. To change something, build a new model that makes the existing model obsolete.
~ Buckminster Fuller

Vision Statement

Imagine living in a revitalized historic neighborhood with tree lined brick sidewalks and historic storefronts, an open air weekend farmer's market along the sidewalk of Florida Avenue, art galleries exhibiting local artists, and entertainment venues to enjoy with friends and family. Taking a page out of the Renaissance Era, imagine living in a neighborhood among professionals in arts, science and various fields of study who act as community role models. Renaissance Row is a project that will make this vision a reality.

The Shaw neighborhood was once the epicenter of cultural and intellectual outlets for African American artists, writers, educators, musicians and other professionals. The memory of that era has never faded but the physical structures that encouraged such activity have fallen into disrepair or no longer exist. Now, we have an opportunity to recreate such an environment along Florida Avenue with a project that will serve as the heart and eastern gateway to the revitalized U Street. Renaissance Row will represent Shaw's past, present and future. The project focuses on a pedestrian friendly environment with active storefronts inspired by retail examples in great urban neighborhoods like the East Village in New York, Pioneer Square in Seattle, Chinatown and Georgetown in the District of Columbia. Renaissance Row will encompass the magic of these successful places. The WMATA parcels along Florida Avenue stand at the center of this change and provide the much needed connectivity to an already successful U Street. These parcels in conjunction with adjacent land will be transformed into what will be the heartbeat of the Shaw community and the eastern gateway to the U Street Corridor.

Our approach to this project is to design the retail and entertainment uses as social drivers to create a distinctive neighborhood. This holistic approach will activate 3 street walls - 7th Street, Florida Avenue and 9th Street - and will encourage social interaction which is a key component in destination neighborhoods throughout the world. Intertwining the national and local retailers along Florida Avenue is a distinguishing feature of the project. Mixing the retail formats makes the street experience more interesting, which contributes to building a strong sense of place Also, national retailers bring the necessary foot traffic which helps support local and small retail businesses.

The residential program will be designed to reflect the excitement and energy of the newly developed area by employing quality design, public spaces, high ceilings and some live/work spaces.

Pedestrian friendly streets and housing between both the Shaw-Howard and U Street Metro Stations will have a tremendously positive effect on Metro ridership, which align directly with the goal of Transportation Oriented Development (TOD). Restoration of the community's historic status coupled with available transportation options ensure that the Shaw neighborhood will become a draw not only to residents of surrounding communities but to the many visitors of the DC metropolitan area.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009190

Development Team

Teamwork is the ability to work together toward a common vision. The ability to direct individual accomplishments toward organizational objectives. It is the fuel that allows common people to attain uncommon results.
~Andrew Carnegie

Development Team

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009193

Qualifications of Developer and Key Team Members

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Qualifications of Developer and Key Team Members

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009195

Qualifications of Developer and Key Team Members

Russ Robertson, AIA MBA, ***Project Manager***

Russ Robertson is the principal of Robertson Design - a specialized consulting practice focused on strategic planning and owner's representation services. His consulting practice concentrates on guiding real estate owners and operators through a myriad of financial, environmental, and market risks that confront the real estate development process. He has been closely involved with several MTC projects. Mr. Robertson advocates for architecture that is appropriate to its social and physical context. He also promotes responsible environmental stewardship in the context of fiduciary responsibility.

Mr. Robertson received his Bachelor of Architecture from Virginia Tech and his Master of Business Administration from the Wharton School at the University of Pennsylvania. His combination of design training and analytical rigor lends a pecuniary advantage to the development management process and owner's decision making process. Mr. Robertson is a member of the American Institute of Architects and is also a registered architect in the state of Maryland.

Columbia Heights, Washington, DC

The modern approach taken for this project emphasizes trends in urban housing prevalent in the Washington DC area. Russ Robertson prepared this scheme for new town homes to be integrated into an historic district. Light weight materials and an open facade indicate the purpose of these buildings - to tread lightly in their environment.

Waterview Overlook, Baltimore, Maryland

Presently, Robertson Design LLC serves as a consultant for Waterview Overlook. Developed by CIMG, Waterview Overlook is a new residential community overlooking the Patapsco River Middle Branch in an area now being referred to as Harbor West. Russ Robertson guided the development team with a design concept that addressed numerous site difficulties including wetlands, steep slopes, forestation, and other constraints. The strategy for funding a project on such a difficult site includes a TIF package and a Maryland Energy Administration Green Building Tax Credit.

Market Center West, Baltimore, Maryland

Market Center West (now called Camden Courts) is a 15 story high-rise at the corner of Howard and Lombard Streets in downtown Baltimore. As part of the Downtown Partnership's push for new housing in the business district area, Market Center West offers 220 units of housing targeted towards a young professional audience.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009196

Ms. Rebecca L. Owen, *Senior Vice President & General Council*

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.

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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Qualifications of Developer and Key Team Members

William Henry Sawicki, ***Director, Real Estate Development***

William Henry Sawicki, Director of Real Estate Development, Clark Enterprises, Inc. (CEI)

As Director of Real Estate Development, Mr. Sawicki oversees the acquisition and development of real estate assets for CEI. Mr. Sawicki brings valuable development experience with complex multi-family and mixed-use real estate projects to the team. His twenty-one-year career in real estate development and construction management in the Washington area has included many noteworthy projects, many of which were created under the basic fundamentals of vibrant, live-work-play, pedestrian-friendly environments.

The Clarendon Apartments, Arlington, Virginia
Leading the development of this urban, 292-unit luxury apartment building with street-level retail space and three levels of sub-surface parking adjacent to a metro station, the strong public support for this project is what ultimately lead to its approval by the County council.

Gallery Place, Washington, DC
Mr. Sawicki was actively involved in schematic design, design development and retail tenant coordination for 192 luxury apartments and over 300,000 SF of retail space, creating a new center of activity in the heart of DC.

Reston Town Center, Reston, Virginia
As part of the development team for the original urban core, Mr. Sawicki focused on creating an energized streetscape that fostered interaction between the private retail facades and the public amenities of the Pavilion, the fountain plaza and ice skating rink.

Sutton Place Gourmet (now Balducci's), Various East Coast Locations
Mr. Sawicki's involvement in everything from new concept development, site selection, store design, construction and facilities management for this large specialty food retailer gave him a unique operator's perspective on creating successful retail developments.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009198

Qualifications of Developer and Key Team Members

Jessica M. Hubley, *Associate General Counsel-Transactions*

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, 1995 graduate of James Madison University, with a B.S. in biology, Ms. Hubley also received a law degree in 1999 from Vanderbilt University School of Law.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009199

Qualifications of Developer and Key Team Members

Bill Hellmuth, ***Senior Principal***

A Senior Principal of HOK, Mr. Hellmuth is a registered architect with more than 20 years of experience in architecture and design.

Mr. Hellmuth heads the HOK Washington, D.C. design studio, which has designed more than one billion dollars of construction and/or renovation since its founding in 1972. Mr. Hellmuth has been widely recognized for his innovative design and ability to create exciting spaces that meet a client's aesthetic and functional needs. He has received local AIA chapter awards for his work on the following projects: the U.S. Embassy in Moscow; a Confidential Federal Government Agency Headquarters in Washington, D.C.; the College Park Aviation Museum; the Sheraton Inn at Timika, Irian Jaya, Indonesia; The Cato Institute; and the IRS Martinsburg Computing Center.

Mr. Hellmuth's projects represent distinctive design solutions addressing diverse needs in function, building systems, methodology and materials. He has a wide array of domestic and international experience, including headquarters for non-profit organizations, corporate and government clients, mixed-use complexes, museums, hotels, developer office buildings and high-security/high-technology facilities. Select experience includes:

Johns Hopkins University Montgomery, County Campus, Rockville Maryland
Chevy Chase Center, Chevy Chase, Maryland
Abu Dhabi Trade Center, Abu Dhabi, United Arab Emirates
Rockville Town Center, Urban Revitalization Master Planning & Design, Rockville, Maryland
Daewoo, Mixed-Use Community, Design Competition, Seoul, Korea
National Air & Space Museum, Steven F. Udvar-Hazy Center, Chantilly, Virginia
College Park Aviation Museum, College Park, Maryland
U.S. Mint Headquarters & Museum, Washington, DC
U.S. Federal Government, Agency Headquarters (Confidential Client), Washington, DC
IRS Computing Center, Martinsburg, West Virginia
FBI Forensic Laboratory, Quantico, Virginia
U.S. Department of State, New Office Building, Nairobi, Kenya
U.S. Department of State, New Office Building, Zagreb, Croatia
U.S. Department of State, New Office Building, Dares Salaam, Tanzania
U.S. Department of State, New Office Building, Abu Dhabi, U.A.E.
U.S. EPA Research & Administrative Facility Campus, Research Triangle Park, NC
U.S. Naval Academy Michelson & Chauvenet Halls, Renovation, Annapolis, Maryland
National Institutes of Health, William H. Natcher Building, Bethesda, Maryland
799 Ninth Street, Washington, DC
APHA Headquarters, Washington, DC
The Executive Tower, Washington, DC
Johns Hopkins University Shady Grove Campus, Shady Grove, Maryland
Sun Microsystems Corporate Campus, Burlington, Massachusetts

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009200

Qualifications of Developer and Key Team Members

Suzette Goldstein, *Principal, Director of Planning*

Ms. Goldstein is responsible for the quality of design and performance of the planning and landscape group in HOK's Washington DC based practice. As the prime planner for projects such as this, Ms. Goldstein is responsible for engaging in an inclusive community engagement process and consultation with planning staff to ensure the creation of dynamic urban spaces that work well in this community. Ms. Goldstein will manage the planning effort; ensuring that the project proceeds in a timely and effective manner.

Ms. Goldstein offers a highly specialized planning and project management background in site analysis and design, including many projects in Montgomery County, the District of Columbia, Northern Virginia and the surrounding areas. She is highly skilled at facilitating community presentations and meetings and has presented to all major Montgomery County approval agencies. As the Director of Planning for the Washington, DC office, Ms. Goldstein works with a multi-disciplinary staff of architects, designers, planners, and landscape architects, and she has been responsible for zoning, code compliance, site development and landscape architecture for projects in urban and suburban locations. She has been honored with the CAO Citation in Montgomery County, Maryland for outstanding service in performing master planning services.

Johns Hopkins University, Montgomery County Campus, Master Plan, Shady Grove, Maryland
Chevy Chase Center, Chevy Chase, Maryland
Rockville Town Center, Rockville, Maryland
Galleria Richmond, Mixed Use Facility Master Plan, Richmond, Virginia
Magedeburg New Town, City Master Plan, Magedeburg, Germany
Westmont-Tower Oak, Corporate Business Park, Master Plan, Rockville, Maryland
The Preserve at Tower Oaks, Speculative Office Complex, Rockville, Maryland
Washingtonian Center, Master Plan, Montgomery County, Maryland
Fortune Parc Master Plan, Bethesda, Maryland,
Johns Hopkins University, Belward Campus, Montgomery County, Maryland
Metro Place at Dunn Loring, Master Planning, Fairfax, Virginia
Nortel Networks, Master Plan & Research Buildings, RTP, North Carolina
Department of State, Master Planning Studies, Shanghia, Korea, and Bangkok
MedImmune, Inc. Corporate Headquarters, Gaithersburg, Maryland
National Institutes of Health, William H. Natcher Building, Bethesda, Maryland
National Archives & Records National Archives II, College Park, Maryland
College Park Aviation Museum, College Park, Maryland
Baltimore County Detention Center Expansion, Baltimore County, Maryland
Baltimore Police Headquarters, Renovation and Addition, Baltimore, Maryland
New York Avenue Corridor, Site Development Feasibility Study, Washington, DC
National Air & Space Museum, Udvar-Hazy Center, Chantilly, Virginia
Huntington Metro Station, Site Analysis/Planning, Fairfax, Virginia
Convention Center Sit, Evaluation Study, Prince William County, Virginia
Bethlehem Works, Redevelopment Plan, Bethlehem, Pennsylvania

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009201

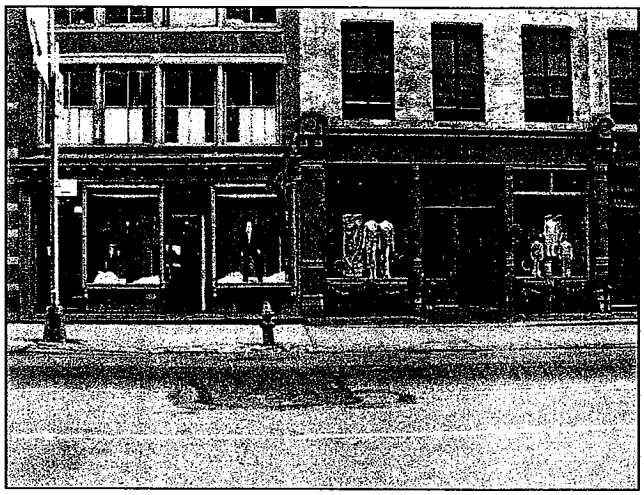
Qualifications of Developer and Key Team Members

The MTC Model

Collaboration among all of the team members from the conceptual stage creates a more realistic development plan and successful project. The senior staff has considerable experience in construction, design, and project management. These strengths will efficiently bridge communication between design and construction in every stage of development. Our team has proven track records in finance, design, construction and management and has led some of the most complex mixed-use projects in the Washington Metropolitan Area. With large scale developers solely focusing their efforts on creating retail/entertainment destinations in the downtown area, MTC has the unique experience to meet the needs of underserved urban communities.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009202

Development Program



The achievements of an organization are the results of the combined effort of each individual.
~Vincent Lombardi

Development Program

Our team has worked over the past year with neighboring private landowners, Howard University and HOK Architects on how best to maximize the WMATA parcels and adjoining private parcels. We currently have a key parcel adjacent to parcel 1 (WMATA RFP), owned by WMATA, under a purchase agreement with closing scheduled for July. Also, we are pursuing site control of other parcels necessary to meet development potential as proposed in the Duke Ellington Plan. 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 believe Plan 2 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 has spent a considerable amount of resources before an RFP was 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, (as shown on pages 17–18) located on Florida Avenue between 8th and 9th Streets, into a mixed-use project with 64 residential units and 12,930 square feet of retail on the ground floor. It includes one parcel currently controlled by our team adjoining the WMATA parcel along 9th Street.

Phase II: Phase II will include developing Project B, located on Florida Avenue between 7th and 8th Streets, into a mixed-use project with 64 residential units and 12,000 square feet of retail. Construction for Phase II will begin three months after start of construction of Phase I.

PLAN 2
Phase I: Includes assembling all of the necessary parcels surrounding WMATA to develop the plan outlined in the Duke Ellington Plan. Phase I will include developing Project A (as shown on pages 19–22) 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. It is essential that the first phase of the project establishes Renaissance Row as a neighborhood draw. A 12,000 SF specialty grocery store will serve as an anchor, establishing the development as a neighborhood destination.

Phase II: Phase II will include developing Parcel B, located on Florida Avenue 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 I. Phase I will establish the project as a neighborhood draw and attract residents and retailers to become part of the project. 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009205

Development Program

Site Assemblage

Project A, primarily occupied by vacant lots and the WMATA parcels, is included in Plan 1 because MTC currently has one of the primary lots under contract and is in negotiation for the remaining lots. Upon selection for the WMATA parcels, our team will move forward with completing the assemblage necessary to complete Plan 2 as outlined in this proposal. Upon contract execution, MTC will start the design and entitlement approvals immediately.

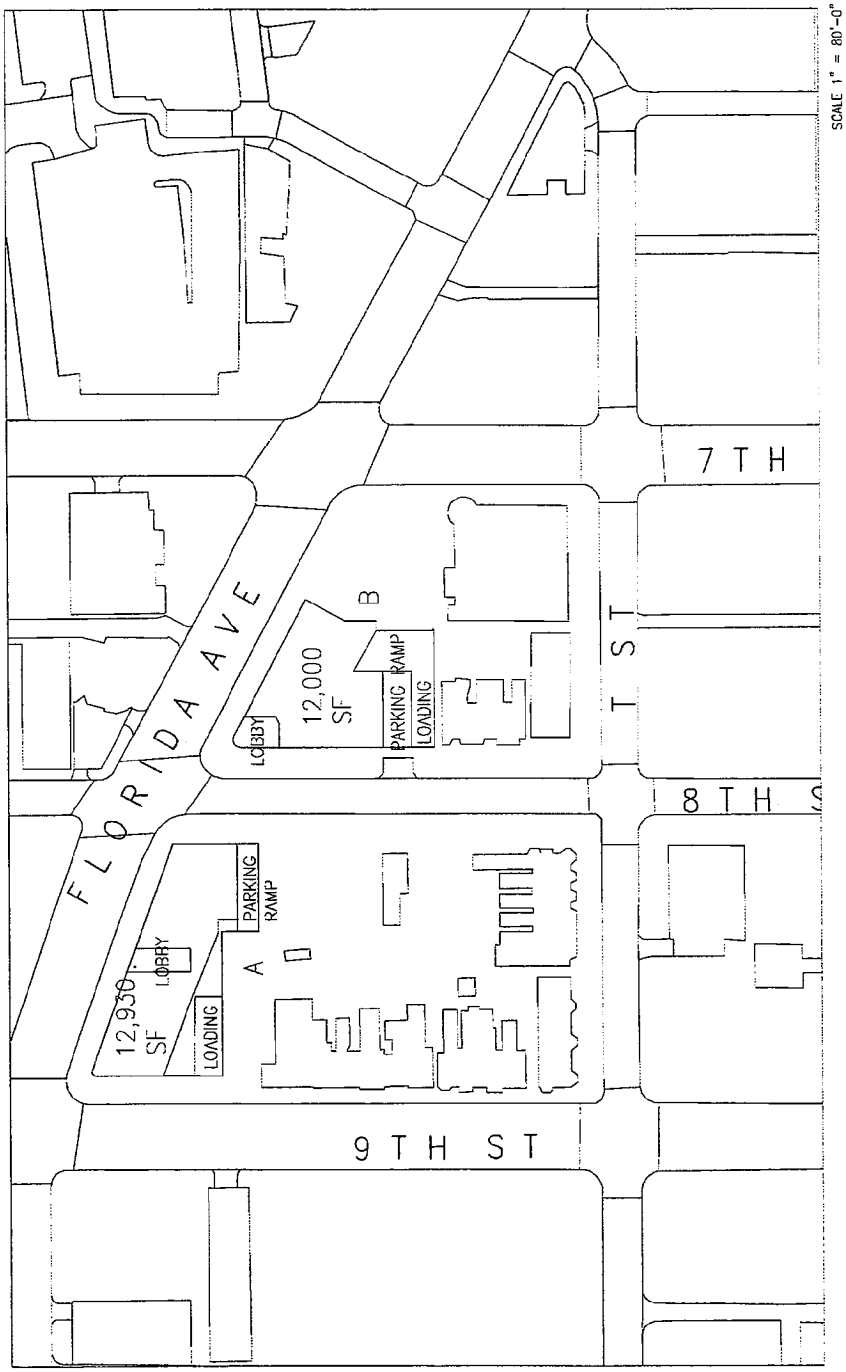
MTC has been actively working with Howard University for acquisition of its lot in Project B. We have also been in serious discussion with all other property owners needed to accomplish our Plan 2. By assembling the WMATA and Howard University parcels, we will meet the full development program as envisioned 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009206

Development Program Plan 1 (Projects A and B)

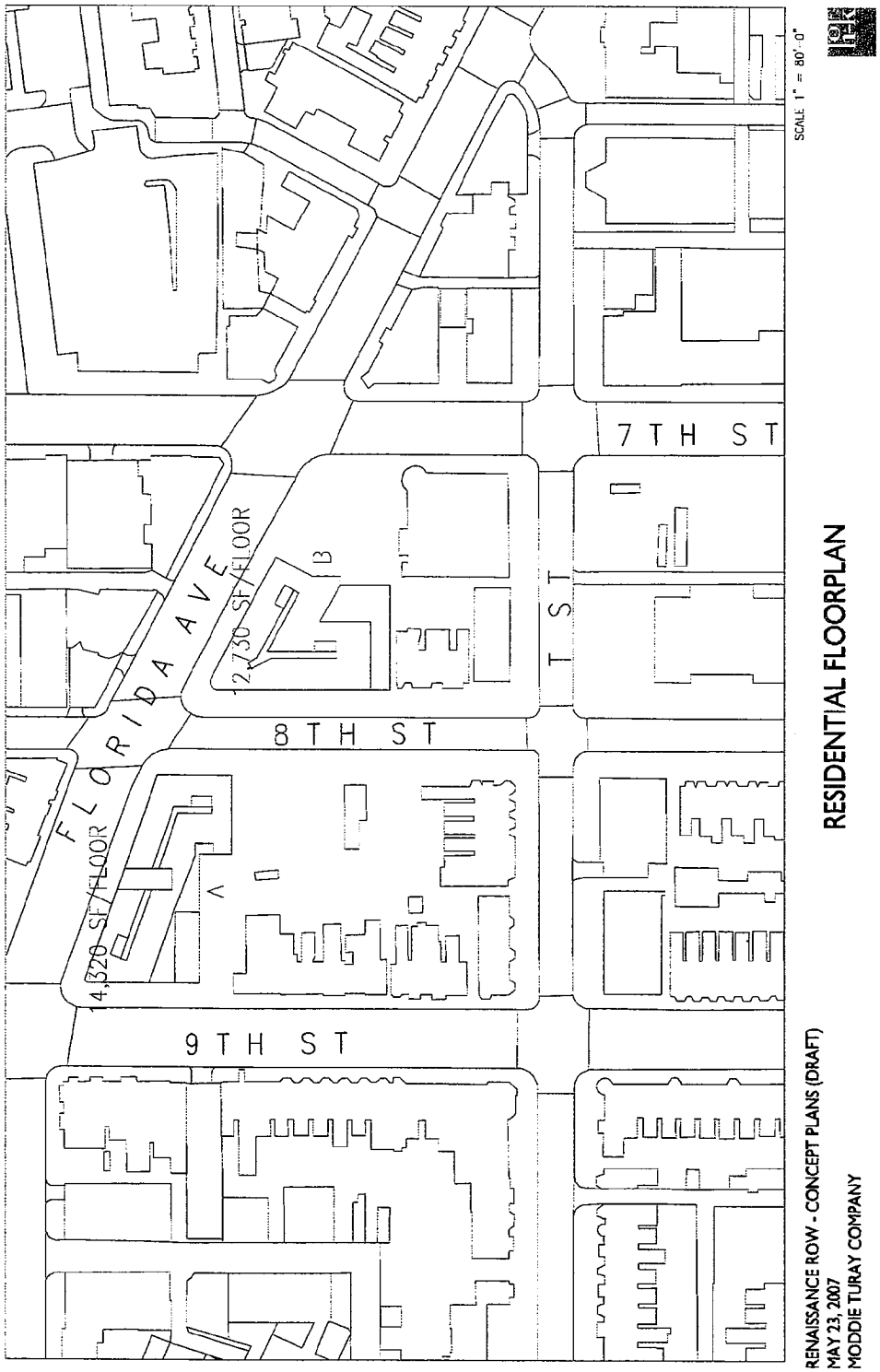


GROUND FLOOR (RETAIL) FLOORPLAN

RENAISSANCE ROW - CONCEPT PLANS (DRAFT)
MAY 23, 2007
MODDIE TURAY COMPANY

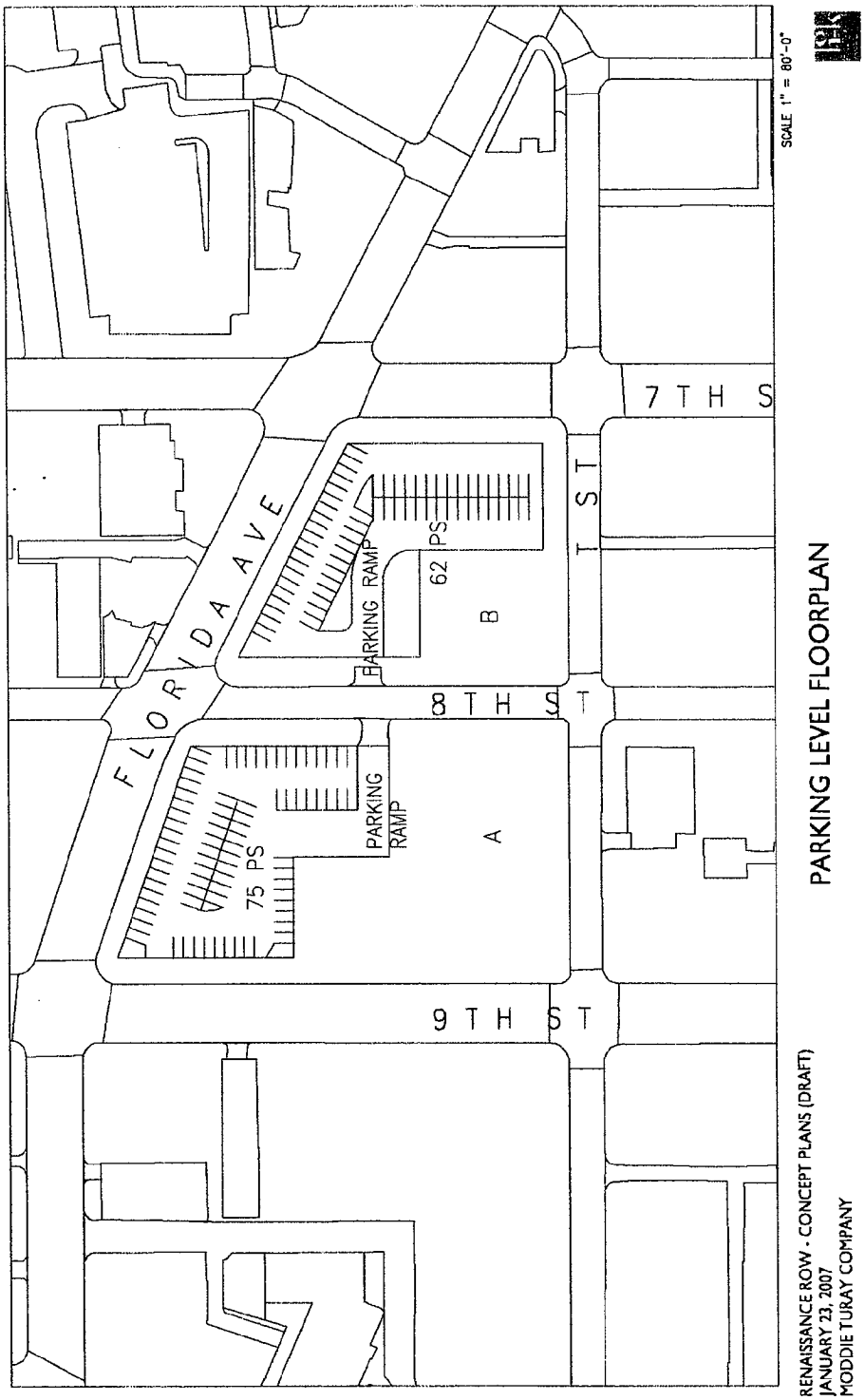
FOIA CONFIDENTIAL TREATMENT REQUESTED

Development Program Plan 1 (Projects A and B)



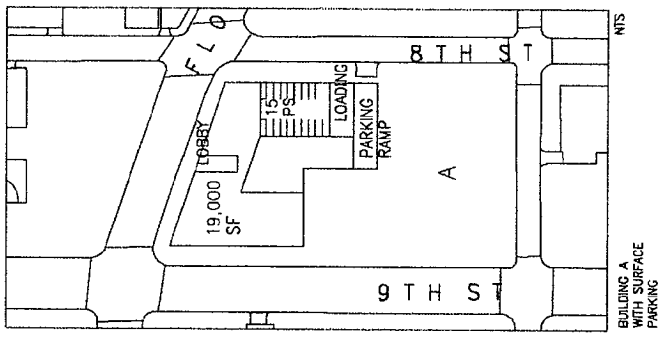
FOIA CONFIDENTIAL TREATMENT REQUESTED

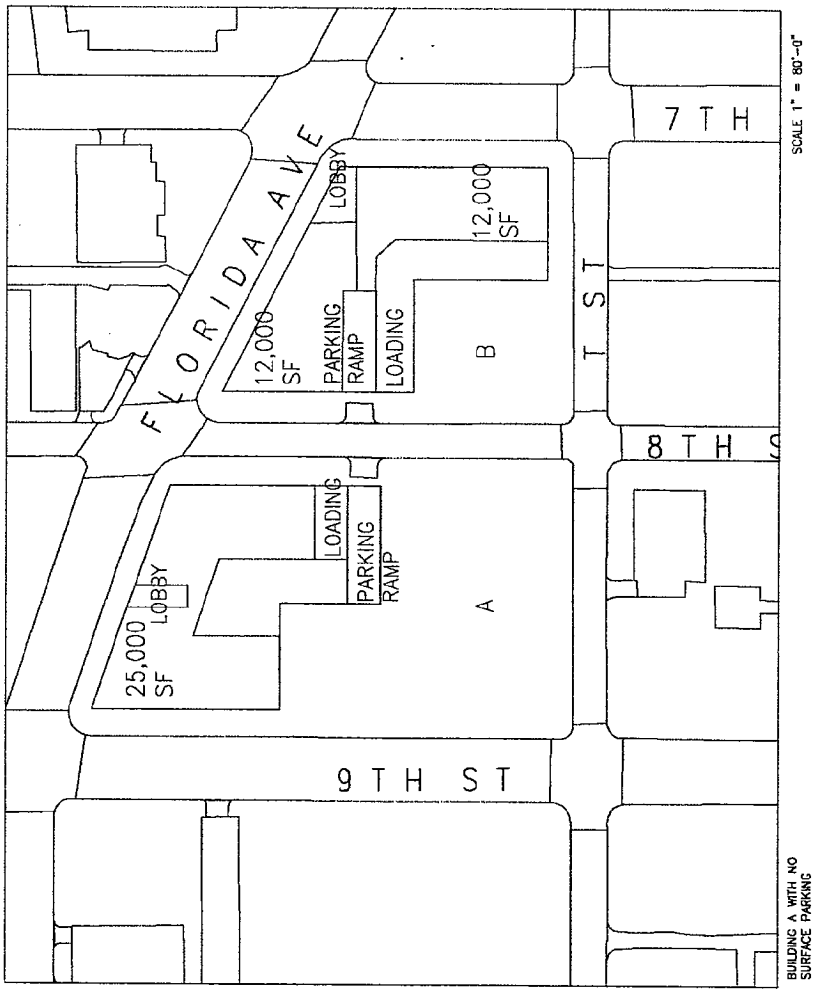
Development Program Plan 2 (Projects A and B)



FOIA CONFIDENTIAL TREATMENT REQUESTED

Development Program Plan 2 (Projects A and B)



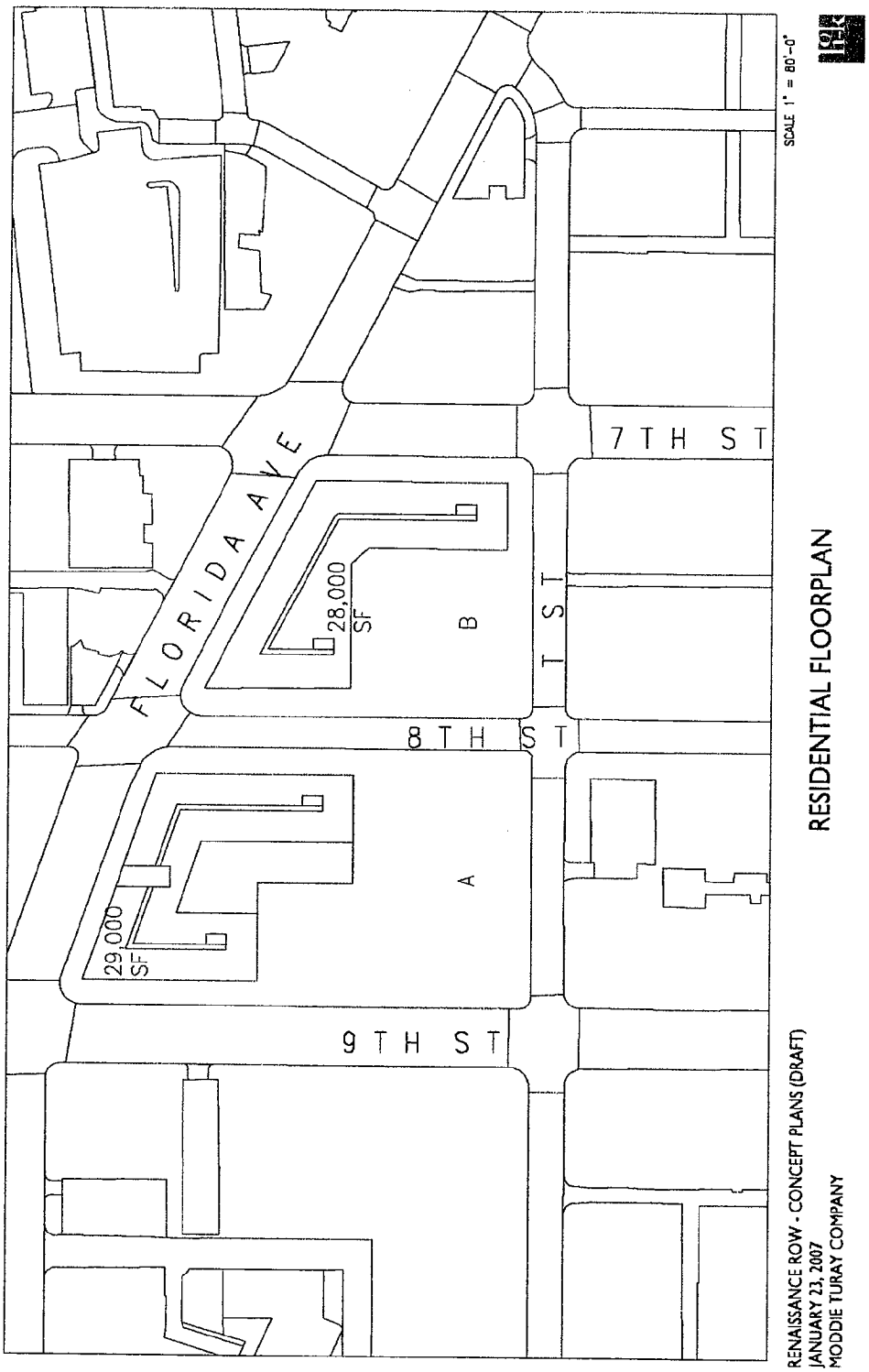


GROUND FLOOR (RETAIL) FLOORPLAN

RENAISSANCE ROW - CONCEPT PLANS (DRAFT)
JANUARY 23, 2007
MODDIE TURAY COMPANY

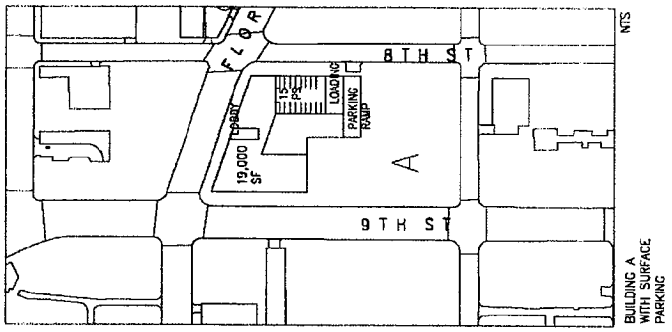
FOIA CONFIDENTIAL TREATMENT REQUESTED

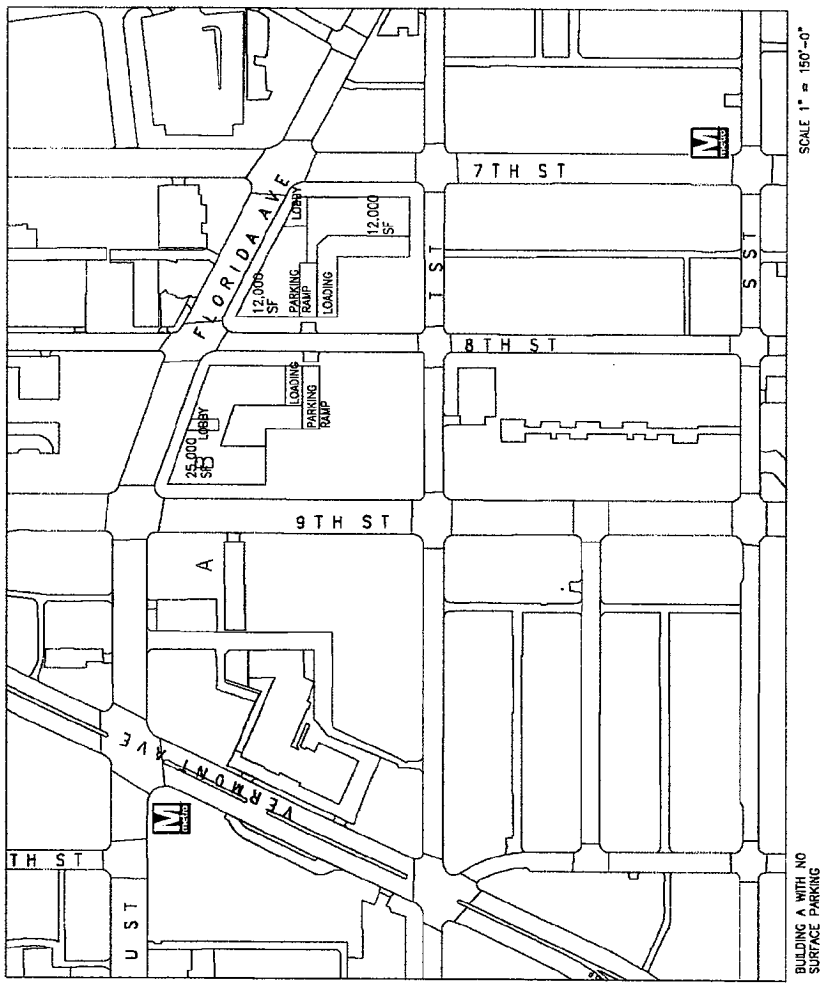
Development Program Plan 2 (Projects A and B)



FOIA CONFIDENTIAL TREATMENT REQUESTED

Development Program Plan 2 (Projects A and B)



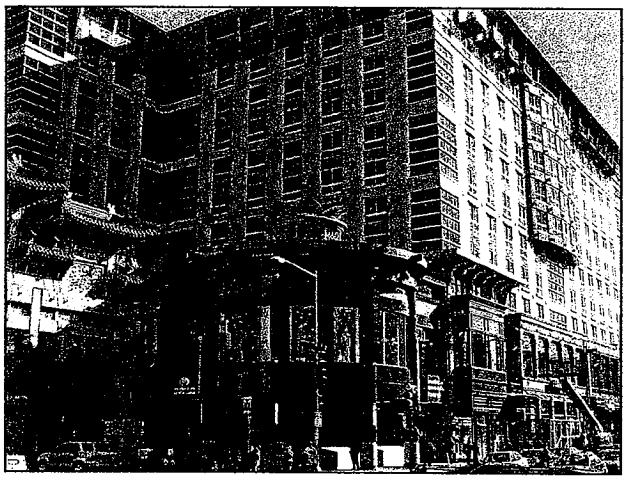


GROUND FLOOR (RETAIL) FLOORPLAN

RENAISSANCE ROW - CONCEPT PLANS (DRAFT)
JANUARY 23, 2007
MODDIE TURAY COMPANY

FOIA CONFIDENTIAL TREATMENT REQUESTED

Development Strategy



Strategy without tactics is the slowest route to victory. Tactics without strategy is the noise before defeat.
~Sun Tzŭ

Development Strategy

1. **Location: Knitting the neighborhood.**

Located at the center of two neighborhoods, Shaw/Howard University and the U Street Corridor, Renaissance Row will transform this section of Florida Avenue into an exciting neighborhood amenity. It will serve as the eastern retail anchor of the U Street Corridor and have a catalytic effect in the Howard Theatre sub-district. The vacant parcels fronting Florida Avenue create an unpleasant pedestrian experience. This infill location offers a great opportunity to knit this part of the Shaw community. The project site will link two metro stations and the two neighborhoods. Since the project site faces Florida Avenue, it is ideal for a great 'placemaking' opportunity.

2. **Program: Creating the right mix.**

Creating the right mix of program uses is key to unlocking the site's value and positive impact to the neighborhood. Some key components to placemaking are community, experience and local distinction. The entertainment and retail program will act as a draw for residents and visitors. The program will include a mix of national and local retailers to create the ideal composite of local flair and national prestige. The residential program located above the retail will provide round the clock activity. A critical mass of people and uses at this location will transform this part of Shaw.

Community. Renaissance Row seeks to provide a retail format that will give residents and visitors a place to convene over lunch or coffee. The space addresses a resident need for a supermarket. Its format will promote a sense of community and will function as a neighborhood amenity.

Experience. Activating the ground floor with retail and entertainment uses will create a welcoming experience. A collection of small format retailers including specialty restaurants and/or stores combined with an entertainment use will complement the visitors' experience. The large format/anchor retail maximizes the large amount of frontage on Florida Avenue while the smaller format uses the north and south streets to move people through the neighborhood.

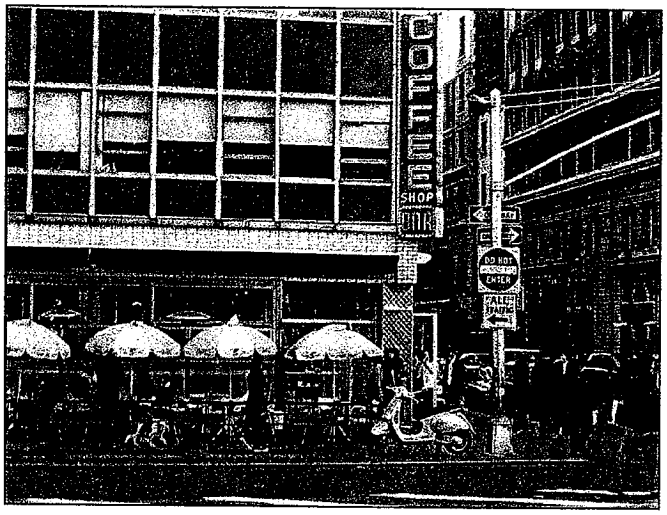
Local Distinction. Local retailers will add a distinctive character to the project. It is what will make the project unique to the neighborhood.

3. **Phasing and Implementation: Phasing the project to make the greatest impact.**

Phasing of a project is very important to its success. Appropriate phasing will depend on site assemblage, absorption, market demand, retailer interest and resident support. At this time, MTC envisions developing Renaissance Row in two phases.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009215

Financial Proposal



Life takes on meaning when you become motivated, set goals and charge after them in an unstoppable manner.

~Les Brown

Financial Proposal

Two Financing Options

1. Outright Purchase

We are 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 increased 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.

2. Ground Lease Alternative

We also propose a ground lease as an alternative to an outright purchase. In this scenario, we will pay a $5,000 per month compensation commencing upon closing and concluding upon stabilization of the property. We project that this period will be approximately 6 months for pre-development, 18 months of construction and 4 months for the project to stabilize. At stabilization, WMATA will receive **10% of their pro-rata share of the Total Gross Revenue** for the project. WMATA's pro-rata share will be based upon the proportion of WMATA land square footage to the total project square footage. Ownership issues upon the completion of the lease period to be negotiated.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Appendix

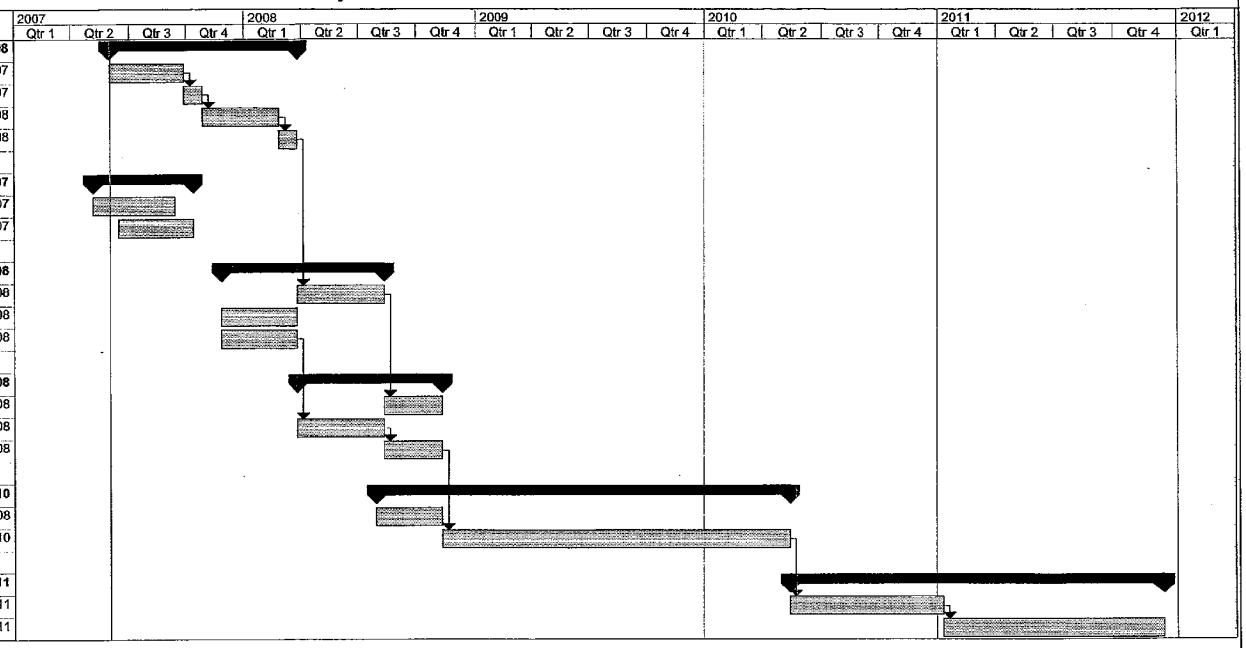
The good we secure for ourselves is precarious and uncertain until it is secured for all of us and incorporated into our common life.

~Jane Addams

FOIA CONFIDENTIAL TREATMENT REQUESTED

Renaissance Row Project TImeline

ID	Task Name	Duration	Start	Finish
1	**WMATA Approval Process**	**300 days**	**Thu 5/31/07**	**Tue 3/25/08**
2	Term Sheet Negotiations	120 days	Thu 5/31/07	Thu 9/27/07
3	WMATA Selects Developer	30 days	Fri 9/28/07	Sat 10/27/07
4	Development Agreement Negotiations	120 days	Sun 10/28/07	Sun 2/24/08
5	Approval of Development Agreement	30 days	Mon 2/25/08	Tue 3/25/08
6				
7	**Adjacent Parcel Acquisition**	**160 days**	**Sun 5/6/07**	**Fri 10/12/07**
8	Phase I Negotiations	130 days	Sun 5/6/07	Wed 9/12/07
9	Phase II Negotiations	120 days	Fri 6/15/07	Fri 10/12/07
10				
11	**Architectural and Site Plan**	**260 days**	**Tue 11/27/07**	**Tue 8/12/08**
12	Concept Design, Planning	140 days	Wed 3/26/08	Tue 8/12/08
13	Zoning Approvals	120 days	Tue 11/27/07	Tue 3/25/08
14	Schematic Design	120 days	Tue 11/27/07	Tue 3/25/08
15				
16	**Permits & Approvals**	**230 days**	**Wed 3/26/08**	**Mon 11/10/08**
17	WMATA Coordination and Local Government	90 days	Wed 8/13/08	Mon 11/10/08
18	DD/Construction Drawing	7 mons	Wed 3/26/08	Tue 8/12/08
19	Building Permits	90 days	Wed 8/13/08	Mon 11/10/08
20				
21	**Financing and Construction**	**649 days**	**Fri 8/1/08**	**Tue 5/11/10**
22	Secure Project Financing	102 days	Fri 8/1/08	Mon 11/10/08
23	Project Construction	547 days	Tue 11/11/08	Tue 5/11/10
24				
25	**Operation**	**420 days**	**Wed 5/12/10**	**Mon 12/12/11**
26	Initial Occupancy	180 days	Wed 5/12/10	Mon 1/10/11
27	Stabilization	240 days	Tue 1/11/11	Mon 12/12/11



Project: WMATA RFP Timeline.mpp
Date: Thu 5/31/07

Task | Progress | Summary | External Tasks | Deadline
Split | Milestone | Project Summary | External Milestone

WMATA-INV 009221

CLARK ENTERPRISES, INC

Rebecca L. Owen
Senior Vice President & General Counsel

301.657.7216 Direct
301.654.2564 Fax
E-mail: rowen@clarkus.com

May 4, 2006

Mr. Moddie Turay
President
The Moddie Turay Company
2500 Q Street, NW
Suite 338
Washington, DC 20007

Re: Shaw-Howard University Metrorail Station

Dear Moddie.

I understand that you are interested in acquiring and developing the WMATA parcels located at the metrorail station at Shaw-Howard University on the south side of Florida Avenue, NW, between 7th and 9th Streets and known as Parcels 1, 2 and 3. Clark Enterprises, Inc. (Clark) is interested in pursuing this acquisition and development with you jointly. Upon being selected as co-purchaser of the site and signing acceptable agreements, Clark would be willing to use its real estate, development and construction experience, as well as its financial capabilities, to help make this project a success.

Thank you again for the opportunity to participate in this exciting development. I look forward to working with you.

Sincerely,

Rebecca L. Owen

G:\LEGAL\CER\WMATA\Shaw-Howard\13ACQUISITION\Expressions of Interest.doc

7500 Old Georgetown Road · 15th Floor · Bethesda, Maryland 20814-6195
T: 301-657-7100 · F: 301-657-7263 · www.clarkenterprisesinc.com

CLARK

FOIA CONFIDENTIAL TREATMENT REQUESTED

WESTERN DEVELOPMENT CORPORATION

May 30, 2007

Mr. 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/U Street District Washington, DC

Dear Gary,

We have worked closely with Moddie Turay for more than three years as he transitioned from the public sector to the real estate industry. He is one of the brightest, creative up-and-comers in the Washington, DC business world. In partnership with Clark Enterprises, Moddie Turay Company will produce an exciting project that will continue the growth and neighborhood revitalization of the U Street Corridor.

Diversity of business leadership is critical to the future of a healthy Washington region. Moddie Turay Company is an important part of that future and WMATA must play a key role in supporting the development of promising entrepreneurs.

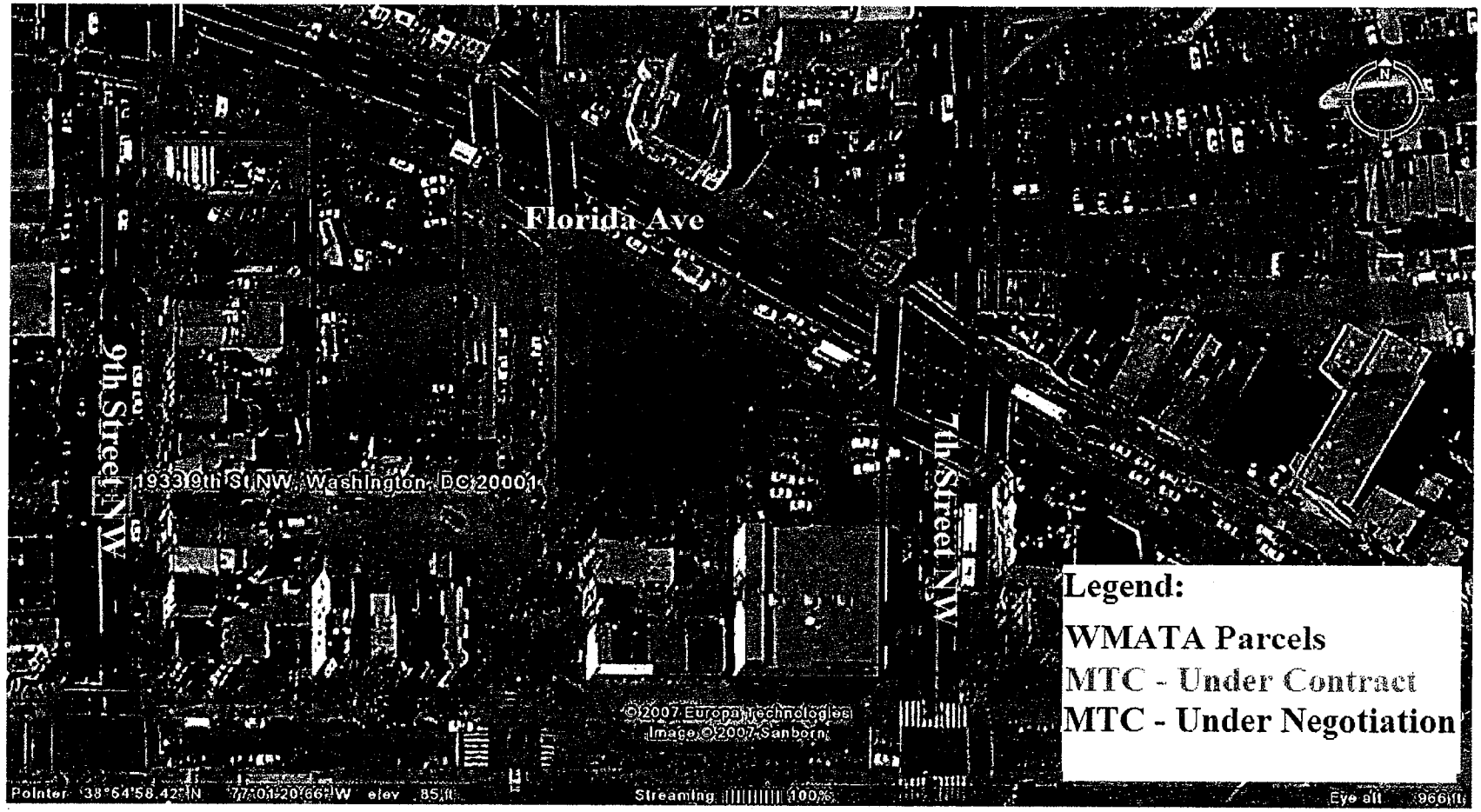
Every day, organizations like WMATA and Western Development work to support our city's young leaders to take on the challenges of the 21st century. Our hope is WMATA will see that selecting the Moddie Turay Company to develop the parcels along Florida Avenue will advance this cause that is so central to our shared mission.

Sincerely,

Herbert S. Miller
Chairman & CEO

1054 31st Street, N.W., Suite 410, Washington, D.C. 20007 (202) 338-5200 Fax (202) 338-6014

FOIA CONFIDENTIAL TREATMENT REQUESTED



WMATA-INV 009224

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	$ 463,639

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

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009227

FOIA CONFIDENTIAL 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: _____ 7/31/07
Moddie Turay
President

SELLER:

_____ 7/31/07
M. Ghebretinsae

_____ 7/31/07
T Ghebretinsae

WMATA-INV 009228

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.

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

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.

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>

6 - 8' alley

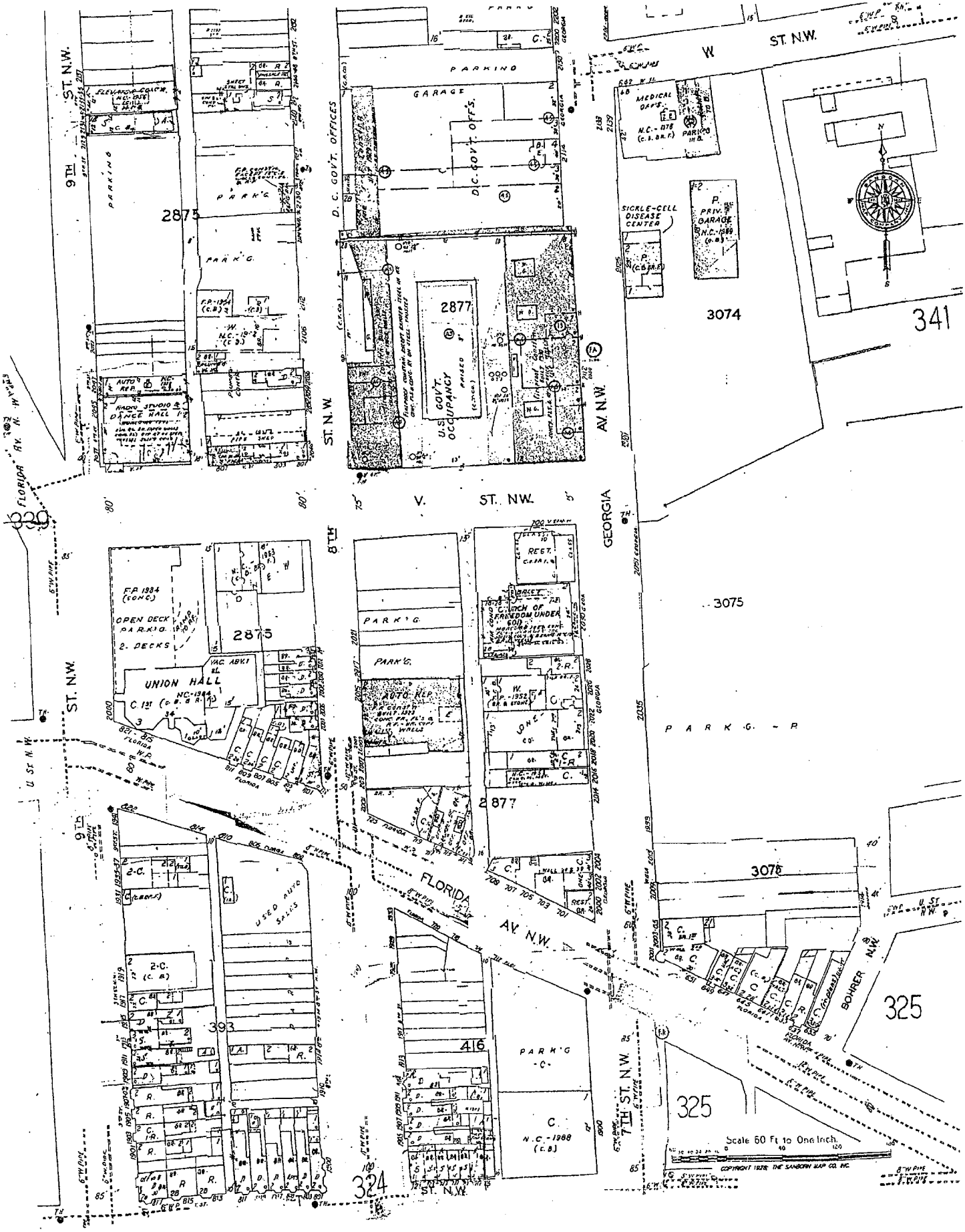
	APN	Owners	Situs Address	ParkType	Lot Area	Acres	Sale Date	Assmnt Yr	Sale Price	Zoning	Bldg/Liv
1	0393-0000-0825	MINNE B SLEEPER			377	0.01		2007		R4	
2	0393-0000-0044	WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY WMA	9TH ST		3,799	0.09		2007		CM1	
3	0393-0000-0045	WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY WMA	FLORIDA AVE		8,621	0.20		2007		CM1	
4	0393-0000-0017	VASQUEZ VICTOR H & IRMA A	803 T ST NW	BASEMENT	1,485	0.03	12/07/2001	2007	$137,255	R4	1,914
5	0393-0000-0018	LEGHESSE HIWET	805 T ST NW	BASEMENT	1,485	0.03	02/03/2005	2007	$463,500	R4	1,914
6	0393-0000-0019	TEKLE ISALAS	807 T ST NW	GARAGE	1,485	0.03	06/21/2001	2007	$35,280	R4	1,568
7	0393-0000-0020	BLUSH WENDY A	809 T ST NW	GARAGE	1,485	0.03	06/11/2007	2007	$700,000	R4	1,974
8	0393-0000-0021	AHDUT PEYMAN	811 T ST NW	GARAGE	1,485	0.03		2007	$35,500	R4	4,089
9	0393-0000-2002	DAUM MARGARET	813 T ST NW 2				08/25/2005	2007	$565,000		1,448
10	0393-0000-2001	MACSATA ROBYN ANN	813 T ST NW				06/08/2005	2007	$595,000		1,407
11	0393-0000-0023	ANDONI ISSAM	815 T ST NW		1,253	0.03	04/20/2007	2007	$630,000	R4	
12	0393-0000-0024	RENMAN HOWARD A TRUST	817 T ST NW	BASEMENT	1,260	0.03	12/04/2003	2007	$580,000	R4	1,940
13	0393-0000-0016	TERRY DON B	1900 8TH ST NW	BASEMENT	1,065	0.02		2007		R4	1,520
14	0393-0000-0800	PADABLA LTD TRUST	1901 9TH ST NW		1,887	0.04	01/03/1989	2007	$77,000	R4	1,704
15	0393-0000-0801	FAUNTROY RENEE T	1903 9TH ST NW		1,887	0.04		2007	$53,500	CM1	1,928
16	0393-0000-0802	LEWIS WILLIAM & MICHELE	1905 9TH ST NW		1,698	0.04		2007	$95,000	CM1	2,144
17	0393-0000-0033	YOHANNES GEBREMICHAEL	1907 9TH ST NW		1,698	0.04		2007		R4	1,940
18	0393-0000-0824	GEBEYEHU MEZGEBU	1909 9TH ST NW	BASEMENT	1,887	0.04		2007	$75,000	R4	2,036
19	0393-0000-0823	BLUE SKY HOUSING 8TH STREET LLC	1910 8TH ST NW		1,887	0.04	03/31/2006	2007	$350,000	CM1	
20	0393-0000-0804	HOSSEINKHANI BEHZAD	1911 9TH ST NW		1,887	0.04	07/31/2002	2007	$265,000	CM1	2,710
21	0393-0000-0822	LUXOR PROPERTIES INC Lot	1912 8TH ST NW		1,887	0.04	07/31/2002	2007	$88,000	CM1	
22	0393-0000-0805	HOSSEINKHANI BEHZAD	1913 9TH ST NW		1,887	0.04	12/18/1987	2007	$55,000	CM1	2,768
23	0393-0000-0821	FRY MICHAEL C & TERRIELL R 2 story house	1914 8TH ST NW		1,887	0.04	03/22/2002	2007	$100,000	C2B	1,902
24	0393-0000-0806	ZEMENFES TAMERU & MARTHA	1915 9TH ST NW		1,887	0.04	02/03/1997	2007	$70,000	CM1	1,553
25	0393-0000-0046	MEDAL INC Lot	1916-1930 8TH ST NW		11,320	0.26	11/13/1990	2007	$490,000		
26	0393-0000-0807	ZEMENFES TAMERU (Queen Mafekeh)	1917 9TH ST NW		1,887	0.04		2007		CM1	1,770
27	0393-0000-0043	AZIKEN SMART E (Patricia Murphy)	1919 9TH ST NW		3,145	0.07	10/15/2002	2007	$505,000	CM1	4,950
28	0393-0000-0042	1923 9TH ST NW (Smart Azi & Smart Bi)	1923 9TH ST NW Park Lot		3,144	0.07		2007		CM1	240
29	0393-0000-0041	TELES PROFESSIONAL SERVICES LLC Park Lot	1931 9TH ST NW		4,669	0.11	11/01/2004	2007	$1,350,000	CM1	
30	0393-0000-0826	GHEBRETINSAE M & T Zula Rest. + Gy Wright	1935-1937 9TH ST NW		3,051	0.07	06/04/1991	2007	$210,000	CM1	1,421

Jim Shay
1935

Win2Data®

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 009233


9TH ST. N.W.
PARKING
PARK'G.
2875
D. C. GOV'T. OFFICES
PARKING GARAGE
D.C. GOV'T. OFF'S.
2877
U.S. GOV'T. OCCUPANCY
ST. N.W.
AV. N.W.
W. ST. N.W.
MEDICAL OFF'S.
SICKLE-CELL DISEASE CENTER
P. PRIV. GARAGE
3074
341
V. ST. NW.
8TH
GEORGIA
FLORIDA
339
F.P. 1984 (CONC.)
OPEN DECK PARKING
2 DECKS
VAC. ABKT.
UNION HALL
REST.
CHURCH OF FREEDOM UNDER GOD
AUTO REP.
JONES CO.
3075
PARK'G. - R
3076
FLORIDA AV. N.W.
USED AUTO SALES
393
416
PARK'G - C -
7TH ST. N.W.
BOHRER N.W.
325
324
Scale 60 Ft. to One Inch.
COPYRIGHT 1928 THE SANBORN MAP CO. INC.

Lakeland =
Lot 46
Sq 373

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.

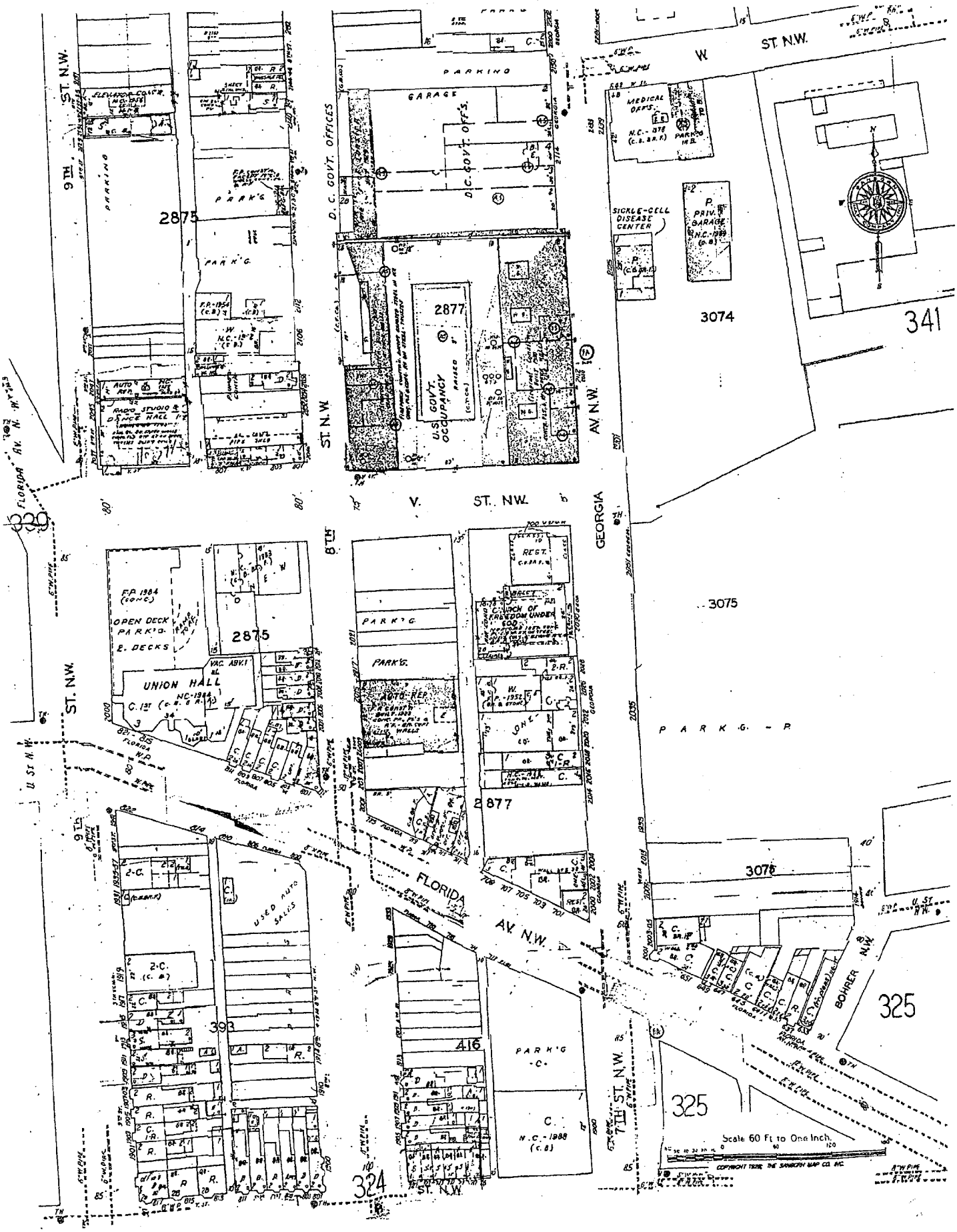
Purchaser has sent Answer Title Company the extension fee of to extend the study period to November 30, 2007 (as evidenced by the statement from Answer Title). In the event of a default by Seller under the Purchase Agreement, the extension fees shall be paid to back Purchaser.

Please sign below to acknowledge our agreement set forth above. Thank you.

3000 SF

3,000 SF
2 lots

Moddie Turay 11/14/13


W. ST. N.W.
9TH ST. N.W.
PARKING
GARAGE
D.C. GOV'T. OFFS.
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CHURCH OF FREEDOM UNDER GOD
AUTO REP.
PARK'G.
FLORIDA AV. N.W.
3076
USED AUTO SALES
393
416
PARK'G -C-
BORRER N.W.
325
7TH ST. N.W.
324
U ST. N.W.
Scale 60 Ft. to One Inch.

Re Maddie Turay
Alley Closing

442 8818
Square 393
Wed the 2nd
Steve Callcott

Steve: 1/8/08
two bldgs next door are listed as contributing in National Register
double bldg – facade has been messed 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 reviews
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 W Rpt

King Dwardom
R. Doggett
1/5/08
Moddie

$65 is today's value
$61.50 today's

4.0 years until stabilization ~~Dec~~ Jan 2001 2

Stabilized at end of 2011 or Jan 2012

If it 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 c 2%
61.50 c 3% escal.

Call through Moddie

Moddie

~~Don Smith~~ 724 8062 12/17

- Steve Cabot
-

413-416

(a) After stabilization, ~~3% annual escalation~~ 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 am

(1) Marc Brondi —

can I be looking at mark red. after 12/19?

King David of Clark run 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

FOIA CONFIDENTIAL TREATMENT REQUESTED

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 6445 SUMAN@SORGANDASSOCIATES.COM
6. ROSALYN DOGGETT	WMATA / SAAM	202 962 2208 rdoggett@wmata.com
7. Tariq Bushnaq	WMATA / JDAC	(202) 962-2043 tbushnaq@WMATA.com
8. John Magarelli	WMATA / SAAM	(202) 962 1557 jmagarel@wmata.com
9. Joel R. Washington	WMATA / SAAM	jrWashington@WMATA.com 202-962-2614
10. MARC BIONDI	WMATA / COUN	202 962 1011 MEBIONDI@WMATA.COM
11. Eric Smart	Boken Smart Associates	202 776-7740 eric.smart@bokensmart.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 First,

He's spoken to the alley adjoiners ~~partners~~, doesn't think it

Clark = long-term apt. holders

Prepare to deliver end of 2011, early 2012

Rents @ $2.55
Going higher = more cost vs a vro rents

GROUND LEASE $65 / FAR based on 2% escalation
$520 to $720
would discuss fixed outside stabilization date
Participation
3% upon capital events - of whatever the gross after debt payment
Land Value Adjusted every 10 years

1. Noddie

Worst case scenario if you ~~have been~~ have to create an alley on your property

Show parking:

2. ~~Why would you get~~ Bannker

how do you make up for Donabelli

Suman — can the deal with hotels manage a little better approvals + architecture

Bannker - manage the community better

Middle

$44M project

11/~~30~~/07
29

A. Taxes

No sales tax

B. Riders

Incoherent

C. FMV

$6.5 M Section C, Vol 2 escalated 2.5% until stabilization
80% lease

at 279,000 / rent / year vs 559,000 Exc Shares
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 Table 1
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	$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	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	vs 400K in Pro Forma															
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		TBD																
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	$8,294,000	$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	0.00%	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)														

outside date = 2013?

highrise fees + pre-dev rent from Clark: pay earlier

Church historic context

WMATA-INV 009245

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 22182-2736/ (703) 288-4000/ Fax (703) 288-2999/ www.klnb.com

KLNBRetail

A division of KLNB, founded in 1968.

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 1968

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

MTC

Roy 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

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:

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.

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.

- *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).*

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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 w. 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 ~~sale~~ amount rec'd. 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

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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>

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:

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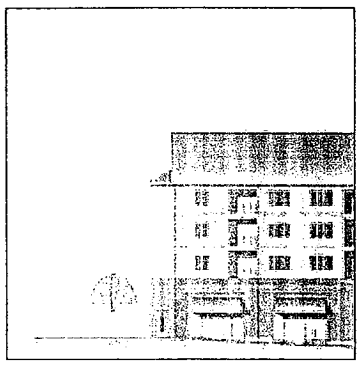
Fort Totten Park Apartments
308-Unit, Transit-Oriented Development

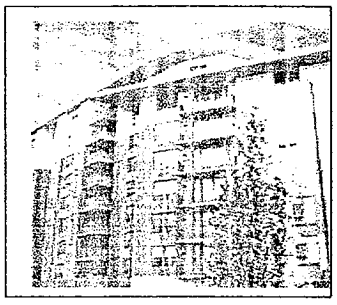
Phase I at Fort Totten is a joint-development project with Clark and Washington Metropolitan Area Transit Authority (WMATA). This 308-unit luxury apartment community is located directly adjacent to Fort Totten Metro transit station. The four- story buildings feature hardi-plank "Italianate train station" 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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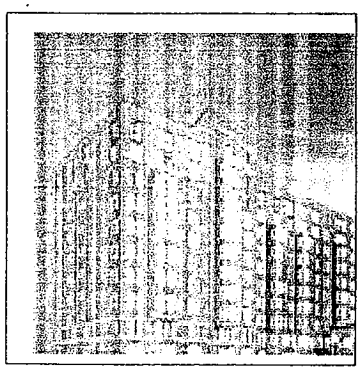
The Clarendon
292 Luxury Apartment Units

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?**

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009256

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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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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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

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Attachments:

a. CBRE Letter
b. Fiscal Impact Calculations
c. Statement of Net Worth
d. Pro forma

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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

FOIA CONFIDENTIAL 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	$44,571,380
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)	$2.63
Rent increase per year	3.0%
Prelease (Units preleased at delivery)	20
Absorption (Units Rented/Month)	15
Multifamily Rental Vacancy	5.13%
Parking:	
Month Parking Space Sales Begin	19
Parking Revenues/Space (Current)	$150
Number of Spaces	62
Absorpcion (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%
Percent of Fixed Expenses	90%
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

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

Volume 2 - F&G Updated Interviews

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

12/17/2007

Volume 2 - F&G Updated Interview.xls

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	$28,208,283	
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%	

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12/17/200710:27 AM

FOIA CONFIDENTIAL TREATMENT REQUESTED

15 Year Cash Flow
Ground Lease Scenario

	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
Year								Year								
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	$ 23,255,315	$ 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 MS 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	5,196,918	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 009265

FOIA CONFIDENTIAL TREATMENT REQUESTED

		Year														
	ALL YEARS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Year	TOTAL	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	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	3,111,086	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%
Return on Equity (ROE)	Avg 15 year ROI 6.79%	0%	0%	0%	0%	8%	-11%	7%	8%	9%	10%	11%	12%	13%	13%	158%
	Avg 15 year ROE 15.86%															

WMATA-INV 009266

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

FOIA CONFIDENTIAL TREATMENT REQUESTED

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

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

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

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

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)

1/27/08

Moddie Rents

$2.55 or $2.65
but says rents go from $2.90-$3.00 at present in the area

Bannekers Rents
$3.00

Moddie -
now 5% net proceeds
was 3% gross proceeds

Moddie has Real Estate Taxes of @ $300k/year
Moddie has ~~ownership of~~

Bannekers - note possible variance
Bill St is a late entrant

OP Issues
Variances
~~OP~~ ~~Condi~~ MV

Diane Branch: Howard

B/?

Malone

Merrick did not find the terms objectionable

Mayor wants Merrick to work with them
Merrick points 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 in ~~Contour~~ 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	Spread
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

CUSHMAN & WAKEFIELD®
SONNENBLICK GOLDMAN

7,500,00

525,000 appraisal

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.
11,750
118,250 × $57/sf = $6,740,250
.20
~~23,650~~

~~94,600 sf. × 57/sf 5,392,200~~
11,750 × 57 669,750
20% 1/2 value 20 affordable 23,250 × $29 674,250
80 market 94,600 × $57 5,392,200
100 % 6,736,200
.07
471,534
× 1.03 × 3 =
× 1.015 × 1
522,987

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

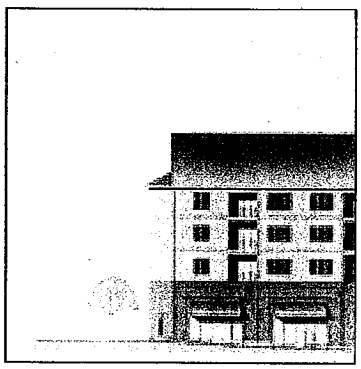
3222 M St., NW, Suite 140
Washington, DC 20007

(P): 202.413.4160
(F): 202.342.1458

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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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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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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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.**

   WMATA prefers 3% / year

   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.

   Option Original

   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.

   Not a outside Date. Please explain

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.**

   Not to Deal Refi/Sale

   Fit Letter no example

   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

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

rcd
1:45 pm

WMATA

Land Acquisition and Development Proposal

Submitted by

metropolis
development company

May 31, 2007

metropolis
development company

Proposal to WMATA
From
Metropolis Development Company LLC
May 31, 2007

Metropolis Development Company ("Metropolis") welcomes the opportunity to compete against and unsolicited proposal and submit its bid for the 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) and look forward to working with WMATA on this transaction.

The WMATA parcels provide an exciting development opportunity for our firm. Metropolis is the most active residential and retail developer in the Uptown Art Overlay with over 600,000 square feet valued at approximately $157 million delivered or under construction in the past 3 years.

Metropolis' core strengths are its ability to successfully execute complex real estate transactions. **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 Loft is an awarding winning mixed use residential/retail building that was built on top of the Metro Tunnel with including two air shafts. Throughout the Langston Project, Metropolis successfully closed an alley, removed oil contaminants, removed the cut and cover debris from site. More importantly Metropolis working closely with WMATA's engineers 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".**

<u>Use:</u>

Metropolis will construct an aesthetically modern mixed-use multifamily condominium and retail development on the three parcels. Assuming a 4.5 FAR is achieved; there will be 12,000 Square Feet of 16-hour day retail and 117,924 Gross Square feet of luxury condominiums. Each parcel will have both ground-floor retail and condominiums above. The largest parcel will have underground parking to serve the buildings on all three parcels. Assuming an average condominium unit size of 700 square feet, there will be over 130 condominium units across the three parcels.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009289

Consideration:

Metropolis offers WMATA **$100 Per FAR** for the fee simple interest in its land. Assuming a 4.5 FAR is achieved, this amounts to consideration of **$12,992,400** (as calculated by $100 Per FAR * 129,924 FAR). WMATA would receive compensation the later of a year after the execution of the purchase and sales agreement or at the closing prior to construction.

28,912 s.f.
x 4.5 = 129,924

x 4

FOIA CONFIDENTIAL TREATMENT REQUESTED

Development Team Background:

Metropolis Development Company is a full service development company focused on residential and retail projects in the Uptown Arts Overly market area.

We are proposing to use as the architect on the project Shalom Baranes Associates (SBA). SBA is the leading design architect in Washington, DC with over 20 million square feet of residential, retail, commercial and institutional projects over the past 20 years. SBA has won over 25 AIA awards for their work, including for Langston Lofts at 14th and V Streets, NW, which Metropolis built above the Metro Green and Yellow line tunnels.

Metropolis is proposing to team with attorneys Robins, Kaplan, Miller & Ciresi, and LLP on this project. We have worked with Robins, Kaplan on Langston Lofts and many projects and land use approvals in the past.

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.

Metropolis has excellent relations with the members of the ANC in which DCHFA is located. We have worked closely with this ANC and others in several of our past projects. 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009291

Development Team Prior Experience:

- **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 20009

Metropolis Development Company, Developer

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009292

- **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.

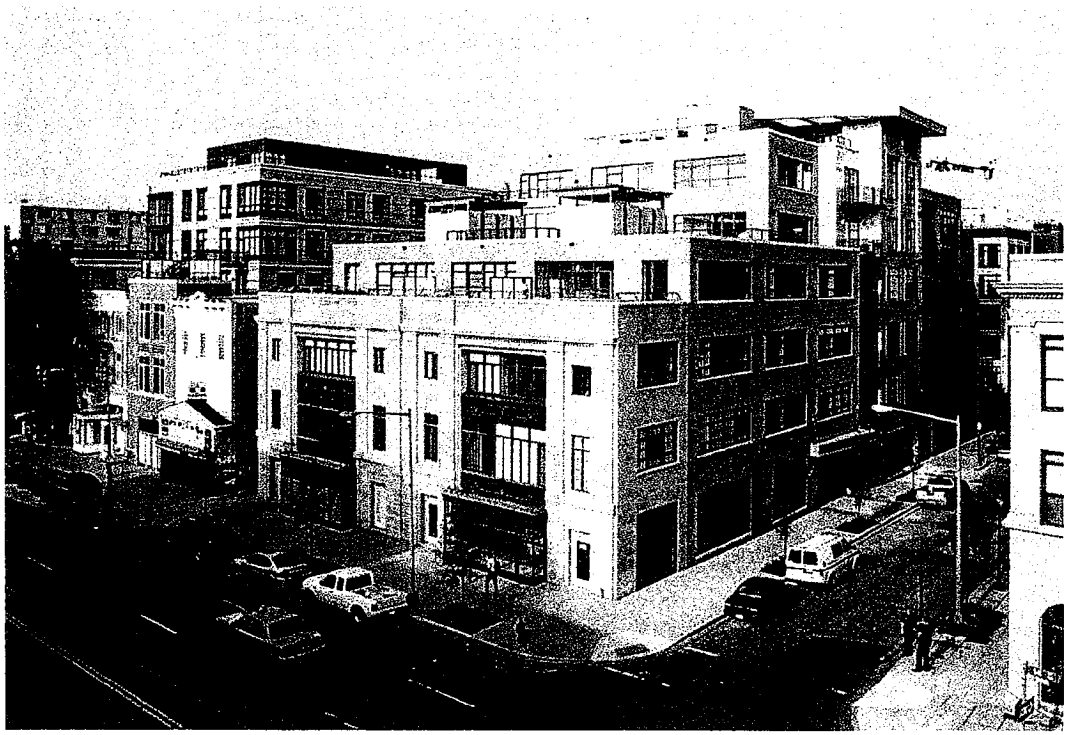
Lofts 14
1401 Church Street, NW
Washington, DC 2005

Metropolis Development Company, Developer

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009293

- **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
1400 Church Street, NW
Washington, DC 20005

Metropolis Development Company, Developer

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009294

- **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.

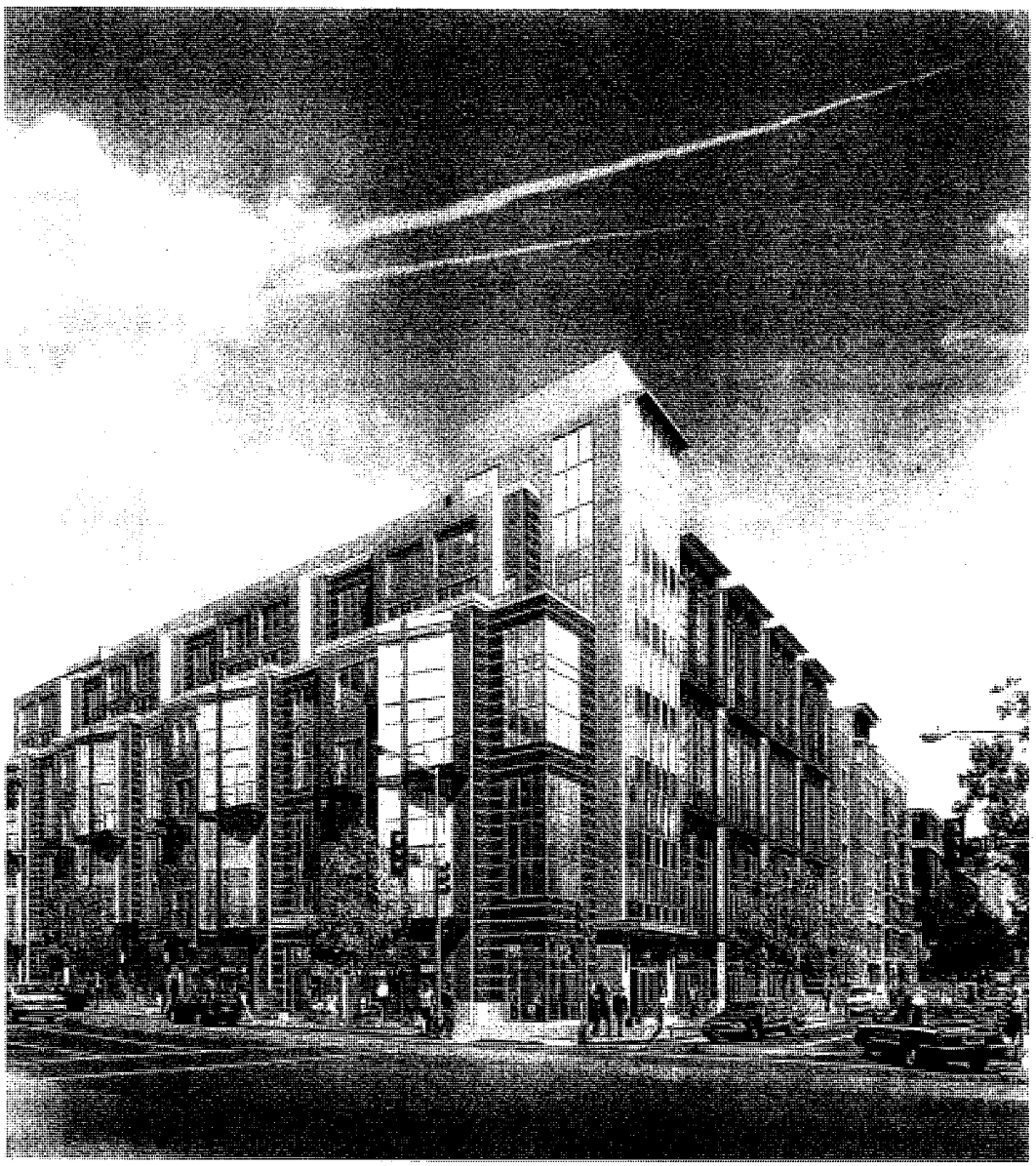
  Winner of the Delta Associates 2004 Best Adaptive Reuse Condominium Project in the Washington Area.

Cooper Lewis Condominium
1403 P Street, NW
Washington, DC 20005

Metropolis Development Company, Developer

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009295

- **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
1515 15th Street, NW
Washington, DC 20005

Metropolis Development Company, Developer

FOIA CONFIDENTIAL TREATMENT REQUESTED

metropolis
development company

Key Principals

Scott Pannick, Owner 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009297

Chris Green, Chief Operating Officer. Chris has over 23 years of experience in global real estate development, management, capital investment, and investment banking. He has held partner level and senior executive positions at the following leading firms and companies in the global real estate industry: Portman Holdings, LandGrant Corporation, First Manhattan (FMCG), and Strategic Capital. Chris has financed and managed over $3.5 billion of commercial and residential real estate projects and properties in the United States, China, India, Singapore, Indonesia and Malaysia. Chris has been involved in the following notable projects and properties: Las Americas, Embarcadero Center, The Bonaventure Hotel, Westin Peachtree Plaza, Park Hyatt, Hyatt Regency San Francisco, Pan Pacific Hotel, Marina Square, Shanghai Centre, Peachtree Center, AmericasMart, Marriott Marquis Atlanta, Marriot Marquis Time Square, Suntrust Plaza, San Francisco Fashion Mart, Northpark and Riverside Office Towers. Chris graduated Magna Cum Laude from Boston College's School of Business and has an M.B.A. in Finance and Real Estate from Columbia Business School.

John Nelson, Vice President of Construction, is responsible for oversight of Metropolis Development's construction projects. Leading a team of project managers, he directs all phases of the construction process, from pre-construction to close-out with priority attention throughout to quality, cost, and schedule. John joined Metropolis Development Company with over 25 years of construction management experience. Most recently, as the owner of Nelson Construction Services, he oversaw construction for the non-profit, community-based organization, Food and Friends, of its new 25,000 square foot administration and kitchen facility. Earlier, John worked as Director of Real Estate and Design for Metromedia Fiber Network Services and as Senior Project Manager for the Clark Construction Group and Bechtel. His project portfolio covers a broad range of projects including heavy industry, institutional, state government, federal government, and residential. He earned a Bachelor of Science in Civil Engineering from the University of Maryland.

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009298

metropolis
development company

Contact Information

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  Cell (202) 437-6704
  Fax (202) 588-1977
  malone@metropolis-dc.com

- Chris Green, Chief Operating Officer
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  green@metropolis-dc.com

- John Nelson, Vice President of Construction
  Tel (202) 588-1332
  Cell (301) 518-8037
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- Alex Shewchuk, Chief Financial Officer
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  shewchuk@metropolis-dc.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009300

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 --

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www.bolansmart.com

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Response to Unsolicited Proposal Presented to WMATA

Harvard Place

at Florida Avenue

TSC

Bennett Associates

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WMATA-INV 009304

Executive Summary

[illegible] will present a [illegible] [illegible] WMATA [illegible] [illegible] building pollution and improve efficiency.

What will [illegible] construct on the property?

A mix of uses to include retail, residential and office [illegible] consistent with the Duke Street plan, current [illegible] and property owners' preferences and market demand.

[illegible]

[illegible] the WMATA parcels will be [illegible] on Florida Avenue [illegible] parcels on Florida Avenue between 8th and 9th Streets, NW, [illegible] ownership. All neighboring [illegible] have indicated, either [illegible] to sell to, or work with, the [illegible] the WMATA parcels.

[illegible] to participate in the development of the [illegible] under either Option 1 or 2.

What consideration will WMATA receive and when?

Based on our initial development study and conversations with [illegible] stakeholders, the parcels are best suited for mixed use [illegible] development. As such, Symmetry prefers to purchase the WMATA parcels and to pay WMATA [illegible] per FAR square foot of yield [illegible] not less than Seven Million Five Hundred Thousand Dollars ($7,500,000.00). Symmetry will also pay WMATA $15 per FAR square foot of yield above [illegible] square feet for all parcels [illegible] whether on the three WMATA parcels or by assemblage on [illegible]. Closing will occur within thirty (30) days of issuance of building permit, but no later than eighteen (18) months after [illegible] purchase and sale agreement.

[illegible] lease [illegible], with a lease payment of $350,000 [illegible] year ground lease at a [illegible] escalation per year, so that [illegible]. A lease is less preferable than a [illegible] receive less favorable financing options [illegible] market conditions.

TSC

DMA ARCHITECTS

SYMMETRY

CONTACT

[illegible] the following contacts [illegible] design/architecture with [illegible] set preferences and needs [illegible]

DEVELOPER

SYMMETRY, LLC
[illegible] Blvd.
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Rockville, MD [illegible]
Phone: 301.299.4150
Fax: 301.299.4151

COMMUNITY MANAGEMENT

[illegible]
[illegible] Blvd.
Suite [illegible]
[illegible], MD [illegible]
Phone: 301.[illegible]
Fax: 301.[illegible]

ARCHITECTURE

[illegible] ASSOCIATES, LLC
[illegible] Professional [illegible]
Suite 200
Gaithersburg, MD [illegible]
Phone: 301.[illegible]
Fax: 301.590.[illegible]

MARKETING

TSC REALTY
[illegible] Wisconsin Avenue
Suite 500
Bethesda, MD [illegible]
Phone: 301.657.[illegible]
Fax: 301.657.[illegible]

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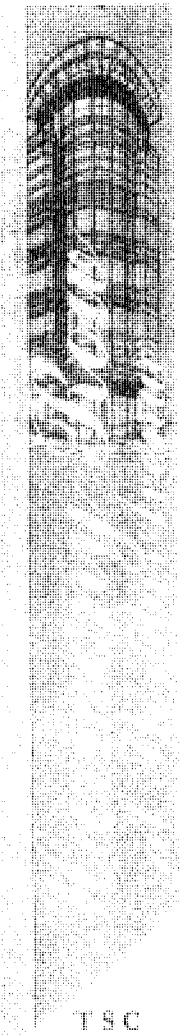
FOIA CONFIDENTIAL TREATMENT REQUESTED

What is the project schedule?

PROJECT SCHEDULE	DURATION
WMATA selects Symmetry [illegible]	[illegible]
Symmetry meets with community groups	[illegible]
Symmetry negotiates with [illegible] property owners	4 MONTHS
Symmetry meets with community groups	[illegible]
Symmetry prepares [illegible]	[illegible]
Symmetry meets with community groups	[illegible]
WMATA approves final development plans	2 WEEKS
Symmetry meet with community groups	2 MONTHS
Symmetry proceed with Construction Documents	6 MONTHS
Symmetry get final Site Plan approval	6 MONTHS
Symmetry get permits to begin [illegible]	4 MONTHS
Symmetry [illegible]	1 MONTH
Symmetry Break Ground [illegible]	24 MONTHS

The schedule [illegible] of duration are based on experience [illegible] on the governing agency [illegible] the time for submittal and review.



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DMJM

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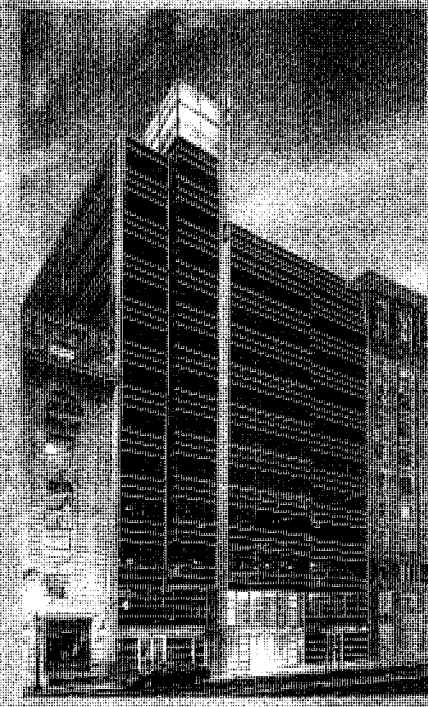
[illegible] the developer's track record showing its ability to [illegible] and what is the [illegible] of a [illegible]

Symmetry was [illegible] in 1990 as [illegible] and [illegible] to [illegible] to develop and [illegible] improved properties [illegible] Chicago, [illegible] which has been developing [illegible] the Greater Washington Metropolitan Area since the 1960s. Ms. Tatah's partner, Saint Trust, has [illegible] billion in assets for thousands of [illegible] arts and several million square feet of [illegible] and [illegible] in [illegible] in the region. Ms. Tatah [illegible] from The Wharton School [illegible] University of Pennsylvania College of Arts and Sciences [illegible] received [illegible] honors. She was [illegible] real estate from an [illegible] perspective. After [illegible] Chicago for several years [illegible] land, purchasing two buildings and developing three others totaling 500,000 square feet in Montgomery and Prince George's Counties, Maryland, Ms. Tatah [illegible] on her own developments and successfully purchased 1400 [illegible] NW. She demolished the two buildings on the site and built the first [illegible] office condominium in the District [illegible] that the concept would work. [illegible] growth has been an overwhelming success [illegible] parts of the city. [illegible] Ms. Tatah is particularly interested in developing the WMATA [illegible] because of her commitment to the arts. Having [illegible] the [illegible] Jose Greco in the [illegible] Director for the past [illegible] years, she has [illegible] order to [illegible] plans to work with [illegible] for the [illegible] including the Washington Performing Arts Society, the Washington [illegible] Joy of Motion, DC Dance [illegible] Levine School of Music, and the Duke Ellington School [illegible] that the [illegible] development integrates the art [illegible] and [illegible]



Symmetry is committed to [illegible] the Maryland Minority Business Enterprise [illegible] to be considered part of MDOT's Federal Disadvantaged Business Enterprise [illegible] such application is approved, Symmetry [illegible] be considered [illegible] DBOOT's Disadvantaged Business Enterprise program.

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Small Business

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MARKETING

[illegible]

CONSTRUCTION MANAGEMENT

[illegible]

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SYMMETRY

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 009309

Brendan McDonnelly, A.I.A.

SENIOR PRINCIPAL - Office / Mixed Use

Mr. Donnelly is the Senior Principal of Donnelly Arpin Associates, located in Silver Spring, Maryland and is responsible for directing design and production of the firm. He has twenty-two years of [illegible] architectural design and construction experience from direct supervision and involvement in every stage of project development.

Mr. Donnelly received his Bachelor of Architecture with High Honors from the University of Maryland and is a registered Architect in Maryland, [illegible] Columbia and Virginia, as well as holding a [illegible] Certificate. He has received the Alpha Rho Chi Medal from the American Institute of Architects, the Adams Award and a Certificate of Scholarship from the University of Maryland. Mr. Donnelly has served as Chairman of the East Bethesda Citizens Association Planning Committee and is a past member of the Phi Kappa Phi Honorary Fraternity. He has served on the Board of Directors of the Potomac Valley Chapter A.I.A. and participated in a national study of energy conscious design for the U.S. Department of Energy.

Mr. Donnelly is an active member of the Building Officials and Code Administrators (BOCA), the ASTM committee on Home Land Security, the National Association of Industrial and Office Parks, the Historic Society of D.C., and is a member, contributing editor, and frequent author for The Ground and Treetime, and Johns Hopkins University.

Bob Arpin, A.I.A.

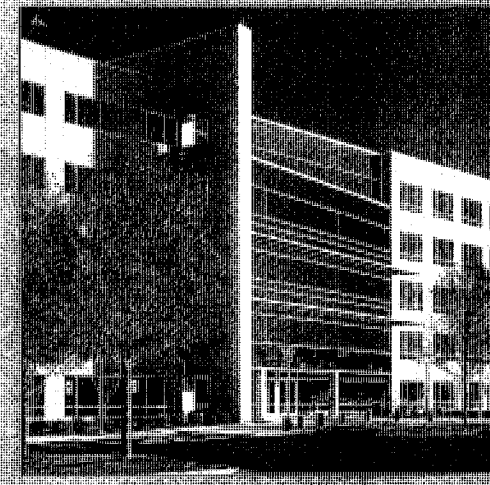
SENIOR PRINCIPAL - Office / Mixed Use

Mr. Bob Arpin is a seasoned professional with over [illegible] years of Project Management experience. He is very familiar with the [illegible] requirements of the A.I.A. Practice and specializes in [illegible] Building Codes, Life Safety Codes, [illegible] Coordination and Construction Administration and therefore [illegible]

Mr. Arpin's well respected ability to systematically organize and perform work Client's requirements and approach each Project with [illegible] degree of professional attention and care [illegible] and timely completion of [illegible] for all projects.

Mr. Arpin graduated (1969) from Pennsylvania [illegible] University with a B.S. degree in Maryland, Virginia and Pennsylvania [illegible] and is a member of the Potomac Valley Chapter of the American Institute of Architects.

barpin@dwarch.com
301.590.8900 x150



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DAA ARCHITECTS

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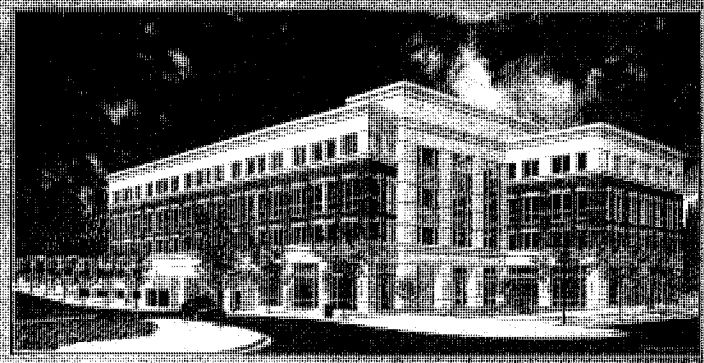
FOIA CONFIDENTIAL TREATMENT REQUESTED

John Gibson AIA

ASSOCIATE PRINCIPAL - Senior Project Manager

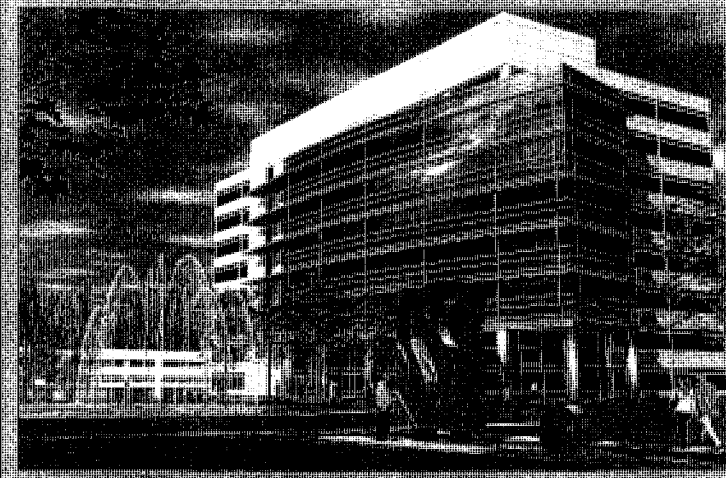
[illegible] Associate Principal and Senior Project Manager [illegible] Gibson is one of the [illegible] Chapter of The American Institute of Architects [illegible] Mr. Gibson's [illegible] professionals in the fields of [illegible] Quality Control, Production, Planning, and Construction Administration Management. With [illegible] years experience and [illegible] Mr. Gibson's [illegible] projects and [illegible] warehouses [illegible] with our firm [illegible] the architectural process. He has [illegible] professionalism in all aspects of the management of [illegible].



Gary Yang AIA

[illegible] - Director of Design

[illegible] Research and Science [illegible] Gaithersburg, Maryland [illegible] Architecture [illegible] Virginia. Mr. Yang [illegible] years. [illegible] design knowledge in [illegible] the [illegible] of the [illegible]



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WMATA-INV 009311

FOIA CONFIDENTIAL TREATMENT REQUESTED

Patricia Geary, AIA

[illegible]

[illegible] Mr. Geary's [illegible] of the Maryland [illegible] safety personnel [illegible] with a focus [illegible] residential, commercial, and [illegible] Mr. Geary also [illegible] Director Manager in charge of Mid-[illegible] Development [illegible] Law, Mid-atlantic Rise [illegible]

[illegible] Mr. Geary [illegible] Planning at Pratt [illegible] and [illegible] the Bachelor of Architecture from the Pratt Institute. He is a member of the AIA and holds his NCARB Certification. [illegible] in the Maryland, New Hampshire, Connecticut, Florida, Massachusetts, Virginia [illegible] Maryland.

Jacqueline F. Lipmann

[illegible] ASSOCIATE [illegible]

[illegible] Mr. Lipmann [illegible] in the United States [illegible] and [illegible] computer [illegible]

WMATA-INV 009312

INTRODUCTION
SCHEDULE
TEAM EXPERIENCE
IMAGE STUDY
SKETCHBOOK
SUMMARY
TSC
SYMMETRY

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DMJM ARCHITECTS

STARNETT

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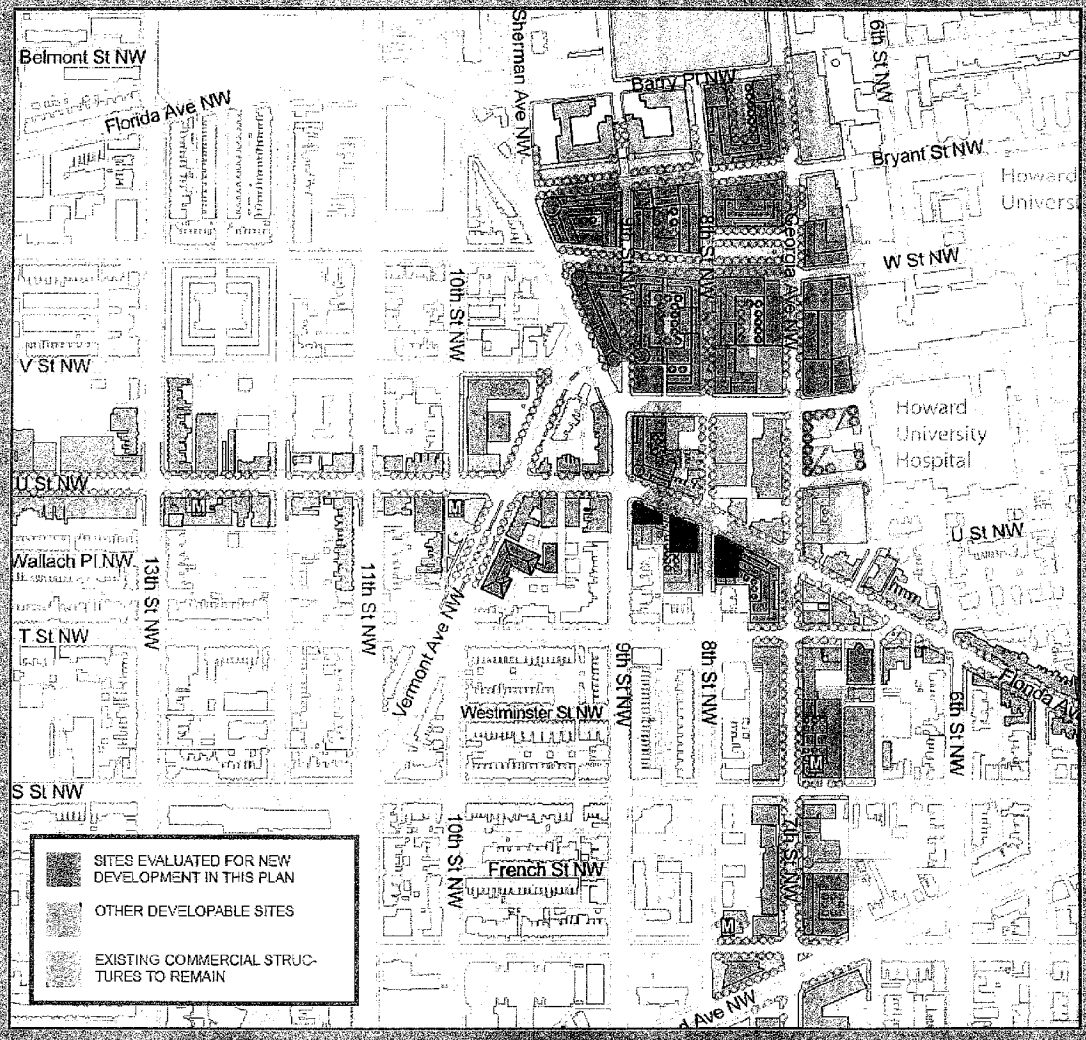
FOIA CONFIDENTIAL TREATMENT REQUESTED



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Russell Associates

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WMATA-INV 009315

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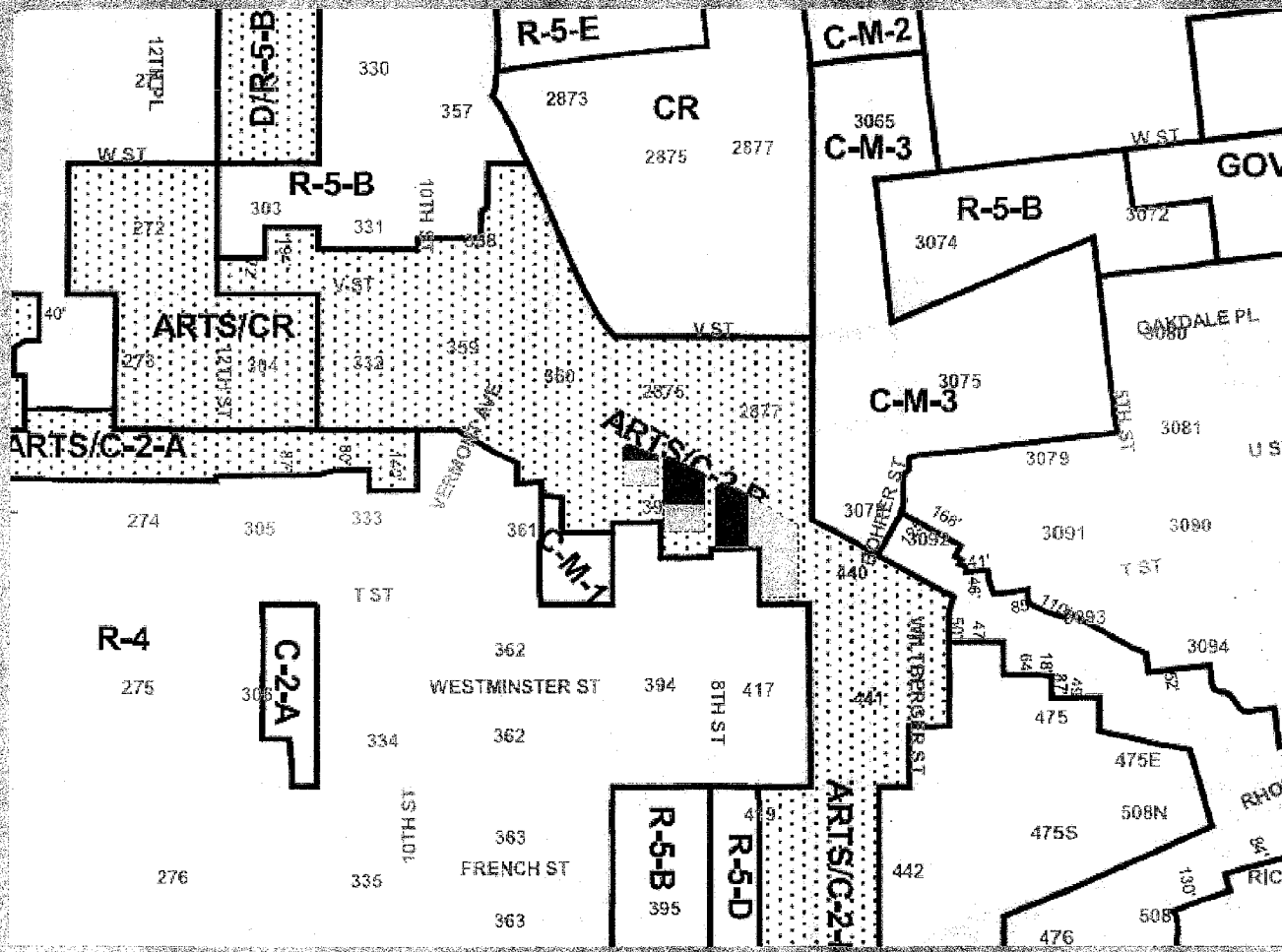

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DMA ARCHITECTS

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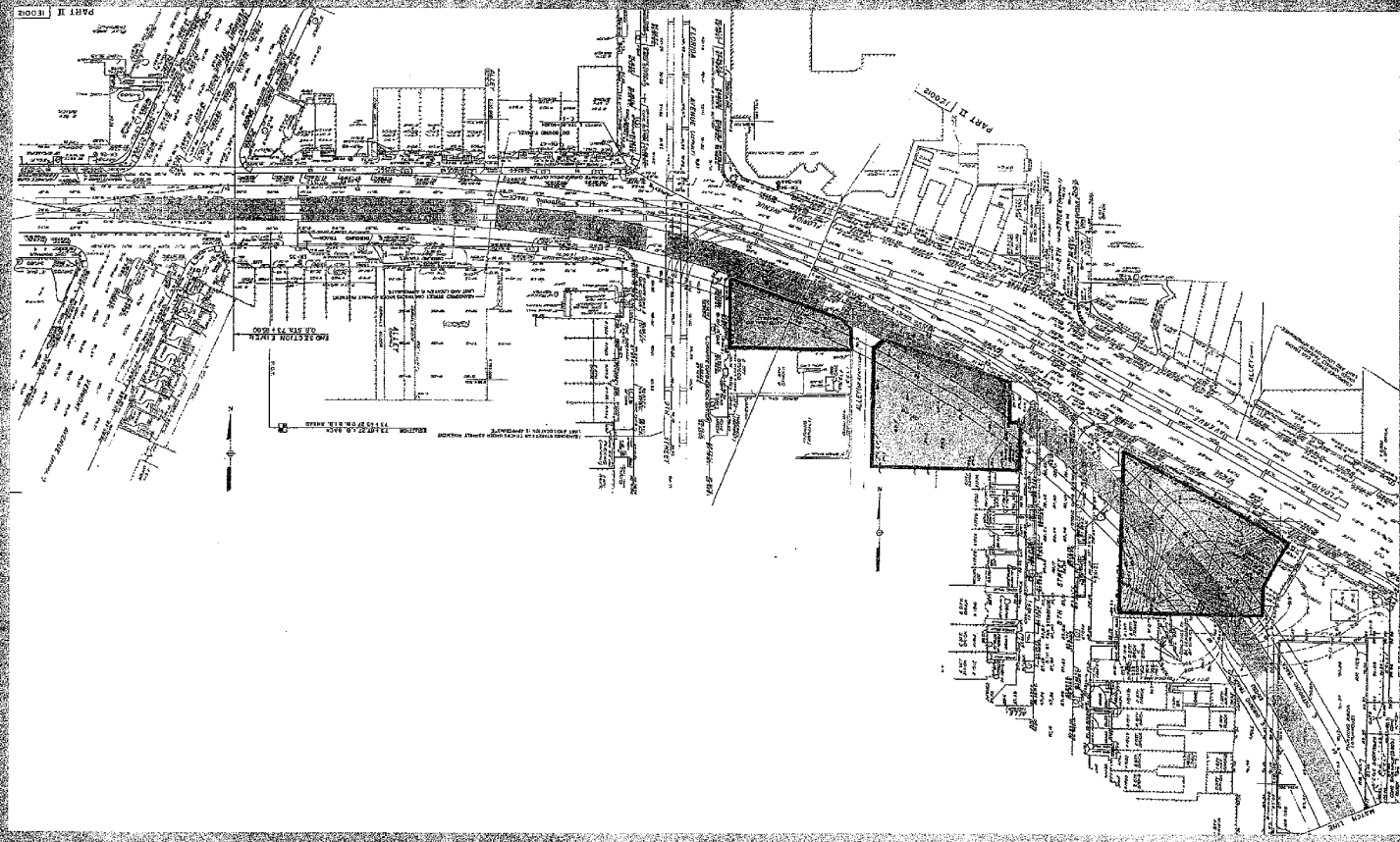
WMATA-INV 009316



Metro Tunnel location relative to WMATA parcels

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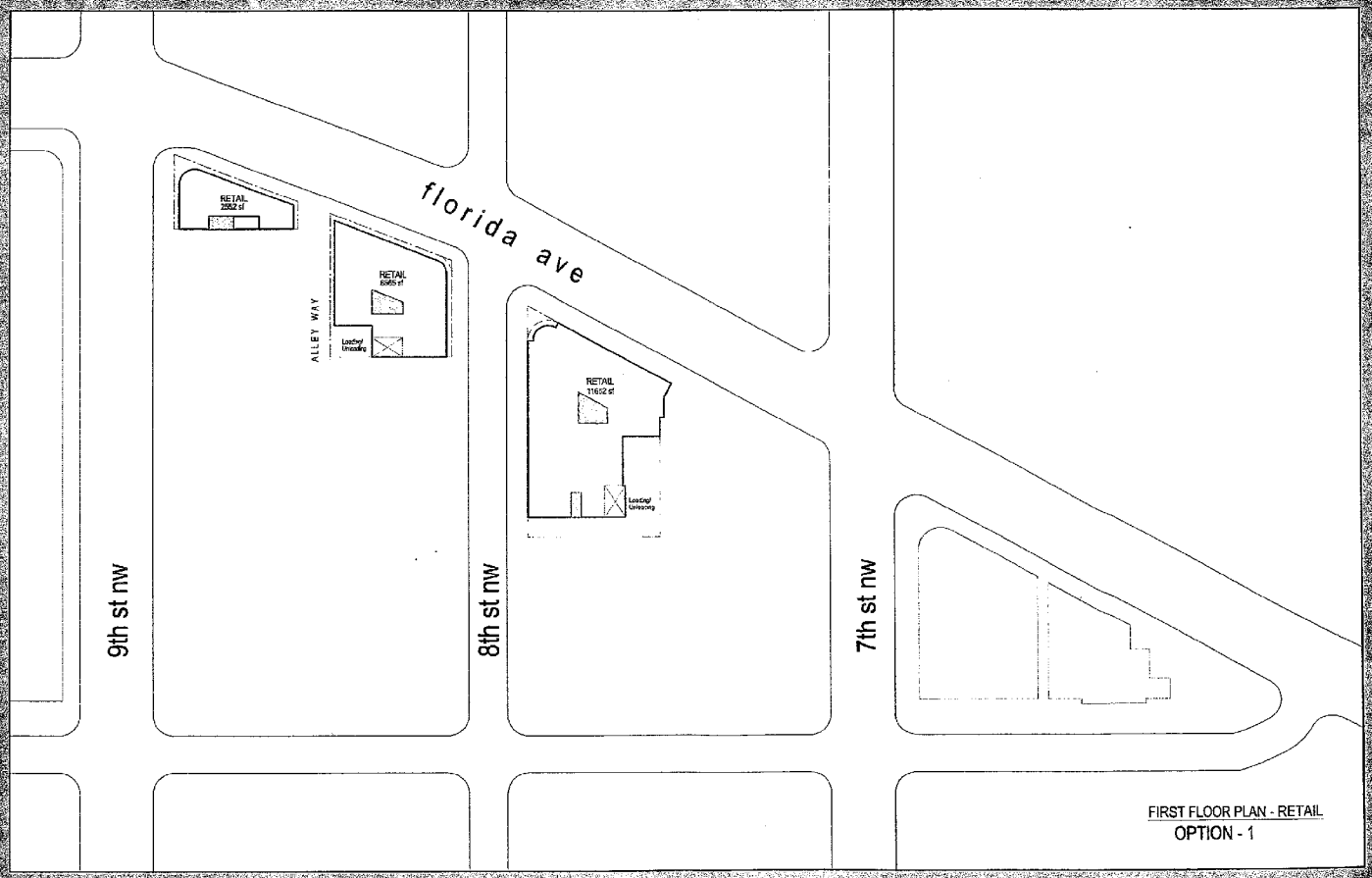
FOIA CONFIDENTIAL TREATMENT REQUESTED



FIRST FLOOR PLAN - RETAIL
OPTION - 1

Option 1 – Development of WMATA Parcels

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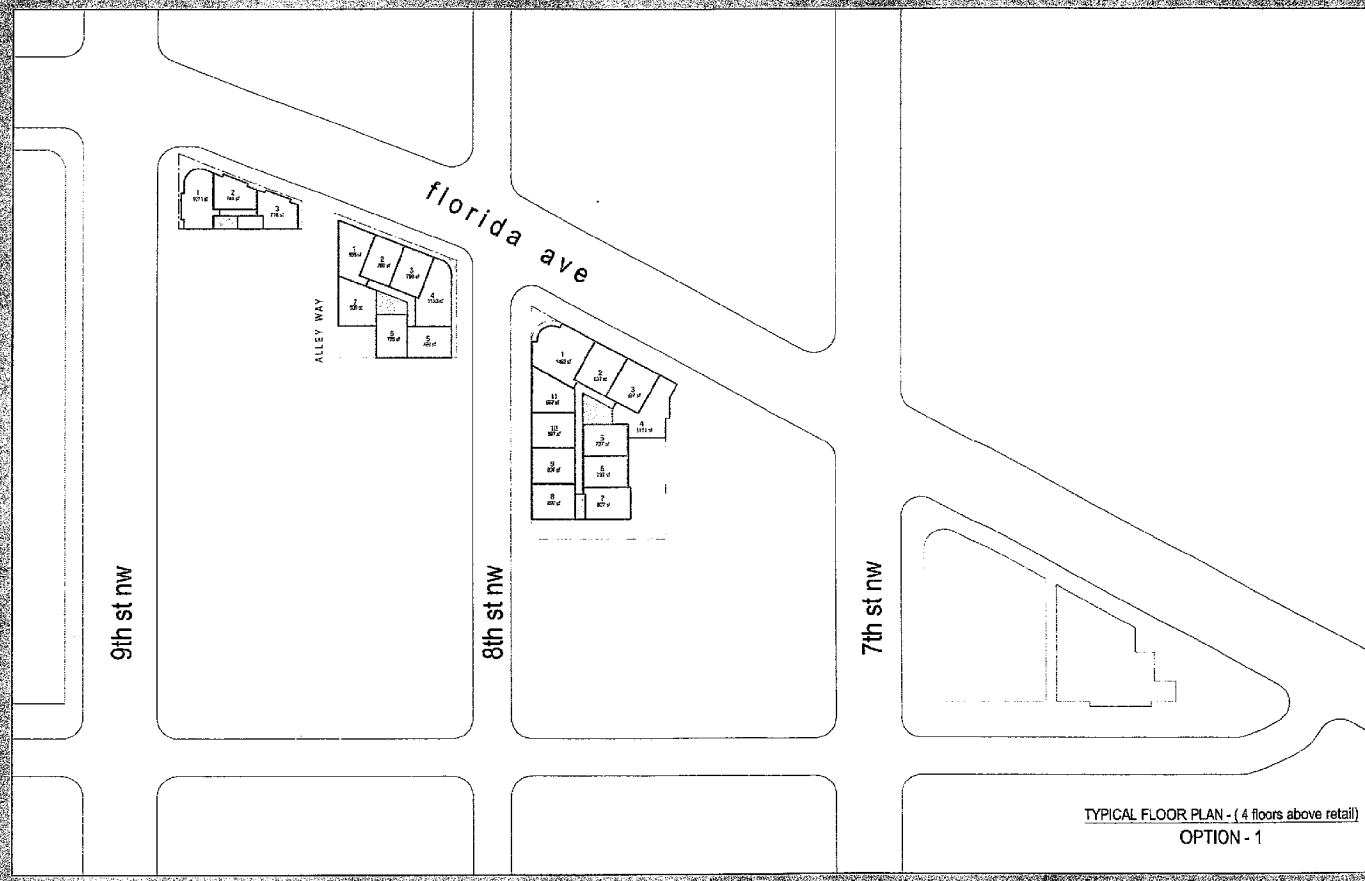
Russell Associates

DA ARCHITECTS

SYMMETRY

WMATA-INV 009318



Option 1 – Development of WMATA Parcels

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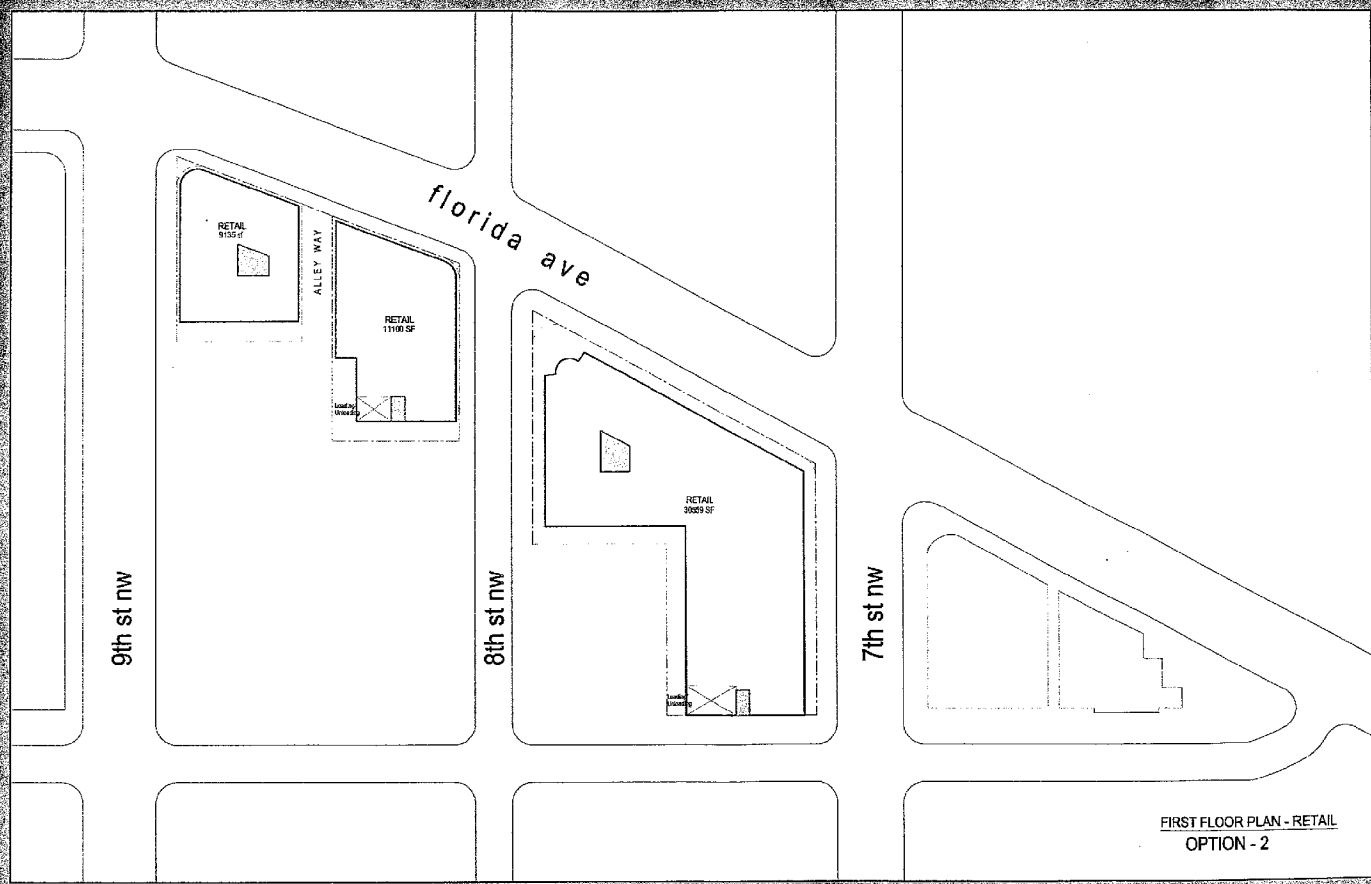

Option 2 – Development of WMATA Parcels & Assemblage

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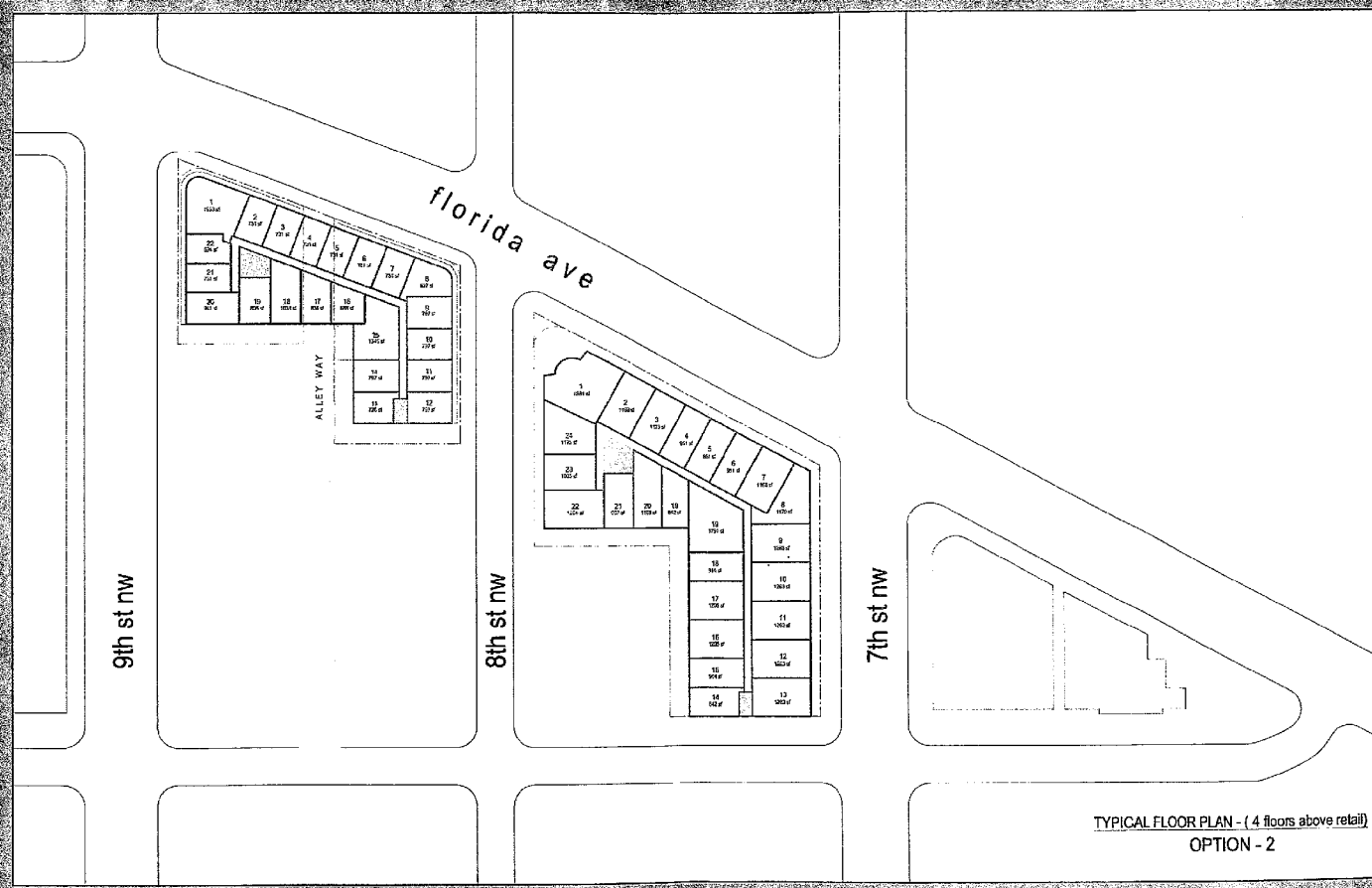
FOIA CONFIDENTIAL TREATMENT REQUESTED



Option 2 – Development of WMATA Parcels & Assemblage

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DMA ARCHITECTS

SYMMETRY

FOIA CONFIDENTIAL TREATMENT REQUESTED

Early Sketch Study

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DMA ARCHITECTS

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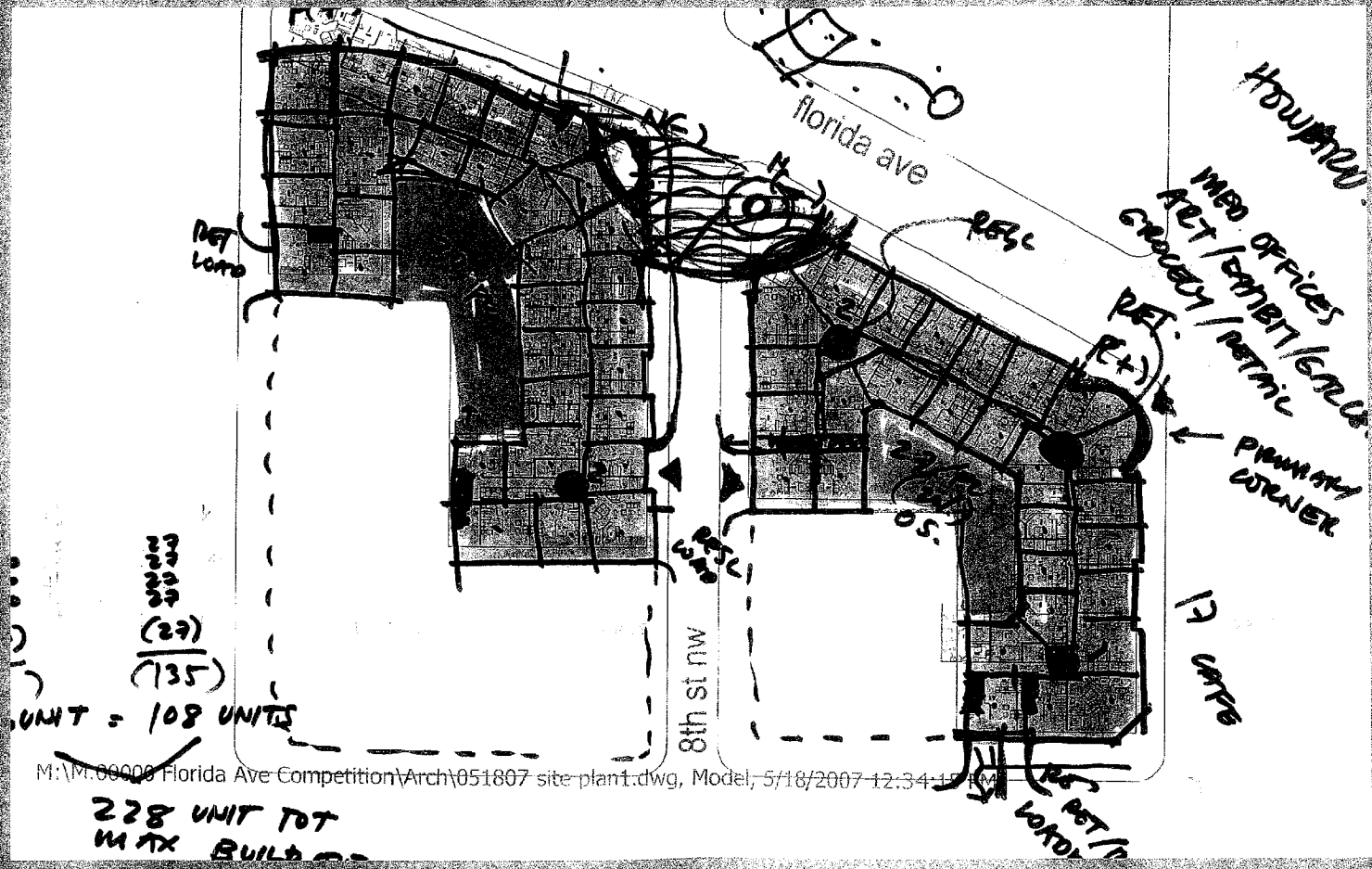
FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED



Early Sketch Plans with Assemblage

Harvard Place at Florida Station

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SYMMETRY

WMATA-INV 009323

Sketch Vision adjacent to Syncopation Alley (8th Street NW)

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Sketch view down 8th Street, NW

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SYMMETRY

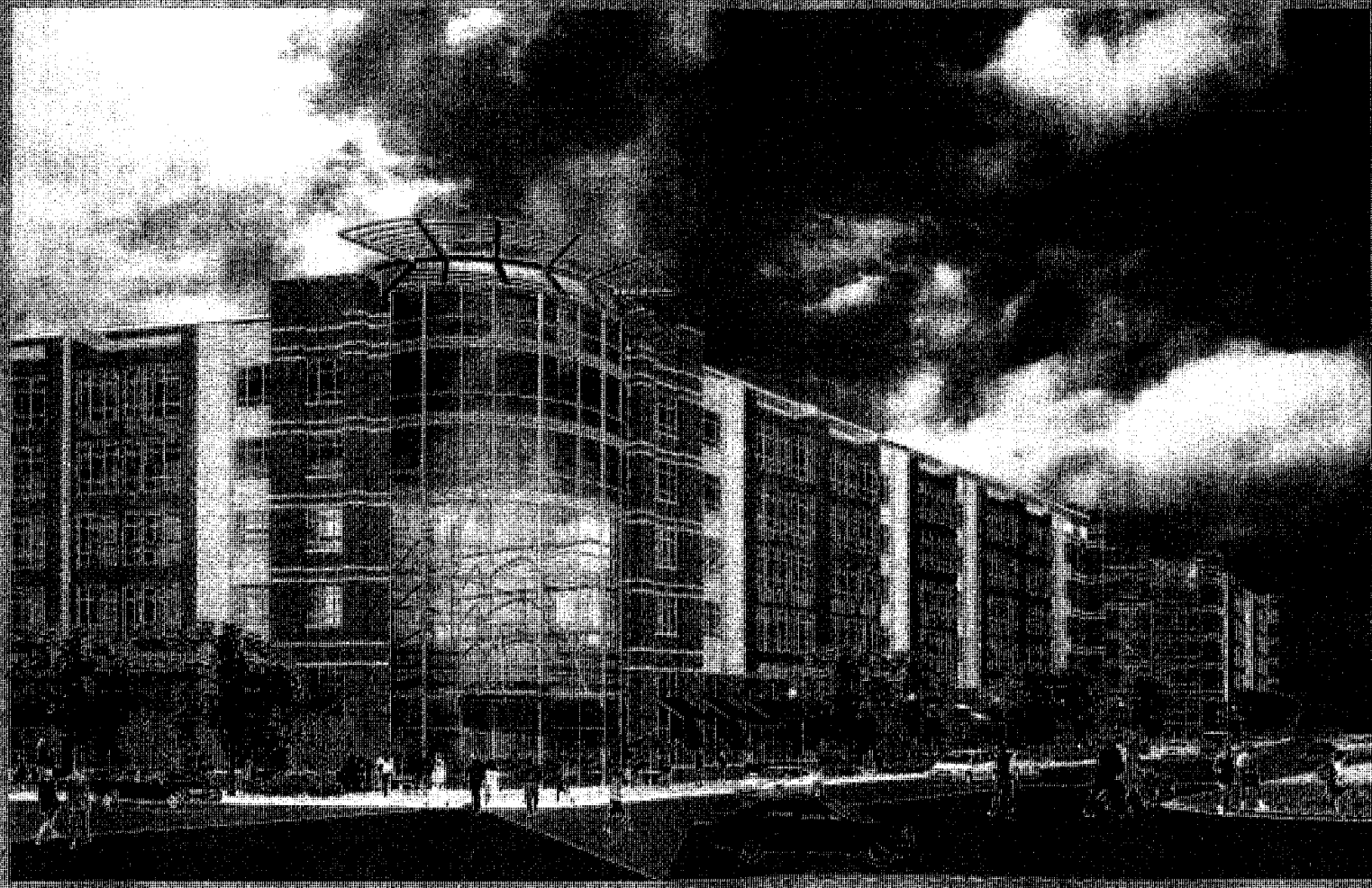
FOIA CONFIDENTIAL TREATMENT REQUESTED

Sketch View at 7th and Florida Avenue

TSC

SYMMETRY

FOIA CONFIDENTIAL TREATMENT REQUESTED



Corner of 7th Street looking up Florida Avenue

TSC

SYMMETRY

FOIA CONFIDENTIAL TREATMENT REQUESTED

SUMMARY

[illegible]

[illegible] WMATA parcels [illegible] the [illegible] and the [illegible] to the [illegible] presents, while at the same [illegible] on this journey and make Harmony Row a reality.

This [illegible] end of the [illegible] a snapshot of our [illegible] While many questions may remain, we [illegible] to present our vision in the depth [illegible] the [illegible]

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SYMMETRY

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WMATA-INV 009328

2010 unsolicited Bid

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T 202 882 0808 • F 202 882 0809
www.lakritzadler.com

GROUND LEASE LETTER OF INTENT ("LOI")
WMATA SHAW/U STREET DISTRICT
WASHINGTON, D.C.
PARCELS 1, 2 and 3

Office of Property Development and Management
Washington Metropolitan Area Transit Authority
Attention: Steve Goldin, Director
600 Fifth Street, NW
Washington, DC 20001
Via Email: sgoldin@wmata.com

Dear Mr. Goldin:

LaKritz | Adler Development, LLC, a Washington D.C.-based, CBE-certified development company, hereby proposes to ground lease parcels owned by WMATA in Washington, D.C., including Lot 44 in Square 0393 ("Parcel 1"), Lot 45 in Square 0393 ("Parcel 2") and Lots 18 and 31 in Square 0416 ("Parcel 3"), collectively known as the "Florida Avenue Parcels," on terms and conditions described more fully below:

Property/Parcels/Premises	Parcel 1: Lot 44 in Square 0393, Washington, D.C., Land Area of 3,799 square feet Parcel 2: Lot 45 in Square 0393, Washington D.C., Land Area of 8,621 square feet Parcel 3: Lots 18 and 31 in Square 0416, Washington, D.C., Land Area of 16,472 square feet 15,956
Landlord	WMATA
Tenant	Three entities to be formed by LaKritz Adler Development, LLC, or its assignee(s)
Leases (3 Leases)	A Lease for each Parcel shall be prepared by Landlord at its expense and submitted for review to Tenant within thirty days of execution of this LOI.
Deposit - why isn't LL holding Deposit after execution of Leases	Fifty Thousand Dollars ($50,000) upon execution of final Leases. Deposit to be held in an interest-bearing account at a title and escrow agent of the Tenant's choosing in Washington, D.C.
Approvals Contingency Can split parcels → WMATA Re-lease issues?	In the event that Tenant, prior to Rent Commencement → 5yrs, determines in its sole discretion that its desired approvals cannot be achieved for any Parcel (whether by action of the HPRB, BZA or other regulatory or government agency), Tenant may discontinue the lease obligation for that

	specific parcel and receive the immediate return of its Deposit, with interest and without penalty.
Plans/Uses	Tenant shall be permitted to develop any legal use on each of the Parcels, in its sole discretion.
Ground Lease Term	Twenty Nine Years (29) with seven (7) ten-year renewal options
Annual Base Rent	Payable in equal monthly installments
Parcel 1	$32,400 per annum
Parcel 2	$72,000 per annum
Parcel 3	$120,000 per annum
Rent Increases	Annual Base Rent shall increase by 20% at the end of each ten year period, and at the commencement of each ten year renewal.
Rent Commencement payments for 5yrs b/w Lease Execution and C/O	Monthly lease payments to commence upon issuance of final Certificate of Occupancy for each completed building, not to exceed 60 months from final Lease ratification.
Memorandum of Lease and other Documentation	Tenant shall receive a recorded Memorandum of Lease, subordination agreement from Landlord in favor of Tenant's construction lender, title affidavits, certificates, lien waivers, corporate resolutions and other documents and information requested by Tenant's title company in support of a leasehold title policy.
Permits and Zoning	Landlord will cooperate with and actively support Tenant's permitting and execute applications, plats, subdivisions, site plans, certifications, documents and recordable instruments as may be required by the applicable jurisdictions for purposes including, but not limited to, subdivisions, zoning variances, and planned unit developments including the Property.
Development Agreements Buildings crossing property lines? parcel lines?	Landlord will cooperate with Tenant's efforts in joining with other properties for the allocation of development rights to Tenant's construction project, so long as such agreements shall not reduce the value of the Property.
Construction	Tenant shall be permitted to construct any legal use on the Premises in Tenant's sole discretion, in compliance with all laws and thereafter to alter and

2/4/2004

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009330

Default → LL own building Ethical issues (Ex. Strip Club)	replace the same, without Landlord's consent. Landlord's approval of plans shall be prompt and not to be withheld absent showing non-compliance with law.
Assignment, subletting and mortgages No? ← All defaults but non-payment? ←	Tenant may freely assign, sublease, mortgage or encumber its interest in any or all of the Leases. Landlord shall subordinate its fee interest to Tenant's construction financing lender during the Construction Period and thereafter until Tenant can stabilize and refinance the completed project. After stabilization and refinancing, Landlord's lease payments but not fee interest shall be subordinated to Tenant's senior lender.
Additional Renewals - As if vacant? - or subtract improvements	At the end of Tenant's final renewal period under each Lease, and each Additional Renewal period herein described, Tenant may elect to renew the Lease at Fair Market Value, based upon its residual land value at the time of renewal exclusive of the value of any improvements, for an additional ten year period.
Right of First Refusal	At any time during the Lease Term, if Landlord shall elect to sell or transfer any part of the Property, Landlord shall first offer to sell Property to Tenant at the price for which Landlord intends to offer the Property for sale or transfer. In the event the parties do not reach agreement on the offered price, Landlord may then offer the Property to the public, but may not accept an offer less than the price offered to Tenant without first offering the Property to Tenant at the lower price.
Expiration of Offer	This Offer will expire at 5 p.m., September 15, 2010 at Tenant's option.
Confidentiality	Landlord and its advisors shall at all times maintain the confidentiality of each and all of the terms of these lease negotiations and the LOI, as well as the identity of the Purchaser, its affiliates and principals, except as required by law or by Landlord's obligations to advertise any such offer.

THE EXECUTION OF THIS LETTER OF INTENT IS NOT A BINDING AGREEMENT BETWEEN THE PARTIES, EXCEPT WITH RESPECT TO THE CONFIDENTIALITY PROVISION ABOVE. If the above terms and conditions are acceptable, please execute below.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009331

Following receipt of the executed Letter Agreement, Landlord will prepare and submit proposed Leases for Tenant's review and comment.

Sincerely yours,

LAKRITZ ADLER DEVELOPMENT, LLC

By: _____ By: _____
Name: Joshua Adler Name: Robb LaKritz
Its: Managing Member Its: Managing Member

ACCEPTED BY LANDLORD:

WASHINGTON METROPOLITANT AREA TRANSIT AUTHORITY

By: _____
Name:
Date:

By: _____
Name:
Date:

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009332

FW: Shaw-Howard/Florida Avenue Term Sheet Answers to Board Questions

Montague, Joshua W.

Sent: Friday, November 06, 2009 10:16 AM

To: Bottigheimer, Nat; Meister, Mark K.

Cc: O'Keeffe, Carol B.; Doggett, Rosalyn; Goldin, Steven; Welch, Kermit A.

Nat,

A couple of comments for any response to the developers:

1. The Guaranty Agreement should also be negotiated by the time the Lease goes to the board for approval;

2. We have already sent drafts of the JDA, Lease, CCRs, Guaranty Agreement, and Right of Entry Agreement to the Developer;

3. Certain CCR/Guaranty terms have changed since they were sent over in August 2009, but we could send over new drafts relatively quickly.

4. Starting with a negotiated document presents a host of problems that we should probably discuss. For example, Kermit has indicated the Rhode Island Ave agreements are still being negotiated and so may not present a proper basis as terms WMATA has agreed to in the past.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Friday, November 06, 2009 9:37 AM

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009333

To: Meister, Mark K.; Bottigheimer, Nat
Cc: aives@bannekerventures.com; mmckinney@bannekerventures.com; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Montague, Joshua W.; O'Keeffe, Carol B.; Doggett, Rosalyn; Goldin, Steven
Subject: RE: Shaw-Howard/Florida Avenue Term Sheet Answers to Board Questions

Nat,

Thanks for your comments. If there is anything that we can do to help provide the Board with answers and clarity on the deal, including the value that WMATA would receive, please let us know.

As for Q3 below, the request was really to re-iterate that the Developer has agreed to pay what wmata's independent appraisal came back at. As for Q11, should staff include both appraisals in the package to the Board? We think it would be a good idea to do so, particularly as Board members have requested additional informaiton.

As discussed yesterday, prior to the staff sending the Board the information, can you forward the info to us in case we can provide further clarity on the information being sent. We can review it very quickly and can get you any comments w/n an hour of you all sending the info to us.

As for moving forward, since you and Carol will be out of the office for the first few days next week, can we have a quick call today (anytime other than 12-2) about what we can do in the interim while the Board reviews the additional information being sent to them? As discussed with Carol yesterday, the four documents that need to be negotiated for the December meeting are:

1. JDA
2. Lease
3. CCRs
4. Co-tenancy agreement

Carol also indicated that she has committed significant resources to get the papers documented over the next few weeks, including assigning an attorney to work on each individual document. This is extremely helpful.

As for 1, we provided full comments to the draft you sent already and await comments from staff.

As for 2, we think using a document that both wmata and the Developer's counsel has worked on would be the best starting point to get us to the finish line in the next 3-4 weeks. However, if you want us to use the draft lease that was sent over to us a while ago, we can do that. The drawback is that our counsel will probably mark it up so much so as to make it similar to the other deal that you all worked on. It will be save all parties involved a TON OF MONEY and TON OF TIME to start with the already negotiated lease as at least a basis for getting this done. We can even use a marked-up version of it that you send to us as a basis. Thoughts?

As for 3, what would be your timetable for sending the CCRs to us? If we get them in a week, John Hagner can spend a week reviewing and providing any comments. We could then turn them around to you all and spend the next week finalizing them.

As for 4, John can get staff the co-tenancy agreement in a week we believe.

Thanks for your entire team working to get this thing done.

Omar

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009334

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: Friday, November 06, 2009 8:42 AM
To: Omar A. Karim; Meister, Mark K.
Cc: aives@bannekerventures.com; 'Tiwana Hicks'; Yohance S. Fuller; O'Keeffe, Carol B.; Montague, Joshua W.; Doggett, Rosalyn; Goldin, Steven
Subject: RE: Shaw-Howard/Florida Avenue Term Sheet Answers to Board Questions

ANSWERS IN CAPS BELOW – I WILL SPEAK WITH COUNSEL ABOUT WHAT STEPS WE CAN TAKE TO KEEP THIS MOVING FORWARD OVER THE NEXT TWO WEEKS.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, November 05, 2009 6:45 PM
To: Meister, Mark K.
Cc: aives@bannekerventures.com; 'Tiwana Hicks'; Yohance S. Fuller; Bottigheimer, Nat; O'Keeffe, Carol B.; Montague, Joshua W.; Doggett, Rosalyn; Goldin, Steven
Subject: Shaw-Howard/Florida Avenue Term Sheet Answers to Board Questions
Importance: High

Mark,

Per my conversation with Nat earlier today, please advise if we can provide you with any additional information to help answer the questions that the Board raised today, including: the value of % of the anticipated Effective Gross Income for the first 60 years. Few more questions:

1. What was provided to Board members for other deals in the past? CONFIDENTIAL TERM SHEET THAT WAS PROVIDED YESTERDAY IS STANDARD; ADDITIONAL INFORMATION IN RESPONSE TO SPECIFIC BOARD MEMBER QUESTIONS IS NOT UNUSUAL
2. Should the summary to the Board that you intend to send to the Board tomorrow provide the appraised value of the property based on the lease transaction of 60 years? IT SHOULD PROVIDE THE FULL EXPECTED VALUE OF THE TRANSACTION OVER ITS TERM
3. Should it state that the Developer has agreed to pay this value? THIS QUESTION WORRIES ME. WHY WOULDN'T IT STATE THAT THE DEVELOPER AGREES TO PAY THIS VALUE?
4. Should it include an estimate of what the Developer anticipates paying WMATA for the additional density that we anticipate building on the WMATA sites? YES, IT SHOULD
5. Should it include an estimate of what the Developer anticipates paying WMATA for the additional density that we anticipate building on the portion of the alley that will be given to WMATA after it is closed? YES
6. Should it state that the Developer is not requesting any subsidies from WMATA, including Transit Infrastructure Investment Funds (TIFF)? Think this is critical since some Developers near WMATA sites

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009335

have requested and WMATA has granted subsidies. NO, BUT THAT COULD BE A POINT THAT A SUPPORTIVE BOARD MEMBER MIGHT WANT TO MAKE. HOWEVER, NO-ONE BUT A DC BOARD MEMBER WILL CARE ABOUT THIS, SINCE EACH JURISDICTION IS ALLOCATED ITS OWN TIIF FUNDS. THE THING THAT MD AND VA BOARD MEMBERS CARE ABOUT MOST IS THAT THE OTHER JURISDICTIONS USE THEIR DEVELOPMENT DEALS TO GENERATE THE MOST POSSIBLE VALUE INTO THE TIIF AS A WHOLE. THEY'RE MORE CONCERNED ABOUT GENERATING REVENUE TO THE TIIF THAN THEY ARE ABOUT HOW DC USES ITS TIIF MONEY.

7. Should it include examples of how this deal is extremely similar to other deals that WMATA has and is currently working on? THAT WOULD BE HELPFUL TO INCLUDE IN A COVER MEMO TRANSMITTING THE INFORMATION
8. Should it state that the Developer will provide a minimum of 8% IZ units which is more than what the Developer originally agreed to in 2008? THAT INFORMATION IS CLEAR FROM THE TERMS SHEET, BUT IT WOULD BE APPROPRIATE FOR A SUPPORTIVE BOARD MEMBER TO EMPHASIZE THAT POINT.
9. Should it state that the Developer anticipates closing on the project by the end of next year, which is almost one year sooner than the original term sheet? THE BOARD MEMBERS ARE MORE INTERESTED IN THE DATES THAT ARE SET AS LIMITS. THEY'RE GENERALLY NOT INTERESTED IN STATEMENTS ABOUT INTENT, WILLINGNESS, ETC. THEY DON'T BELIEVE SUCH STATEMENTS HAVE MUCH VALUE.
10. Should it state that the Developer has continued to remain push forward with the project in spite of the collapse of the debt and equity markets NO, THOUGH A SUPPORTIVE COULD MAKE THAT POINT
11. Should the staff provide copies of the actual Term Sheet that was finalized yesterday, both appraisals, drawings of the project, etc? THE BOARD MEMBERS DID RECEIVE THE FINAL TERM SHEET, AND ELEMENTS OF IT WERE REVIEWED. WE WILL RESEND.

Can we schedule a quick call tomorrow to discuss when you all will send the Board answers to their questions as well as when the Board will re-convene to consider approval of the Term Sheet again.

As discussed with WMATA staff over the past several months, it is critical that we get the Term Sheet, JDA and Lease finalized as our financing will be jeopardized should delays continue beyond a few more weeks.

Thank you 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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009336

Doggett, Rosalyn

From: Montague, Joshua W.
Sent: Monday, October 19, 2009 12:10 PM
To: Goldin, Steven; Doggett, Rosalyn
Subject: RE: Florida Avenue - Outstanding legal issues

I am meeting with Tariq at 1pm. I have heard back from Tom Robinson yet.

We are meeting in 2D-05.

Josh

From: Goldin, Steven
Sent: Monday, October 19, 2009 12:06 PM
To: Montague, Joshua W.; Doggett, Rosalyn
Cc: Heppen, Bruce P.
Subject: RE: Florida Avenue - Outstanding legal issues

Where is 1:00 meeting? Will be there by 1:20

From: Montague, Joshua W.
Sent: Monday, October 19, 2009 10:00 AM
To: Doggett, Rosalyn; Goldin, Steven
Cc: Heppen, Bruce P.
Subject: Florida Avenue - Outstanding legal issues

Hi Steve and Rosalyn,

Here are my comments on the three outstanding legal issues in the Florida Avenue Term Sheet:

1. **Version of WMATA Design and Construction Standards (Section 9.5):**
   a. *Developer*:
      i. Developer is arguing that it is impossible to prepare its plans for DC approval if WMATA can change its standards.
      ii. Developer is arguing that a lender cannot underwrite the project if WMATA can change its standards.
      iii. Developer is trying to avoid the costs/risks associated with the two above.
   b. *WMATA*:
      i. JDAC is adamant that Developer be held to the current construction manual, as revised from time-to-time.
      ii. WMATA has agreed to this in the past and been burned because many of these projects get extended for years and years. This leads to the Construction Manual being greatly out-dated by the time construction is completed.
      iii. "Safety first"
   c. *Comments*:
      i. This is a risk/cost that the developer has to take on in order to build on this project. WMATA has been up-front about this risk/cost since day one.
      ii. Possible compromise: Developer can rely on today's Construction Manual (as of date of execution of the Definitive Agreement) as long ~~as it gets to final completion within 2 years~~. If construction goes past two years, then the Developer must adhere to the then current standards. Under this scenario, Developer must accept all additional costs/risk for adjustment after the 2 year mark.

2. **Guarantor (Section 9.8(e)**:
   a. *Developer*:
      i. Guarantor wants to only guarantee the construction of the project.
      ii. Guarantor does not want to guarantee the other indemnifications, covenants, and payments of the Definitive Agreement.
   b. *WMATA*:
      i. In its previous acceptance of this project, WMATA's Board has expressed reservations about Banneker. The Board stated that it wanted a strong presence from Banneker's partners. This can be accomplished most effectively through the Guaranty.
      ii. The switch from a lease to a sale makes this guarantee much more important. If this was still a lease, WMATA could terminate the lease agreement if the Developer violated the Definitive Agreement. Now, as a sale transaction, WMATA's remedies are limited.

FOIA CONFIDENTIAL TREATMENT REQUESTED

iii. Since this is a sale, the guarantee of the construction of the project is of less concern to WMATA. WMATA should be concerned protecting its interest in the indemnifications and future payments.
iv. The Jazz @ Florida Avenue, LLC will be a highly leveraged SPE, which will allow for limited recourse by WMATA. Having a strong Guaranty Agreement will be essential to shifting risk away from WMATA and back onto the Developers.

c. Comments:
   i. We should stick to our guns and force the guarantor to accept this responsibility.
   ii. Possible compromise: force the guarantor to specify which terms they object to. Since there is no Definitive Agreement at this time, this probably is not a valid/timely option.

3. **Insurance (Section 11)**:
   a. *Developer*:
      i. Developer agreed to include a CGL policy, but only wants to add WMATA as an Additional Insured on their policy.
   b. WMATA:
      i. WMATA's Office of Risk is requiring the Developer, the GC, and all Subs that work on the project to name WMATA as an Additional Insured on their policies.
      ii. The Office of Risk would also like to implement a policy where every GC, Sub, etc. is required to sign a ROE permit with WMATA. This will create privity of contract between the relevant party and WMATA. This will strengthen our insurance position.
   c. Comments:
      i. We should defer to our Office of Risk's assessment. Since this will be a sale rather than a lease, the required indemnifications and insurance will be WMATA's only protection of its tunnel.
      ii. I have asked Rod Schraven to put something in writing, which explains why we need all of the relevant parties to name WMATA as an additional insured on their CGL policies.

Please let me know if you have any questions/comments.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009338

Doggett, Rosalyn

From: Goldin, Steven
Sent: Monday, October 19, 2009 10:07 AM
To: Montague, Joshua W.; Doggett, Rosalyn
Cc: Heppen, Bruce P.; Robinson, Thomas; Mohsberg, Sid; Bottigheimer, Nat; Moneme, Emeka
Subject: RE: Florida Avenue - Outstanding legal issues

Josh: Good memo

Tom: Just want you to be in the loop

Steve

From: Montague, Joshua W.
Sent: Monday, October 19, 2009 10:00 AM
To: Doggett, Rosalyn; Goldin, Steven
Cc: Heppen, Bruce P.
Subject: Florida Avenue - Outstanding legal issues

Hi Steve and Rosalyn,

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   b. *WMATA*:
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      iii. "Safety first"
   c. *Comments*:
      i. This is a risk/cost that the developer has to take on in order to build on this project. WMATA has been up-front about this risk/cost since day one.
      ii. Possible compromise: Developer can rely on today's Construction Manual (as of date of execution of the Definitive Agreement) as long as it gets to final completion within 2 years. If construction goes past two years, then the Developer must adhere to the then current standards. Under this scenario, Developer must accept all additional costs/risk for adjustment after the 2 year mark.

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      i. In its previous acceptance of this project, WMATA's Board has expressed reservations about Banneker. The Board stated that it wanted a strong presence from Banneker's partners. This can be accomplished most effectively through the Guaranty.

ii. Possible compromise: force the guarantor to specify which terms they object to. Since there is no Definitive Agreement at this time, this probably is not a valid/timely option.

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   b. WMATA:
      i. WMATA's Office of Risk is requiring the Developer, the GC, and all Subs that work on the project to name WMATA as an Additional Insured on their policies.
      ii. The Office of Risk would also like to implement a policy where every GC, Sub, etc. is required to sign a ROE permit with WMATA. This will create privity of contract between the relevant party and WMATA. This will strengthen our insurance position.
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      i. We should defer to our Office of Risk's assessment. Since this will be a sale rather than a lease, the required indemnifications and insurance will be WMATA's only protection of its tunnel.
      ii. I have asked Rod Schraven to put something in writing, which explains why we need all of the relevant parties to name WMATA as an additional insured on their CGL policies.

Please let me know if you have any questions/comments.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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* do I return the check?

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.

July 15, 2010

MEMORANDUM FOR: Chairman and Members of the Board

SUBJECT: Unsolicited Proposals

Mr. Graham has asked staff to analyze how WMATA's policies and guidelines address unsolicited proposals received if there has been a prior joint development solicitation for the site.

Staff undertakes this analysis without the benefit of a specific factual context or hypothetical situation. Therefore, three sets of Joint Development Guidelines will be discussed in an attempt to include all Joint Development Solicitations that are currently open, on-going, distressed or on-hold. This memorandum includes references to the Joint Development Policies and Guidelines dated February 21, 2002; July 21, 2005 and November 20, 2008 ("2002 Guidelines"; "2005 Guidelines" and "2008 Guidelines" respectively or collectively "Guidelines").[1] In addition to these Guidelines, references are provided to the July 28, 2004 Joint Development Solicitation ("2004 JDS") and the August 2006 Joint Development Solicitation ("2006 JDS" or collectively with the 2004 JDS, "Solicitations").[2] The WMATA Board of Directors adopted its first Joint Development Policy in August, 1980 and the first Joint Development Policies and Procedures Manual in 1988. A review of all of the complete history of guidelines and solicitations is beyond the scope of the request made to staff.

We note that a complete analysis of the status of negotiations of a Joint Development Solicitation is a fact-specific inquiry including information regarding action (or inaction) on behalf of each party involved in the negotiation. The analysis below, therefore, is by necessity at summary level.

Washington Metropolitan Area Transit Authority

600 Fifth Street, NW
Washington, DC 20001
202/962-1234

www.metroopensdoors.com

A District of Columbia, Maryland and Virginia Transit Partnership

[1] Excerpts of the Guidelines and Solicitations referenced in this memorandum are attached for the reader's convenience.

[2] No Request for Proposals has been issued under the November 2008 Joint Development Policies and Guidelines as of this writing. A Request for Qualifications (RFQ) was issued pursuant to the 2008 Guidelines; however the processes established in the RFQ are not the same as the processes undertaken to complete an RFP and therefore are not addressed in this memorandum.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009342

In completing the requested analysis, staff also reviewed the Board Resolutions authorizing the referenced Guidelines. In each case, the Guidelines were adopted on a going-forward basis for Solicitations and Proposals. That is to say, as staff undertakes this analysis in 2010, the 2008 Guidelines apply to future solicitations and unsolicited proposals. If the question presented involved an on-going solicitation or negotiation (pre-failure of negotiations) the site-specific JDS would be read in the context of the then-current Guidelines to inform the decision.

For purposes of this memorandum, we have divided the Joint Development Solicitation process into four segments:

1. Solicitation of Developer Proposals;
2. Developer Submissions and Term Sheet Negotiations;
3. Joint Development Agreement Negotiations and Project Build-out; and
4. Failure of Joint Development Negotiations

Solicitation of Developer Proposals

WMATA could receive a development proposal during an open solicitation of proposals from a developer who was unaware of the solicitation. Notwithstanding the developer's possible lack of awareness of the open and on-going process, the 'unsolicited proposal' would be received and evaluated as a response to the open solicitation.[3] It is likely, but not certain, that, should the developer's proposal not address the requirements of the solicitation, the developer would be given the opportunity to amend or revise its submission in order to fully participate in the solicitation and provide a responsive proposal.

Developer Submissions and Term Sheet Negotiations

After the submission window closes, WMATA begins evaluation of submissions on both a technical and financial basis. During this period, an 'unsolicited proposal' received by WMATA is technically a late proposal. The issue of Late Proposals is not addressed in the Guidelines; however, the Solicitations allow consideration of Late Proposals "at the sole discretion of WMATA's Contracting Officer."[4] The Guidelines and the Solicitations contemplate an evaluation and negotiation process during this phase in which the developers would be ranked by staff and a recommendation made to the Board. The

[3] Section 2 of the Solicitations and Section 7 of the Guidelines address proposal requirements.
[4] Solicitations at 1.15

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Guidelines and Solicitations further contemplate a "bump-down" process wherein Staff can move from the highest-ranked developer to the next-highest-ranked developer should negotiations with the highest-ranked developer fail to produce a Term Sheet approved by the Board.

> "If negotiations [for a Term Sheet] 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." 2006 JDS at Section 3.1.E, Proposal Review Process; *See similar language in 2004 JDS at Section 3.1.E.2, Proposal Review Process.*[5]

> "If negotiations [for a Term Sheet] are unsuccessful, Staff may terminate negotiations and commence negotiations with the second ranked developer, and those ranked thereafter, in order of ranking." 2008 Guidelines at 7.8; *See similar language at 2005 Guidelines at 7.3.6; and 2002 Guidelines at 7.3.8.*

In addition to the bump-down, the 2008 Guidelines contemplate requesting new submissions from all proposers should there be a material change in circumstances.[6] These options are in addition to the Board's inherent authority and discretion to cancel the solicitation and hold the property for WMATA use or re-start the process.

Joint Development Agreement Negotiations and Project Build-out

After the Board has approved a Selected Developer and Term Sheet an obligation to negotiate exclusively with that Selected Developer attaches to the process. Unlike the 'unsolicited proposal' received during the developer selection and term sheet negotiations process where some latitude is provided under the Solicitations; 'unsolicited proposals' received during this phase should be rejected because an approved Term Sheet confers on the Selected Developer an exclusive right to negotiate with WMATA. WMATA does not have the discretion to entertain a new developer at this late stage in the process. The Solicitations set a developer's expectation of a period of exclusive negotiations.

---

[5] Under the 2004 JDS and the 2002 Guidelines, Board Approval was required to designate a Selected Developer and Alternate Selected Developers before term sheet negotiations. A "bump-down" under the 2004 JDS and the 2002 Guidelines, therefore, was available if 1) the Board approved an Alternate Selected Developer and 2) Term Sheet negotiations failed with the Selected Developer. Beginning with the 2005 Guidelines and continuing through the 2008 Guidelines, Board Approval is sought concurrently for the Selected Developer and the Term Sheet, thus the availability of a "bump-down" under the current guidelines is not dependent on Board designation of an Alternate Selected Developer.

[6] 2008 Guidelines at 7.6.1

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> "A Developer designated by the WMATA Board of Directors as a Selected Developer will be required to pay WMATA, in immediately available funds, a nonrefundable option fee for WMATA's granting to the Selected Developer the exclusive right to negotiate a Development Agreement. 2006 JDS at Section 3.3.B, Post Developer Selection Process. *See 2004 JDS at Section 3.3, Post Developer Selection Process, where the JDS establishes a negotiation schedule, but not an express exclusive right to negotiate.*

It is true that there is no binding agreement with WMATA until a subsequent Joint Development Agreement has been approved by the Board and signed by the parties; however, as a governmental entity it is important for WMATA to deal fairly and in good faith with others and a cancellation at this point in the process would arguably breach these obligations.

Failure of Joint Development Negotiations

In the event that the Joint Development Agreement negotiations fail,[7] the Solicitations provide two alternative paths. Either the Board can reestablish the Selected Developer and provide additional time for negotiations or the Board can re-advertise the Joint Development Site.

> "In the event that this [negotiating] 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." 2006 JDS at Section 3.3.E, Post Developer Selection Process. *See also 2004 JDS at Section 3.3.B, Post Developer Selection Process.*

Neither the Solicitations nor the Guidelines address "bumping-down" after the failure of Joint Development negotiations. Read together with the express "bump-down" option during developer selection and term sheet negotiations, it is staff's opinion that "bumping-down" is not an option at this stage of the process.

It is possible to receive an unsolicited proposal after failure of negotiations but before

[7] Joint Development Agreement negotiations may fail for a variety of reasons. This memorandum assumes a good faith effort to reach agreement fails without wrong-doing or obstruction by either party.

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the Joint Development Site is re-advertised. In this case, the 2008 Guidelines would apply. Section 14 of the 2008 Guidelines addresses Unsolicited Proposals and provides for internal reviews including screening for operational use[8] and notification of the local jurisdiction.[9] After these threshold reviews are successfully completed, WMATA would advertise the availability of the site for development and solicit additional proposals.[10] Staff would then evaluate the Unsolicited Proposal or solicited proposals and make a recommendation to the Board.[11]

Carol B. O'Keeffe
General Counsel

Nat Bottigheimer
Assistant General Manager
Planning and Joint Development

[8] 2008 Guidelines at 14.2
[9] 2008 Guidelines at 14.3
[10] 2008 Guidelines at 14.4
[11] Where no competitive proposals are received, Section 14.5 of the 2008 Guidelines would apply; where competitive proposals are received, Section 14.6 of the 2008 Guidelines would apply. In either case, Staff would ultimately present a Term Sheet and Joint Development Agreement to the Board for approval.

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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.

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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 7.4 below~~.

   not to be unreasonably withheld conditioned or delayed

   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

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.

   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.]]*

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~~.]]*

   Deleted: *NECESSARY*

   Deleted: *INDICATES*

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 undefined terms

20 BD's

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.

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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.

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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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.

delete rent is due at end of 45 mo pre-stab period

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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:

Deleted: 500,000.00)

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

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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 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)]] *[[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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Deleted: *[[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.]]*

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

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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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WMATA-INV 009353

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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.

in Mod?

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.]]*

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WMATA-INV 009354

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. no

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009355

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. Guaranty - remove

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009357

Director, Office of Station Area Planning and Asset Management
Planning and Joint Development

Banneker Ventures, LLC

By:

Title:

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009358

Real Estate Exec. (No Action)

WMATA 3/17/08 Revisions

COK to talk to Leonida

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~~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 ~~corporation~~ company for the Project (as defined in Section 4 herein), to be known as The Jazz @ Florida Avenue, LLC or ~~some other~~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 ~~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~~ Joint Development Agreement ("~~M~~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 ~~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

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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. ~~[[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 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

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WMATA-INV 009360

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 $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 unreasonablye 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.~~

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009361

6.~~65~~ 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 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 "P~~p~~re-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. ~~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

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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 ~~and Eighty~~ Thousand and No/100 Dollars ($~~500,000.00580,000.00~~597,000.00).~~]] [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.~~ *1.5% 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]~~

Base Rent Payments

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)

FOIA CONFIDENTIAL TREATMENT REQUESTED **WMATA-INV 009363**

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 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~~c~~apital E~~e~~vent occurs, the DEVELOPER will make a payment to WMATA ("Capital Event Participation"). Capital Event" include ~~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. 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~~'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.

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

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 009364

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 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 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.

~~7.9~~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

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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 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.

~~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~~

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009366

~~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

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009367

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~~2007 Drawings/ Specifications/ Design Criteria*," and WMATA's *Adjacent Construction Design Manual, Revision 2* (collectively, "WMATA Design and Construction Standards").

AIA Bond - requires payments to subcontractors

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

If no facilities then OKAY to delete.

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

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 009368

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 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 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. ~~and shall be acceptable to DEVELOPER.~~

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009369

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 CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 009370

03/13/08

Guy - DLA Piper
- Defer to Business issues first.

WMATA: Dec '07 Schedule : Use intervals

Updated Schedule being Provided

- A Option is Non-Refundable - Return to Original
- $250K Security Deposit
  - LOC
  - Tie w/ timing
  } Return Original
- Pre-Stabilization Rent
  - Quarterly in advance
  - Not refundable
  Leave terms as in issue
- Base Rent
  - Okay w/ $580
- 7.3.5 - Extend Lease by mutual Consent? yes
- 7.4 - Revert to Original
  - Can add Distribution for New change in Membership
- Refund return - Parked till next draft

Where is IZ legislation

Changes in schedule

(+1 mo) (+1 mo)

After Definitive Agree - 35% / 65% drawings

SMP Set Drawings (65-100%) (+3 mo)

11/16/07

FL AVE - Show TD Property Submission

* Review Subordinated Ind Lease w/ Option to Purchase *
- Moddie & Rahity -

(MB) ✓ * Evidence of Access / Rights to Adj. Property *

(MB) ✓ Show Building Act
- Leases from WMATA - }

(MB) ✓ ~~IZ~~
- Applicable ?

(MB) ✓ New Fenty Policy
- 30% Affordable Housing - } City Web Site ?

Future

FL Ave 8/11/09

- Meeting w/ COK to go over Guaranty
- Banc vs. Bank → Cannot find on web
- what kind of organization is BOACDC
  - what kind of Assets
  - Financial Status
- Guaranty
  - OK as long as Roz, Tres. etc. are comfortable w/ BOACDC
- Restoration Bond

Florida Avenue – NPV and Affordable Housing issues

Bidding Issues:

1. NPV of the three final offers at the time of board approval:

    a. Banneker (winner) – $14 million
    b. Moddie Turay - $11.8 million
    c. Lakritz Adler (hotel) - $6 million
    d. FYI: WMATA Appraisal at that time - $7.5 million

Affordable Housing:

1. Inclusionary Zoning:

    a. 10% of units
    b. Income Target:
        i. 50% at 50% AMI
        ii. 50% at 80% AMI
    c. Note: DC distinguishes between stick-built and concrete-built structures. Only stick built requirements were provided because the Developer has indicated that it will build a stick-built structure.
    d. Final regulations to be Title 11, Chapter 26 of the DC Zoning Regulations (does not appear on the DC Zoning webpage yet).

2. Duke Plan:

    a. The Duke Plan does not have an affordable housing requirement, but rather provides guidance for Developers and District agencies.
    b. According to the DC Office of Planning, this *guidance* is basically a *requirement* when the Developer is seeking to get a PUD approved.
    c. The Duke Plan's guidance/requirement states the following:
        i. The Duke Plan's Planning Goals are to "develop 20 to 30 percent affordable housing in residential development, particularly on publicly owned land."
        ii. The Duke Plan's Howard Theatre Sub-District Plan specifically mentions Florida Avenue's Lot 2 (*8,621 square feet, Square 393, Lot 45*), and recommends 20-30% Affordable Housing Target

DC Office of Planning - 202-442-7600 9/21
2000 14th St NW 14th Floor
- Geraldine Gardner
- Tarek Bolden ✓

- DC Dep Mayor → Pipeline of projects
- NHLIC.org
  - Catalog of AH Projects
- Duke Plan is only a Recommendation, Not a Requirement
- Community
  - May object
  - But IZ takes precedente
- DCOP will only Push IZ
- Ellington → Not 20%
- "New Day" can get 8% of all, so don't need to push the 20-30% of neighborhood plans on some Projects

9/21

- Yohance Fuller - LM

Define

ARTICLE 10

INSURANCE REQUIREMENTS (Revised 11/30/09)

Developer shall procure and maintain, at its sole cost and expense, the types of insurance specified below. Developer shall evidence such coverage by submitting to WMATA the original Railroad Protective Liability Policy and certificates of insurance evidencing the other required insurance, prior to commencement of Operations. All insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the Operations are to be performed. Developer shall require general contractor and all subcontractors to carry the insurance required herein, or Developer may, at its option, provide the coverage for any or all subcontractors, provided the evidence of insurance submitted by Developer to WMATA so stipulates. The insurance shall provide for thirty (30) days prior written notice to WMATA in the event coverage is substantially changed, canceled or non-renewed. All insurance shall remain in force until all Operations are satisfactorily completed (unless otherwise noted below), all Developer's Contractor personnel and equipment have been removed from WMATA property, and any work has been formally accepted. Developer's insurance shall be project-specific with respect to this Lease. Developer's failure to comply with the insurance requirements set forth herein shall constitute a violation of the Agreement.

Also

GC

All

Make primary?

By WMATA in writing

1.1 All (GC + sub) Policy? Notice from Carrier? Default Event → important

1.2 **During the Construction Period.**

WMATA GC Sub

Commercial General Liability Insurance, issued to and covering the liability of the Developer for all activities and obligations under or in connection with this Lease Agreement and the other Transaction Documents. The Policy shall include the following coverages: 1) Products & Completed Operations Liability, 2) Independent Contractor's Liability, and Contractual Liability with all railroad exclusions deleted; and all XCU (explosion, collapse and underground) exclusions are to be deleted, wherever required. If the insurance is written on a claims made basis, then the extended discovery period must be at least three (3) years following completion and acceptance of the project. The coverage under such an insurance policy or policies shall be at least $10,000,000 per occurrence combined single limit. WMATA shall be included as an additional insured with respect to activities related to this Lease Agreement and the other Transaction Documents.

1.2.1

Dev cause GC to procure + maintain

1.2.2 **Builder's Risk Coverage**, covering physical damage or destruction to 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 in the ~~Developer's or its~~ contractor's care, custody and control. 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, in respect of all construction, installation, alteration and other similar construction activities.

or subs

Ny.c?

Deleted: **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 (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 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, such coverage and policies having the scope and limits not less than as set forth below.

Deleted: Pre-Stabilization

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Deleted: The Insurance Obligors shall each procure and maintain one or more commercial general liability insurance policies

Deleted: Insurance Obligor

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Deleted: WMATA shall be included as an additional insured under the coverage for Commercial General Liability Insurance on an appropriate endorsement. Coverage shall include, without limitation, premises, operations, products liability, products completed operations, independent contractors, protective broad form property damage, personal injury, blanket contractual liability insurance and explosion, collapse, and underground hazards. The coverage under such an insurance policy or policies sh ... [1]

Deleted: ¶ <#>**Non-Construction Activities and Obligations.** Personal Injury and ... [2]

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Deleted: To the extent not fully covered by the policies required under subsection 10.2,

Deleted: the Developer shall cause its general contractor to procure and main ... [3]

Deleted: and stored off-site

Deleted: This insurance shall include the interests of WMATA and the Insurance Obligors.

Deleted: . Said insurance policies shall be in such amounts as shall be reasonably required by WMATA

Deleted: of the Insurance Obligors

Note: last Revision is 12/7/09

1.2.3 **Worker's Compensation Insurance.** The Developer shall procure and maintain workers' compensation insurance in accordance with the statutes of the District of Columbia, and with all requirements of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, Admiralty Laws, and the Federal Employers' Liability Act. Such insurance shall conform to all applicable statutory limits and, to the extent not specified to the following minimum coverage limits:

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

Deleted: Insurance Obligors
Deleted: each
Deleted: one or more insurance policies, which in the aggregate fully comply with all applicable
Deleted: '
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Deleted: disability benefit and other similar employee benefit
Deleted: , regulations and requirements, including, without limitation, those
Deleted: policies, without limitation,

1.2.4 **Automobile Liability Insurance.** The Developer shall procure and maintain automobile liability insurance 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. 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 $2,000,000 per occurrence.

Deleted: Insurance Obligors
Deleted: each
Deleted: one or more insurance policies
Deleted: , to the extent not fully covered by the policies required under subsection 12.1.1

Contractors Contradict opening ¶? Should be "shall cause"

1.2.5 **Pollution Legal Liability Insurance.** The Developer shall procure and maintain pollution legal liability insurance covering the liability of the contractors and subcontractors 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 insurance policies shall have limits not less than $3,000,000 per occurrence of claims made.

Deleted: require its contractors and all subcontractors that provide excavation work or work with Hazardous Materials to provide one or more
Deleted: insurance policies
Deleted: contractors' and subcontractors' pollution legal liability, including, without limitation,

1.2.6 **Railroad Protective Liability Insurance.** The Developer shall procure and maintain railroad protective liability insurance (RRP) issued to WMATA, covering the liability of any and all of the Developer for any and all personal injuries, deaths and any and all damage to property, equipment and facilities caused by work performed by the Developer on, above, below, adjacent or within fifty (50) feet 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. As an option, WMATA will waive the requirement for the Developer to procure the RRP for a fee of $208,845 and add the project to WMATA's blanket RRP program.

Deleted: cause its contractor to
Deleted: one or more
Deleted: policies,
Deleted: Insurance Obligors
Deleted: Insurance Obligors
Deleted: 5

1.2.7 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.

Deleted: <#>One or more insurance policies covering the liability of the Insurance Obligors for any and all indemnification obligations and indemnification liabilities under this Lease and the Transaction Documents. ¶

operation = Lease term → non-Construction → OK

1.3 **During Operation Period. Prior to the end of the Construction Period, Developer shall** procure and at all times maintain without interruption throughout the remainder of the Lease Term, at its sole cost and expense, insurance coverage to protect itself and WMATA and all of their respective officers, directors, agents, and employees, such coverage and policies having the scope and limits not less than as set forth below.

Deleted: After Pre-Stabilization

Deleted: Pre-Stabilization

Deleted: and policies

1.3.1 **Commercial General Liability Insurance.** The Developer shall procure and maintain one or more commercial general liability insurance policies issued to and covering the liability of the Developer for all activities and obligations under or in connection with this Lease Agreement and the other Transaction Documents. WMATA shall be included as an additional insured under the coverage for Commercial General Liability Insurance on an appropriate endorsement. Coverage shall include, without limitation, premises, operations, products liability, products completed operations, independent contractors, protective broad form property damage, personal injury, blanket contractual liability insurance and explosion, collapse, and underground hazards. The coverage under such an insurance policy or policies shall have at least the following limits:

1.3.1.1 **Non-Construction Activities and Obligations:** $5,000,000 Combined Single Limit Each Occurrence.

Deleted: .

Deleted: Personal Injury and Property Damage Liability:

1.3.1.2 **Construction Activities and Obligations:** $10,000,000 Combined Single Limit Each Occurrence.

Deleted: .

Deleted: . Personal Injury and Property Damage Liability:

1.3.2 **Commercial Property Insurance.** The Developer shall procure and maintain one or more special form insurance policies, which in the aggregate cover the full replacement value of all Improvements on the Property.

Deleted: one hundred twenty percent (120%) of

who Determines this?

Deleted: cost

1.3.3 **Rental Value Insurance Policy.** Beginning with the Base Rent Effective Date and continuing during the entire period of operation of this Lease, Developer shall procure and maintain a Rental Value Insurance Policy. During the first two (2) years of the Term following the Base Rent Effective Date, the insurable limit of said policy shall be in the amount of twelve (12) months Base Rent. Within forty-five (45) days before the beginning of the third year of the Term following the Base Rent Effective Date, and before the beginning of each subsequent year of the Term, WMATA and Developer shall review Developer's revenue projections and determine the total amount of rent expected to be payable during the lease year. Said policy shall then be amended to reflect this review but the maximum limit of the policy shall be the aggregate amount of the Base Rent for a twelve (12) month lease year.

Field Code Changed

The Rental Value Insurance Policy shall name WMATA as a loss payee to the extent of the Base Rent.

1.3.4 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.

1.4 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 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.

1.5 **WMATA's Interests.** The Developer shall cause its insurance carrier(s) to name WMATA as an additional insured under its general and auto liability insurance policies and to provide not less than thirty (30) days' written Notice of modification, termination, or cancellation of any required 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 Developer (i) shall be written on an occurrence basis (except for pollution and professional liability) and Developer's coverage shall be specified as primary and not contributing with or in excess of any coverage which WMATA may carry; (ii) 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; (iii) 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; (vii) shall provide for a deductible or self insured retention not to exceed $100,000; Neither the issuance of any insurance policies required hereunder, nor the minimum limits specified herein with respect to the Developer's insurance coverages, shall be deemed to release, limit or restrict in any way the Developer's liability arising under or out of this Lease or otherwise.

GCL

Repeal

ok to include primary language.

1.6 **Verification of Coverage.** With respect to each and every one of the insurance policies herein required to be procured by the Developer, 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 within thirty (30) days of the renewal date, Developer 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) the original Railroad Protective Liability policy and original signed certificates of insurance and all applicable endorsementsfor each such required insurance coverage or renewal thereof, as the case

wmata option for whole policy

Deleted: <#>One or more insurance policies covering the liability of the Developer for any and all indemnification obligations and indemnification liabilities under this Lease and the Transaction Documents. ¶

Deleted: Each of the Insurance Obligors

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Deleted: Insurance Obligors

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Deleted: policy coverage

Deleted: (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, nor shall any such actions or omissions affect or limit the obligation of the insurance company to pay the amount of any loss sustained

WHY?

Deleted: and (viii) shall not include restrictive language to WMATA's additional insured status

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Deleted: not less than sixty (60) days before any such insurance policy shall expire

Deleted: each of the Insurance Obligors

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Deleted: or copy of the entire insurance policy

Deleted: policy

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 thirty (30) 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, Developer 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 to WMATA within thirty (30) days of the renewal date of the applicable policies.

1.7 **Failure to Procure or Maintain Insurance.** In the event that Developer shall fail to furnish and maintain any insurance coverage required 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 Developer, without the need of any notice to any of the Developer, 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. Still a Default

1.8 **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 "VII" 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 Lease Premises is located. WMATA's approval or failure to approve the insurance furnished by the Developer shall not release, limit or restrict in any way Developer's liability arising under or out of this Lease or otherwise.

1.9 **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.

Repeat?

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Deleted: the Insurance Obligors

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Deleted: twenty (20) days prior to the respective expiration

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Deleted: <#>**Compliance with Insurance Requirements.** The Developer shall not itself and shall not suffer any of the Insurance Obligors 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 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, 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. ¶

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WMATA shall be included as an additional insured under the coverage for Commercial General Liability Insurance on an appropriate endorsement. Coverage shall include, without limitation, premises, operations, products liability, products completed operations, independent contractors, protective broad form property damage, personal injury, blanket contractual liability insurance and explosion, collapse, and underground hazards. The coverage under such an insurance policy or policies shall be maintained for three (3) years after Final Completion and shall have at least the following limits:

1.1.1

Page 1: [2] Deleted Jim Hamilton 11/9/2009 1:21:00 PM

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

Construction Activities and Obligations. Personal Injury and Property Damage Liability: $10,000,000 Combined Single Limit Each Occurrence.

Page 1: [3] Deleted Jim Hamilton 11/9/2009 1:26:00 PM

the Developer shall cause its general contractor to procure and maintain one or more policies of builder's risk insurance on

1.1.2

D

C

S

Montague, Joshua W.

From:	Hamilton, Jim
Sent:	Tuesday, December 08, 2009 4:01 PM
To:	Meister, Mark K.; Jachles, Cynthia; Ackerman, Heidi; Biondi, Marc E.; Wyner, Jonathan S.; Malasky, Gary; Doggett, Rosalyn; Burns, Bob; Bushnaq, Tariq; Robinson, Thomas; Bottigheimer, Nat; McNeil, Taryn - Mobile; Goldin, Steven; Montague, Joshua W.; Chu, Mable; Dickerson, Tracie S.; Welch, Kermit A.; Bost, LaShawn L.; Manzanero, Florante E.
Cc:	Scott, Sharrone; Brown, Kim; Schraven, Rodney
Subject:	Blanket RRP Program Clarification
Attachments:	Blanket RRP Program Description.docx

All,

Since our meeting last week, I have had several conversations with the insurer who underwrites the new blanket Railroad Protective Liability Insurance program (RRP) to get answers to the questions that were raised and to clarify some of the terms and conditions. Contrary to what I had previously told you, please note the following key points:

- "Entry Permit" means any contractor entry onto WMATA property, the value of whose work is $25,000 or less and/or job term is 5 days or less, regardless of whether the work is for WMATA or not. Permittees who request to pay the waiver fee in lieu of providing a standalone RRP policy will pay $150 for the $2M/$6M RRP program, or $225 for the $5M/$10M RRP program. Most entries will fall under the 2/6 program; RISK shall determine if the risk exposure of a particular job warrants limits of 5/10.

- The aggregate limits are for the *policy period*, not on a per-job basis. In other words, the most the 2/6 policy will pay is $6,000,000 during the policy year, and the most the 5/10 policy will pay is $10,000,000 in a policy year.

- For jobs with total cost of work between $25,001 and $5,000,000 and/or the work is more than five (5) days in term of job and the work is for someone else (e.g., adjacent real estate and joint development projects), the waiver fee rate is based on **the cost of work *within 50 feet of WMATA railroad property, subject to a minimum of $1,000 per job*.**

Please review the revised Blanket RRP document attached and let me know if you have any questions.

Jim Hamilton, CPCU, ARM, ARe
Manager, Insurance
Washington Metropolitan Area Transit Authority
Department of Risk Management
600 5th Street, NW, 8F-17
Washington, DC 20001
Office: 202-962-1223
Mobile: 202-573-3192
Fax: 202-962-1171
Email: jhamilton@wmata.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009384

DRAFT

WMATA Blanket Railroad Protective Liability Insurance Program

Effective 12/1/09

(Revised 12/7/09)

Introduction

Railroad Protective Liability Insurance ("RRP") is required of all contractors conducting activities within 50 feet of WMATA railroad property (e.g., rail infrastructure, rail stations, and rail yards) with certain exceptions. RRP provides WMATA, the Named Insured on the policy, with:

1. Liability coverage for bodily injury claims by contractor/subcontractor employees working on the covered project and any other third parties who suffer a loss arising out of the contractor/subcontractor work; and
2. Damage to WMATA's railroad property resulting from the covered project.

It is typically procured by a contractor in WMATA's name (i.e., WMATA is the Named Insured) for construction, maintenance, testing, or related activities involving tracks, rail bridges, rail tunnels, rail yards, rail stations, etc. RRP is also required for those seeking access to WMATA property for activities not for the benefit of WMATA (e.g., a request to film on a station platform). All are considered "Permittees."

Because a separate "one-off" RRP policy is relatively costly (e.g., a minimum premium of $2,600 on small projects), WMATA is implementing a blanket RRP program that in most cases will be a more cost effective option for the Permittee (and for WMATA when the work is being done for WMATA) whereby the Permittee pays an RRP waiver fee to have the job added to WMATA's blanket RRP in lieu of providing WMATA a standalone RRP policy. The decision to provide a standalone RRP or have WMATA waive the RRP requirement for a fee remains with the Permittee.

Departments that are involved with 1) entry to WMATA property or 2) work on or near the WMATA ROW will be affected by this new program. They are:

Planning and Joint Development – Rights of entry to WMATA property for third party access for benefit of third party projects (Adjacent Construction) and Joint Development of WMATA property with private sector participation.

Corporate Strategy and Communications – Use of WMATA property for filming/photography (ROW and non-right of way).

Information Technology – Lease of WMATA property (IT/Telephony infrastructure), includes fiber optic installations within the tunnels; roof-top antenna leases in and out of yards.

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DRAFT

Rail Operations – includes Railcar Maintenance; Track Structures and Systems Maintenance and the Vehicle Engineer's Office. Projects generally include WMATA employee participation, but could also include third party entry to property (ROW) for rail testing, traction power substation work or other maintenance/repair.

Operations Services – Includes Engineering/Adjacent Construction Program; Plant Maintenance and Elevators/Escalators.

Program Description

What is Railroad Protective Liability Insurance (RRP)?

RRP provides protection to WMATA for liability arising out of acts or omissions at the designated job site which are related to or in connection with a specific job being performed by a Designated Contractor performing activities on WMATA property.

Generally, RRP is needed for any contractor working within 50 feet of WMATA property, particularly along the right-of-way, in stations, or in yards. RRP is not needed if the contractor is teaching a class inside in an office setting or a similar low exposure activity as determined by WMATA's Risk Management Department ("RISK").

Coverage Provided under RRP:

- ❑ Third Party Bodily Injury/Property Damage
- ❑ Physical Damage to WMATA property
- ❑ FELA for designated employees of WMATA (i.e., flagging protection; supervisors/flagmen and protective type personnel)

Characteristics of RRP:

- ❑ Project Specific –the per occurrence limit is available for each project subject to the policy aggregate
- ❑ FELA is provided versus 3rd Party CGL
- ❑ First Dollar Coverage (i.e., no deductibles)
- ❑ First Party Physical Damage (i.e., damage to WMATA property)
- ❑ Insulates WMATA's self-insurance program and responds to losses that contractor's Commercial General Liability policy (CGL) may not pay
- ❑ Coverage is provided for length of project (once reported), not policy period
- ❑ Tunneling/blasting is excluded, however, it can be submitted prior to the job and underwriter will review for quotation. If insurer agrees to quote it, insurer may decide to quote as a separate policy, or to include in the blanket.

Benefits of a blanket RRP:

- ❑ Pricing more attractive (*Separate "one-off" policies have minimum premiums of $2,600 for a limit of $2/$6)*
- ❑ Terms and Conditions are "known" to WMATA

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- ❑ Aggregate applies to each project
- ❑ Reduction in Paper

Blanket RRP Program – Waiver Fee Structure

The program's RRP waiver fee structure is as follows:

1. **Entry Permits.** For *any* jobs that are $25,000 or less in total job cost and/or five (5) days or less in term of job term, the Permittee shall pay a flat RRP waiver fee as follows:
   a. $2M per occurrence/$6M aggregate RRP limits - **$150**
   b. $5M per occurrence/$10M aggregate RRP limits - **$225** *(RISK shall determine if the project's exposure requires limits of $5M/$10M).*

2. For jobs with total cost of work between $25,001 and $5,000,000 and/or the work is more than five (5) days in term of job, the RRP waiver fee rate for limits of $2M/$6M is as follows:
   a. If work is for WMATA (e.g., a construction project solely for WMATA on WMATA property), the waiver fee rate is **$0.60 per $100 of the *entire contract value;***
   b. If work is for someone else (including joint development projects), the waiver fee rate (*subject to #4 below*) is **$0.60 per $100 of the cost of work *within 50 feet of WMATA railroad property, subject to a minimum of $1,000 per job*.**

3. Jobs with total cost of work $5,000,001 and greater need to be reviewed by the underwriter, may be separately underwritten, and may or may not be included in the blanket program (if the latter, a separate policy would be issued).

4. Jobs $10,000,000 and greater *will* require RRP limits of $5M/$10M; jobs less than $10,000,000 *may* require limits of $5M/$10M as determined by RISK. The RRP waiver fee rate for the $5M/$10M policy is **$0.83 per $100 of contract value** *unless modified by the underwriter* as noted in #3 above. As with the $2M/$6M policy for jobs between $25,001 and $5,000,000 (and/or the work is more than five days in term of job), the waiver fee for the $5M/$10M limits for WMATA contracts is based on the entire contract value. For non-WMATA jobs, the waiver fee is based on the cost of work within 50 feet of WMATA railroad property ***subject to a minimum of $1,000 per job*.**

Examples

- $15,000 filming project, ½ day on station platform; RRP waiver fee = $150
- $5,000,000 building construction project for WMATA lasting 6 months; RRP waiver fee = $30,000 (.60 x 5M / 100)
- $4,000,000 joint development project lasting one year; 25% of project is within 50 feet of WMATA railroad property; RRP waiver fee $6,000 (4M x .25 x .60 / 100)

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- $100,000 project not for WMATA, 100% within 50 feet of WMATA railroad property; RRP waiver fee = $1,000 (subject to minimum premium)
- $12,000,000 building construction project for WMATA lasting one year; RRP waiver fee = $99,600 (requires 5M/10M limits; 12M x .083 / 100)

Procedure

The responsibility for determining that all insurance requirements (including RRP) have been met rests with Procurement in the case of goods and services purchased by WMATA and with the applicable department for all other entries. In order for RISK to determine the appropriate RRP waiver fee for each project, Procurement or the applicable WMATA department must provide the following information to RISK, attention Sharrone Scott (sscott@wmata.com):

- Permittee (i.e., Designated Contractor)
- Project Description
- Project Effective Date
- Project Completion Date
- Unique Project Characteristics (e.g., tunneling, blasting, demolition)
- Project Location (i.e., milepost numbers or other specific location identifiers)
- Total Contract Value
- Percentage of Contract Value within 50 Feet of WMATA Railroad Property
- Contract , PR, or Permit Number

RISK will determine the appropriate RRP fee and advise Procurement or the applicable WMATA department, who will, in turn, advise the Permittee. If the Permittee chooses to pay the RRP waiver fee, Procurement or the applicable WMATA department shall instruct Permittee to send its check for the appropriate RRP waiver fee amount (noting "RRP Waiver Fee" on the "memo" line) made payable to WMATA to:

Washington Metropolitan Area Transit Authority
Department of Risk Management
600 5th Street, NW
Washington, DC 20001
ATTN: Sharrone Scott, 8-F

If the work requires RRP and the Permittee does not wish to pay the RRP waiver fee, a separate RRP policy must be procured by Permittee and sent to Ms. Sharrone Scott's attention.

If you have any questions about the WMATA RRP program, please contact Sharrone Scott at 202-962-1236 (sscott@wmata.com) or Jim Hamilton at 202-962-1223 (jhamilton@wmata.com).

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J. Hamilton Comments
11/10/09

ARTICLE 10

INSURANCE REQUIREMENTS

1.1 **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 (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 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, such coverage and policies having the scope and limits not less than as set forth below. Developer's insurance shall be project-specific with respect to this Lease.

- Only Developer?
JH: yes
Practically only one can Require

1.2 **During the Construction Period.**

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each

Commercial General Liability Insurance. The Insurance Obligors shall each procure and maintain 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 Lease Agreement and the other Transaction Documents. The Policy shall include the following coverages: 1) Products & Completed Operations Liability, 2) Independent Contractor's Liability, and Contractual Liability with all railroad exclusions deleted; and all XCU deletions (explosion, collapse and underground) exclusions are to be deleted, wherever required. If the insurance is written on a claims made basis, then the extended discovery period must be at least three (3) years following completion and acceptance of the project. The coverage under such an insurance policy or policies shall be at least $10,000,000 per occurrence combined single limit. WMATA shall be included as an additional insured with respect to activities related to this Lease Agreement and the other Transaction Documents.

3 yrs.?

why $10M?

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1.2.1

1.2.2 **Builder's Risk Coverage.** The Developer shall cause its general contractor to procure and maintain 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. 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, in respect of all construction, installation, alteration and other similar construction activities of the Insurance Obligors.

equal to

(100% of estimated ~~completed~~ costs to construct project)

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<#>**Non-Construction Activities and Obligations.** Personal Injury and Property Damage Liability: $5,000,000 Combined Single Limit Each Occurrence.¶
<#>**Construction Activities and Obligations.** Personal Injury and Property Damage Liability: $10,000,000 Combined Single Limit Each Occurrence.¶

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1.2.3 **Worker's Compensation.** The Insurance Obligors shall each procure and maintain one or more insurance policies, which in the aggregate fully comply

Deleted: . Said insurance policies shall be in such amounts as shall be reasonably required by WMATA

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, and 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:

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

1.2.4 **Automobile Liability Insurance.** The Insurance Obligors shall each procure and maintain 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 $2,000,000 per occurrence.

1.2.5 **Pollution Legal Liability Insurance.** The Developer shall require its contractors and any subcontractors that provide excavation work or work with Hazardous Materials to provide one or more insurance policies covering contractors' and subcontractors' pollution legal liability, including, without limitation, the liability of the contractors and subcontractors 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 insurance policies shall have limits not less than $3,000,000 per occurrence of claims made.

1.2.6 **Railroad Protective Liability Insurance.** The Developer shall cause its contractor to procure and maintain one or more insurance policies, issued to WMATA, 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 Obligors on, above, below, adjacent or within fifty (50) feet of the Metro Facilities.

Blanket policy that WMATA owns

Should be 5 or 10? JH confirming

The coverage under such policies shall have limits not less than $10,000,000 combined single limit for bodily injury and property damage with a $10,000,000 aggregate.

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1.2.7 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.

Deleted: <#>One or more insurance policies covering the liability of the Insurance Obligors for any and all indemnification obligations and indemnification liabilities under this Lease and the Transaction Documents. ¶

1.3 **During Operation Period. Prior to the end of the Construction Period, Developer shall** procure and at all times maintain without interruption throughout the remainder of the Lease Term, at its sole cost and expense, insurance coverage to protect itself and WMATA and all of their respective officers, directors, agents, and employees, such coverage and policies having the scope and limits not less than as set forth below.

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1.3.1 **Commercial General Liability Insurance.** The Developer shall procure and maintain one or more commercial general liability insurance policies issued to and covering the liability of the Developer for all activities and obligations under or in connection with this Lease Agreement and the other Transaction Documents. WMATA shall be included as an additional insured under the coverage for Commercial General Liability Insurance on an appropriate endorsement. Coverage shall include, without limitation, premises, operations, products liability, products completed operations, independent contractors, protective broad form property damage, personal injury, blanket contractual liability insurance and explosion, collapse, and underground hazards. The coverage under such an insurance policy or policies shall have at least the following limits: use 2nd to last + last Sentence

Match to 1.2.1

Remove XCU language

1.3.1.1 **Non-Construction Activities and Obligations:** $5,000,000 Combined Single Limit Each Occurrence.

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~~1.3.1.2~~ ~~**Construction Activities and Obligations:** $10,000,000 Combined Single Limit Each Occurrence.~~

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1.3.2 **Commercial Property Insurance.** The Developer shall procure and maintain one or more special form insurance policies, which in the aggregate cover the full replacement value of all Improvements on the Property.

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Deleted: cost

1.3.3 **Rental Value Insurance Policy.** Beginning with the Base Rent Effective Date and continuing during the entire period of operation of this Lease, Developer shall procure and maintain a Rental Value Insurance Policy. During the first two (2) years of the Term following the Base Rent Effective Date, the insurable limit of said policy shall be in the amount of twelve (12) months Base Rent. Within forty-five (45) days before the beginning of the third year of the Term following the Base Rent Effective Date, and before the beginning of each subsequent year of the Term, WMATA and Developer shall

Field Code Changed

Keep for Additional Rent

How to determine limit

pro formas from Developer

protects our ass against Dishonesty

review Developer's revenue projections and determine the total amount of rent expected to be payable during the lease year. Said policy shall then be amended to reflect this review but the maximum limit of the policy shall be the aggregate amount of the Base Rent for a twelve (12) month lease year. The Rental Value Insurance Policy shall name WMATA as a loss payee to the extent of the Base Rent.

1.3.4 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.

Deleted: <#>One or more insurance policies covering the liability of the Developer for any and all indemnification obligations and indemnification liabilities under this Lease and the Transaction Documents. ¶

1.4 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 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.

1.5 **WMATA's Interests.** Each of the Insurance Obligors shall cause its insurance carrier(s) to name WMATA as an additional insured under its general and auto liability insurance policies and to provide not less than thirty (30) days' written Notice of modification, termination, or cancellation of any required 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 (i) shall be written on an occurrence basis (except for pollution and professional liability) and Insurance Obligor'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, 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; (vii) shall provide for a deductible or self insured retention not to exceed $100,000; and (viii) shall not include restrictive language to WMATA's additional insured status. 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

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release, limit or restrict in any way the Insurance Obligors' liability arising under or out of this Lease or otherwise.

include option to grab policies

Need "and any applicable endorsements." ~~[illegible]~~

1.6 **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 within thirty (30) days of the renewal date, 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) original signed certificates of insurance ~~for~~ each such required insurance coverage 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 thirty (30) 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 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 to WMATA within thirty (30) days of the renewal date of the applicable policies.

Certificates not enough

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1.7 **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 any of the Insurance Obligors, 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.

1.8 **Compliance with Insurance Requirements.** The Developer shall not itself and shall not suffer any of the Insurance Obligors 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 to promptly comply with all rules, orders, regulations or requirements relating to such insurance policies, including all rules, orders, regulations, requirements and insurance

vent + over tunnel → WMATA policy?

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. **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 "VII" 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 Lease Premises 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 Lease or otherwise.

Deleted: 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 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. ¶

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1.9 **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.

Rhode Island Ave

Exhibit J

Insurance Requirements[1]

Section 1. Insurance Obligations

The insurance obligations of each Developer Declarant, its respective contractors, "Major Subcontractors" (as defined below), subcontractors and commercial subtenants are set forth in this Exhibit J. "**Major Subcontractors**" are those contractors and subcontractors of Insured whose cumulative contract or subcontract amount exceeds $2,000,000. The word "contractor," standing alone, includes general contractors, Major Subcontractors, subcontractors, and any other contractors, unless the context clearly indicates otherwise.

Too high?

1.1 At Developer Declarant's sole cost and expense, Developer Declarant shall procure and maintain the following insurance (with the exception of contractors' pollution insurance) and shall require its contractors, Major Subcontractors, subcontractors and subtenants (with the exception of Rental Value Insurance and Business Interruption Value Insurance) to procure and maintain, at their respective sole cost and expense, the following insurance unless otherwise limited below:

1.1.1 Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance: A Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance for Bodily Injury and Property Damage liability shall be not less than: (i) $10,000,000 ~~Combined Single Limit~~; Per occur. ~~(ii) $1,000,000 Each Occurrence; and (iii) $2,000,000 Aggregate, with $9,000,000 of such Combined Single Limit coverage to be provided in the Excess (Umbrella) Liability Insurance.~~ The coverages under Developer Declarant's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance policies may be allocated ~~differently than stated in the preceding sentence~~ Developer sees fit in any manner, so long as the ~~aggregate~~ Per occurrence coverage requirements are met. WMATA shall be included as an additional insured under Developer Declarant's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance.

?

1.1.2 Contractor's, Major Subcontractor's, and Subcontractor's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance: Developer Declarant shall require each of its contractors, Major Subcontractors or subcontractors to have in place a commercial general liability insurance policy issued to and covering the liability of such contractor, Major Subcontractor or subcontractor for all its operations on, near or with respect to the Property. Each Major Subcontractor of Developer Declarant shall have coverage under its Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance for Bodily

[1]The insurance requirements for Developer were obtained from Section 10 of the Joint Development Agreement, and the insurance requirements for the Component Tenants were obtained from Section 8 of the Ground Leases.

Injury and Property Damage liability of not less than: (i) $10,000,000 Combined Single Limit; (ii) $1,000,000 Each Occurrence, and (iii) $2,000,000 Aggregate, with $9,000,000 of such Combined Single Limit coverage to be provided in an Excess (Umbrella) Liability Insurance. Each contractor and subcontractor of Developer Declarant whose cumulative contract or subcontract amount is between $500,000 and $2,000,000 shall have coverage under its Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance for Bodily Injury and Property Damage liability of not less than: (i) $2,000,000 Combined Single Limit; and (ii) $1,000,000 Each Occurrence, with $1,000,000 of such Combined Single Limit coverage to be provided in the Excess (Umbrella) Liability Insurance. Each contractor and subcontractor of Developer Declarant whose cumulative contract or subcontract amount is less than $500,000 shall have coverage under its Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance for Bodily Injury and Property Damage liability of not less than: (i) $1,000,000 Combined Single Limit; and (ii) $500,000 Each Occurrence, with $500,000 of such Combined Single Limit coverage to be provided in the Excess (Umbrella) Liability Insurance. The coverages under the aforesaid Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance policies may be allocated differently than stated in the three preceding sentences, so long as the aggregate coverage requirements are met. WMATA and Developer Declarant shall be included as an additional insured under the Commercial General Liability Insurance and any Excess (Umbrella) Liability Insurance of each Major Subcontractor, contractor and subcontractor of Developer Declarant. Nothing in this Section 1.1.2 shall relieve Developer Declarant of its insurance obligations under Section 1.1.1 of this Exhibit J.

1.1.3 Commercial Subtenant's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance: Prior to the first date each commercial subtenant uses or occupies its subleased premises in the respective Leasehold Property, Retail Declarant or Residential Declarant, as the case may be, shall require each of its respective commercial subtenants to have in place a commercial general liability insurance policy issued to and covering the liability of such commercial subtenant for all its operations on, near or with respect to its subleased premises in the respective Leasehold Property. Each commercial subtenant shall have coverage under its Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance as provided in Exhibit K of the respective Ground Lease. The coverages under the subtenant's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance policies may be allocated differently than stated in Exhibit K of the respective Ground Lease (entitled "Commercial Subtenant's Required Liability Insurance Coverage"), so long as the aggregate coverage requirements are met. WMATA and Retail Declarant or Residential Declarant, as the case

may be, shall be included as an additional insured under the Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance, if any, of each of their respective commercial subtenants. Nothing in this Section 1.1.3 shall relieve Retail Declarant or Residential Declarant of its insurance obligations under Section 1.1.1 of this Exhibit J.

1.1.4 Worker's Compensation: A policy complying with the requirements of the jurisdictions in which the work will be performed, with minimum limits as follows:

Workers' Compensation ("Coverage A")	Statutory
Employers' Liability ("Coverage B"):	
Each Accident	$100,000
Disease – Policy Limit	$500,000
Disease - Each Employee	$100,000

provided, however, that the foregoing minimum limits of Workers Compensation and Employer's Liability shall apply for construction work only to contractors and subcontractors of Developer Declarant who are not Major Subcontractors. Developer Declarant at all times, and Developer Declarant's Major Subcontractors for construction work shall be required to increase Employer's Liability "each accident" coverage and Employer's Liability "Disease-Each Employee" coverage to a total of $500,000 through umbrella coverage.

1.1.5 Automobile Liability Insurance: Developer Declarant shall have in place an insurance policy covering the use by Developer Declarant or any of its contractors or subcontractors of all owned, non-owned, hired, rented, or leased vehicles bearing, or under the circumstances in which they are being used, required by the Motor Vehicle Laws of the District of Columbia, Maryland, Virginia, or any other jurisdiction to bear, license plates, and not covered under the aforementioned Commercial General Liability Insurance. The coverage under such policy or policies shall not be less than a Combined Single Limit for Bodily Injury Liability and Property Damage Liability of $1,000,000 per occurrence. Developer Declarant shall use its Best Commercially Reasonable Business Efforts (as defined in the Joint Development Agreement and the Ground Leases) to have WMATA named as an additional insured under each such policy.

1.1.6 Contractor's Pollution Legal Liability: In connection with any construction activities or environmental work done on or about the Property that, in WMATA's reasonable judgment, is likely to involve any of the activities or risks described below in this Section 1.1.6, Developer Declarant shall require all of its contractors (including its general contractor, if applicable) and subcontractors engaging in activities on or about the respective Property involving removal, storage, transport, and disposal of hazardous waste, contaminated soil, or other similar materials, to carry Contractors' "Pollution Legal Liability Insurance" as such coverage description is commonly understood, covering the liability of the contractor or subcontractor. The policy shall include coverage for the risks of bodily injury, personal injury, and loss of, damage to, or loss of use of property, whether any of the foregoing arises directly or indirectly out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, any liquid or gas, waste materials, or any other irritants, contaminants, or pollutants, upon any land, into the atmosphere, or into any course or body of water, whether such discharge, dispersal, release, or escape be gradual or sudden and accidental. Developer Declarant and WMATA shall each be designated as an additional insured under each such insurance policy. The amount of coverage for this insurance shall be a minimum of $1,000,000; provided, however, that WMATA may require a higher amount of coverage if WMATA reasonably so determines and such higher amount is customarily carried by contractors and subcontractors in similar circumstances. Contractor Pollution Legal Liability Insurance need not be in place as of the Effective Date of this Declaration, but instead, Developer Declarant must provide satisfactory evidence of this insurance at least five (5) Business Days before any contractor whose work may involve pollution legal liability begins any such work on or about the Property.

1.1.7 Railroad Protective Liability Insurance: In connection with any construction activities or other work done on or about the respective Property by Developer Declarant or its contractors, Major Subcontractors, or subcontractors, if, in WMATA's reasonable judgment, such construction activities or other work poses a potential for piercing, at any level, a vertical plane extending into the ground and up to the sky, that is fifty feet (50') from the edge of the WMATA rail system component (as defined in this Section 1.1.7) that is nearest to such construction activities or other work, WMATA shall have the right to require Developer Declarant to provide WMATA with a railroad protection insurance policy issued at Developer Declarant's sole cost and expense, to and for the benefit of WMATA and covering the liability of the Developer, the Retail Declarant, the Residential Declarant, and their contractors, Major Subcontractors, and subcontractors for any personal injuries or deaths or any damage to property, equipment, or facilities caused by such construction activities or other work. For purposes of this Section 1.1.7,

rail system components are WMATA's railroad tracks, or any structure that connects directly or indirectly to WMATA's railroad tracks, including ventilation systems, emergency stairways, canopies, station platforms, traction power sub-stations, and station entrances. The coverage under such a policy shall have the following limits: $5,000,000 Combined Single Limit for Bodily Injury and Property Damage, with a $10,000,000 Aggregate; provided, however, that WMATA may require a higher amount of coverage if WMATA reasonably so determines. Within the earlier of thirty (30) days after Notice from WMATA or five (5) Business Days before the first date Developer Declarant or its contractors, Major Subcontractors, or subcontractors engage in any such construction activities or other work, Developer Declarant shall deliver either the original or a certified signed duplicate original of such policy to WMATA for its retention.

1.1.8 Replacement Cost Property Insurance: An insurance policy covering Developer Declarant against loss of or damage to Developer Declarant's real or personal property situated on or about the Property (including boiler and machinery equipment, as applicable), naming WMATA as an additional insured, and written on ISO Special Causes of Loss Form CP 1030 (or substitutes or successors therefor), without any co-insurance provision, and for not less than the full insurable value and replacement cost of such real and personal property, if reasonably available, without reduction for depreciation, and including coverage for expediting expenses, hazardous substances, water damage, demolition and increased cost of construction, extra expense, and business interruption, and covering all pressure, mechanical, and electrical apparatus, including production machines and public utility equipment, with a maximum deductible of $25,000. If an insurance policy with unlimited replacement cost coverage is not available on a commercially reasonable basis, then Developer Declarant shall obtain and annually renew such insurance policy containing such replacement cost coverage as is available on a commercially reasonable basis, whereupon WMATA shall have the right to request, and Developer Declarant shall obtain, a reasonable increase in the coverage amount of the policy. Such property insurance shall include flood and earthquake coverage of at least $2,000,000. At Developer Declarant's option, such flood and earthquake coverage may be carried in a separate policy. All insurance required by this Section 1.1.8 shall also include an automatic waiver of subrogation in favor of WMATA which shall expressly state that the coverage afforded to the insured shall not be voided, prejudiced, or otherwise unavailable if, prior to a loss, the insured shall have waived any and all rights of recovery from the party(ies) responsible for such loss. Developer Declarant shall use its Best Commercially Reasonable Business Efforts (as defined in the Joint Development Agreement and the Ground Leases) to have each policy of

insurance described in this Section 1.1.8 include the maximum amount of terrorism coverage reasonably available.

1.1.9 Rental Value Insurance: Effective as of the "Conversion Date" (as defined in the Ground Leases) and continuing during the entire term of the respective Ground Lease, Residential Declarant and Retail Declarant shall each procure and maintain an annual rental value insurance policy to cover at least one year's projected gross rents from the Component Tenant's respective Leasehold Improvements. Not later than fifteen (15) days before the Conversion Date, and not later than forty-five (45) days before each succeeding anniversary of the rental value insurance policy during the term of the respective Ground Lease, Residential Declarant or Retail Declarant, shall deliver to WMATA the respective revenue projections for the forthcoming rental value insurance policy year and projection of the total amount of Participating Rent (as that term is defined in the respective Ground Lease) which is reasonably expected to be payable to WMATA for such policy year; provided, however, such revenue projections shall be made in good faith by Residential Declarant and Retail Declarant, and the coverage amount under the rental value insurance policy shall be subject to WMATA's Approval. If WMATA disagrees with the revenue projections, WMATA and Residential Declarant or Retail Declarant, as the case may be, shall promptly meet to resolve such disagreement before the anniversary date of said policy, if possible. Said policy shall be amended no later than the later of each anniversary date of such policy or ten (10) Business Days after WMATA's Approval of the coverage amount to provide coverage in the amount so determined. The insurance required by this Section 1.1.9 may be provided by each of Residential Declarant and Retail Declarant, either as a separate policy, or as a separate endorsement, but in either case WMATA shall be one of the loss payees under such policy or endorsement, as its interests may appear. Within five (5) days after Notice from WMATA, Residential Declarant and Retail Declarant, as the case may be, shall deliver either the original or a certified signed duplicate original of such policy (or any endorsement, if applicable) to WMATA for its retention.

1.1.10 Builder's Risk: Developer Declarant, or Developer Declarant's general contractor shall purchase and maintain replacement cost property insurance written on a builder's risk "all risk" or equivalent occurrence basis policy form [including "excess floater" coverage] for the Residential Improvements, Retail Improvements, and for the WMATA Replacement Garage with optional deductibles of no greater than $10,000 except for earthquake (if customarily obtained) and flood coverage (if customarily obtained), for which the optional deductible shall be no greater than $25,000. Developer shall maintain such property insurance, unless otherwise provided in the Declaration or the Joint Development Agreement, until the Conversion Date (as defined in the Joint

Development Agreement). The Builder's Risk insurance shall include, without limitation, insurance against the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake (if customarily obtained), flood (if customarily obtained), windstorm, faulty workmanship, testing and start-up, temporary buildings and debris removal including demolition occasioned by enforcement of any Applicable Laws. Flood and earthquake insurance (if customarily obtained) for the Residential Improvements and the Retail Improvements may be subject to a sublimit, which shall be no less than $2,000,000. Flood and earthquake insurance (if customarily obtained) for the WMATA Replacement Garage shall not be subject to any sublimit. Such insurance shall also be written to cover portions of work securely stored off-site if Developer has paid for it, and also portions of the work in transit. Such property insurance shall also include an automatic waiver of subrogation in favor of WMATA which shall expressly state that such coverage afforded to the insured shall not voided, prejudiced, or otherwise unavailable if, prior to a loss, the insured shall have waived any and all rights of recovery from the party(ies) responsible for such loss. WMATA shall be an additional insured under the Builder's Risk insurance policy(ies) for the Residential Improvements and Retail Improvements but the respective Mortgagee shall be the loss payee. To the extent that WMATA has provided funding for, guaranteed, or otherwise become obligated with respect to the WMATA Replacement Garage, WMATA shall be the sole insured under the Builder's Risk insurance policy for the WMATA Replacement Garage; to any other extent, WMATA shall be an additional insured. WMATA agrees to use any proceeds it receives from Builder's Risk insurance to first rebuild and restore the applicable Improvements.

1.1.11 Mortgagee's Insurance: Such insurance policies as Developer Declarant's Mortgagee(s) may require any Developer Declarant to obtain and carry from time to time or at any time, by the Developer during the development and construction of the Project, or by Retail Declarant or Residential Declarant during the term of the respective Ground Lease including insurance against acts of terrorism, civil insurrection, or sabotage. Whenever a Mortgagee shall require Developer Declarant to have a type of coverage or a higher limit of coverage (including terrorism coverage under Section 1.1.8 of this Exhibit J) than is specified in this Exhibit J, such coverage requirement shall apply under this Exhibit J.

The above-described insurance policies shall: (a) except as otherwise expressly provided in Section 1.1.5 of this Exhibit J, designate WMATA as an additional insured on the commercial general liability, contractor's pollution legal liability, replacement cost property insurance, and boiler and machinery insurance policies; (b) designate WMATA as the sole insured and loss payee under the railroad protective liability coverage and

WMATA's rental value insurance coverage; and (c) be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved.

Section 2. Additional Insurance Requirements

2.1. Insurance Companies

2.1.1 Insurance companies providing the aforesaid coverages must be rated "A:XI" by A.M. Best, or a comparable rating as determined by WMATA, from another insurance rating company acceptable to WMATA. All insurance shall be procured from insurance companies licensed and authorized to do business in the District of Columbia, and otherwise in compliance with any federal requirement.

A-:VII

2.2. Changes in Insurance Coverage

2.2.1 The insurance policies required by this Exhibit J shall not be canceled or terminated by the applicable insurer without thirty (30) days' prior written notice to WMATA's Office of Insurance and to the other persons required to receive Notice on behalf of WMATA pursuant to Article 11 of the Declaration. Developer Declarant shall use Best Commercially Reasonable Business Efforts (as defined in the Joint Development Agreement and the Ground Leases) to obtain each insurer's agreement as an endorsement to each insurance policy that the requisite insurance policies shall not be modified (except to increase the amount of coverage) without thirty (30) days' prior written notice to WMATA's Office of Insurance and to the other persons required to receive Notice on behalf of WMATA pursuant to Article 11 of the Declaration. If any of the required insurance policies should be canceled, terminated, or modified, resulting in Developer Declarant's failure to maintain the insurance required under this Exhibit J, and not replaced by Developer Declarant, their respective contractors, subcontractors, or commercial subtenants, as applicable, with, in WMATA's opinion, at least equivalent insurance coverage within three (3) Business Days after Developer Declarant receives written Notice from WMATA requiring such replacement, then WMATA may proceed in accordance with the terms of Section 9.1 of the Declaration.

2.3 Insurance for Construction Changes

2.3.1 In the event that after initial construction of the Retail Declarant's or Residential Declarant's respective Leasehold Improvements have been completed and operations commenced, either Declarant intends to make changes or alterations as permitted under the terms of its respective Ground Lease which require WMATA's review or approval under Article 11 of such Ground Lease, such Declarant shall notify WMATA's Office of Insurance, in writing, of any plans before construction or

demolition work commences. In connection with such changes or alterations, WMATA may require that Retail Declarant or Residential Declarant, as the case may be, obtain such insurance coverage as WMATA reasonably requires to protect WMATA.

2.4 Compliance with Insurance Policies

2.4.1 Developer Declarant shall observe and comply with, or shall cause to be observed and complied with, all the requirements of the insurance policies required by this Exhibit J. Failure to comply with the insurance requirements of this Exhibit J within three (3) Business Days after Developer Declarant receives written Notice from WMATA requiring such compliance shall entitle WMATA to proceed in accordance with the terms of Section 9.1 of the Declaration.

2.5 Evidence of Insurance

2.5.1 Developer Declarant, prior to the time it is making use of any easement granted by WMATA under the Declaration, and thereafter as appropriate, shall deliver, and shall cause their respective contractors and subcontractors to deliver to the Office of Insurance, Washington Metropolitan Area Transit Authority, 600 Fifth Street, NW, Washington, DC 20001, certificates evidencing the insurance required to be obtained under the Declaration (each on ACORD Form 27 or comparable form for general liability insurance) together with copies of all insurance policies similarly required which are not then being held by WMATA, provided, that Retail Declarant and Residential Declarant need not deliver to WMATA evidence of insurance for Rental Value Insurance until fifteen (15) days before the Conversion Date (as defined in the Ground Leases). Developer Declarant shall certify all copies of their respective insurance policies so delivered to WMATA as being complete and accurate. Thereafter, all insurance required to be provided by or on behalf of Developer Declarant pursuant to the Declaration (including any required changes in such insurance) shall be evidenced by annual renewal certificates of insurance in the specified form, and delivered as aforesaid to WMATA's Office of Insurance. All certificates of insurance, except for the insurance required by Section 1.1.7 of this Exhibit J relating to Railroad Protective Liability Insurance (which such policy shall be held by WMATA, and shall name WMATA as the insured and sole loss payee thereof), shall be delivered with endorsements stating that WMATA and such others as Developer Declarant may reasonably determine are additional insureds or loss payees.

2.6 Insurance Review

2.6.1 Every five (5) years during the term of the respective Ground Lease, WMATA and Retail Declarant or Residential Declarant, as the case may

be, shall review the limits and amounts of insurance coverage required to be carried by such Declarant to determine whether such limits and coverage remain commercially reasonable. If WMATA shall reasonably determine that such limits and/or coverages should be increased or otherwise changed based upon such review, WMATA shall provide Notice thereof to Retail Declarant or Residential Declarant, as the case may be, whereupon such Declarant shall comply with such new limits and/or coverages within thirty (30) days after such Notice.

2.7 Other Waivers of Claims and Rights of Recovery

2.7.1 In addition to Retail Declarant's and Residential Declarant's waivers set forth in Section 1.1.11 of this Exhibit J, each of Retail Declarant and Residential Declarant shall cause their respective commercial subtenants or space tenants, operators, or licensees to waive in its commercial sublease, occupancy agreement, or other similar document all claims and rights of recovery against Retail Declarant, Residential Declarant, and WMATA and their respective officers, directors, employees, agents, contractors, subcontractors, and business invitees for injury or loss for damage or loss to any person or entity or its property caused by or resulting from any risks insured against under any insurance policies carried by such commercial subtenant or space tenant, operator, or licensee and in force at the time of any such damage or loss, regardless of the cause of the damage or loss (including the negligence of WMATA and/or Retail Declarant and/or Residential Declarant and/or their respective officers, directors, employees, contractors, subcontractors, agents, and business invitees) to the extent of proceeds actually recovered. Retail Declarant and Residential Declarant shall cause their respective commercial subtenants or space tenants, operators, or licensees, at the sole cost and expense of such subtenant or space tenant, operator, or licensee to obtain any special endorsements required by its insurer to evidence compliance with the aforementioned waiver.

RAILROAD PROTECTIVE LIABILITY INSURANCE

The loss exposures created by operations of independent contractors are of special importance to railroads for two reasons. The first is the unique status of railroad companies as property owners. Their property extends in narrow strips over thousands of miles, bordering hundreds of thousands of other owners' property and intersected by city streets, country roads, interstate highways, waterways, pipelines, and utility cables. The second reason for railroads' special concern about the operations of independent contractors is the fact that railroads are, for the most part, self-insured and highly motivated to transfer as much third-party liability as they can to other entities that may share part of that liability.

Like any business, railroads hire independent contractors from time to time to perform operations on railroad property. In this capacity, as project owner, the railroad has the same independent contractor exposure as any other business that contracts out work. But because railroad tracks are contiguous with so many other elements of the nation's infrastructure, it is often necessary for contractors performing work for third parties unconnected with the railroad to cross or be on railroad property and rights-of-way. The most obvious example of such work is the construction of a highway that crosses railroad tracks.

Railroads protect themselves from liability arising out of the operations of their own independent contractors in much the same way as any other project owner—by requiring the contractor to hold the railroad harmless for injury or damage arising out of the contractor's work. Railroads use the same strategy whenever they grant permission for access to their right-of-way by contractors performing work for other entities (a contractor building a highway for the state, for example). The entity for which the work is being done, and the contractor performing the work, will ordinarily be required to hold the railroad harmless for any claims arising in connection with the work on or near the railroad right-of-way.

The railroad may also request additional insured status under the general liability policy of the contractor performing the work, but it is much more common for the railroad to require the purchase of protective liability insurance, under which the railroad is the named insured. Indeed, protective liability insurance is required far more regularly in connection with work on or around railroad tracks than it is in connection with any other kind of construction. In the case of highway work that makes access to a railroad right-of-way necessary, the railroad will typically require a railroad protective (RRP) liability policy of the project owner (governmental entity) constructing the highway, and the project owner, in turn, will make the purchase of an RRP policy for the railroad a condition of its contract with the highway contractor.

Railroad protective liability insurance is written under a standard form developed by Insurance

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Services Office, Inc. (ISO), or under coverage forms developed by a small number of insurers that specialize in RRP coverage. Coverage is similar under all these forms; this discussion will take the ISO form as a model.

Railroad protective liability coverage has much in common with owners and contractors protective liability insurance discussed in section XII.C. Since it is designed specifically to address one well-defined set of contracting exposures, however, RRP coverage differs from OCP coverage in some significant ways that reflect the sorts of contractual risk transfer commonly practiced by railroads. Perhaps the most obvious difference between OCP and RRP coverage provisions is the fact that the RRP coverage form is structured to provide two separate coverages—bodily injury and property damage liability (Coverage A) similar to that of the OCP; and physical damage to railroad property (Coverage B), which has no counterpart in the OCP coverage form.

Bodily Injury and Property Damage Liability

Coverage A of the railroad protective liability coverage form applies to the insured's (i.e., the railroad's) liability for bodily injury or property damage under certain specified conditions.

- The bodily injury or property damage must occur during the policy period. Railroad protective liability coverage, in other words, is written on an occurrence basis.
- The injury or damage must arise out of "acts or omissions" at the policy's designated job location. These acts or omissions will, in most instances, be those of the contractor who is listed in the policy declarations and to whom the policy's defined term "contractor" refers. But the policy's coverage extends to *any* party's acts or omissions, except acts or omissions of any *insured* that prove to be the "sole proximate cause" of the injury or damage. The policy, in other words, does not protect the railroad against its sole negligence. It does provide protection against liability based on (1) the joint negligence of the railroad and the contractor and (2) the sole negligence of the contractor—in other words, the types of liability commonly assumed by a contractor in an intermediate form hold harmless agreement. See section IV.D.
- The "acts or omissions" causing the injury or damage must be "related to" or "in connection with" the covered project—the "work"—as described in the policy declarations.

As is the case with OCP coverage, the contractor who purchases an RRP policy has no coverage under the policy. Nevertheless, the contractor benefits from the existence of such coverage, because the policy insures liability exposures for which the contractor might otherwise be forced to make indemnification to the railroad. It is therefore to the contractor's advantage to make certain that coverage is written on sufficiently broad terms. One point that is crucial to the scope

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of protection under an RRP policy is the designation of the "job location" and the "work" with respect to which coverage will apply. Both items of information must be described in the policy declarations, and both descriptions should be as inclusive as necessary to reflect the full scope of the project. A "work" designation that is *overly* broad or general, however, will penalize the contractor, since the policy is rated on the total cost of the "work" as described.

A court decision that illustrates the importance of "job location" and "work" descriptions in defining railroad protective liability coverage is *Southern Railway Co. v Fidelity and Casualty Company of New York,* 455 F Supp 9 (SC 1977). A highway construction project involved the moving of dirt across a railroad track that intersected the highway at various points. The contractor doing the work obtained permission to cross the tracks with its dirt-hauling equipment at a temporary crossing built by the railroad specifically for that purpose. In return for this permission and cooperation from the railroad, the contractor agreed to purchase a railroad protective liability policy naming the railroad as the policy's insured and specifying "temporary road or driveway-crossing at milepost R-21-52—Rock Hill, S.C." as the "designation of the job site and description of work" in the policy declarations. During a period when no construction work was being done, some young boys started a bulldozer owned by the contractor (but not used in the dirt-hauling aspect of the project), drove the bulldozer onto the railroad tracks approximately 60 feet from the special crossing, and left it. A train later collided with the bulldozer, causing injury to two railroad employees and damage to the train.

The railroad protective insurer denied coverage under the policy on the grounds that the act or omission out of which the loss arose—the contractor's failure to secure the bulldozer during periods of nonuse—was not "related to or in connection with" the work described in the policy. A U.S. district court agreed with the insurer. It ruled that:

> the policy terms, limiting coverage to omissions "related to or connected with" the work at or on the crossing, clearly refers to a situation where the crossing is being used. ... The only possible omission was the failure to protect the bulldozer from theft. This omission occurred at the end of a work week when the construction crew left the job and when the crossing was not in use. Clearly, such an omission had no connection with the crossing.

In light of this reasoning by the court, it is possible that a broader definition of the "job location" and "work" in the policy declarations would have permitted coverage for the loss under the railroad protective policy in question.

Coverage A Exclusions

Some of the exclusions that limit Coverage A of the railroad protective liability policy are equivalent in effect to exclusions found in the OCP policy as discussed in section XII.C. Among these exclusions are the following.

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Expected or Intended

This is the same exclusion found in both the OCP and commercial general liability coverage forms. It eliminates coverage with respect to bodily injury or property damage that is expected or intended from the standpoint of the insured. Like the corresponding OCP and CGL exclusions, the RRP Coverage A exclusion makes an exception for bodily injury that results from the use of reasonable force in the protection of persons or property.

Completed Work

Like other forms of protective liability insurance, railroad protective liability coverage is designed to apply to work in progress, not to completed operations. The policy's coverage ceases once the designated "work" is complete. Completion of the work is determined by any one of the following criteria: (1) when all work called for in the contract with the policy's designated "contractor" is completed; (2) when all work at the "job location" specified in the policy has been completed; or (3) when work at the "job location" has been put to its intended use by the railroad, the governmental authority (in the case of highway construction, for example), or any other party to the construction contract. The exclusion does not apply when injury or damage is caused by tools, uninstalled equipment, or abandoned or unused materials, even if one of the three conditions for completed work has been met.

Acts or Omissions of Insured

This exclusion is similar to the exclusion of "acts or omissions of you and your employees" in the OCP coverage form (see section XII.C) in that it makes clear that the purpose of protective liability insurance is not to cover the named insured's own liability. The RRP exclusion, however, applies only to the losses for which the railroad's act or omission is the "sole proximate cause." This leaves intact a considerable amount of coverage with respect to losses arising out of the *shared* liability of the railroad and another party (the "contractor," for example), while OCP coverage applies to direct liability of the insured only with respect to the insured's "general supervision" of the contractor's work. In many cases, the insured railroad under an RRP policy will have no connection with the contractor's work, other than the fact that the work is being performed on the railroad's right-of-way. Nevertheless, injury or damage arising out of the work might be contributed to by negligent acts or omissions of the railroad, and the railroad wants to transfer its liability in connection with such losses to the contractor by means of the RRP. For example, a motorist might be hit by a train after he is flagged through a railroad crossing where highway construction is going on. Even though the primary negligence giving rise to this injury is assigned to the contractor (whose employee mistakenly flagged the motorist through), some

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negligence may be assigned to the railroad (e.g., operating its trains at too high of speed along a stretch of track where it knew construction was in progress). Liability of the railroad in such a case would be covered by RRP insurance, even though the liability is not vicarious and is unconnected with any supervision exercised by the railroad over the contractor's activities. Such a loss would not fall within the scope of OCP coverage.

There are two important exceptions to the "acts or omissions of insured" exclusion.

- Coverage exists, despite the exclusion, when the sole proximate cause of the loss is an act or omission of one of the railroad's "designated employees." This category of employee includes: railroad supervisory employees at the job location; railroad employees working at the job location on railroad equipment that has been assigned to the contractor (e.g., a work train made available for the contractor's use in the project); and other railroad employees assigned to perform safety or security functions for the contractor in connection with the project. In other words, sole negligence attributable to the railroad is covered when the act or omission is by a railroad employee involved directly in the contractor's work.

- Coverage exists, despite the exclusion, for injury that occurs at the job location to any of the railroad's "designated employees" as listed above, to any employee of the contractor, or to any employee of another party to the construction contract other than the railroad. In short, the railroad protective policy covers the railroad's sole responsibility in causing injuries to a broad range of employees—the railroad's, the contractor's, and others'—while they are involved directly in the contractor's work.

Workers Compensation and Similar Laws

Obligations under workers compensation, disability benefits, and similar laws are excluded from Coverage A. This exclusion does not apply, however, to the railroad's obligations under the Federal Employers Liability Act, the legislation under which railroad employees are allowed to bring suit against their employer for job-related death or disability. Railroad protective liability insurance, in other words, provides the railroad with a form of employers liability coverage for employee injuries arising out of the construction work.

The following three RRP Coverage A exclusions are significantly different from exclusions found in other protective liability forms.

Contractual Liability

While the RRP contractual liability exclusion is worded very similarly to contractual liability exclusions in other general and miscellaneous liability coverage forms, its scope is quite

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different. No coverage is provided for the insured railroad's assumption of liability in a contract or agreement other than a "covered contract." The RRP policy's definition of "covered contract," however, is very different from the concept of "insured contract" found in the CGL and OCP policy definitions. A "covered contract" within the context of RRP coverage is a contract or agreement to carry persons or property for a charge, or a contract executed in connection with the interchange of locomotives or railroad cars between railroads. The insured railroad's assumption of liability for bodily injury or property damage as part of one of these "covered contracts" is insured by the RRP policy, subject to the other policy exclusions and conditions.

The most significant feature of coverage left intact by this exclusion (unlike that left intact by OCP or general liability contractual exclusions) is not coverage for the assumption of another party's tort liability. It is the direct assumption of liability for bodily injury or property damage, by way of a "covered contract," that the railroad would not have in the absence of the contract. For example, if the insured railroad, as part of its contract to carry freight for a customer, agrees to be liable for *any* damage to the freight in transit, that assumed liability may be covered under the RRP policy. The agreement between the railroad and its customer is a "covered contract," and the railroad is assuming property damage liability in that contract. As long as property damage to the freight occurs under circumstances that bring the loss within the scope of the RRP policy, the railroad's contractual liability for the damage will be covered.

Pollution

Two sections of the railroad protective policy's pollution exclusion pertain to the disposal or treatment of waste at the designated job location. There is no coverage with respect to any release of pollutants at or from the job location if it has been used at any time to dispose of or handle waste in any way. Nor is there coverage in connection with the contractor's disposal of waste at the job location if the railroad or any of its "designated employees" has knowledge of such disposal.

A third section of the exclusion removes coverage with respect to any incident involving pollutants brought to the job location in connection with operations being performed by the railroad, by contractors working *for* the railroad, or by the railroad's "designated employees." (When the work being done by the contractor is not for the railroad—when the railroad is merely allowing use of its right-of-way for the contractor to perform work for another party—this feature of the pollution exclusion must be modified by endorsement. The endorsement creates an exception of fuel and lubricants for equipment used in the designated work, i.e., these fuels and lubricants will not be considered pollutants brought to the job location so as to trigger application of the exclusion. See Exhibit XII.D.1 for the text of this endorsement.)

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EXHIBIT XII.D.1

RRP ENDORSEMENT CG 28 31 07 98

Pollution Exclusion Amendment

This endorsement modifies insurance provided under the following:

RAILROAD PROTECTIVE LIABILITY COVERAGE PART

Paragraph (3) of exclusion f. of Section I—Coverage A—Bodily Injury And Property Damage Liability is replaced as follows:

This insurance does not apply to:

> f. "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at or from the "job location":
>
> > (3) On which you or "contractors" working directly or indirectly on any insured's behalf are performing operations if the "pollutants," other than fuels or lubricants for equipment used at the "job location," are brought on or to the "job location" in connection with such operations by you, the "contractor" or "your designated employee."
>
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The exclusion of pollutants brought to a job location specifically does not apply with respect to heat, smoke, or fumes from a hostile fire. In other words, smoke damage from the accidental burning of work materials would not qualify as the release of a "pollutant" from the job location. Like the CGL pollution exclusion, the RRP exclusion makes an exception for the accidental release of mobile equipment "operating fluids"—gasoline or other fuel, motor oil, hydraulic fluid, etc.—from mobile equipment, as long as the operating fluid spills from a vehicle part designed to contain it. In other words, diesel fuel from a ruptured fuel tank or fluid from a broken hydraulic line would not represent an excluded release of "pollutants."

A fourth section of the RRP pollution exclusion eliminates coverage at job locations where the insured railroad or contractors are performing pollution remediation work of any kind—environmental testing, treating or removing pollutants, etc.

Unlike the CGL coverage form, the railroad protective pollution exclusion contains no separate cleanup provisions. Governmentally mandated cleanup costs imposed on the insured railroad are

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thus not automatically excluded under the RRP policy. As long as such costs represent "damages" arising out of property damage and the circumstances of the pollution event are not themselves excluded by any of the policy language discussed above, the insured railroad may have coverage when a contractor's work triggers cleanup obligations.

Damage to Owned, Leased, or Entrusted Property

Damage to any of these categories of property is excluded under Coverage A of the RRP because such damage is the subject of the policy's Coverage B. ("Entrusted property" is property in the railroad's possession under terms of a trust agreement.)

Physical Damage to Property

Coverage B of the railroad protective liability policy provides direct, first-party property coverage against physical damage to property owned by or leased or entrusted to the railroad under a lease or trust agreement. Perhaps the most obvious example of a loss in this category is damage to a train caused by the contractor's activities near the tracks. Coverage conditions are the same as for Coverage A—the loss must arise out of acts or omissions at the job location that are related to the designated "work."

Except for an exclusion of damage due to nuclear hazards (which is common to virtually all property insurance), the Coverage B exclusions are based on corresponding exclusions applicable to Coverage A. Damage that occurs after the designated "work" has been completed is excluded, except for damage caused by tools, uninstalled equipment, or unused materials. Damage caused by any pollution incident excluded under Coverage A is excluded under Coverage B. Damage caused solely by an act or omission of any insured is excluded, except for acts or omissions of the railroad's "designated employees" (i.e., employees involved directly in the contractor's work).

Just as Coverage A gives the railroad a source of insurance recovery for liability losses that the contractor may be required to assume but cannot insure, so Coverage B applies to property damage losses for which the contractor may be liable but that are excluded under the contractor's CGL policy and other policies applicable to the project. For example, property damage to the project itself is covered by the railroad protective policy when caused by an act or omission of the contractor at the job location. Such damage may not be covered by a builders risk policy written on the project because of a faulty workmanship or materials exclusion. Moreover, the contractor may not have *liability* coverage for the act or omission because of the CGL policy exclusions pertaining to (1) real property on which the contractor is performing operations or (2) any property that must be repaired or replaced because the contractor's work was incorrectly performed.

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Similarly, railroad protective Coverage B insures damage to railroad equipment made available for the contractor's use at the job location—another exposure for which the contractor probably has no general liability coverage. Construction and demolition work on or near railroad tracks often requires specialized equipment that contractors borrow from the railroad during the course of the project. If such equipment is damaged through the negligence of the contractor or one of its employees, the CGL care, custody, or control exclusion eliminates the contractor's policy as a source of insurance recovery for the railroad. Railroad protective liability insurance covers such loss.

Policy Conditions

Four of the railroad protective liability policy conditions are of particular importance: cancellation, other insurance, premium and premium audit, and transfer of recovery rights (subrogation).

Cancellation

An insurer that chooses to cancel a railroad protective liability policy must give 60 days' notice to the insured railroad, to the contractor designated in the policy, and to any other designated party to the project contract (such as a governmental entity for which the contractor is doing highway construction).

Other Insurance

Railroad protective liability insurance is primary over any other insurance available to the railroad, except for a policy provided by another contractor in connection with the same project and job location (in other words, another railroad protective policy). When two or more such policies are available to the railroad, each policy contributes to the loss payment on the basis of the contribution methods defined in the policies.

Premium and Premium Audit

In addition to explaining that audited premiums (based on contract cost, as explained below) will be charged against the deposit premium, this policy condition is an acknowledgment that the contractor—not the railroad—purchases the policy. Any unearned premium at the end of the policy term is refunded to the contractor. The premium and premium audit condition specifies that "in no event shall the payment of premium be [the railroad's] obligation."

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RRP Coverage, Indemnity Agreements, and Subrogation

One RRP policy condition deserves extended consideration. Like other forms of liability (and property) insurance, the railroad protective liability coverage form contains a subrogation clause—"Transfer of Rights of Recovery Against Others to Us"—that reinforces the insurer's common law right to recover from negligent third parties the amounts it has paid under the policy for losses caused by those third parties. In the case of RRP insurance, that negligent third party is likely to be the contractor who purchased the policy for the railroad. The long-established principle that an insured may not subrogate against its own insured will not apply to protect the contractor, because the contractor is not an insured under the policy.

The right of recovery against others that devolves to the RRP insurer once it has paid a claim may arise from either of two sources. As mentioned above, the contractor may be at least partially responsible for the loss because of its own negligent acts, in which case the insurer would have the railroad's right to sue the contractor in tort. This would be a means of recovering that portion of the paid claim that represents the contractor's own degree of tort liability.

But the contractor will almost certainly also be obligated to the RRP insured under the hold harmless agreement contained in the contract for the designated project. This too represents a right of recovery to which the RRP insurer becomes subrogated by paying a claim under the policy. The recovery in this instance (assuming that the hold harmless is an intermediate form) could be the entire amount of the loss paid on behalf of the railroad, because the contractor has assumed liability for *all* the railroad's liability whenever both the railroad and the contractor share responsibility for a loss.

These two subrogation exposures exist for contractors who purchase either an owners and contractors protective liability (OCP) policy or a railroad protective liability policy. With respect to the OCP policy, a contractor can insulate itself to some degree from subrogation by the insurer. It can purchase the contractually required OCP coverage from its own CGL insurer. In such a case, the OCP insurer will have little incentive to pursue subrogation against the contractor, since the same insurer's CGL policy—issued to the contractor—will ordinarily respond to the subrogation claim. (There may be an allocation of the claim ultimately to the general liability policy after it has been brought by the OCP insured, but such an allocation will usually not be of great importance to the contractor except as the paid loss affects a loss-sensitive insurance program.) As an additional protection against OCP insurer subrogation, contractors usually request that a subrogation waiver endorsement be attached to the OCP policy, stipulating that the insurer will not seek recovery against the contractor. A standard ISO endorsement exists for this purpose. See section XII.C.

Unfortunately, neither of these strategies, which are effective in protecting against subrogation by

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an OCP insurer, can be relied upon by contractors purchasing a railroad protective policy. First, the market for RRP policies is confined to relatively fewer insurers than those writing OCP coverage. That makes it less likely that the contractor will be able to purchase an RRP policy from its own general liability insurer and forestall subrogation in that way. Moreover, standard general liability policies do not automatically cover an insured's obligation under hold harmless agreements in connection with work near railroad lines. For this reason, an RRP insurer that also writes the contractor's general liability insurance is free to pursue recovery against the contractor under the hold harmless agreement, since it is not providing the contractor with contractual liability coverage for the claim. (Some CGL insurers have always been willing to endorse the policy to provide contractual coverage for this exposure, and at least one insurer active in the RRP market has a CGL form that builds the coverage into its definition of insured contract. A standard ISO endorsement is available to provide contractual liability coverage for this exposure. See Exhibit XII.D.3.)

Second, there is no standard subrogation waiver endorsement for use with the railroad protective liability coverage form, and it is not customary for RRP insurers to agree to such a waiver. This means that a contractor who has purchased RRP insurance in compliance with contract requirements must expect and be as prepared as possible for a subrogation action brought by the railroad.

If the subrogation action is grounded in allegations of tort liability (i.e., if it is based on the contractor's own negligent involvement in the bodily injury or property damage), then the contractor's general liability insurance will respond, subject to any applicable exclusions or other policy limitations on coverage. For instance, consider again the loss example in which the contractor's employee negligently directs a motorist through a railroad crossing at which construction work is in progress, and the motorist is subsequently hit by a train. The RRP insurer pays the claim brought by the injured motorist against the railroad, then pursues recovery against the contractor, alleging that the injury was caused in part by the contractor's employee's negligence. The contractor's CGL policy should respond to this subrogation action of the RRP insurer, just as it would respond to an action brought directly by the injured motorist.

Assume, on the other hand, that the RRP insurer pursues recovery against the designated contractor not on the basis of the contractor's liability in tort for the loss, but on the basis of the contractor's obligation under the hold harmless agreement with the railroad. In this circumstance, coverage for the subrogation action against the contractor will depend on the terms of the CGL contractual liability coverage. The central question with respect to that coverage is whether the hold harmless agreement constitutes an "insured contract" under the CGL.

Insofar as a standard, unendorsed CGL policy is concerned, the answer to that question is "No." Two portions of the CGL definition of "insured contract" address hold harmless agreements in favor of a railroad, and both eliminate such agreements as "insured contracts." Those portions of the CGL policy are shown in Exhibit XII.D.2.

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EXHIBIT XII.D.2

CGL "INSURED CONTRACT" DEFINITION PERTAINING TO RAILROAD INDEMNITY

"Insured contract" means:

> c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad.

["Insured contract"] does not include that part of any contract or agreement:

> (4) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

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If a contractor's hold harmless agreement in favor of a railroad is not an "insured contract," then the contractor has no CGL coverage for an action against it to enforce such a hold harmless agreement. The solution to this problem is to modify the CGL definition of "insured contract" to eliminate the exclusionary language pertaining to indemnification of a railroad. This can be accomplished by means of a standard endorsement, "Contractual Liability—Railroads" (CG 24 17). The text of this endorsement is shown in Exhibit XII.D.3. Endorsement CG 24 17 restores CGL contractual liability coverage by eliminating both of the problematic clauses in the definition of "insured contract" shown in Exhibit XII.D.2. With this endorsement attached to the CGL policy, any easement or license agreement is an "insured contract," including the indemnity provisions of an easement agreement by means of which a contractor obtains access to a railroad right-of-way. Moreover, section f. of the "insured contract" definition—hold harmless agreements executed in any contract pertaining to the insured's business—can also be applied to indemnification of a railroad with endorsement CG 24 17 in place, since the exclusion of such indemnification is eliminated by the endorsement.

EXHIBIT XII.D.3

CGL ENDORSEMENT 24 17

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Contractual Liability—Railroads

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Scheduled Railroad: Designated Job Site:

With respect to operations performed for, or affecting, a Scheduled Railroad at a Designated Job Site, the definition of "insured contract" in the DEFINITIONS section is replaced by the following:

8. "Insured Contract" means:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

b. A sidetrack agreement;

c. Any easement or license agreement;

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement;

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

(1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

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(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

(2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in paragraph (1) above and supervisory, inspection, architectural or engineering activities.

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Contractors required to purchase railroad protective liability policies and execute indemnity agreements in favor of railroads should attempt first to (1) have a waiver of subrogation endorsement attached to the RRP policy, or (2) ask that the railroad waive its own right of recovery against the contractor to the extent that any loss is covered by the RRP policy. If neither of these precautions is feasible (and it is unlikely that either will be), then the contractor should at least take the precaution of having CG 24 17 attached to its own CGL policy. This will protect the contractor's contractual liability coverage with respect to the hold harmless obligation.

Limits of Insurance

Loss payments under a railroad protective liability policy are defined by two limits.

- *An annual aggregate limit.* This represents the maximum total that can be collected under the policy in any one year for the sum of all bodily injury liability losses, all property damage liability losses, and all physical damage to property losses.
- *An "each occurrence" limit.* This represents the maximum that will be paid for the sum of bodily injury and property damage liability claims and all physical damage to property arising out of any one occurrence. The term "occurrence" is not defined in the policy but presumably refers to events resulting from a single set of "acts or omissions" as referred to in the Coverage A and Coverage B insuring agreements.

Railroads typically require policy limits of $2 million or $3 million for each occurrence and $6 million for the annual aggregate.

Within the "each occurrence" limit as it affects Coverage B, an additional limitation applies to physical damage to property. The policy will not pay more than the damaged property's actual cash value at the time of loss, nor more than the cost to repair or replace the property.

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Rating

The basis for rating railroad protective liability insurance is the total cost of the designated "work." This total cost includes all labor and equipment costs, plus the cost of materials for use in the project. When equipment owned by the railroad is rented to the contractor for use in the project, the cost of this equipment use (including payroll for railroad employees assigned to operate it) is made part of the total cost for rating purposes.

Minimum premiums for railroad protective liability insurance vary from insurer to insurer, based on considerations such as the hazardous nature of the project or whether the insurer also writes the contractor's own general liability coverage. Typical minimum premiums range from $2,500 to $5,000, but they may be as high as $10,000 for particularly hazardous work.

Location

Work that is performed within 50 feet of operating railroad tracks or that otherwise involves direct exposures to railroad train hazards requires higher rates. (Note that *any* contracted work done for a railroad may require a railroad protective policy, regardless of whether it is performed near a railroad track.)

Type of Project

Construction and nonconstruction projects are rated separately, with nonconstruction rates varying widely according to the level of hazards involved. Construction on state or federal highway projects is subject to its own rating program; partly because of the hazards inherent in road construction (whether adjacent to railroad tracks or not), rates for this exposure can be significantly higher than those for other types of construction.

Project Owner

For construction operations other than those on state or federal highways and those with no immediate railroad track exposure, separate rates apply to (1) work for a railroad itself and (2) work for project owners other than railroads.

Hazardous Nature of the Work

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Railroad protective underwriters have considerable discretion in devising a rate that reflects the hazards connected with individual projects. One such consideration usually built into the rating structure for this coverage is the amount of traffic on railroad lines where the work is being done. Increasingly higher rates may apply, for example, to operations on or near tracks that carry: 5 or fewer trains per day; 6 to 20 trains; 21 to 40; 41 to 60; 61 to 100; and more than 100 trains per day.

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Indemnification.

a. Contractor shall defend, indemnify and save harmless WMATA, its directors, officers, employees and agents, irrespective of any negligence or fault on their part, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, including the property of the Contractor and WMATA, occurring in connection with, or in any way arising out of the use, occupancy and performance of the work and/or any acts in connection with activities to be performed under this contract ~~resulting in whole or in part from the acts, errors or omissions of Contractor, or any employee, agent or representative of Contractor~~. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any obligation of Contractor under this Contract.

Comment [RS1]: WMATA should reserve the right to tender both defense and indemnity whether it does so or not. By not including a defense obligation we could not force the contractor to accept WMATA's tender.

Comment [RS2]: It is not sufficient that the Contractor's indemnity be unilateral in favor of WMATA, the indemnity should also be activity based, not fault based. That is the reason for including the irrespective of WMATA's negligence or fault and deleting any reference to the Contractor's negligence or fault.

b. Contractor shall indemnify, defend and hold harmless WMATA its directors, officers, employees and agents against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the contract.

c. If any action or proceeding relating to the indemnification required is brought against WMATA, then upon written notice from WMATA to the ~~indemnitor~~ Contractor, the ~~indemnitor~~ Contractor shall, at the ~~indemnitor's~~ Contractor's expense, resist or defend such action or proceeding by counsel approved by WMATA in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same.

d. Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to WMATA pursuant to this Section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund

FOIA CONFIDENTIAL TREATMENT REQUESTED

any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

Insurance.

a. WMATA is acknowledged and understood to be a third party beneficiary of any insurance policy carried by any contracting Party.

Comment [RS3]: WMATA is not a third party beneficiary under the Contractor's Workers Compensation insurance or its Professional Liability insurance. In fact WMATA is most likely to be a claimant against the Contractor's Professional Liability insurance.

b. As may be required in any insurance policy carried by any contracted Party, this Contract is understood and agreed to be a written contract or an Insured Contract between that Contractor and WMATA.

c. Contractor understands and agrees that **provision of a complete copy of the Policy or Policies which provide the below required insurance, including a copy of any endorsement or exclusion thereto, for review and approval by WMATA is a prerequisite** for entry onto WMATA property. It is the Contractor's responsibility to ensure adequate and complete coverage as contemplated in this agreement. This responsibility is not waived, nor is any requirement to indemnify waived by WMATA's review and approval of any Policy.

d. Contractor understands and agrees that WMATA is a self-insured governmental entity and that the insurance and indemnification provided by any Contractor under the terms of this Contract shall be Primary. Contractor agrees that to the extent any endorsement contemplates issuance of a contract by a state or political subdivision, WMATA shall be considered a state or political subdivision for the purposes of those policies and endorsements.

Comment [RS4]: Although WMATA carries significant retentions it is not self-insured for all of its exposures. It is not clear why WMATA's insurance status pertains to this agreement.

e. Insurance Companies. Insurance companies providing the required ~~coverages~~ insurance must be rated by A.M. Best or a comparable rating company and carry at least an "A" rating. All insurance shall be procured from insurance or indemnity companies reasonably acceptable to WMATA and licensed and authorized to conduct business in the jurisdiction where the work is to be performed. WMATA approval or failure to disapprove the insurance shall not release the Contractor of full responsibility for liability for damage and accidents.

Comment [RS5]: It's not clear what an indemnity company is (risk retention group? Or state pool?) or why WMATA's insurance requirements permit an alternative to commercial insurance.

f. Changes in Insurance ~~Coverage~~. The ~~requisite~~ required insurance policies shall not be canceled, ~~terminated~~ non-renewed or modified

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(except to increase the ~~amount of~~ coverages and limits) without thirty (30) calendar days prior written notice from Contractor to WMATA's Office of Insurance, Room, 8D01, and Office of Procurement, 600 Fifth Street, NW, Washington, DC 20001. All correspondence and insurance certificates must include the Contract Number. If any required insurance policies should be canceled, ~~terminated~~ non-renewed or modified so that the insurance is not in full force and effect, then WMATA can hold Contractor in default of this Contract. Under such circumstances, WMATA shall give Contractor a notice of default and after the expiration of the cure period, WMATA may terminate this Contract for an event of default or obtain insurance ~~coverage equal~~ equivalent to that required herein, the full cost of which shall be paid by Contractor to WMATA on demand.

g. Evidence of Insurance Coverage. Evidence of the ~~requisite~~ required insurance ~~policies~~ in the form of the complete insurance policy including any endorsements and certificates of insurance with WMATA designated as the Certificate Holder ~~stating~~ describing work to be performed and Contract Number shall be submitted to WMATA at least ten (10) business days prior to commencement of operations and from time to time at WMATA's request. Contractor shall not be allowed to enter WMATA Premises until the evidence of insurance has been received and approved in writing by WMATA. All evidence of insurance shall be sent to:

Comment [RS6]: This information is included in the Description box of the COI.

Office of Procurement
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

With a Copy to:
Office of Insurance
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW - Room 8D01
Washington, DC 20001

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h. Contractor shall require each subcontractor, at all tiers, to provide evidence of insurance coverage specified herein and such evidence of coverage shall be provided to WMATA.

i. Any ~~contract of~~ insurance or indemnification ~~naming~~ where WMATA is designated as an additional insured shall be endorsed to ~~provide that the insurer will not contend, in the event of any occurrence, accident, or claim, that no payment is due from the insurer by virtue of the fact that WMATA~~ delete any exclusions of coverage ~~is~~ for a governmental instrumentality, public or quasi-public body.

Comment [RS7]: It is not clear what is meant by contract of indemnification

j. Limits and Modification of Coverage. The limits of liability included herein are minimum limits. WMATA reserves the right to review or change these limits if the terms of the Contract or standards in the industry change. If requested by WMATA, Contractor shall make or require its subcontractors to make any necessary adjustments in such limits or in the type of coverage to reflect then currently acceptable, commercially reasonable policy limits and types of coverage for similar uses and operations. Contractor's failure to cooperate with WMATA regarding this shall constitute a Default in accordance with this Contract. During the term of this Contract and any extensions, except for such longer terms as may be required herein, **Contractor shall provide or cause to be provided the types and amounts of insurance indicated below.**

Comment [RS8]: This provision is appropriate where the contractor is required to procure project specific insurance (e.g. major construction), where the insurance is at WMATA's cost and expense, but it might not be appropriate where the Contractor is using its existing insurance whose costs is included as an overhead.

Field Code Changed

WORKERS COMPENSATION. An insurance policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, and if there is any exposure to personnel of any Contractor with the U. S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or the Federal Employers' Liability Act, Contractor will provide coverage for these exposures on an "if any basis" with limits not less than:

Worker's Compensation:	Statutory
Employers' Liability:	
Each Accident	$1,000,000
Disease - Policy Limit	$1,000,000
Disease - Each Employee	$1,000,000

COMMERCIAL GENERAL LIABILITY INSURANCE. A Commercial General Liability Insurance policy issued to and

FOIA CONFIDENTIAL TREATMENT REQUESTED

covering the liability for all work and operations under or in connection with this Contract and all obligations assumed by Contractor under this Contract. ~~Coverage~~ Policy shall include the following coverages: 1) Products & Completed Operations Liability, ~~Completed Operations and Contractual Liability Insurance~~, 2) Independent Contractor's Liability, and Contractual Liability with all railroad exclusions deleted; and all XCU deletions (explosion, collalpse and underground) exclusions are to be deleted ~~in addition to coverage for explosion, collapse, and underground hazards~~, wherever required. If the insurance is written on a claims made basis then the extended discovery period must be at least three (3) years following completion and acceptance of the project. The coverage under such an insurance policy or policies shall ~~be maintained for three (3) years upon and shall~~ have at least the following limits:

Bodily Injury and Property Damage Liability
$2,000,000 each occurrence / aggregate

Personal Injury/Advertising	$1,000,000
Premises Medical Payments	$5,000

WMATA shall be included as an additional insured under the commercial general liability insurance coverage with respect to activities related to this Contract.

AUTOMOBILE LIABILITY INSURANCE. A commercial auto insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicles bearing valid license plates appropriate for the circumstances for which the vehicles are being used. These vehicles should bear license plates applicable to the state laws for which the vehicle(s) are registered. Liability for contractor's mobile equipment is not subject to this coverage and therefore the aforementioned general liability insurance is required. Contract employees are not permitted to operate any vehicle owned by WMATA whether in commission of the contract or outside the same.

The coverage under such an insurance policy or policies shall include mandatory Uninsured Motorist Coverage and Under Insured Coverage where applicable. If hauling contaminants or pollutants, the Contractor must adhere to Sections 29 and 30

FOIA CONFIDENTIAL TREATMENT REQUESTED

of the Motor Carrier Act of 1980, which shall include coverage Form MCS-90.

The coverage under such an insurance policy or policies shall have limits not less than: BODILY INJURY AND PROPERTY DAMAGE LIABILITY $~~1~~2,000,000 Combined Single Limit and Uninsured Motorist Coverage Minimum Limit $50,000

WMATA must be included as an additional insured under the auto liability insurance coverage with respect to activities related to this Contract.

PROFESSIONAL LIABILITY INSUANCE. A separate insurance policy to ~~pay on behalf of~~cover the Contractor ~~all costs the Contractor shall become legally obligated to pay as damages due to any claim caused by any negligent act,~~liability for financial loss suffered by third parties resulting from the Contractor's wrongful judgments and errors or omissions ~~of any Contracting Party out of their acts or omissions~~ in performance of their work under this Contract.

~~Such~~ If written on a claims made basis the Professional Liability insurance shall be maintained for five (5) years after the final acceptance of the work by either continuation of the policy every year or if coverage is moved to another carrier, the same prior acts retro date should be continued. If coverage is not renewed, an extended reporting period of five (5) years should be purchased and such coverage should be evidenced on the certificate of insurance. In addition, Contractor should purchase unintentional errors and omissions and cross liability coverage by endorsement if not already provided.
For contracts with a value ***Over $500,000** the coverage under such an insurance policy shall have a limit of liability not less than:

$3,000,000 per occurrence / aggregate

PROPERTY INSTALLATION FLOATER. ~~An insurance policy or endorsement to existing property coverage for all risk of physical loss or damage to property building materials to be used in, incidental to, or during installation and any resultant damage caused by installation of materials in connection with this contract. WMATA shall be named as "Loss Payee" to the extent of WMATA's insurable interest, if any, in the property to~~

Comment [RS9]: An installation floater is the same as Builders Risk insurance and should be included in that paragraph.

Field Code Changed

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~~be installed. The coverage under such policy shall have a limit of liability in accordance with the value of the property insured.~~

~~Such insurance shall be written on the ISO Form. The coverage under such an insurance policy shall have a limit of liability not less than: *" the estimated cost of materials "*~~

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CONTRACTOR'S POLLUTION LIABILITY INSURANCE.
Contractor shall provide a liability insurance policy covering the Contractor during the process of removal, storage, transport, and waste contaminated ground water soil remediation. Policy should include coverage for bodily injury, and 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, liquids or gas, waste material or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental.

The policy should include the following coverage arising from pollution resulting from covered operations:

a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;

b. Property damage, including physical, to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been destroyed.

The policy form shall include an extended reporting period of at least three (3) years. This coverage shall be secured from an insurance carrier acceptable to WMATA and in accordance with the information provided. Prior to commencement of work on this contract the policy form shall be submitted to WMATA for review and approval.

Comment [RS10]: Should not the Contractor's Pollution Liability insurance requirement not specify limits?

RAILROAD PROTECTIVE LIABILITY INSURANCE. An insurance policy issued to **WMATA as the named insured** and covering the liability of all Contracting Parties for the work to be performed within fifty (50) feet (on, above, adjacent to or underneath) of WMATA's operating railroad property for any personal injuries or deaths or any damage to the property, equipment and

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facilities caused by the activities of any Contractor or Subcontractor resulting from performance of this contract work. The coverage under such an insurance policy shall have a limit of liability not less than:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY
$5,000,000 per occurrence/ $10,000,000 aggregate
COPY OF THIS POLICY SHOULD BE FORWARDED TO WMATA

COMPREHENSIVE DISHONESTY, DISAPPEARANCE AND DESTRUCTION INSURANCE. Contractor shall maintain and certify to WMATA a separate and distinct blanket crime insurance policy or a standard crime policy with third party liability coverage and with segregated limits of liability covering losses caused by dishonesty of employees, loss of money or securities while being conveyed by messenger outside premises. Such a policy should also include loss caused by forgery of outgoing monies, but not limited to cash, securities or other forms of negotiable instruments, for loss caused by burglary, theft, robbery, and mysterious disappearance. The indemnity provisions under such policy should have the following limits:

Blanket Employee Dishonesty $
Forgery and Alterations $
Theft, Disappearance and Destruction $

Comment [RS11]: The ;need for a contractor to carry crime insurance is in situations where their employees can steal from WMATA. The Crime insurance needs to carry third party liability for the thefts of WMATA's property to be covered. Without it only the property of the contractor would be covered.

BUILDERS RISK INSURANCE. ~~An insurance policy covering all risk of physical loss or damage to, property; including machinery and equipment in the course of construction, and to materials incidental to construction under this contract. WMATA shall be named "Loss Payee" As Their Interest May Appear (ATIMA) in the property insured. The coverage under such policy shall have limits of liability in accordance with the value of the property insured.~~

Comment [RS12]: WMATA, not its contraactors' should be purchasing the Builders Risk and Installation insurance. Key reason – WMATA is the named insured and thus controls the repairs or replacements if it purchases the Builders Risk/ Installation insurance. If the Contractor is the named insured it controls the repairs or replacements. After a loss WMATA may wish to use a different contractor to make the repairs.

Field Code Changed

Non-Liability of WMATA. WMATA shall have no liability for any injury or property damage whatsoever unless the injury or damage arises solely from WMATA's negligence. Neither the contract nor any provision thereof, shall impose upon WMATA any new or additional duty or liability or enlarge any existing duty or liability of WMATA. Nothing in this Contract shall be deemed to waive WMATA's immunity as a sovereign entity.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009428

T:\contract requirements_2009.doc
Last revision March 2009

FOIA CONFIDENTIAL TREATMENT REQUESTED

Exhibit J

Insurance Requirements[1]

Section 1. Insurance Obligations

The insurance obligations of each Developer Declarant, its respective contractors, "Major Subcontractors" (as defined below), subcontractors and commercial subtenants are set forth in this Exhibit J. "**Major Subcontractors**" are those contractors and subcontractors of Insured whose cumulative contract or subcontract amount exceeds $2,000,000. The word "contractor," standing alone, includes general contractors, Major Subcontractors, subcontractors, and any other contractors, unless the context clearly indicates otherwise.

1.1 At Developer Declarant's sole cost and expense, Developer Declarant shall procure and maintain the following insurance (with the exception of contractors' pollution insurance) and shall require its contractors, Major Subcontractors, subcontractors and subtenants (with the exception of Rental Value Insurance and Business Interruption Value Insurance) to procure and maintain, at their respective sole cost and expense, the following insurance unless otherwise limited below:

GC|Subs

1.1.1 Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance: A Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance for Bodily Injury and Property Damage liability shall be not less than: (i) $10,000,000 Combined Single Limit; (ii) $1,000,000 Each Occurrence; and (iii) $2,000,000 Aggregate, with $9,000,000 of such Combined Single Limit coverage to be provided in the Excess (Umbrella) Liability Insurance. The coverages under Developer Declarant's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance policies may be allocated differently than stated in the preceding sentence, so long as the ~~aggregate~~ per occurrence coverage requirements are met. WMATA shall be included as an additional insured under Developer Declarant's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance.

1.1.2 Contractor's, Major Subcontractor's, and Subcontractor's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance: Developer Declarant shall require each of its contractors, Major Subcontractors or subcontractors to have in place a commercial general liability insurance policy issued to and covering the liability of such contractor, Major Subcontractor or subcontractor for all its operations on, near or with respect to the Property. Each Major Subcontractor of Developer Declarant shall have coverage under its Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance for Bodily

[1]The insurance requirements for Developer were obtained from Section 10 of the Joint Development Agreement, and the insurance requirements for the Component Tenants were obtained from Section 8 of the Ground Leases.

Injury and Property Damage liability of not less than: (i) $10,000,000 Combined Single Limit; (ii) $1,000,000 Each Occurrence, and (iii) $2,000,000 Aggregate, with $9,000,000 of such Combined Single Limit coverage to be provided in an Excess (Umbrella) Liability Insurance. Each contractor and subcontractor of Developer Declarant whose cumulative contract or subcontract amount is between $500,000 and $2,000,000 shall have coverage under its Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance for Bodily Injury and Property Damage liability of not less than: (i) $2,000,000 Combined Single Limit; and (ii) $1,000,000 Each Occurrence, with $1,000,000 of such Combined Single Limit coverage to be provided in the Excess (Umbrella) Liability Insurance. Each contractor and subcontractor of Developer Declarant whose cumulative contract or subcontract amount is less than $500,000 shall have coverage under its Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance for Bodily Injury and Property Damage liability of not less than: (i) $1,000,000 Combined Single Limit; and (ii) $500,000 Each Occurrence, with $500,000 of such Combined Single Limit coverage to be provided in the Excess (Umbrella) Liability Insurance. The coverages under the aforesaid Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance policies may be allocated differently than stated in the three preceding sentences, so long as the aggregate coverage requirements are met. WMATA and Developer Declarant shall be included as an additional insured under the Commercial General Liability Insurance and any Excess (Umbrella) Liability Insurance of each Major Subcontractor, contractor and subcontractor of Developer Declarant. Nothing in this Section 1.1.2 shall relieve Developer Declarant of its insurance obligations under Section 1.1.1 of this Exhibit J.

1.1.3 Commercial Subtenant's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance: Prior to the first date each commercial subtenant uses or occupies its subleased premises in the respective Leasehold Property, Retail Declarant or Residential Declarant, as the case may be, shall require each of its respective commercial subtenants to have in place a commercial general liability insurance policy issued to and covering the liability of such commercial subtenant for all its operations on, near or with respect to its subleased premises in the respective Leasehold Property. Each commercial subtenant shall have coverage under its Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance as provided in Exhibit K of the respective Ground Lease. The coverages under the subtenant's Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance policies may be allocated differently than stated in Exhibit K of the respective Ground Lease (entitled "Commercial Subtenant's Required Liability Insurance Coverage"), so long as the aggregate coverage requirements are met. WMATA and Retail Declarant or Residential Declarant, as the case

may be, shall be included as an additional insured under the Commercial General Liability Insurance and Excess (Umbrella) Liability Insurance, if any, of each of their respective commercial subtenants. Nothing in this Section 1.1.3 shall relieve Retail Declarant or Residential Declarant of its insurance obligations under Section 1.1.1 of this Exhibit J.

1.1.4 Worker's Compensation: A policy complying with the requirements of the jurisdictions in which the work will be performed, with minimum limits as follows:

Workers' Compensation ("Coverage A")	Statutory
Employers' Liability ("Coverage B"):	
Each Accident	$100,000
Disease – Policy Limit	$500,000
Disease - Each Employee	$100,000

$1m

provided, however, that the foregoing minimum limits of Workers Compensation and Employer's Liability shall apply for construction work only to contractors and subcontractors of Developer Declarant who are not Major Subcontractors. Developer Declarant at all times, and Developer Declarant's Major Subcontractors for construction work shall be required to increase Employer's Liability "each accident" coverage and Employer's Liability "Disease-Each Employee" coverage to a total of $500,000 through umbrella coverage.

1.1.5 Automobile Liability Insurance: Developer Declarant shall have in place an insurance policy covering the use by Developer Declarant or any of its contractors or subcontractors of all owned, non-owned, hired, rented, or leased vehicles bearing, or under the circumstances in which they are being used, required by the Motor Vehicle Laws of the District of Columbia, Maryland, Virginia, or any other jurisdiction to bear, license plates, and not covered under the aforementioned Commercial General Liability Insurance. The coverage under such policy or policies shall not be less than a Combined Single Limit for Bodily Injury Liability and Property Damage Liability of $1,000,000 per occurrence. Developer Declarant shall use its Best Commercially Reasonable Business Efforts (as defined in the Joint Development Agreement and the Ground Leases) to have WMATA named as an additional insured under each such policy.

$2m

1.1.6 Contractor's Pollution Legal Liability: In connection with any construction activities or environmental work done on or about the Property that, in WMATA's reasonable judgment, is likely to involve any of the activities or risks described below in this Section 1.1.6, Developer Declarant shall require all of its contractors (including its general contractor, if applicable) and subcontractors engaging in activities on or about the respective Property involving removal, storage, transport, and disposal of hazardous waste, contaminated soil, or other similar materials, to carry Contractors' "Pollution Legal Liability Insurance" as such coverage description is commonly understood, covering the liability of the contractor or subcontractor. The policy shall include coverage for the risks of bodily injury, personal injury, and loss of, damage to, or loss of use of property, whether any of the foregoing arises directly or indirectly out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, any liquid or gas, waste materials, or any other irritants, contaminants, or pollutants, upon any land, into the atmosphere, or into any course or body of water, whether such discharge, dispersal, release, or escape be gradual or sudden and accidental. Developer Declarant and WMATA shall each be designated as an additional insured under each such insurance policy. The amount of coverage for this insurance shall be a minimum of $1,000,000; provided, however, that WMATA may require a higher amount of coverage if WMATA reasonably so determines and such higher amount is customarily carried by contractors and subcontractors in similar circumstances. Contractor Pollution Legal Liability Insurance need not be in place as of the Effective Date of this Declaration, but instead, Developer Declarant must provide satisfactory evidence of this insurance at least five (5) Business Days before any contractor whose work may involve pollution legal liability begins any such work on or about the Property.

$3m

1.1.7 Railroad Protective Liability Insurance: In connection with any construction activities or other work done on or about the respective Property by Developer Declarant or its contractors, Major Subcontractors, or subcontractors, if, in WMATA's reasonable judgment, such construction activities or other work poses a potential for piercing, at any level, a vertical plane extending into the ground and up to the sky, that is fifty feet (50') from the edge of the WMATA rail system component (as defined in this Section 1.1.7) that is nearest to such construction activities or other work, WMATA shall have the right to require Developer Declarant to provide WMATA with a railroad protection insurance policy issued at Developer Declarant's sole cost and expense, to and for the benefit of WMATA and covering the liability of the Developer, the Retail Declarant, the Residential Declarant, and their contractors, Major Subcontractors, and subcontractors for any personal injuries or deaths or any damage to property, equipment, or facilities caused by such construction activities or other work. For purposes of this Section 1.1.7,

$10m/$10m

rail system components are WMATA's railroad tracks, or any structure that connects directly or indirectly to WMATA's railroad tracks, including ventilation systems, emergency stairways, canopies, station platforms, traction power sub-stations, and station entrances. The coverage under such a policy shall have the following limits: $5,000,000 Combined Single Limit for Bodily Injury and Property Damage, with a $10,000,000 Aggregate; provided, however, that WMATA may require a higher amount of coverage if WMATA reasonably so determines. Within the earlier of thirty (30) days after Notice from WMATA or five (5) Business Days before the first date Developer Declarant or its contractors, Major Subcontractors, or subcontractors engage in any such construction activities or other work, Developer Declarant shall deliver either the original or a certified signed duplicate original of such policy to WMATA for its retention.

1.1.8 Replacement Cost Property Insurance: An insurance policy covering Developer Declarant against loss of or damage to Developer Declarant's real or personal property situated on or about the Property (including boiler and machinery equipment, as applicable), naming WMATA as an additional insured, and written on ISO Special Causes of Loss Form CP 1030 (or substitutes or successors therefor), without any co-insurance provision, and for not less than the full insurable value and replacement cost of such real and personal property, if reasonably available, without reduction for depreciation, and including coverage for expediting expenses, hazardous substances, water damage, demolition and increased cost of construction, extra expense, and business interruption, and covering all pressure, mechanical, and electrical apparatus, including production machines and public utility equipment, with a maximum deductible of $25,000. If an insurance policy with unlimited replacement cost coverage is not available on a commercially reasonable basis, then Developer Declarant shall obtain and annually renew such insurance policy containing such replacement cost coverage as is available on a commercially reasonable basis, whereupon WMATA shall have the right to request, and Developer Declarant shall obtain, a reasonable increase in the coverage amount of the policy. Such property insurance shall include flood and earthquake coverage of at least $2,000,000. At Developer Declarant's option, such flood and earthquake coverage may be carried in a separate policy. All insurance required by this Section 1.1.8 shall also include an automatic waiver of subrogation in favor of WMATA which shall expressly state that the coverage afforded to the insured shall not be voided, prejudiced, or otherwise unavailable if, prior to a loss, the insured shall have waived any and all rights of recovery from the party(ies) responsible for such loss. Developer Declarant shall use its Best Commercially Reasonable Business Efforts (as defined in the Joint Development Agreement and the Ground Leases) to have each policy of

$100,000

insurance described in this Section 1.1.8 include the maximum amount of terrorism coverage reasonably available.

1.1.9 Rental Value Insurance: Effective as of the "Conversion Date" (as defined in the Ground Leases) and continuing during the entire term of the respective Ground Lease, Residential Declarant and Retail Declarant shall each procure and maintain an annual rental value insurance policy to cover at least one year's projected gross rents from the Component Tenant's respective Leasehold Improvements. Not later than fifteen (15) days before the Conversion Date, and not later than forty-five (45) days before each succeeding anniversary of the rental value insurance policy during the term of the respective Ground Lease, Residential Declarant or Retail Declarant, shall deliver to WMATA the respective revenue projections for the forthcoming rental value insurance policy year and projection of the total amount of Participating Rent (as that term is defined in the respective Ground Lease) which is reasonably expected to be payable to WMATA for such policy year; provided, however, such revenue projections shall be made in good faith by Residential Declarant and Retail Declarant, and the coverage amount under the rental value insurance policy shall be subject to WMATA's Approval. If WMATA disagrees with the revenue projections, WMATA and Residential Declarant or Retail Declarant, as the case may be, shall promptly meet to resolve such disagreement before the anniversary date of said policy, if possible. Said policy shall be amended no later than the later of each anniversary date of such policy or ten (10) Business Days after WMATA's Approval of the coverage amount to provide coverage in the amount so determined. The insurance required by this Section 1.1.9 may be provided by each of Residential Declarant and Retail Declarant, either as a separate policy, or as a separate endorsement, but in either case WMATA shall be one of the loss payees under such policy or endorsement, as its interests may appear. Within five (5) days after Notice from WMATA, Residential Declarant and Retail Declarant, as the case may be, shall deliver either the original or a certified signed duplicate original of such policy (or any endorsement, if applicable) to WMATA for its retention.

1.1.10 Builder's Risk: Developer Declarant, or Developer Declarant's general contractor shall purchase and maintain replacement cost property insurance written on a builder's risk "all risk" or equivalent occurrence basis policy form [including "excess floater" coverage] for the Residential Improvements, Retail Improvements, and for the WMATA Replacement Garage with optional deductibles of no greater than $10,000 except for earthquake (if customarily obtained) and flood coverage (if customarily obtained), for which the optional deductible shall be no greater than $25,000. Developer shall maintain such property insurance, unless otherwise provided in the Declaration or the Joint Development Agreement, until the Conversion Date (as defined in the Joint

Development Agreement). The Builder's Risk insurance shall include, without limitation, insurance against the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake (if customarily obtained), flood (if customarily obtained), windstorm, faulty workmanship, testing and start-up, temporary buildings and debris removal including demolition occasioned by enforcement of any Applicable Laws. Flood and earthquake insurance (if customarily obtained) for the Residential Improvements and the Retail Improvements may be subject to a sublimit, which shall be no less than $2,000,000. Flood and earthquake insurance (if customarily obtained) for the WMATA Replacement Garage shall not be subject to any sublimit. Such insurance shall also be written to cover portions of work securely stored off-site if Developer has paid for it, and also portions of the work in transit. Such property insurance shall also include an automatic waiver of subrogation in favor of WMATA which shall expressly state that such coverage afforded to the insured shall not voided, prejudiced, or otherwise unavailable if, prior to a loss, the insured shall have waived any and all rights of recovery from the party(ies) responsible for such loss. WMATA shall be an additional insured under the Builder's Risk insurance policy(ies) for the Residential Improvements and Retail Improvements but the respective Mortgagee shall be the loss payee. To the extent that WMATA has provided funding for, guaranteed, or otherwise become obligated with respect to the WMATA Replacement Garage, WMATA shall be the sole insured under the Builder's Risk insurance policy for the WMATA Replacement Garage; to any other extent, WMATA shall be an additional insured. WMATA agrees to use any proceeds it receives from Builder's Risk insurance to first rebuild and restore the applicable Improvements.

1.1.11 Mortgagee's Insurance: Such insurance policies as Developer Declarant's Mortgagee(s) may require any Developer Declarant to obtain and carry from time to time or at any time, by the Developer during the development and construction of the Project, or by Retail Declarant or Residential Declarant during the term of the respective Ground Lease including insurance against acts of terrorism, civil insurrection, or sabotage. Whenever a Mortgagee shall require Developer Declarant to have a type of coverage or a higher limit of coverage (including terrorism coverage under Section 1.1.8 of this Exhibit J) than is specified in this Exhibit J, such coverage requirement shall apply under this Exhibit J.

The above-described insurance policies shall: (a) except as otherwise expressly provided in Section 1.1.5 of this Exhibit J, designate WMATA as an additional insured on the commercial general liability, contractor's pollution legal liability, replacement cost property insurance, and boiler and machinery insurance policies; (b) designate WMATA as the sole insured and loss payee under the railroad protective liability coverage and

WMATA's rental value insurance coverage; and (c) be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved.

Section 2. Additional Insurance Requirements

2.1. Insurance Companies

2.1.1 Insurance companies providing the aforesaid coverages must be rated "A:XI" by A.M. Best, or a comparable rating as determined by WMATA, from another insurance rating company acceptable to WMATA. All insurance shall be procured from insurance companies licensed and authorized to do business in the District of Columbia, and otherwise in compliance with any federal requirement.

2.2. Changes in Insurance Coverage

2.2.1 The insurance policies required by this Exhibit J shall not be canceled or terminated by the applicable insurer without thirty (30) days' prior written notice to WMATA's Office of Insurance and to the other persons required to receive Notice on behalf of WMATA pursuant to Article 11 of the Declaration. Developer Declarant shall use Best Commercially Reasonable Business Efforts (as defined in the Joint Development Agreement and the Ground Leases) to obtain each insurer's agreement as an endorsement to each insurance policy that the requisite insurance policies shall not be modified (except to increase the amount of coverage) without thirty (30) days' prior written notice to WMATA's Office of Insurance and to the other persons required to receive Notice on behalf of WMATA pursuant to Article 11 of the Declaration. If any of the required insurance policies should be canceled, terminated, or modified, resulting in Developer Declarant's failure to maintain the insurance required under this Exhibit J, and not replaced by Developer Declarant, their respective contractors, subcontractors, or commercial subtenants, as applicable, with, in WMATA's opinion, at least equivalent insurance coverage within three (3) Business Days after Developer Declarant receives written Notice from WMATA requiring such replacement, then WMATA may proceed in accordance with the terms of Section 9.1 of the Declaration.

2.3 Insurance for Construction Changes

2.3.1 In the event that after initial construction of the Retail Declarant's or Residential Declarant's respective Leasehold Improvements have been completed and operations commenced, either Declarant intends to make changes or alterations as permitted under the terms of its respective Ground Lease which require WMATA's review or approval under Article 11 of such Ground Lease, such Declarant shall notify WMATA's Office of Insurance, in writing, of any plans before construction or

demolition work commences. In connection with such changes or alterations, WMATA may require that Retail Declarant or Residential Declarant, as the case may be, obtain such insurance coverage as WMATA reasonably requires to protect WMATA.

2.4 Compliance with Insurance Policies

2.4.1 Developer Declarant shall observe and comply with, or shall cause to be observed and complied with, all the requirements of the insurance policies required by this Exhibit J. Failure to comply with the insurance requirements of this Exhibit J within three (3) Business Days after Developer Declarant receives written Notice from WMATA requiring such compliance shall entitle WMATA to proceed in accordance with the terms of Section 9.1 of the Declaration.

2.5 Evidence of Insurance

2.5.1 Developer Declarant, prior to the time it is making use of any easement granted by WMATA under the Declaration, and thereafter as appropriate, shall deliver, and shall cause their respective contractors and subcontractors to deliver to the Office of Insurance, Washington Metropolitan Area Transit Authority, 600 Fifth Street, NW, Washington, DC 20001, certificates evidencing the insurance required to be obtained under the Declaration (each on ACORD Form 27 or comparable form for general liability insurance) together with copies of all insurance policies similarly required which are not then being held by WMATA, provided, that Retail Declarant and Residential Declarant need not deliver to WMATA evidence of insurance for Rental Value Insurance until fifteen (15) days before the Conversion Date (as defined in the Ground Leases). Developer Declarant shall certify all copies of their respective insurance policies so delivered to WMATA as being complete and accurate. Thereafter, all insurance required to be provided by or on behalf of Developer Declarant pursuant to the Declaration (including any required changes in such insurance) shall be evidenced by annual renewal certificates of insurance in the specified form, and delivered as aforesaid to WMATA's Office of Insurance. All certificates of insurance, except for the insurance required by Section 1.1.7 of this Exhibit J relating to Railroad Protective Liability Insurance (which such policy shall be held by WMATA, and shall name WMATA as the insured and sole loss payee thereof), shall be delivered with endorsements stating that WMATA and such others as Developer Declarant may reasonably determine are additional insureds or loss payees.

2.6 Insurance Review

2.6.1 Every five (5) years during the term of the respective Ground Lease, WMATA and Retail Declarant or Residential Declarant, as the case may

be, shall review the limits and amounts of insurance coverage required to be carried by such Declarant to determine whether such limits and coverage remain commercially reasonable. If WMATA shall reasonably determine that such limits and/or coverages should be increased or otherwise changed based upon such review, WMATA shall provide Notice thereof to Retail Declarant or Residential Declarant, as the case may be, whereupon such Declarant shall comply with such new limits and/or coverages within thirty (30) days after such Notice.

2.7 Other Waivers of Claims and Rights of Recovery

2.7.1 In addition to Retail Declarant's and Residential Declarant's waivers set forth in Section 1.1.11 of this Exhibit J, each of Retail Declarant and Residential Declarant shall cause their respective commercial subtenants or space tenants, operators, or licensees to waive in its commercial sublease, occupancy agreement, or other similar document all claims and rights of recovery against Retail Declarant, Residential Declarant, and WMATA and their respective officers, directors, employees, agents, contractors, subcontractors, and business invitees for injury or loss for damage or loss to any person or entity or its property caused by or resulting from any risks insured against under any insurance policies carried by such commercial subtenant or space tenant, operator, or licensee and in force at the time of any such damage or loss, regardless of the cause of the damage or loss (including the negligence of WMATA and/or Retail Declarant and/or Residential Declarant and/or their respective officers, directors, employees, contractors, subcontractors, agents, and business invitees) to the extent of proceeds actually recovered. Retail Declarant and Residential Declarant shall cause their respective commercial subtenants or space tenants, operators, or licensees, at the sole cost and expense of such subtenant or space tenant, operator, or licensee to obtain any special endorsements required by its insurer to evidence compliance with the aforementioned waiver.

FLORIDA Ave - Insurance 11/2/09

- Jim - Rod - kim

- Construction
  - need at least $10 million per occurrence on CGL

- Will email Language for insurance/indemnification

- Issues:
  - Pace
  - ✓ Indemnity
  - Probs w/ language Provided

- Engineering Dept

- GC
  - Stand alone, project Specific
  - At least $10 mil
  - At most, will be 2 layers

Montague, Joshua W.

From: Schraven, Rodney
nt: Wednesday, October 21, 2009 9:26 AM
o: Montague, Joshua W.
Cc: Brown, Kim
Subject: RE: Florida Avenue - Insurance question

Josh:
I am scheduled to participate on three interview panels for the selection of a Workers Compensation Specialist. I note from the Internet that the Board Meeting is scheduled to meet at 11:00 am which is the same time as one of the interviews. Do you have any idea when the Florida Ave Joint Development Site will be discussed? If it won't be before 11:30 I can have the interview panel rescheduled to 10:30 which should allow sufficient time to attend the Board meeting at 11:30.

RDS

From: Montague, Joshua W.
Sent: Wednesday, October 21, 2009 7:47 AM
To: Schraven, Rodney
Cc: Brown, Kim
Subject: RE: Florida Avenue - Insurance question

Hi Rod,

Thank you very much for all of your help with these issues. Three related issues for you:

1. Steve Goldin in SAAM asked me to ask you to come to the Board meeting on Thursday, in case any Insurance issues come up.

2. The Developer is going to obtain HUD financing for this project. The Developer has indicated that HUD will require them to limit their indemnifications to "surplus cash." This limitation would basically put the indemnification behind every other payment (including Developer's return on investment). Do you have an opinion on this type of indemnification limitation? Will this limitation affect any of our insurance policies?

3. To alleviate the limitations of the above, we reached an agreement with the Guarantors of this deal where we would tie their indemnification responsibility to the insurance requirements. In other words, they are guaranteeing the maintenance of all of the required insurance policies. If any of these policies should fail, they are indemnifying us up to the amount insurance would have covered.

Thanks again!

Josh

From: Schraven, Rodney
nt: Tuesday, October 20, 2009 11:20 AM
o: Montague, Joshua W.; Brown, Kim; Scott, Sharrone
Subject: RE: Florida Avenue - Insurance question

FOIA CONFIDENTIAL TREATMENT REQUESTED

Joshua:
This is a follow-up to my initial response because I did not respond to your second question on why the GGL is necessary when requiring the RRP Liability. RRP Liability is one of several types of Protective Liability insurance. Protective Liability insurance provides property owners with project specific liability insurance where the contractor's GL insurance may not cover the loss or the contractor's GL insurance is not forthcoming. RRP Liability insurance is premised on the fact that there probably is coverage for the railroad under the contractor's GL insurance and it requires the railroad insured thereto to protect the RRP Liability insurance's subrogation potential. Here is my real world example:

> The U.S. Post Office has a construction project above the tracks going into a large inner city railroad station. The Post Office's GC is constructing a platform above the tracks and switches upon which will be constructed a new post office facility. A demolition subcontractor notices an electrical box at track side and decides to cut into it to see what's inside. The cutting torch causes a fire in the electrical box shorting out all of the switches (i.e. the device which moves trains from one set of tracks to another) into the train station. Neither the GL insurance for the demolition subcontractor nor the GL insurance for the GC accept the railroad's claim for the damage and extra expense. So the railroad decides to collect from the RRP Liability insurance and let it pursue subrogation against the other two GL insurance policies. If the railroad in question had not required the GC and subcontractors to carry GL insurance its RRP Liability insurance would not have had any subrogation potential.

I think we will have a Blanket RRP Liability program in place by December 1. We are meeting on the 29th of this month to review the final proposal from Liberty. As such, we may be able to provide the Florida Avenue people with a cost effective alternative to the RRP Liability insurance requirement.

RDS

From: Montague, Joshua W.
Sent: Monday, October 19, 2009 9:17 AM
To: Schraven, Rodney; Brown, Kim; Scott, Sharrone
Subject: Florida Avenue - Insurance question
Importance: High

Hi Rod, Kim, and Sharrone,

Attached is the Developer's comments to the Florida Avenue Term Sheet.

As you will see in Section 11, they have agreed to add WMATA as an "Additional Insured" to the Developer's CGL policy. Per our previous discussion, we are asking the Developer to require the GC and all Subs to name WMATA as an Additional Insured on their CGL policy.

Can you put something in writing explaining why we need each of the parties that work on the property (GC and all subs) to put WMATA on their policy, as opposed to just the Developer or the GC. Can you also add a note of why the CGL is necessary in addition to the Railroad?

As we discussed on Friday, this is a deal that is being pushed from "up above" to get signed quickly, so please let me know as soon as possible.

If you need a brief re-cap of the details, here it is: The Florida Avenue project is vacant land that WMATA is selling to a developer. WMATA's rail tunnel runs directly beneath the property. The top of the tunnel is 29 feet below the surface. The Developer is planning on building below ground parking that will go as far down as WMATA lets it.

Please let me know if you have any questions.

Sincerely,

FOIA CONFIDENTIAL TREATMENT REQUESTED

Montague, Joshua W.

From: Schraven, Rodney
Sent: Tuesday, October 20, 2009 10:03 AM
To: Montague, Joshua W.; Brown, Kim; Scott, Sharrone
Subject: RE: Florida Avenue - Insurance question

Joshua:
The General Contractor generally purchases project specific liability insurance with enhanced limits (i.e. $5 million to $25 million or more) to cover bodily injury/ property damage liability resulting from the construction activities. The GC's construction liability insurance almost always covers liability resulting from the negligence or fault of the subcontractors as well. The GC will nevertheless require subcontractor's to carry primary General Liability insurance which is not project specific and whose limits are not enhanced and the GC requires the subs to name the GC and generally the project owner as additional insureds thereto. Additional insured status on another party's General Liability insurance does two things: 1) it covers the vicarious liability of the additional insured (i.e. GC and project owner) from the negligence or fault of the Named Insured (i.e. subcontractor), and 2) it bars the General Liability insurance from subrogating against the additional insured. Additional insured status on the subcontractor's GL insurance does not cover the direct liability of the GC or project owner.

Although WMATA is not the project owner, because the construction activity is directly above WMATA's railroad property, the authority is subject to the same vicarious liability as the project owner and thus should be an additional insured on the GC's and the subcontractor's GL insurance.

RDS

From: Montague, Joshua W.
Sent: Monday, October 19, 2009 9:17 AM
To: Schraven, Rodney; Brown, Kim; Scott, Sharrone
Subject: Florida Avenue - Insurance question
Importance: High

Hi Rod, Kim, and Sharrone,

Attached is the Developer's comments to the Florida Avenue Term Sheet.

As you will see in Section 11, they have agreed to add WMATA as an "Additional Insured" to the Developer's CGL policy. Per our previous discussion, we are asking the Developer to require the GC and all Subs to name WMATA as an Additional Insured on their CGL policy.

Can you put something in writing explaining why we need each of the parties that work on the property (GC and all subs) to put WMATA on their policy, as opposed to just the Developer or the GC. Can you also add a note of why the CGL is necessary in addition to the Railroad?

As we discussed on Friday, this is a deal that is being pushed from "up above" to get signed quickly, so please let me know as soon as possible.

If you need a brief re-cap of the details, here it is: The Florida Avenue project is vacant land that WMATA is selling to a developer. WMATA's rail tunnel runs directly beneath the property. The top of the tunnel is 29 feet below the surface. The Developer is planning on building below ground parking that will go as far down as WMATA lets it.

Please let me know if you have any questions.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009444

Montague, Joshua W.

From: Schraven, Rodney
nt: Tuesday, October 20, 2009 11:20 AM
To: Montague, Joshua W.; Brown, Kim; Scott, Sharrone
Subject: RE: Florida Avenue - Insurance question

Joshua:
This is a follow-up to my initial response because I did not respond to your second question on why the GGL is necessary when requiring the RRP Liability. RRP Liability is one of several types of Protective Liability insurance. Protective Liability insurance provides property owners with project specific liability insurance where the contractor's GL insurance may not cover the loss or the contractor's GL insurance is not forthcoming. RRP Liability insurance is premised on the fact that there probably is coverage for the railroad under the contractor's GL insurance and it requires the railroad insured thereto to protect the RRP Liability insurance's subrogation potential. Here is my real world example:

> The U.S. Post Office has a construction project above the tracks going into a large inner city railroad station. The Post Office's GC is constructing a platform above the tracks and switches upon which will be constructed a new post office facility. A demolition subcontractor notices an electrical box at track side and decides to cut into it to see what's inside. The cutting torch causes a fire in the electrical box shorting out all of the switches (i.e. the device which moves trains from one set of tracks to another) into the train station. Neither the GL insurance for the demolition subcontractor nor the GL insurance for the GC accept the railroad's claim for the damage and extra expense. So the railroad decides to collect from the RRP Liability insurance and let it pursue subrogation against the other two GL insurance policies. If the railroad in question had not required the GC and subcontractors to carry GL insurance its RRP Liability insurance would not have had any subrogation potential.

+hink we will have a Blanket RRP Liability program in place by December 1. We are meeting on the 29th of this month review the final proposal from Liberty. As such, we may be able to provide the Florida Avenue people with a cost effective alternative to the RRP Liability insurance requirement.

RDS

From: Montague, Joshua W.
Sent: Monday, October 19, 2009 9:17 AM
To: Schraven, Rodney; Brown, Kim; Scott, Sharrone
Subject: Florida Avenue - Insurance question
Importance: High

Hi Rod, Kim, and Sharrone,

Attached is the Developer's comments to the Florida Avenue Term Sheet.

As you will see in Section 11, they have agreed to add WMATA as an "Additional Insured" to the Developer's CGL policy. Per our previous discussion, we are asking the Developer to require the GC and all Subs to name WMATA as an Additional Insured on their CGL policy.

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.s we discussed on Friday, this is a deal that is being pushed from "up above" to get signed quickly, so please let me know as soon as possible.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009445

If you need a brief re-cap of the details, here it is: The Florida Avenue project is vacant land that WMATA is selling to a developer. WMATA's rail tunnel runs directly beneath the property. The top of the tunnel is 29 feet below the surface. The Developer is planning on building below ground parking that will go as far down as WMATA lets it.

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009446

~~HTT~~ 11

Shaw / FL Ave Notes 7/30/08

- WMATA RE Permit
  - Redline version
  - Right of entry for
    - Survey
    - Environ testing
    - Other tests / Due diligence
  - Signed July 1st. Good through: unknown (60 days?)

- JD Term Sheet
  - Principal terms being Considered for lease of Property
  - 60 year Ground Lease
  - 28,892 Sq. Feet → 3 separate parcels (4 lots)
  - Study period → 60 Days via RE Permit
  - Rent / Deposit / Fees
    - Proposal Deposit : $100,000 (to be replaced by Sec. Deposit)
    - Security Deposit : $250,000 (upon execution of Definitive Agreement)
      - Look at 6.4 & 6.5 → Conflict?
    - Option Fee → $100,000 (upon Term Sheet approval by Board)
    - Pre-Stabilization Rent
      - For term of "project Stabilization" or 45 mos.
      - 1-15 mos : $100,000 per year ($25,000 per quarter)
      - 16-27 mos. : $115,000
      - Remainder of Pre-Stab : $130,000
    - Base Rent
      - $597,000 per year
      - multiplied by 1.5% ← *

Shaw/FL Ave Notes 8/1/08

Ground Lease Agreement vs. Term Sheet

- Q → Study period begins when?
- Q → What Date was Expression of Interest Request issued?

- Tenant → not Banneker Ventures, LLC?

- Property
  - Exceptions: For Tunnel
  - Easement: 19 Ft?

- Due diligence
  - Lease - on or before Last Day of Study Period
  - Term - 10 Days after Study Period

- Prestabilization Rent (Term 7.2) & Development Approval period (GL 2.02(B)) → ~~Do they need to match?~~ OK
  - Affected by Additional Density?

- Option Fee (paid upon approval?)
  - Default → non-Refundable
  - Approval Termination (3.02 (c)) → non-Refundable?

- Deposit
  - Term Sheet → if WMATA uses, BV must replace used amount w/ in 10 Days Section 6.3
  - Refunded upon - Contractor Bond & Guaranty (9.6 & 9.8 of Ts)
    - in GL?

Shaw / FL Ave Notes 8/1/08

Ground Lease vs. Term Sheet (2)

- Pre-Stabilization Rent (GL 5.02)
  - GL: Space T entitled to take possession or 20 mos
  - TS: project Stabilization ↗? or 45 mos (§7.2)
  - include 3.01(c) in
  - Verbiage → All Pre-Stabilization? (take out Dev. Approval Rent)

- Base Rent (GL 5.03)
  - Due: 1st Business day of Calendar year → Jan 1st
    - Should this say each Subsequent
  - Initial Escalation Factor
    - Additional 1.5%? No 1.015 percent? increase?
  - TS: Due annually in quarterly installments → Not in GL
  - Capital Event: 7% of projected Land value → Explain
    - Required? change members?

- Premium/Percentage Rent → NONE
  - Remove clauses Related to? (Ex. 5.07 Gross income or Net Proceeds)
  - Keep for inspection of Capital Events (5.04)
- Audit → Change to Capital Event (5.11(B))
- Taxes 6.02(A) → ~~ok~~ See notes
- Environ → Ensure T inspects to level of "All Appropriate inquiry"
  - Maybe Don't want b/c want liability Partners
- Licenses → Alcohol
- Insurance → Right to inspect policies → 9.05 ✓

SHaw / FL Ave 8/1/08

- TS → JDA plus lease

- JDA will allow for increased density, PUD, other changes
  - why also enter into Lease

- Pre-lease payments → Stabilization
  - up to 4 yrs (45 mos from JDA)
  - will stabilize w/in 1 yr of being built

- Sub surface
  - Tunnel
  - vent

- AH → Removed Component

- JDA was Supposed to go out at the end of July
  - Get it out by end of Next week

- WMATA Said only go Down 19' (one level)
  - Distance to Tunnel is 29'
  - Developer wants 2 levels (8' to 10' per level)

SHAW-HOWARD

8/5/08

- AS is, where is !!
- JDA then Lease → Do just Lease & Constr.??
  - meeting!
- Submissions → Disclaim or Retain Control?
  - Support
  - Speak to Ros
  - Anything that goes to city in terms of zoning or building must be Approved
- Capital Event
  - Participate at Gross value of Cap Event
  - $7.5 million
- ✓ ROE → Latest Copy
- Flea mkt → on property on wknds.
- Pre-stabilization Period → what are benchmarks
  - 92-95% occ → ?
  - 20 mos before Dev (turn ground)
  - Add'l 25 mos
  - get approvals & entitlements
  - Who Controls during Pre-Stab
    - Locks on Gates → WMATA
  - Insurance
    - CGL
    - Indemnify
  - Cannot turn Shovel w/o WMATA Approvals

- Development Entity → will be Ready

- Turn Dirt → Lease
  - Approved plans/Entitlements (incl. construction Approvals)
  - Fully Formed Dev Entity
  - Financing

- Guidance → NJ Ave / Navy Yard → Example Files
  → Columbia Heights

JDA Questions:

1. When does Pre-stabilization end?
   a. All building/zoning issues resolved
   b. Financing obtained
   c. Development entity formed
   d. 45 Months

2. What must be approved by WMATA (ex. Zoning, building permits, etc.)?

3. Include vent and/or stormwater management?

4. Is there a financing contingency?

5. Is this a Key Station?

6. Tax issues negotiated?

7. Will subdivision be an issue?

8. Is there a design criteria/standard for this project that needs to be referenced?

9.) Stormwater, utilities, Vent?

ROE Questions:

9. Terminates 60 days after effective date of JDA. What if don't enter into JDA?
   - Term or Section 10 → Provided However, if JDA not entered into prior to 3/1 will Expire 3/31
10. 30 days written request to do work & 10 days pre-work meeting – correct?

11. Indemnify for acts made in whole or in part – pro rate indemnifying responsibility?

12.) Flea MKT Lease

8/21

- ROZ: teleconference
  - Spoke to Omar & Joel
  - Omar had plans to Rent out land
  -
  - Is license(s) a material change Requiring Board Approval → COK

1.) • Tariq → Adj. Construction 4B-08 x2403
2.) • Ros/Heidi → Ask FM 9-11 & 2-4

- Insurance Issue

- Compact hearing
  - Community gets to Speak
  - 6 month process
    - must publish notice of hearing (30 Days)
    - Hearing
    - Staff Report → takes 3 mos!
    - Presentation to BOD

3.) - Get milestones from MB
  - when is it Reasonable to expect BOD approval?

- TARIQ - 4 to 5 days; up to week; fill it up and Cap. (fill w/ grout)
  - White Flint - took about a week
    - 9 Borings

Shaw-Howard 8/21

- ROE
- Roz, Heidi
  Parking 9pm-6am Fri + Sat
  Fm Will adjust to fit

- Environ - Ask Tom + Tarag

- Limit to 6Am mon to 12pm Fri

T/T - What kind of equipment
- How much time do they need > Tarag phone conf.

- Should be able to fill borings & doing Studies during week
- Can leave equipment on side cot
- get a Schedule from them
- not a big property, so won't need much

- T → get language to Restore language

- Devorah Lewin
- Railroad insurance waived. → Per Rosalyn or Mark according to Developer

Shaw-Howard Ts → Deposit

- Return 20 Days after COO
- 9.6 performance & payment Bond - in WMATA's name
- 9.8 Guaranty → Roz doesn't think is necessary

- Bonds
  - Amount → Business office
    - usually 50-60% of project
  - Ts - 100% performance & payment Surety bonds

Shaw-Howard 8/22

COK
- is either a lease or not
- Lease
- Termination
  - Based on Licenses, approvals
  - Limit their Activities
  - Strong
- BOD Approval
- Sublease → Approval
- insurance → all up front
- ROE
  - must give insurance policy to WMATA for Review prior to ROE

- ROZ → will make a business decision w/ Omar
  - Wants JDA then Lease @ Construction
- Review Similar Files
  - Columbia heights 11/8/01
    - include Easements & Reserved Areas in Prop. Descr.

Shaw - Howard 8/29

- Base Rent - Initial
  - Extend / Prorate if after June 30th → Keep going to following year
  - Additional Density will Cause Recalculation

- if go w/ Lease
  - Blame City holding up → get extension of lease
  - Dev → gets income
    - WMATA Retain right to Approve

- Other projects that went Straight to lease
  - Columbia Heights
  - Courthouse

- Lease
  - 20 mos or Terminate
    - Avoid "City Delays" excuse

- AH → will try to use to Adjust Rent
  - RD → will probably have to give on this

- Green Bldg Act → Applicable
  - RD will use to make lower
  - effective Date * "Omar Should've Known"
  - * Instrumentality vs. Non-inst to RD

Shaw-Howard 8/29

* - If go to Lease → Approvals in Lease or 2 Docs?

- Closing w/ in 20 mos or Terminated

8/29

Bruce

- BOD - Resolution on LEED policy
  - Be mindful of BOD policy
- is this a Recorded property interest (60 yr Lease)?
  - is Developer considered an owner?

FL. Ave - RoE meeting 9/11/08

- Bruce & Carol

- Roz Comments
  - Bameker is not Developer; who to give Right to?
  - Need static point (Ex. Sea level) for 15 ft. Soil Boring mark/limit → Tarig

- insurance policies
  - Additional insured

- Storage
  - limited to testing equipment
  - At no Risk to WMATA

- Roz → BoD has approved Term Sheet

- Lease vs. JDA
  - Bundle of Rights → JDA / Lease Compensation
  - Approval (and Disapproval of other Proposals) Based on TS → SAAM discuss Financial Analysis
    - Look at assumptions Compared to other proposals Before Switch deal

- A/H

Florida Ave. 9/22/08

- Meet w/ Bruce & Carol to go over Docs.
  - TS - if 5 mos + no JDA, Refund proposal deposit
  - Lease vs. JDA
    - need to discuss Financial / Selection impact if Change deal
    - Discuss w/ Rosalyn & Joel / Nat
  - ROE
    - waiting for insurance
  - JD
    - Eviction if not progressing
    - who is Developer's financing?
    - Deposit → Replaces proposal Security
    - ✓ 7.4 → either party may terminate
    - Vent Shaft → Any moves or changes?
      - who Controls
      - protective measures during Construction
      - Sanders → Require public hearing?
    - ✓ Compact Hearing 7.7.2 → if it happens, Developer pays for it ($50,000)
    - ✓ 10.1.4 → list all?
    - ✓ 11.A.1 → Completion Bond → only for WMATA facilities
      - Here: only if moving vent → WMATA Replacement Fac, if any. Limit to Replacement Costs.
    - ✓ 11.19 → Co-Obligee is ok
      - we have our own Completion Bond Standard (Not AIA)

FL. Ave 9/26/08

- Meeting w/ Omar Karim, Joel & Roz

- Issues
  - A/H Component
  - LEED Requirement

- LEED → need to make LEED certified
  - going to cause 3% delta to hard costs
  - at 4.5 FAR → 1.1 million Delta to project
  - B/C WMATA is instrumentality
  - Q → when was Green Bldg Act in effect?

- A/H
  - Graham said need A/H component (at least 20%)
    - 30% AMI Req'mt
    - 60-80%
    - "Suggested Funds would come from WMATA (Discount)"
  - is this a WMATA BOD Req'mt?
    - ✗ - is this a DC policy ANC
    - ✗ - is mentioned in JD? Policies or Compact
    - ✗ - what was said in BOD minutes
  - Negotiations
    - Was this factored in appraisal price?
  - How does this affect economics → work out O/K & R/D
  - Original plan included 10% A/H
    - But cannot get bond financing w/ only 10%

FL Ave (2) 9/26/08

- Omar's proposed new numbers:
  - original budget was $36.2 milly
  - At 4.5 FAR w/ 20% A/H
    - Reduce WMATA Share due to LEED impact

  - At 4.5 w 20% A/H
    - Don't pay WMATA Sec Deposit or pre-lease payments
    - not enough to Do project for D

  - How does A/H affect Income/Expenses

  - at 6.0 FAR w/ 20% AH

- What does DC Law require for A/H?

Florida Ave 9/29/08

- Meet w/ R. Doggett to go over Lease / JDA

- Close after 20 mos.
  - Construction will Start
  - Should have Construction Approvals
- If not touching vent, can just Rely on adjacent manual
  - * - is the Controlling Document
  - Change to Revision 2
  - Refer to process in adjacent Construction Manual
  - Look up 35/65/100%
- Compact Public Hearing
  - Conditional
  - RD → Remove

- Change of Control
  - Cannot change members of Developer, LLC
  - Tighten change of Control language

- Additional Density
  - JDA - to Extent of Add'l Density → will be effected in Base Rent of Lease
- Lease → make clear Effective Date JDA or Lease
- Construction Approvals → Approvals Achievement Date
  - 1.1.7 add Construction Approvals
- Survey Req't
  - must produce in Study period & give to us

FL Ave

10/6/08

Meeting w/ Jim, Cok, BPH
Rosalyn, Joel, NAT

- Affordability Component
  - Jim Graham requiring

- Green Building Act
  - Does this apply to Developer?
  - Should have known → Act prior to bid

- A/H
  - How much will BOD require
  - Does it affect relative value of bids?
    - 3RD bid was offic?
  - How does this affect putative Return
  - DC → No A/H Req'mt
    - is a PUD negotiation
  - Dev now wants to go through PUD (more Density)
  - 20% → qualify for LIHTC

- Financing
  - w/ AH → cannot afford

* Look at Mo Co Covenants for AH
  - what does AH mean? income levels undefined

10/6/08

- Does AH drop property/project below Appraisal Threshold value
- Put AH framework into JDA → Mable folks
  - Look at moco, Pet worth, Radio one agreements
- Determine AH affect threshold

- Agreements
  - Rosalyn wants to Read Add'l Density
  - BPH Comments
  - Add note to include AH considerations in the future

- Add'l Density
  - prior to lease execution

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

The parties defined/addressed the issues of delay in the Term Sheet as follows:

- **Agreement**. The Parties agreed to negotiate a Definitive Agreement ("JDA"), as defined in Section 2.1. Section 2 states (*note: there is no Section 2.1*):
  - The JDA will be prepared by WMATA and presented to the WMATA Board within *five months of Board Term Sheet approval;*
  - The Lease term will begin upon the earlier of 1) twenty months after WMATA Board approves the JDA; or 2) the start of construction of the Project.
- **Exclusive Negotiation Period**:
  - The Term Sheet gives the Developer the exclusive right to negotiate a JDA with WMATA for 5 months from the date of the Term Sheet.
  - If WMATA and Developer do not execute the JDA within five months following Board Term Sheet Approval, WMATA will refund Developer's Proposal Security ($100,000.00) within twenty days.
- **WMATA Delays**:
  - The maximum length of the Pre-stabilization Period (45 months) will be extended, on a day-for-day basis, for delays caused by WMATA actions or failure to act, including obtaining FTA Approval.
  - 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. (*note: why does it say "no other event"?*)
- **Force Majeure Delay**:
  - The maximum length of the Pre-stabilization Period (45 months) may be extended 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 JDA.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009467

- **Developer Conditions**. Developer may terminate the Term Sheet and the JDA upon 10 days Notice if each of the following conditions are not satisfied within the timeframes provided:

    - The Developer must obtain WMATA approval of the conceptual Project Site Plan within 60 days of the effective date of the JDA (*note: Developer must submit said plan with ten days of the effective date of the JDA*).

    - The Study Period contingency lasts through the 60th day after the effective date of the JDA.

    - WMATA must apply for FTA approval within 30 days of the effective date of the JDA.

    - The Financing Contingency is described, but no timeframe/deadline is discussed.

- **Study Period**: WMATA agreed to grant Developer a Right-of-Entry Permit ("ROE") upon execution of the Term Sheet.

    - The Term Sheet states that the Study Period shall expire sixty days from the effective date of the JDA;

    - The Developer has the right to terminate the JDA by delivering Notice to WMATA with ten days of the expiration of said Study Period.

- **Security Deposit**.

    - The Developer must deliver the Security Deposit ($250,000) within two days of the effective date of the JDA.

    - The Security Deposit is to replace the Proposal Security ($100,000), but no mention is made as to the time provided to WMATA to return said Proposal Security.

    - If the Security Deposit is applied in whole or in part, the Developer must increase the Security Deposit by an amount equal to the amount applied within ten days.

    - WMATA must return the Security Deposit to the Developer within twenty days of receiving a copy of the Certificate of Occupancy for the Project.

FOIA CONFIDENTIAL TREATMENT REQUESTED

- **Pre-stabilization Period**:
    - The Pre-stabilization Period begins upon the effective date of the JDA and goes through the earlier of 1) Stabilization (*note: to be defined in the JDA as 90% occupancy*); or 2) Forty-five months.
    - For the first fifteen months after the effective date of the JDA, Pre-stabilization Period payments will be $100,000 annually, due in quarterly installments.
    - For the next twelve months, Pre-stabilization period payments will be $115,000 annually, due in quarterly installments.
    - Thereafter, through the end of the Pre-stabilization Period, Pre-stabilization Period payments will be $130,000 annually, due in quarterly installments.
- **Lease Payments**:
    - The Developer must make the first quarterly base rent payment to WMATA within fourteen days of the end of the Pre-stabilization Period.
    - Any delay in first payment of base rent will require a penalty payment
    - On the first anniversary of the first base rent payment, base rent will be increased by 1.5% annually.
    - On the eleventh anniversary of the first base rent payment, base rent will be increased by 3.0% annually.
    - 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.
- **Community Contact**: Within 60 days of the WMATA Board's approval of the JDA 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.
- **Surety Bonds**: Developer must furnish the required surety bonds to WMATA at least 10 days prior to commencement of construction.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009469

Florida Ave. 10/16/08

Meeting w/ Omar Karim, Rosalyn, Joel

- AH issues
  - WMATA proposes no rent for the Affordable Units
    - Doesn't make up the GAP
  - Policy issue - for WMATA in future
    Jurisdictional ordinances are easy to incorporate
    - DC doesn't have any legal Requirement
    - BOD - "we would like to see an AH Component"
      - what does this mean?
      - Has never Subsidized transactions beyond being offered here
  - JG mentioned 30% AMI
    - would direct write down of lease payments on Gap Created
    - Considered 20% at 50% AMI
    - Q → Section 8 ??
  - why is it 20% vs 10% (amount originally in Appraisal)
  - Discounted land value
    - OK → Cannot Cover

  - Bollen Smart → Consulted WMATA on this transaction
    - Agreed there was a gap

  - Q - Draft does to Consider how much they end up getting out of property

10/16/08

- Why Should WMATA absorb Costs?

- LEED → DC Green Bldg. Act
  - Law was written in 2006

- Will Send Comments to Lease/JDA by next Tues (10/22)

- 60-yr. lease
  - Not an effective ownership b/c is not 99yrs.

- Can City Contribute to project to lessen Rent Contribution from WMATA?
  - JG told OK that there would be no City Subsidies in deal
  - OK - Does not qualify for new market Credits
    - it Drives commercial development in urban neighborhoods
    - Had expert look at this

- LIHTC - 2.3 million
  - what if do 40/60
  - what happens to market Rents

- Equity investors → Don't invest in AH
  - would have to Re-market and find new investors
  - Are not AH experts

- Thurs 11 Am -

FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential - Budget and Proform - (The Jazz @ Florida Avenue)

Summary Data

Site Area	SF	28,892
Total Possible Project GSF	**6.00 FAR**	178,752
Total Buildable Residential + Retail GSF		178,752
Retail GSF		14,000
Retail NSF	90% efficiency	12,600
Residential Gross SF	100%	164,752
Residential Net SF	83% efficiency	136,744
Residential Net SF - Market	**80%**	109,395
Residential Net SF - Affordable	20%	27,349
Total No. of Residential Units	950 SF avg	144
Market Rate Units	80%	115
Affordable Units	20%	29
Below Grade Parking (Resid Parking)	450.0 SF	45
Below Grade Parking (Dedicated Retail/Share Parking)		15
Total Parking Spaces		60

Program % Breakdown

Residential	92.17%
Retail	7.83%

Lease Payments

WMATA - Year 1 of Stabilization	$	150,000

Project Vacancy

Residential	5%
Retail	5%

% of Project Revenue

Residential	91%
Retail	9%

Residential Per SF revenues

Market	$	2.70
Affordability	$	1.10
Loan Rate		7.40%
WMATA Annual Lease Payment - Year 1	$	150,000
Security Deposit		50,000
Pre-Lease Payment		100,000

Sources and Uses of Funds

Sources		**Residential**	**Retail**	**Total**
FHA Bonds	80% LTC	$ 38,142,000	$ -	$ 38,142,000
LIHTC		2,429,780	$ -	$ 2,429,780
Private Equity		3,657,090	3,691,662	7,348,752
Total Sources of Funds		**$ 44,228,870**	**$ 3,691,662**	**$ 47,920,532**

Uses	**Residential**	**Retail**	**Total**
Land	$ 230,420	$ 19,580	$ 250,000
Hard Costs	35,860,207	2,192,546	38,052,754
Transaction/Leasing Fees	305,997	26,003	332,000
Architectural/MEP, Structural Services	1,455,506	123,683	1,579,189
Marketing	442,406	37,594	480,000
General and Administrative	1,377,910	217,090	1,595,000
Financing Costs	2,720,648	43,316	2,763,964
Real Estate Taxes	341,021	28,979	370,000
Permit, Utility and Municipal Fees	376,444	31,989	408,433
Legal and Accounting	460,840	39,160	500,000
Retail	-	875,853	875,853
Insurance	25,968	2,207	28,174
Miscellaneous Expenses	631,503	53,663	685,165
Total Uses of Funds	**$ 44,228,870**	**$ 3,691,662**	**$ 47,920,532**

Summary of Stabilized Returns at Sale

2016	**Residential**	**Retail**	**Total**
Effective Gross Income	$ 4,165,754	$ 412,065	$ 4,577,819
Expenses	$ 995,047	$ 20,244	$ 1,015,291
Net Operating Income	**$ 3,170,707**	**$ 391,821**	**$ 3,562,528**
Less			
Reserves	$ 36,709	$ 21,224	$ 57,933
Debt Service	$ 2,822,160	-	$ 2,822,160
Stabilized Net Cash Flow 2016	**$ 311,838**	**$ 370,597**	**$ 682,435**

Avail Proceeds before LEED, WMATA & Return to Equity Investor		**12,635,657**
Impact of LEED Certification	**0.0% hard costs**	-
Avail pre WMATA share		12,635,657
WMATA Share of Avail Profit	**0% avail profit**	-
Net Proceeds after WMATA share paid		12,635,657
Preferred Return	**17% per year**	9,159,396
Potential proceeds avail to Developers after pref paid		3,476,262

WMATA-INV 009472

FOIA CONFIDENTIAL TREATMENT REQUESTED

LIHTC Calculation

Qualifying Costs		**LIHTC**
Total Development Cost (Residential Portion)	$	44,228,870
Less:		
FF&E		150,000
Parking		1,350,000
Marketing		442,406
Total Non-Qualifying Costs	$	1,942,406
Total Eligible Costs	$	42,286,464

Valuation		
Total Eligible Costs (see above)	$	42,286,464
x Factor (LIHTC - High Cost Area Adjustment)		130%
Total Adjusted Basis		54,972,403
x Applicable Fraction		20%
Total Qualified Basis		**10,994,481**
x Annual Tax Rate		3.4%
Annual Credit		373,812
Applicable Period (Years)		10
Credit Amount		3,738,123
x Equity Proceeds from Sale of Credits @		$0.65
Realized Value to Project	$	**2,429,780**

WMATA-INV 009473

FOIA CONFIDENTIAL TREATMENT REQUESTED

Confidential - Budget and Profo, The Jazz @ Florida Avenue)

Summary Data

Site Area	SF	28,892
Total Possible Project GSF	**6.00 FAR**	178,752
Total Buildable Residential + Retail GSF		178,752
Retail GSF		14,000
Retail NSF	90% efficiency	12,600
Residential Gross SF	100%	164,752
Residential Net SF	83% efficiency	136,744
Residential Net SF - Market	80%	109,395
Residential Net SF - Affordable	20%	27,349
Total No. of Residential Units	950 SF avg	144
Market Rate Units	80%	115
Affordable Units	20%	29
Below Grade Parking (Resid Parking)	450.0 SF	45
Below Grade Parking (Dedicated Retail/Share Parking)		15
Total Parking Spaces		60

Program % Breakdown

Residential	92.17%
Retail	7.83%

Lease Payments

WMATA - Year 1 of Stabilization	$	205,000

Project Vacancy

Residential	5%
Retail	5%

% of Project Revenue

Residential	91%
Retail	9%

Residential Per SF revenues

Market	$	2.70
Affordability	$	1.20
Loan Rate		7.53%
WMATA Annual Lease Payment	$	205,000
Security Deposit		50,000
Pre-Lease Payment		100,000

Sources and Uses of Funds

Sources		Residential	Retail	Total
Bond Financing	73% LTC	$ 35,784,000	$ -	$ 35,784,000
LIHTC		2,327,629	$ -	$ 2,327,629
Private Equity		5,317,088	5,745,304	11,062,392
Total Sources of Funds		**$ 41,101,088**	**$ 5,745,304**	**$ 49,174,021**

Uses	Residential	Retail	Total
Land	$ 230,420	$ 19,580	$ 250,000
Hard Costs	35,738,509	2,639,717	38,378,226
Transaction/Leasing Fees	329,039	27,961	357,000
Architectural/MEP, Structural Services	1,270,293	322,404	1,592,696
Marketing	442,406	37,594	480,000
General and Administrative	758,042	836,958	1,595,000
Financing Costs	1,165,157	99,011	1,264,168
Real Estate Taxes	341,021	28,979	370,000
Permit, Utility and Municipal Fees	380,131	32,302	412,433
Legal and Accounting	175,000	425,000	600,000
Retail	-	877,970	877,970
Insurance	25,398	2,158	27,556
Miscellaneous Expenses	245,671	395,671	641,341
Total Uses of Funds	**$ 41,101,088**	**$ 5,745,304**	**$ 46,846,392**

Summary of Stabilized Returns at Sale/Refinance

2017	Residential	Retail	Total
Effective Gross Income	$ 4,537,008	$ 439,880	$ 4,976,889
Expenses	$ 965,093	$ 26,894	$ 991,987
Net Operating Income	**$ 3,571,915**	**$ 412,987**	**$ 3,984,902**
Less			
Reserves	$ 37,446	$ 22,082	$ 59,528
Debt Service	$ 2,694,609	-	$ 2,694,609
Stabilized Net Cash Flow 2017	**$ 839,859**	**$ 390,905**	**$ 1,230,764**

Avail Proceeds before LEED, WMATA & Return to Equity Investor		**18,990,508**
Impact of LEED Certification	2.5% hard costs	959,456
Avail pre WMATA share		18,031,053
WMATA Share of Avail Profit	0% avail profit	-
Net Proceeds after WMATA share paid		18,031,053
Preferred Return	**17% per year**	15,252,893
Potential proceeds avail to Developers after pref paid		3,737,615

WMATA-INV 009474

FOIA CONFIDENTIAL TREATMENT REQUESTED

Summa ta

Confidential - Budget and Profo.. (The Jazz @ Florida Avenue)

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	90% efficiency	12,600
Residential Gross SF	100%	121,414
Residential Net SF	83% efficiency	100,774
Residential Net SF - Market	**100%**	100,774
Residential Net SF - Affordable	**0%**	0
Total No. of Residential Units	950 SF avg	106
Market Rate Units	100%	106
Affordable Units	0%	0
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	$	597,000

Project Vacancy

Residential	5%
Retail	5%

% of Project Revenue

Residential	92%
Retail	8%

Residential Per SF revenues

Market	$	**3.00**
Affordability	$	-
Loan Rate		7.53%
WMATA Annual Lease Payment	$	**597,000**
Security Deposit		**250,000**
Pre-Lease Payment		**345,000**

Sources		**Residential**	**Retail**	**Total**
Debt	78% LTC	$ 29,359,000	$ -	$ 29,359,000
Private Equity		2,647,754	5,736,807	8,384,561
Total Sources of Funds		**$ 32,006,754**	**$ 5,736,807**	**$ 37,743,561**

Uses	**Residential**	**Retail**	**Total**
Land	$ 623,146	$ 71,854	$ 695,000
Hard Costs	26,861,471	2,644,022	29,505,493
Transaction/Leasing Fees	320,091	36,909	357,000
Architectural/MEP, Structural Services	968,106	256,372	1,224,478
Marketing	430,374	49,626	480,000
General and Administrative	757,415	837,585	1,595,000
Financing Costs	977,930	112,763	1,090,693
Real Estate Taxes	331,747	38,253	370,000
Permit, Utility and Municipal Fees	312,284	36,009	348,293
Legal and Accounting	175,000	425,000	600,000
Retail	-	846,560	846,560
Insurance	19,591	2,259	21,851
Miscellaneous Expenses	229,597	379,597	609,194
Total Uses of Funds	**$ 32,006,754**	**$ 5,736,807**	**$ 37,743,561**

Summary of Stabilized Returns at Sale/Refinance

2017	**Residential**	**Retail**	**Total**
Effective Gross Income	$ 4,209,872	$ 386,941	$ 4,596,813
Expenses	$ 1,266,521	$ 79,833	$ 1,346,355
Net Operating Income	**$ 2,943,350**	**$ 307,108**	**$ 3,250,458**
Less			
Reserves	$ 27,596	$ 22,082	$ 49,678
Debt Service	$ 2,210,790	-	$ 2,210,790
Stabilized Net Cash Flow 2017	**$ 704,965**	**$ 285,026**	**$ 989,991**

Avail Proceeds before LEED, WMATA & Return to Equity Investor		**17,050,539**
Impact of LEED Certification	0.0% hard costs	-
Avail pre WMATA share		17,050,539
WMATA Share of Avail Profit	10% avail profit	1,705,054
Net Proceeds after WMATA share paid		15,345,485
Preferred Return	17% per year	11,560,684
Potential proceeds avail to Developers after pref paid		3,784,802

WMATA-INV 009475

Florida Avenue 10/24/08

- Omar Karim, Roselyn

→ - No documents yet. Hope to have by next week.

→ - Pro Forma

1.) - preferred Return - 21%, 20.16%, or 17%
- Minimum project IRR
- 17% goes to investors; 3% goes to ?

2.) Will discuss directly w/ Eric (WMATA)

- AH
- Not based on Square Footage → Studio, 1BR, 2BR
- Avg of 950 SF
- previously used $1.20/SF, now using $1.10

- Policy Issues (Joel came into meeting)

- OK met w/ Neil Albert
- NA wants as much A/H as possible
- NA thinks can go down to $150,000 lease
- JW - FTA must Approve & we must get appraised value
- OK → proposing $150,000/yr for 60 yrs
- includes 20% A/H on Site
- See Deposit $50,000
- No Participation

10/24/08

- How does this Compare to other bids?

- Option to purchase or Extend
  - SAAM - Lease position
  - Does this need Board approval?
- Adjacent properties
  - B/w 8th & 9th St
  - if not leasing, how do you build on Both?

- Who owns improvements on Ground lease

- We are going to wait for FTA to give opinion on A/H discount
  - Joel will follow up next week

From: Rosalyn Doggett
To: eric.smart@bolansmart.com; Joshua W. Montague
Date: 11/3/2008 12:39:37 PM
Subject: Wed a.m. meeting

I received your e-mail. Wed. a.m. about 10 would be good to get together. I have an 11 a.m. Joel just forwarded me a voice mail from FTA, to whom we asked a question about how far one could write down land per FTA policy, if any. This gist of the message:
1. Consult your attorney to see if we can accept a changed offer reflecting affordable housing without resoliciting.
2. If we can accept a changed offer, the present value cannot be lower than that of the next highest bidder, notwithstanding that that developer had no affordable housing.
3. If we decide to resolicit, we would have to get a new appraisal which aoppraisal could take into account an affordable housing requirement.

Obviously point 2 constrains any analysis that you might be doing. I will need to discuss it with Joel.

CC: Joel R. Washington

From: Rosalyn Doggett
To: Joshua W. Montague
Date: 10/17/2008 11:04:36 AM
Subject: Fwd: Re: Florida Avenue

>>> Rosalyn Doggett 10/16/2008 2:15 PM >>>
Eric, thank you for the analysis which Joel and I used in speaking with Omar Karim of Banneker.

We have concluded, and Nat agrees with us, that reducing the rent beyond land value for "affordable" units is really a Board policy matter and that we should show implications of writedowns at various percentages of affordability (maybe only 10% or 20%) at different income levels maybe 30, 50, 60, 80 % AMI.

I asked Omar to send us his model, and he agreed. I would like to get together with you, go over his base development assumptions and see if we agree and then have you do some sensitivity analysis. We have scheduled a meeting with Omar for Thursday at 11 a.m.

It appears that some of our Board may think that WMATA should write down the entire gap. We would like to have the Board take up this issue (as to what their policy would be) in December.

Assuming Omar sends his model (and it is usable) by tomorrow, would you have time Monday afternoon or Tuesday morning to get together? Maybe we can do it by phone. I'd have to wait to see what he sends.

>>> <eric.smart@bolansmart.com> 10/15/2008 2:30 PM >>>
To: Roz
Re: Florida Ave revised proposal

Three summary comments per yesterday's discussion:

1) Do not see why developer should get a LEEDS related credit when overall project cost is the same per square foot between the two presented scenarios.

2) Obviously the recently submitted developer comparisons do not permit easy comparison to the proforma data relied upon as part of the initial developer designation. Without clarification of many changed items it would not seem there is a basis provided to change the deal structure, at least as it relates to the assumptions presented at the time of the preliminary award.

3) Focusing on the 20% affordable housing component alone, we make the following observations:

a) The developer's willingness to increase the ground rent structure by $97,000 earlier in 2008 suggests, at least at some level, that they valued the cost of providing 10 affordables at approximately 60% AMI in the range of $10,000 per unit per year. Employing a 6.0% cap rate would value the waived affordable subsidy in the range of $165,000 per unit, no out of line with what an independent analysis would likely substantiate.

b) Unfortunately the above ratios cannot be applied as a constant when increasing the percentage of affordables, since at 20% vs. 10% there are fewer market units per affordable to help offset the extra costs. The

simple math on this suggests that if there are 11.11% fewer market units to be built relative to the number of affordables there is an additional proportional developer cost needed to offset the extra affordable on the order of $11,250 per unit ($10,000 x 9/8).

c) The drop of proforma affordables rent from $1.50 to $1.20 per FAR appears to pretty much conform with going from a 60% AMI income to a 50% AMI, assuming the affordable units' apt sizes average 95% of the market units (per DC standard requirements). This 20% drop in rents, other things being constant, would increase the relative cost of the affordables to the developer by 20%, or $13,500 per unit compared with the initial $10,000 cost per unit ($11,250 x (($1.50-$1.20)/$1.50)).

d) Figure that if you allow for a discount for the 29 affordables totaling $391,500 ($13,500 x 29 units), you will gross up the overall rent structure to include the additional 43,338 FAR (178,752 gsf - 135,414 gsf) valued at $60 per FAR per the term sheet equaling $130,014 per year ($2,600,280 x .5.0%), or a total of $727,014 ($597,000 + $130,014), then perhaps offer to discount $391,500 as a recognized credit for the affordables, netting out at a base year ground rent of $355,514 (all else being held the same). This is probably much more than you were thinking of conceding, so you can simplify based on whatever starting point you wish.

Perhaps you can begin by simply saying, as I thought you were saying yesterday, that you will credit them 20% on the grossed up land rent, or $581,600 ($727,014 x 80%), then maybe work down to a more comprehensive number. For what it is worth, if need be we think you could fall back on the kind of basic analysis outlined above.

Eric

On Fri, 10 Oct 2008 4:13:14 -0500 (EST), "Rosalyn Doggett" <rdoggett@wmata.com> wrote:
> I have sent you a barrage of e-mails and don't even know if you are around.
> I would like to talk to you about FL Ave on Tues. Essentially, this
> developer is attempting to renege on a number of bases. Only a correction
> for actual affordable housing makes sense to me. He is claiming he had 10%
> work force only in his prior pro formas which you have and I will attempt to
> look at this weekend along with 3 other work assignments!
>
>
>
--
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: Rosalyn Doggett
To: Joshua W. Montague
Date: 10/10/2008 10:25:48 AM
Subject: Fwd: Follow-up re: LEED Certification and Affordability Impact on Florida Avenue Project

>>> "Omar A. Karim" <okarim@bannekerventures.com> 10/2/2008 7:08 PM >>>
Ms. Doggett,

As a follow-up to our meeting last Friday, attached please find an updated analysis of the impact of the LEED certification and affordable unit inclusion on the Jazz @ Florida Avenue project. In sum, based on the LEED and affordable requirements imposed on the project, to keep us in the same financial situation that we were in prior to these impositions, the following changes would have to be made:

- Project would increase from 4.5 FAR to 6.0 FAR w/ no impact to any payments to WMATA
- Affordable Units: Increase from 0% affordable units to 20% affordable at 50% AMI
- Rents: Decrease from $3/SF to $2.70/SF (market rate) and $1.20/SF (affordable units)
- LEED Certification: 2.5% of hard costs which is $959k reduction in available proceeds
- WMATA Share of Profit upon sale of Project: Decrease from 10% to 0% of potential profit
- Annual Lease Payment: Decrease from $597k/year to $205k/year
- Security Deposit: Decrease from $250k to $50k
- Pre-Lease Payment: Decrease from $345k to $100k

We would like to schedule a follow-up meeting next week to discuss these impacts. Also, when should we expect to receive drafts of the JDA and lease?

Looking forward to speaking with you soon.

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

From: Rosalyn Doggett
To: Joshua W. Montague
Date: 10/24/2008 10:36:26 AM
Subject: Fwd: FTA Affordable Housing Questions

>>> Rosalyn Doggett 10/23/2008 5:53 PM >>>
Does the writeup below make sense?

Affordable Housing Issues for Consideration

The Florida Avenue joint developer (Banneker)
is essentially asking WMATA to write down the cost of affordable housing by reducing rent as greatly as possible, including rent from market rate housing and retail, based on a residual land value analysis. The residual land value analysis takes into account income from rents , etc., expenses, assumptions on reasonable investment costs and returns and assesses what is left over to pay a ground lease. WMATA would like a reading from FTA as to what would be acceptable.

- Is it acceptable to write the cost of housing down beyond the land value (and resultant rent) assigned to the affordable housing?

In the past our appraisers have deemed affordable housing (as defined by each local jurisdiction) to have 0% or a somewhat higher percentage of land value. FTA has accepted these appraisals. Further, these appraisals were based on legislative requirements of local jurisdictions which have ranged from 8% to 15% of housing units constructed at the local definition of affordable. In the case of the District of Columbia, there is presently no legislative or regulatory requirement; however, in going through a process of getting Planned Unit Development approvals for higher density, it is likely that the developer would be required to have a percentage of affordable housing as a condition of approval.

- If it is acceptable, what should the parameters be?

It is understood that the value could not dip below appraised value, but is there another benchmark above that?

• Staff Meeting • 11/5/08

• DD

Research → Material Change 11/7/08

AmJur: Municipal Corporations
- N/A

MacQuillan
- Ch. 29: Contracts
  - 29.64 Change of Specs (invalidate bidding)
    - x 160 MD 660
    - x 444 NE 2d 414
    - x 440 SW 2d 864
    - x 57 Wash 645
    - x 256 Ga 175
  - 29.65 Conformity of Bid to Advertisement
    - 126 MD 606
    - 89 Minn 48
    - 74 A 672
    - 174 NE 363
    - 53 Cal Rptr 2d 389
    - 680 NE 2d 937
    - 59 A 2d 386
- Due Process

WMATA Joint Development for Shaw-Howard/Florida Avenue Sites

Material Change to Approved Term Sheet

SUMMARY:

The WMATA Board approved the Florida Avenue Term Sheet during the Meeting of the WMATA Board of Directors on June 26, 2008. The Board's approval stipulated that: 1) the final agreement must include an affordable housing component and 2) that WMATA staff must provide documentation to the Board clarifying the roles and responsibilities of the members of the development team.

The affordable housing requirement has caused negotiation problems due to the undefined nature of the requirement. The WMATA Board clearly said that an affordable housing component is required, but never indicated *what type* or *how much* affordable housing is required. The Developer now claims that it must severely re-arrange its income stream to accommodate an affordable housing component that was not a part of the original solicitation. This has caused the Developer to greatly reduce its offered consideration to WMATA.

The roles and responsibilities of the members of the development team have also become muddled in the Developer's negotiation of the Joint Development Agreement and the Lease. The Developer has removed all references to District Development Group, LLC and Metropolis Development Company, LLC in these documents and replaced them with blank lines.

ISSUE:

Can the Developer's above-described reduction of consideration and/or replacement of development team members be considered a material change to the approved Term Sheet, which would require re-solicitation or board approval?

Are the new proposed terms so different from the approved Term Sheet that the due process rights of the other Developer/Offerors have been violated?

JOINT DEVELOPMENT POLICIES/GUIDELINES:

Nothing in the WMATA Joint Development Policies and Guidelines (the "JDPG") specifically addresses these issues. Nonetheless, there are a number of sections that may be relevant.

The JDPG does not directly address the question as to how much an approved developer can alter its consideration offer, whether due to an affordable housing requirement or otherwise. But, it does indirectly address the requirement of revenues generated to WMATA from the joint development program in the following sections:

FOIA CONFIDENTIAL TREATMENT REQUESTED

- Section 1.0, states that one of the joint development project goals is to generate long-term revenues for WMATA;
- 13.0 FTA Requirements

The JDPG does not discuss material changes to the terms of a term sheet after Board approval. But, it does discuss the procedures to follow when there are material changes in other WMATA offers, as discussed below:

- Section 7.6.1 addresses Material Changes during the RFP process. This sections states that material changes after receipt of proposals will require WMATA to inform all developers who submitted proposals of the material change and then afford said developers the opportunity to amend their proposals accordingly.
- Section 7.10 indicates that *significant new terms* and *material changes* from the terms of the approved term sheet may be included on the final JDA submitted for Board approval.

The JDPG does not directly address the question as to how much an approved developer can alter its consideration offer, whether due to an affordable housing requirement or otherwise. But, it does indirectly address the requirement of revenues generated to WMATA from the joint development program in the following sections:

- Section 1.1.1 Goals, states that the Board will give priority to transit agency goals, such as affordable housing. The JDPG limits this goal, however, to Board adoption of policy governing the application of this goal. *Q - has this happened?*

FTA:

A Federal Register notice (72 FR 5788, Feb. 7, 2007) provides FTA/DOT guidance describing the eligibility of joint development improvements under Federal transit law (49 U.S.C. 5302 et. seq.). The FR notice states the following:

- 49 U.S.C. 5302(a)(1)(G) establishes the following criteria for determining whether a joint development improvement is eligible for funding pursuant to a program established under Federal transit law. The public transportation improvement must:
    - Enhance economic development or incorporate private investment;
    - Enhance the effectiveness of a public transportation project and relate physically or functionally to that public transportation project; and
    - *Provide a fair share of revenue for public transportation that will be used for public transportation.*

CASE LAW:

- Sec. Deposit must be kept in Interest Bearing Acct
- Small Claims Court

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009486

From: Rosalyn Doggett
To: eric.smart@bolansmart.com; Joshua W. Montague
Date: 11/3/2008 12:39:37 PM
Subject: Wed a.m. meeting

I received your e-mail. Wed. a.m. about 10 would be good to get together. I have an 11 a.m. Joel just forwarded me a voice mail from FTA, to whom we asked a question about how far one could write down land per FTA policy, if any. This gist of the message:
1. Consult your attorney to see if we can accept a changed offer reflecting affordable housing without resoliciting.
2. If we can accept a changed offer, the present value cannot be lower than that of the next highest bidder, notwithstanding that that developer had no affordable housing.
3. If we decide to resolicit, we would have to get a new appraisal which aoppraisal could take into account an affordable housing requirement.

Obviously point 2 constrains any analysis that you might be doing. I will need to discuss it with Joel.

CC: Joel R. Washington

FL Ave - meet w/ Bruce 11/14 2:14

- FL Ave Docs → Policy Concerns
  - How Do Developer changes affect/Coincide w/ WMATA policy
    - Commercially Reasonable → limit to Developer
      - WMATA not doing anything
    - Change of Control → make consistent w/ TS & Board Approval
      - Since identity of Developer in WMATA's Control or under Supervision
    - Unconditional Approvals → keep unconditional
      - Tunnel
      - Vent
      - Standards WMATA in Adjacent Construction Manual
    - Project minimums → why Remove?
      - Dwelling units is TOD
      - might affect FTA approval
      - How does this Affect Rent?
    - Personal Services Contract
      - Assignment issue
        - we are in Deal for you (picasso)
      - Does this matter if there is a non-assign Clause
      - * - COK

- Confidentiality -
  - need to protect Competitive Advantage (ex. price)
  - Information about System → someone who wanted to Do harm to the Rail System/infrastructure (ex. Soil info)
  - what Do they Care PARP → Critical infrast. Info

- Applicable to Entire Property
  - Re-zoning → necessary? ASK ROZ
  - Last Sentence → Retain rights on unconditional Approvals

- Submission Delays:
  - morgan Blvd. → Finite Deadline → Terminated (Ask Kermit)
  - Greenbelt → Finite Deadline

- WMATA taking over approvals upon termination
  - Not in TS
  - * - COK (After DLA Explanation)
    - Business Decision
    - might be more pertinent where have Replacement Facilities

- Progress oversight
  - Can't Remove this And Deadlines
  - Ask Kermit about Greenbelt
  - intermediate Deadlines can be difficult, but may be necessary
  - One way to ensure don't tie up property forever w/o making progress

Florida Ave (cont.) 11/14

Lease

- Impositions:
  - * - Split of Taxes (7.6) is a deal breaker
    - We Do not pay taxes
    - SE Bus Garage → MEB: Buyer pays 100% of Transfer Tax
    - Tenant is not tax-exempt
    - why does Tenant want?
      - in Definition → Trying to trade out
      - 7.6 acknowledge exempt, but WMATA will pay 1/2

- Sublease → Business Decision: ROZ
  - Ethics Requirements came After

- Environ Indems
  - Reps/warranty limit to prior to Study period
  - Adjacent Property
  - Look up Cercla/Nuisance
  - Could be a Deal breaker

Environ Reps: - Jim Ashe - 1745

700 Block of 7th St.

- Date of acquisition →
  - May have acquired prior to many Environ Statutes being enacted
- Property in historic District — J.A will send link

Meeting on FL Ave 11/18

- Roz / Josh
- Eric Smart
- Omar Karim + inhouse Counsel
- Joanne FTA

- Issue A/H
  - FTA - offer cannot go under NPV of next highest bidder
  - ES presented his modified figures as a hurdle point
  - DC may waive Comparable Size Req'mt b/w aff. & market units to a certain extent
- NPV
  - Rent has the biggest Impact
  - Can't quantify Contingent Participation, but can quantify escalation
- Marked up Lease / JDA → Shoot for Monday 11/24 or Tues AM 9:00

From: James A. Ashe
To: LeLacheur, Joan; Montague, Joshua W.
Date: 11/20/2008 3:56:37 PM
Subject: Re: Florida Avenue

Josh,

I agree that there is potential for chemical grout on parcels above the tunnel and those near the fan shaft.

Plans for this segment date to 1984 indicating that the segment was constructed before Ph Is were routine.

I have some additional material for you to review. Please let me know when you are available.

Jim

>>> Joan LeLacheur 11/19/2008 3:37 PM >>>
I am not aware of nor do we have records of any environmental concerns at that location. It appears it was utilized during construction of the station. The only potential concern might be the presence of chemical grout used in construction but Jim Ashe would have to verify.

>>> Joshua W. Montague 11/19/08 10:12 AM >>>
Hi Joan,

I don't have street addresses for the property. The property is located at the intersection of 8th Street and Florida Ave, NW and 9th Street and Florida Ave, NW in Washington, DC

Here are the square/lots:

Parcel 1: Square 393, Lot 44 (approx 3,799 SF);

Parcel 2: Square 393, Lot 45 (approx 8,621 SF);

Parcel 3: Square 416, Lots 18 and 31 (approx 16,452 SF);

Let me know if you need more info. Thanks!

Josh

>>> Joan LeLacheur 11/19/2008 10:01 AM >>>
Josh-

Jim has records such as environmental impact assessments or statements related to the development and construction of the system. I would have records after operation begins. I just need the address for the property.

>>> James A. Ashe 11/19/08 9:55 AM >>>
Josh,

Until I get the dates of acquisition, I have exhausted my search of data. As I mentioned, I believe the parcels were acquired in the very early stages of the system, but would like to get that information confirmed.

I am NOT working on issues related to activity since the parcel was purchased. Joan LeLacheur is a better source for that information. She will need Square and Lot no. as well as addresses.

Jim

>>> Joshua W. Montague 11/19/2008 9:13 AM >>>
Hi Jim,

I understand that you will be looking at the environmental information (if any) that WMATA gathered at the purchase of these parcels.

Are you also looking for any records (or lack thereof) of environmental issues/conditions that might have been produced between purchase and today?

I am pretty sure that you are, but thought I should double check with you since we never specifically discussed it. I have to make a representation as to our knowledge of any environmental conditions on the property in the final agreement.

Thanks!

Josh

CC: Robinson, Thomas

Florida Ave 11/24/08

- Meet w/ Carol
  - Under no circumstanies are we to give lower bid info.

Roz Comments

- WMATA "Customary" = As is, where is

Florida Ave 11/26/08

- Meet w/ Roz to Discuss 11/26/08 Blackline by Jim

JDA

- 1.1.13 → NJ Ave

  other Recent Examples - Twinbrook
  - Arlington Bus Garage
  Rhode Island Ave

- 1.1.86 - Tunnel
  Vent
- 3.1.6 - why does it matter?
  - Shall Cause → Change
- 7.6.3 - Approved = wmata Approved and then Zoning approval
  - wmata approved again if changed during Approval by ZC
- 11.9.1.1 - 30 Days
  - Check w/ Kermit on Greenbelt
- 12.1 - Developer & GC → Kermit
  - Look at NJ Ave
  - Subs have to be covered per Sharrone/Kim
- 14.2.2 - is JDA still Relevant

Lease

- 1.1.17 → is this from another agreement?
  - Twinbrook, RI Ave? Twinbrook
- 9.1.4 - indemnify → go to BOD
- 17.1 - Syndicate
- 19.3 - How can we Default? What happens?
- 21.4 - $100K & ~~R~~ Stet time
- 27 - Fix Appraisal language · Arlington Bus garage

Florida Avenue – Document comparisons

JDA	Term Sheet	WMATA draft	Developer's counter JDA
Developer	Banneker, District Development, Metropolis *Q - Did WMATA Board rely on presence of District and/or Metropolis in its approval?*	Banneker, District Development, Metropolis	Banneker and _____
Project	Single phase, including minimum: Gross FAR: 130,014 sf Units: 104 Retail: 11,750 sf Parking: 47 spaces	Single phase, including minimum: Gross FAR: 130,014 sf Units: 104 Retail: 11,750 sf Parking: 47 spaces	Removed all numbers and replaced with blanks. Removed reference to building in a single phase.
Improvements	No mention of ownership or purchase of improvements.	Developer owns all improvements but ownership rights automatically transfer to WMATA at end of Lease.	Upon ending of Lease, WMATA must purchase improvements from Developer at FMV
Pre-stabilization period	Stabilization or 45 months	Stabilization or 45 months	Stabilization or 61 months
Lease closing	On or before 20 months	On or before 20 months	On or before 29 months
Pre-stabilization period payments	*Note: paragraph 7.8 appears to have a typo in reference to payments during extensions of pre-stabilization period due to WMATA delay.*	Payments are due from effective date of JDA to Stabilization (at which time rent payments begin)	Pre-stabilization period shall be extended on a day-for-day basis for WMATA caused delays (including FTA approval), however no pre-stabilization payments or rent shall be due during said delay extension
Deposit	Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer	Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer	Upon receipt of $50,000 deposit, WMATA returns $100,000 proposal security to developer
Completion Bond (for replacement of Metro facilities)	Not mentioned (only have performance and payment)	120% of replacement costs	100%

FOIA CONFIDENTIAL TREATMENT REQUESTED

Florida Avenue – Document comparisons

JDA	Term Sheet	WMATA draft	Developer's counter JDA
Insurance	*Q – what is WMATA policy on this?*	Everybody: Developer, contractor, subcontractor, etc.	Developer or contractor, as applicable
FTA Approval	WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; JDA will include appropriate termination provisions in the case FTA denies approval	WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; Said agreement is automatically terminated if FTA denies approval and all appeals are exhausted.	WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; WMATA has 60 days to secure FTA approval; If FTA denies approval, WMATA shall pay developer $300,000 as compensation for Developer's costs incurred with due diligence and negotiation of Agreement.
Change of control	Section 1.2 states that WMATA consent is needed to: 1) include other parties in the Developer (except for equity finance partners) and 2) assign or sell Developer's interest in the Project or the Improvements.	Prior to Final Completion – no change of control; After Final Completion – only change of control upon WMATA approval.	Prior to Final Completion – no change of control; After Final Completion – Developer can change control freely.

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

Florida Avenue – Document comparisons

LEASE	Term Sheet	WMATA draft	Developer's counter Lease
Developer	See JDA	See JDA	See JDA
Guarantor	Requires guarantor for "remediation of all hazardous materials as required by the Definitive Agreement or by applicable law…and the timely payment and performance of all Developer obligations under the Definitive Agreement." *Q – was guaranty contemplated to be for lease also?*	Required guarantor with net worth exceeding 3 times value of project	Removed guarantor requirement
Term	60 year lease	60-year lease	60-year lease with a 39-year option to extend
Stabilization	TBD in JDA	90% occupancy	95% occupancy
Base Rent	$597,000 in quarterly payments	$597,000 in quarterly payments	$150,000 in monthly payments
Escalation (Years 1 to 10)	1.5% increase *(note: may have been typo on term sheet)*	1.5% increase	1.5% increase
Escalation (Years 11 to end)	3% increase	3% increase	1.03% increase *(this is likely related to typo mentioned above)*
Periodic Rent Revaluation	Upon Capital Event or every 10 years	Upon Capital Event or every 10 years	Removed entirely.
Capital Event Participation	10% of gross income from Capital Event	10% of gross income from Capital Event	Removed entirely.
Density Adjustment Rent	Add to base rent based on formula in Section 7.11 of term sheet.	Add to base rent based on formula in Section 7.11 of term sheet.	Removed entirely.
Late Charge	TBD in JDA	20% of delinquent amount	3% of delinquent amount
Default interest rate	Not mentioned.	15% or 10% over prime (whichever is higher)	3%

WMATA-INV 009498

Florida Avenue – Document comparisons

LEASE	Term Sheet	WMATA draft	Developer's counter JDA
Right to assign Lease	Section 1.2 states that Developer's interest in the Project or the Improvements may not be assigned or sold without the written consent of WMATA.	Not assignable prior to Final Completion; only assignable upon WMATA consent after Final Completion	Prior to Substantial Completion: assignable without WMATA consent if to a "Qualified Assignee"; otherwise is assignable only upon WMATA consent After Substantial Completion: assignable w/o WMATA consent Assignment restrictions do not apply to leasehold mortgage remedies.
Right of First Offer	N/A; *Q – was this mentioned in negotiations? What is normal consideration to WMATA for this right?*	N/A	Must first offer to Developer if wish to sell/transfer property.
Environ Condition	Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS	Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS	If during construction, Developer discovers "catastrophic environ conditions", then Developer may terminate Lease
Insurance	See JDA	See JDA	See JDA

FOIA CONFIDENTIAL TREATMENT REQUESTED

Florida Ave. 12/2/08

- Meet w/ Bruce + Carol to go over changes to JDA + Lease drafts of 12/1/08
-

JD - Assemblage → not Contemplated
→ Rejected
• Timeline issue
• our project
• Default / termination
- Project Concept Plan → Tariq: OK to Remove?
- 30 Day Review → Tariq
- Confidentiality → why?
- Public Hearing - if vent Shaft moved, would need
- 7.6.1 - nothing changes on Tunnel / vent
- if Something changes → WMATA hearing
- 7.8/9 - Developer's Obligations →
- 9.1.1.8 - on this Property
- 9.8.2.1 - LLC
- 14.2.2 - After Final Completion → Lease

Lease 7.6 → we Do pay other Impositions (Ex. Sewage)

10 - Developer + Subtenant
- Construction - JD

Gen Law Meeting 12/2/08

Albert

- Metropolis - must Replace w/ Competent partner
- Write down land value for Aff units only
  - Gap - Neil doesn't have $ to fund
    - is Dev's problem
- Adj Prop - Not adverse to
- Eneka - Impact of site on Transit Impact Fund
  - Analyze
- Neil - 99 yrs

Q → FTA Reg

Florida Ave 12/12/08

Meeting w/ Developer, SAAM, Eric Smark
Tiwana, Roz Doggett

- Changes to Pro Forma
- Offer $150,000 Rent
  - WMATA is Subsidizing market/AH
  - WMATA willing to writedown AH → cover totally
  - - what is % of AH (free) units 20 or 30?
  - Roz Suggesting tax Abatement
    - wmata get market Rate
    - DC gives tax abatement
- Omar → DC won't give tax Abatement to give $ to WMATA
- Roz Suggests also trying numbers w/ all AH units in One building
  - OK → AH buildings don't go up w/o Subsidy
- OK → WMATA Should write down 20%
- Question of whether writing down AH units or Land
  - OK wants Cost of Construction
  - WMATA wants land value

Florida Ave. 12/12/08

- RE Tax - Total $330,000
  AH units - $1,000 per unit > Could make up X

- Additional Density
  - 4.5 or 6.0

- E. Smart → if Removed AH, would OK make $600,000 based on Current numbers?
  - no

- Additional Lots under Contract
  - Subject to 20% →

- Units - why 950 SF instead of 800 SF
  - want families

- Major issue → write down land value or Cost of Construction

- what would be Comfortable accepting
  - WMATA take 20% off lease payment
  - Dev → I Can't get there

- Q-what if write down Construction to % Return
  - not getting nothing for AH

FL. Ave (3) 12/12/08

- OK → neil Albert did not Agree to Reducing land value by 20%

- RD → we ARE trying to meet a city goal? then the city has to be in the game

- WMATA has written down land value in past & has worked
  - OK → But was probably part of offer

- JW → if you had known AH upfront would $150k have been your offer?
  - OK - Don't know what would have done?

- RD → willing to Consider Removing Add'l Density Rent
  - Raise to 6.0 FAR

- Changing 950SF to lesser → increase income by over $100,000 (E/S)

From: Sharrone Scott
To: Montague, Joshua W.
Date: 12/15/2008 8:05:30 AM
Subject: Re: Shaw-Howard / Florida Avenue - Insurance requirements

Hello Joshua,

What is the Adjacent Construction number for this file?

Per your request the insurance requirements for Shaw-Howard/Florida Avenue are listed below.

Pre-Construction Period

Worker's Compensation $1 million each occurrence / $1 million disease policy limit / $1 million disease each employee
Automobile Liability $1 million
Commercial General Liability $1 million each occurrence / $2 million per project aggregate
Contractor's Pollution Liability $3 million each occurrence / $3 million per project aggregate

Construction Period

Worker's Compensation - same as above
Automobile Liability - same as above
Commercial General Liability - $2 million each occurrence / $5 million per project aggregate
Railroad Protective Liability - $5 million combined single limit / $10 million aggregate
Contractor's Pollution Liability - $3 million per occurrence / $3 million per project aggregate
'All Risks' Property'
Builder's Risk

Post Construction

Commercial General Liability - $2 million each occurrence / $2 million per project aggregate
'All Risks' Property

Sharrone M. Scott
Insurance Technician
System Safety & Risk Management
Washington Metropolitan Area Transit Authority
(202) 962-1236
Fax 202-962-1171
sscott@wmata.com

>>> Joshua W. Montague 11/12/08 5:26 PM >>>
Hi Sharrone,

I am trying to find out the proper insurance requirements to include for another project.

I have attached a copy of the drafts of the lease and joint development agreements. I have also included an insurance issue list.

Please let me know what you think.

Thanks!!

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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CC: Brown, Kim

1.) Omar Karim
Banneker Ventures, LLC
700 12th Street, NW, Suite 700
Washington, DC 20005
202-667-4110 or 301-523-1810

2.) Project - minimums from JDA

3.) Duration
- pre-Dev 20 mos.
- Dev. 25 mos.
- Lease 60 years

4.) Term Sheet Approved in July 2008

From: LaShawn L. Bost
To: Bushnaq, Tariq; Montague, Joshua W.
Date: 1/13/2009 4:14:29 PM
Subject: Re: Florida Avenue Prjoect Info

The Project Control Number (PCN) for this Florida Avenue project will be **250917**.

Florida Avenue 2/11/09

SAAM
- Developer meeting w/ BOD member → Tiff
- Developer meeting w/ CAO → Negotiating

AH Zoning
- Art Rogers
  - prob publish in Feb 09 in DC Register
  - Triggering point 60 Days
  - DHCD administers program
  - Holding Zoning Regs off from publishing until Administrative Regs are published

• Meet w/ Bruce & Carol

- AH: Can we impose AH outside of Govt Regulations
  - How does this effect FMV Requirement of FTA
- Compact → Section 3 (WMATA mission)
  Section 4
- FTA → improper lowering of Values
- ✱ - Jurisdiction Survey of AH
- ✱ - Skews Competitive bidding
- Transit purpose → lower income Residents are more Dependent upon Mass Transit
- ✱ - what is NPV of $300,000?
- After the Fact
- Comparing the offers
  → NPV
- ✱ - What was each offer purpose
- ✱ - What was modest amount of AH → include in Negotiations

Florida Avenue

3/17/09

- Joel — Omar Karim — Duane Oates (Banneker)
  Roz — Timanna — Maurice Perry (BOA)

- BOACDC:
  - To do 1-2 projects per yr in DC
  - Right now is only MP w/ admin Asst & Support in Charlotte
  - Process:
    - Head's up memo → greenlight to do due diligence.
      → Shows interest

Q → - "looked at Survey + Phase I" → ROE?
  - Intent is to provide:
    - Pre-development Financing
    - guarantees need during Construction
    - get project to Lease/stabilization/Permanent Loan Closing

- Project:

Q → - WMATA parcels → will building traverse lots?

- Maurice Construction mgmt experience
  - Runs numbers but also oversees Construction
  - managed at CDC
    - Victory Square / Parkside → future projects
    - Cedar Heights Re-Development

- Construction Managers
  - Duane heads Construction mgmt for Banneker

- Also intend to bring in CM firm.
  - want Someone who has worked over tunnels
  - BOACDC → ~~[illegible]~~ utilize experience of partners, but is mgmnt member
    - CM Reports to BOACDC

- JW: BOD was Comfortable w/ Metropolis
  - MP: CM will provide this Comfort

- Duane: Can provide experience working w/ Metro

- MP: will bring in 3rd party to test Construction, Concrete, etc.

- Checklist of Documentation needed from JDS
  - for all partners (Ex. Financials, good standing, etc.)
  - what was provided from Metropolis

- MP → never did Housing Finance Agency in DC

- JW – BOD did not give an Extension
- OK – Emeka gave email this morning Saying we have an Extension

- Smallest parcel will have building which traverses WMATA & NON-WMATA Lots
  - RD asked for Agreements on Adjacents
  - OK Reluctant to give

Florida Avenue 3/17/09

A/H - How will we finance the gap?
- wmata needs credible sources & uses of funds
- LOI → ok for now
- DC has said they will not put any $ in project

ok: - if we had the $300,000 lease payment, the city may be willing to provide help to cover gap.
- why does city base on Rent Amount?
- where did this come from?

- MP: want enough time to go through City process
- Don't want to have to provide letter of intent until have Site Control (JDA/Lease)
- Put LOI in Condition in JDA

Florida Avenue - 3/20/09

- → Meeting w/ Roselyn

JDA
- Improvements
  - WMATA never does
- Stabilization - 48
  Lease Closing - 20 mos (even w/ Alley Closing)
- Deposit $250k is Standard
  -
- Completion Bond → N/A
  - dual obligee on Payment & Performance
- Insurance
  - Contractor → Bifurcate b/w JD & Lease
    - Dunn Loring
  - ✗ - Go over w/ Rosalyn
- Change of Control (after Completion) Criteria
  - Experience (management)
  - Resources ($)
  - ✓ — - Look at PG Plaza & Twinbrook
    - Residential lease
    - Ask Around

Lease
- BOA - Completion Guarantee
- Lease Term → where else have 60 yrs

- Default % in Twinbrook & PG Plaza
- Less AH = more Rent (Right now is 18 units

3/20/09

- will provide overhead Costs to E. Smart to make Sure not taking Costs on Adjacent Lots and pushing to WMATA

FL Ave 3/25/09

- Tele conf w/ Roz + E. Smart

- E/s → Shading towards Market

  #5 → A/H units → Cause 3-4 million Deficit
  - How to make up Deficit
    - Raise LL mkt Rent
    - Lower WMATA Rent Received

- NOI
  - BOA - 17% on preferred basis
    - Excessive → NO
    - As Int Rate

- WMATA - 12%

- A/H → only have to be Affordable for 1st 15 yrs

* * - O/K - under HUD, Cannot have a fixed escalator each year

* * - Research other projects from previous meeting

FL Ave Meeting 3/25/09

R. Doggett Omar
E. Smart Maurice
Joel W. Tiwanna

- Gross Income
  - Effective Gross Income
  - Adjusted Gross Income

- LIHTC - Either 4% or 9%
  ProForma has 4%

- New AMI - $102,700
  - Works out to $1.25/SF on A/H units

- 221(D)(4) Rules (Hud)
  - "Not an income program" - m/p
    - Can be used for mkt units
    - A/H will be driven by Tax Credits & Bonds
  - 40yr loan
- Time limit → DC Requires A/H for life of project
  - FHA typically saw DC Require 30yrs
  - Bond Regs typically 15 yrs.

~~**~~ - include provisions where by A/H units go to market ~~**~~
  - Re-Set Rent at market Rate

- why do improvements Revert
  - Transit-Oriented Development

3/25/09

- O/K will Research Leases w/ Building that goes over WMATA and non-WMATA lot

- Speculative income
  - 9.75% of Effective Gross Income
    - HUD Does not allow a fixed escalation (O/K)
    - But will allow a % of Effective Income

  - O/K - Compares to WMATA Mosaic project
    - R/D → paid 2/3 of Rent up front
    - Ellington was 221 (but was sale)
  - E/S Suggestion
    - Fixed piece as long as above Speculative
    - Re-set after Spec Inc increases

  - O/K Suggestion - Base Rent plus % EGI
    - Lower (Ex. 2%)
  - E/S → Still not ~~enough~~ enough guarantee of Fixed income for BOD

  - M/P - what is number we are trying to get to?
    - E/S it used to be 12 million

- Uses → General & Administrative
  - M/P: these numbers are subject to change
  - O/K: we are at 6% of total Dev Costs, where it is normally 10% (asked why went from 4.5 to 6%)

3/25/09

→ - Chart Review

- Pre-Stabilization
  - why so long?
    - 18 mos pre-Construction
    - 18 mos Construction
    - 18 mos lease up
  - will have motivation due to loan/Bond issues for project to get moving
  - R/D → payments need to go up
    - Need at least $80,000/yr
  - O/K propose meet at 57 mos.

- Deposit
  - Return w/in 5 Business Days (or 6)

- Insurance
  - who needs when
  - Dunn Loring & Twinbrook Phase I
  - Kim Brown

- Change of Control
  - After Completion → Change "freely" w/in Certain Criteria
  - m/p will have 3d party mgmt of property
  - - needs BOA to be able to exit deal w/o Restrictions
  - Other C of C Clauses → Twinbrook

- Lease
  - Guarantee
    - over & Above → per Approved Specs
      - not any add-ons
  - Term - 75 yr lease b/c of HUD
    - O/K : • Hud minimum Req't
      • Market
    - why 60 vs. 75?
      - J/W → 60 + 15 option @ market?
- Stabilization - is occupancy Economic or physical
  - needs to be defined
  - Residential and Retail?
- Terms

other projects
- Rhode Island - 60 yrs
  Could be FHA finance
- Dunn Loring - 20yrs + (4) 10 yr Extensions

- what are they giving us for extra 15 yrs?
- Why not 60 + 15yr option? - J/W
  - O/K: will Check
- Stabilization -
  - 95% occ. is like 90% when Consider Concessions and bad Debt
  - will ultimately ~~[illegible]~~ Rest on outside mos. (57)

3/25/09

- Stabilization under HUD
  - 60 Day Cost
  - not triggered by occ

> ok

- Occupancy - Physical
  - Based on lease Signing?
    Commencement?
    Physical Presence?
  - 92.5% on Residential
  - Leave Commercial out of Definition

- Does HUD 221 Allow Escalations?
  - Escalations are industry Standard

- Timetable
  - Cmte ~~Sta~~ 4/9

- Project total: 125,000 SF
- Project - WMATA portion is on pro Forma

- Pre-Construction
  - Want to Close Alley
  - HPRB
  - Adjacent Lots

Florida Avenue 3/30/09

- Omar Karim 202-667-4110

  - Bruce (Pre-phone call Discussion)
    - COK Said "NO"
    - Rules of JD Solicitation

- 3:45 pm - LM w/ Receptionist

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

○Action ◉Information	MEAD Number:	Resolution: ○Yes ◉No

TITLE:

Extend Agreement Negotiation Period for Shaw-FL Av

Linda asked about prev exp. of Bofa CDC

PURPOSE:

Approve a 120-day extension for negotiating a joint development agreement for the Shaw-Howard University/Florida Avenue parcels.

New Partner Bank of America CDC

DESCRIPTION:

On June 26, 2008, the Board selected a development team and approved a term sheet for the Shaw-Howard University/Florida Avenue property, which consists of three parcels totaling 28,892 sf located between 7th and 9th Streets NW in Washington, DC. The development team was composed of Banneker Ventures, LLC; District Development Group, LLC; and Metropolis Development Company, LLC. It proposed to develop a minimum of 104 housing units over ground floor retail of approximately 11,750 sf under a 60-year lease.

In its approval, the Board directed that the final agreement include an affordable housing component. It further directed staff to provide documentation to the Board clarifying the roles and responsibilities of the members of the development team.

Following term sheet and Developer approval, staff prepared a draft development agreement, which was provided to the Developer. The Developer has:

A. Requested a revised business deal reflecting the inclusion of affordable housing. The rent would be substantially reduced from that agreed to at term sheet approval.

B. Lost at least one member of the development team, Metropolis Development Company, which provided the construction and development expertise needed for the proposed project. Banneker, the lead member of the development team, has not yet provided documentation on a suitable replacement and its roles and responsibilities on the team.

C. Requested a 99-year lease instead of a 60-year lease.

The extension being requested is expected to provide enough time for resolution of the items noted above.

FUNDING IMPACT:

This action will have no immediate impact on funding although a reduction in land value for

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009521

affordable housing from that agreed to at term sheet stage will have an impact that will be presented to the Board upon negotiation of a joint development agreement. Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

RECOMMENDATION:

Approval of a 120-day extension for negotiating a ~~joint development agreement~~ Revised Term Sheet for the Shaw-Howard University/Florida Avenue parcels. A negotiated agreement will be brought to the Board for approval.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009522

Florida Ave 4/6/09

- Omar Karim called
- Replacing Letter of Credit w/ $100,000 check
  - Tiwanna will deliver
- Lease / Purchase
  - Spoke w/ Counsel
  - Issues:
    - Option to purchase Adjacent Land in case of Default

FL. Ave 4/15/09

- meeting w/ R. Doggett to go over Charts Summarizing Deal
- Compare to previous Charts
  - Anything missing?
- PG Plaza → notes from 3/25 meeting
  Courthouse
  Rhode Island Ave
- Late/Default fees
  - model lease/JDA
  - PG Plaza

Montague, Joshua W.

From: Doggett, Rosalyn
Sent: Wednesday, April 15, 2009 9:20 AM
To: Montague, Joshua W.
Subject: FW: Florida Ave Update

-----Original Message-----
From: eric.smart@bolansmart.com [mailto:eric.smart@bolansmart.com]
Sent: Tuesday, April 07, 2009 12:34 PM
To: Doggett, Rosalyn
Subject: Florida Ave Update

Roz

If you are looking at this you are back and catching up.

Talked with Omar last week, and he scheduled a conference call with Maurice any myself for yesterday, Monday April 6. I posed three questions:

1) Want to source HUD ground lease rules under Section 221(d). As background, BSA was able to get some detail directly from HUD, and had a chat with former Mid-City folks about Mosaic, none of which was conclusive. CapStar guy got on Omar's conference call and said would be sending along relevant language directly from HUD sources.

Illustrated to Omar et al that per our meeting, they could prepay the ground rent escalations in various amounts and adjust the fixed ground lease accordingly to preserve the same NPV as produced by the standing proposal for $300k escalated over the term. Omar and Maurice wished to focus instead on lowering the base rent in exchange for a prepayment, but not one explicitly tied to maintaining the NPV of the standing $300K offer. After much discussion my interpretation is that they are trying once again to reduce the obligated payments, despite my repeated refrains regarding a variety of WMATA obligations. We will see what they propose next.

3) Suggested that Roz might want BoA fees to be explained. More circular discussion lead by Omar.

At end it was left open that Omar might call me back again or will see them at your next meeting.

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 WMATA-INV 009525

FL. Ave 4/16/09

· Meeting w/: Omar, Maurice, Tiwanna, Roselyn, Eric Smart

- Chart Review
  - JDA
    - Project 92 units vs. 104 → Less units = Less Revenue
      - Can't build out to FAR
      - OK: prefer to Stick to Gross FAR → up to 4.5 FAR
        - MP: Don't want to get tied to Specific number of units
    - Phase I: will be built Continuously
      - Single Phase will be defined in JDA
    - Pre-Stabilization: 57 mos. → RD Not Sold on it
      - WMATA wants 26/18/12 or 18/18/12 = 48 or 50
      - 57 mos is long time to Stabilize project
      - MP: There are other projects Coming to market
    - Deposit → 10 BD due to WMATA procedures
    - Pre-Stab payments → have to look at w/ Rest of Rent
  - Lease:
    - Guarantor: will be BOA CDC (MP)
      - MP will not provide Separate net worth b/c Rolled up in BOA
      - Will provide guarantee Language to WMATA
  - Stabilization → Units Rented: WMATA thought was 92.5%
    - Include Commercial?

4/16/09

- Stabilization → Occupancy (92.5% of Project)
  - Rents Commencement → Occupancy Commencement, whichever is Sooner (Avoid Credits)
- AH → open item now
  - As far as WMATA is Concerned, 20% is MAX
  - MP → still thinking b/w 20/50 or 40/60
- Appraisal → if Re-Appraise, may need to Re-bid
- Late/Default → Agreed

- Rent Proposal
  - Escalation Rent → Change to pre-paid Rent
    - Take NPV of Escalation Rent over life of lease and pay as pre-paid Rent
    - E/S. $350K base w/ 1.75 milly prepaid at Stabilization
  - O/K: pay 250K plus % of AGI
    - Escalations are no longer 4%, Now is 2%
  - MP/ thought WMATA Should provide Spreadsheet Showing offer
    - wants to Reduce fixed Costs in operating costs
  - O/K → this is not the Conversation I had w/ Gary
    - E/S is Suggesting
      1.) $350K per yr
      2.) 1.75 milly upfront → NPV of Escalation
      3.) EGI participation at X yrs to cover periodic Rent Revaluation

4/16/09

- AH → How long is LIHTC Req'd?
  - 15 yrs?

- Duke Plan → what is AH Req'mt

- E/S → Do you want to back off of the Standing offer?
  - $300K fixed, 1.5% Esc. and 3% Esc.
  - m/p → only offered upfront to Reduce $300K Base not for Escalation
    - Fixed Escalation is going to be a problem For any lender
    - need time to evaluate this offer

Florida Avenue 4/30/09

The proposal made this week by Banneker will not exceed our $7.5M appraisal dated August 2007. The proposal this week from Banneker is worth $5.8 million npv. (At the time we asked the Board for an extension, Banneker's proposal was worth just over $7.5 million but they have since lowered it in consultation with BACDC.)

- It can be argued that we need a new appraisal anyway as the one we have is out of date.
- BolanSmart (BSA) contends that the offer nearly equals the appraisal and does reflect today's values if the developer's offered annual participation (3% of Effective Gross Income - EGI) is counted. BUT we have not historically counted variables, and 3% of EGI is a variable.
- In part, Banneker has changed the deal because it is contemplating FHA insurance, which will not accept rent escalations unless taken after all operating expenses are deducted. Based on our negotiations at Prince George's Plaza, I can confirm this. I believe, also, that Urban Atlantic, which is part of the same group of companies that built the housing at Pr. G. Plaza, is using similar FHA insurance for RI Avenue.

I propose that we do the following in order:

- Ask BSA to craft a proposal that meets the appraisal and present it to Banneker as a take it or leave it
- If Banneker cannot accept that deal, rebid the project at a later date

I do not think that COUN would let us reappraise the project to allow Banneker's offer, which is now lower than either LaKritz Adler or Moddie Turay, to be retained.

The other alternative, allowing variables to be counted as part of assured income, is probably not acceptable to our Board or to FTA.

FL AVE 5/26/09

Eric Smart O. Karim Tiwana Hicks
Rosalyn Doggett Maurice Perry

- Dev offer
  - Base $250K
  - Upfront → $750K
  - Re-Calibration → 1%
  - E/S still have $1 milly gap
- Base 300 to 250

- Closing the Gap
  - $300 Base, $800 pre-paid
  - need to do Something to Decrease the gap - E/S
  - Rent Commencing on 60th month

☐ ← - O/K → what is NPV based on? For WMATA benchmark
  - R/D → Cannot Disclose
  - WMATA has Right to protect its proprietary info
  - Have not asked For Re-trade due to Market Conditions (yet)

- R/D → I take it this is as far as you can go, Nail Down particulars:
  - 60 yrs
  - 54 [redacted] mos.? B/w 54 & 57 → Dev. 54% is fine
  - Rent issues
  - 3% to 1% of EGI
    - R/D → too Speculative

5/26/09

- E/S → all Considered offers have to have Some adjustment for future events

- when is upfront $ paid
  - Dev → at Closing, not at Stabilization

- EGI → Does HUD have Restrictions
  - R/D → thought it was only on Surplus cash
  - 10 yr period?
- Mosaic Deal → when did % Rent begin?
  - pre-payment
  - Speculative
  - if no Surplus after net costs, then no payment
- Dev.:
  - $250k Base
  - $800k upfront (Closing)
  - Read HUD guidelines: Percentage gross Rev
    - year 1 of Stabilization (54 mos.) Beginning of 54th month
    - 1%
  - Capital Event Participation → 10%
    - (4/28 Email)
  - Term of Lease - 60 yrs
    - R/D will get back to Dev on that
    - Rent adjustment - R/D will propose

  - Cap Event
    - takeout - Debt, member loan, Equity (Plus 20%) (10%)
      Accrued interest
      - Yield →

5/26/09

- Is there any Cap on Equity (including member loan)
  - no; shortages will be Covered by increasing member loan
  - no incentive to take out
    - might as well leave in there and let accrue 16 to 20%

- Next Step → R/D Report up and See if we are going to begin negotiating Contract

- I think that the BOD wants to Sign this ASAP

- Legal Questions
  - Cap Event in/out → need to know Financing?
  - Assign in/out
  - Adjacent Property
    - Shifting Expenses

- Financing Process of Dev.
  - BOD will ask what the Sources of funding on this project.

- Cap Event
  - E/S – Land is worth more than 10%
    - After everyone else is paid back
  - O/K → GM agreed to 10%

5/27

Florida Avenue - Economic Terms

JDA	Term Sheet	WMATA draft	Agreed Upon Terms or Status
Developer	Banneker, District Development, Metropolis	Banneker, District Development, Metropolis	**Agreed:** Banneker and BACDC
Project	Single phase, including minimum: Gross FAR: 130,014 sf Units: 104 Retail: 11,750 sf Parking: 47 spaces	Single phase, including minimum: Gross FAR: 130,014 sf Units: 104 Retail: 11,750 sf Parking: 47 spaces	**Agreed:** Single Phase Gross FAR: 130,1014 sf X (WMATA parcels only)
Improvements	No mention of ownership or purchase of improvements.	Developer owns all improvements but ownership rights automatically transfer to WMATA at end of Lease.	**Agreed:** Developer owns all improvements but ownership rights automatically transfer to WMATA at end of Lease.
Pre-stabilization period	Stabilization or 45 months	Stabilization or 45 months	**Agreed:** Stabilization or 54 months
Lease closing	On or before 20 months	On or before 20 months	**Agreed:** On or before 20 months
Pre-stabilization period payments	*Note: paragraph 7.8 appears to have a typo in reference to payments during extensions of pre-stabilization period due to WMATA delay.*	Payments are due from effective date of JDA to Stabilization (at which time rent payments begin)	**Agreed:** Payments are due from effective date of JDA to Stabilization (at which time rent payments begin)
Deposit	Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer	Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer	**Agreed:** Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer within 10 business days
Completion Bond	Not mentioned (only have performance and payment)	120% of replacement costs	**Agreed:** N/A
FTA Approval	WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; JDA will include appropriate termination provisions in the case FTA denies approval	WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; Said agreement is automatically terminated if FTA denies approval and all appeals are exhausted.	**Agreed:** WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; Termination

FOIA CONFIDENTIAL TREATMENT REQUESTED

Florida Avenue – Economic Terms

JDA	Term Sheet	WMATA draft	Agreed Upon Terms or Status
Change of control	Section 1.2 states that WMATA consent is needed to: 1) include other parties in the Developer (except for equity finance partners) and 2) assign or sell Developer's interest in the Project or the Improvements.	Prior to Final Completion – no change of control; After Final Completion – only change of control upon WMATA approval.	**Agreed:** Prior to Final Completion – no change of control; After Final Completion – Developer can change control freely among Developer members, including Tax Credit Syndicators. Do BADC + BK want to Exit? Who are Syndicators?
Pre-stabilization period payment amounts	First 15 months: $100,000/year Next 12 months: $115,000/year Thereafter: $130,000 per year	First 15 months: $100,000/year Next 12 months: $115,000/year Thereafter: $130,000 per year	**Open:** First 18 months: $50,000/year Next 12 months: $65,000/year Thereafter: $80,000 per year
Insurance	WMATA policy: According to Kim Brown, we will require insurance on everybody.	Everybody: Developer, contractor, subcontractor, etc.	**Open:** WMATA to provide alternative insurance language

FOIA CONFIDENTIAL TREATMENT REQUESTED

Florida Avenue - Economic Terms

Lease	Term Sheet	WMATA draft	Agreed Upon Terms or Status
Developer	See JDA	See JDA	See JDA
Guarantor	Requires guarantor for "remediation of all hazardous materials as required by the Definitive Agreement or by applicable law…and the timely payment and performance of all Developer obligations under the Definitive Agreement." *Q – was guaranty contemplated to be for lease also?*	Required guarantor with net worth exceeding 3 times value of project	**Agreed:** Required guarantor with net worth equal to cost to complete project per approved plans and specifications. ~~As along~~ BOA
Stabilization	TBD in JDA	90% occupancy	**Agreed:** 92.5% project occupancy
Density Adjustment Rent	Add to base rent based on formula in Section 7.11 of term sheet.	Add to base rent based on formula in Section 7.11 of term sheet.	**Agreed:** Add to base rent based on formula in Section 7.11 of term sheet.
Affordable Housing	No mention	No mention	**Agreed:** ~~A minimum of~~ 20% of the total number of units. Look AT IZ
Right to assign Lease	Section 1.2 states that Developer's interest in the Project or the Improvements may not be assigned or sold without the written consent of WMATA.	Not assignable prior to Final Completion; only assignable upon WMATA consent after Final Completion	**Agreed:** WMATA agreed to insert "reasonableness" language in JDA and Lease
Right of First Offer	N/A; *Q – was this mentioned in negotiations? What is normal consideration to WMATA for this right?*	N/A	N/A
Environ Condition	Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS	Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS	**Agreed:** Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer takes property AS IS, WHERE IS
Insurance	See JDA	See JDA	**Agreed:** See JDA

FOIA CONFIDENTIAL TREATMENT REQUESTED

Florida Avenue – Economic Terms

Lease	Term Sheet	WMATA draft	Agreed Upon Terms or Status
Term	60 year lease	60-year lease	**Open:** 60 year lease with option to extend. Rosslyn Doggett to provide language. N4-C Vacant land → RD to add
Base Rent	$597,000 in quarterly payments	$597,000 in quarterly payments	**Open:** $250K base rent, plus $800K pre-payment paid at construction loan closing, plus 1.5% of Effective Gross Income paid thru term of lease.
Escalation (Years 1 to 10)	1.5% increase *(note: may have been typo on term sheet)*	1.5% increase	N/A
Escalation (Years 11 to end)	3% increase	3% increase	N/A
Periodic Rent Revaluation	Upon Capital Event or every 10 years	Upon Capital Event or every 10 years	N/A
Capital Event Participation	10% of gross income from Capital Event	10% of gross income from Capital Event	**Open:** 10 % of any income from Capital Event after repayment of all debt, member loans, outstanding member loans, accrued interest, equity and preferred return on equity. Member loans to receive no more than 16% annual interest and equity to receive no more than 20% annual interest before WMATA participation
Late Charge	TBD in JDA	20% of delinquent amount	**Agreed:** 5%
Default interest rate	Not mentioned.	15% or 10% over prime (whichever is higher)	**Agreed:** 4% over prime

- original Equity to Develop project
  - member loan?
    ↳ 12% int

Equity vs. member loan
- it is either equity or Debt
- Developer Explain?

FOIA CONFIDENTIAL TREATMENT REQUESTED

FL Ave 5/29/09

— meet w/ COK, BPH, RD, NB, MM

- Award vs. Negotiation

- Possibility of Re-opening to 3 previous bidders

- How did AH play into AWARD

  - Banneker had 10% workforce Housing

  - Duke → 20% - 30%
    → Does not define AH

- DC Regs → Final Regs Approved for IZ
  → To go into effect in 90 days

- Our award was based on Price

- Economic Downturn → BOD: Determine on Case-by-Case basis

- What are grounds for terminatron?
  ?

- Malcolm DME → 5.08M w/ 20% AH
  12% Economic Downturn

- Lakritz → what if their offer is now the best offer?
  - L/A → Argument for lower offer was that they did not need to Accomodate A/H of Duke Plan

5/29/09

- How do you stop working w/ Bannecker
  - Flawed Solicitation
  - Mutual mistake → not meeting Duke Requirements
    - our Solicitation Requires them to Comply w/ All laws
  - Law at that time did not allow parties to make a proper determination
  - Effect of new Regulation → changing Landscape undermines Requirements
    - Awarding Term Sheet when there will be "new facts on the ground"
  - what is most defensible to WMATA - COK
- Solution on Cancellation
  - Re-Solicit

- BOD allowed to Cancel on Business decision

- Still needs a new Appraisal
  - min. 45 days for Contract Appraisal
  - precludes July BOD → September (No August mtg)

- meet w/ Roz
  - ✗ → Look AT IZ: give to R. Doggett

Montague, Joshua W.

From: Doggett, Rosalyn
Sent: Friday, May 29, 2009 5:03 PM
: thicks; Omar A. Karim; Maurice' 'Perry
Cc: Montague, Joshua W.; eric.smart@bolansmart.com; Meister, Mark K.
Subject: RE: Revised Florida Avenue Economic Terms Chart

Omar et al.,

We had some opportunity to discuss the chart you forwarded to us. Responses:

1. PROJECT. We remain interested in nailing down how you expect to combine the adjacent parcel(s) on 9th Street with ours and account for revenue/rent. Please describe.
2. FTA APPROVAL. Assume you meant to add the language in the "WMATA Draft" column about automatic termination. Please confirm.
3. CHANGE OF CONTROL. We understood that a change of control without WMATA consent was to accommodate BACDC's exit upon project completion. Any other change would require WMATA consent not to be unreasonably withheld.
4. PRE-STABILIZATION PERIOD AMOUNTS. Agreement relates to Base Rent (see below).
5. INSURANCE. Josh was still attempting to get a response today from our Risk Mgmt. folks.
6. GUARANTOR. Agreed as long as we insert B of A as guarantor.
7. STABILIZATION. Earlier of 54 months or 92.5% occupancy. This may be affected by outside appraisal.
8. AFFORDABLE HOUSING. Delete "minimum of" 20% so that amount is 20%. Less than 20% would result in rent adjustment. Also have you looked at the new Inclusionary Zoning (IZ)Regulations issued May 15 to see if/how they affect your projected rent proposal? I have printed them out but not yet reviewed them.
9. TERM. We are willing to extend to 99 years provided that land after 60 years is revalued as if vacant and the lease rate is at market but no less than 7%.
10. BASE RENT. Again, must await outside appraisal and a look at IZ. Further, we will need to have a provision for setting rent at market with reasonable escalations once HUD insurance no longer applies unless IZ kicks in.
11. CAPITAL EVENTS. We need some discussion of what member loans are and how different from cash equity. My thought had been that after original non-tax credit equity to develop the project is paid off at 20% IRR, WMATA participates in 10 percent of capital event proceeds, less repayment first of debt and transaction costs, with the remaining 90% a return to investors.

From: thicks [mailto:thicks@bannekerventures.com]
Sent: Thursday, May 28, 2009 9:22 AM
To: Doggett, Rosalyn
Cc: okarim@bannekerventures.com
Subject: RE: Revised Florida Avenue Economic Terms Chart

Thanks Mrs. Doggett.

Tiwana Z. Hicks

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

ice: (202) 667-4110

Fax: (202) 558-5157

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009539

Cell: (202) 486-1863

thicks@bannekerventures.com

From: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Thursday, May 28, 2009 8:27 AM
To: thicks
Subject: RE: Revised Florida Avenue Economic Terms Chart

Thanks, Tiwana. I will be working on this later today and try to get back either late this aft. Or early morning tomorrow depending on availability of those I need to consult.

From: thicks [mailto:thicks@bannekerventures.com]
Sent: Wednesday, May 27, 2009 11:14 AM
To: Doggett, Rosalyn; Montague, Joshua W.
Cc: Maurice L. Perry; okarim@bannekerventures.com; eric.smart@bolansmart.com; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
Subject: Revised Florida Avenue Economic Terms Chart
Importance: High

Mrs. Doggett,
As a follow-up to our meeting yesterday, attached please find the revised Florida Avenue Economic Terms Chart. We look forward to receiving a final determination on the 5 remaining open items in the coming days. Please call us if you have any further questions. Thanks.
Tiwana

Tiwana Z. Hicks

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

Office: (202) 667-4110

Fax: (301) 565-4982

Cell: (202) 486-1863

thicks@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009540

Montague, Joshua W.

From: eric.smart@bolansmart.com
nt: Thursday, May 28, 2009 1:20 PM
: Doggett, Rosalyn
Cc: Montague, Joshua W.
Subject: RE: Revised Florida Avenue Economic Terms Chart

Some comments on particpation:

1) Addressing rent adjustment at option period suggest that after sixty years the instructions for appraisal include determining a yield rate appropriate to market conditions at that time in addition to setting a fee simple land value. Fine to leave at 7.0% if such an approach is not conforming to WMATA practice.

2) Percent interest in capital events should conceptually be based on the land value relative to the entire project investment at the time of the initial investment. For example, if the development cost of the WMATA portion of the subject project is $28M, and the land value is in the range of $5M, the combined development cost as if the land value cost was fully capitalized would be $33M. Of this total cost, the land interest would represent approximately 15%, which would then be the basis for the WMATA distribution of excess capital event proceeds. If the going in land value was higher, as previously assumed, the distribution percentage could be argued to be correspondingly higher.

Another argument can be made that after all other investment capital has been repaid, including the cumulative risk premium yields, in this case proposed between 16% and 20%, the land should be entitled to a higher yield than a prorate share for two reasons. First, unlike the other contributed capital, the principal, in this case the original land value, s not be paid, and until it is paid it should get a premium over the other already paid down capital contributions. Second, over time, it is the land which is generally appreciating while the improvements are depreciating (not to speak of tax treatment benefiting the returns on the improvements), meaning that if the relative values of the land to the improvements were to guide the distribution of property income, they would increasing accrue to the land. This is especially true after the initial at risk cash investments have been repaid, including the initial risk period risk premiums. And of course all of these approaches need to match up with whether the ground lease annual rent is below, at, or somehow above market at different points of the lease term.

Notwithstanding the above, we are inclined to recommend in this case that WMATA agrees to a fixed 10% participation in defined capital events, with a safeguard however that any equity or member yield rates related to replacement capital subsequent to the initial investment period are adjusted to a then market rate commensurate with the norms for stabilized income producing properties.

Hope this helps, first in posing some more complexities, then in getting simple.

Eric

On Thu, 28 May 2009 12:30:57 -0000 (GMT), "Doggett, Rosalyn"
<RDoggett@wmata.com> wrote:
T was not looking at the latest draft. I probably have not yet
printed
it out.
>

FOIA CONFIDENTIAL TREATMENT REQUESTED

> From: Montague, Joshua W.
> Sent: Wednesday, May 27, 2009 6:18 PM
> To: Doggett, Rosalyn; eric.smart@bolansmart.com
> Subject: RE: Revised Florida Avenue Economic Terms Chart
>
> RE: Valued as if vacant language.
>
> Do you have the latest draft, which includes your comments from
Vancouver?
>
> Here is Section 5.3.4:
>
> 1. Extended Term Base Rent. Upon the commencement of the Extended
Term,
> Base Rent shall be adjusted to seven percent (7%) of Property land
value
> established through the Fair Market Value Process.
> a. For the Base Rent adjustment at the commencement of the Extended
Term, the
> Property is to be appraised as if vacant and at its highest and best
use.
> b. At no time shall the Base Rent for the Extended Term decrease
> below
the then
> payable Base Rent at the end of the Initial Term.
>
>
>
>
>
> From: Doggett, Rosalyn
> Sent: Wednesday, May 27, 2009 5:15 PM
> To: eric.smart@bolansmart.com
> Cc: Montague, Joshua W.
> Subject: FW: Revised Florida Avenue Economic Terms Chart
> Importance: High
>
> I should have asked you when you called for your advice on % of what
> is
now net
> capital event income. I would rather take a % of gross if you have an
> alternative formulation.
>
> On revaluation after 60 years, I am thinking of using Navy Yard
> Chiller
language
> which is for revaluation as if vacant after 60 years. Except that,
Josh, now
> that I look at the Navy Yard Chiller lease language I don't see
language about
> valued as if vacant. Perhaps I missed it in a rush. It does allow a
33-year
> extension.
>
> From: thicks [mailto:thicks@bannekerventures.com]
> Sent: Wednesday, May 27, 2009 11:14 AM
> To: Doggett, Rosalyn; Montague, Joshua W.

FOIA CONFIDENTIAL TREATMENT REQUESTED

> Cc: Maurice L. Perry; okarim@bannekerventures.com;
eric.smart@bolansmart.com;
> Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
> Subject: Revised Florida Avenue Economic Terms Chart
Importance: High
>
> Mrs. Doggett,
> As a follow-up to our meeting yesterday, attached please find the
revised
> Florida Avenue Economic Terms Chart. We look forward to receiving a
final
> determination on the 5 remaining open items in the coming days.
> Please
call us
> if you have any further questions. Thanks.
> Tiwana
>
> Tiwana Z. Hicks
> Banneker Ventures, LLC
> 700 12th Street, NW, Suite 700
> Washington, DC 20005
> Office: (202) 667-4110
> Fax: (301) 565-4982
> Cell: (202) 486-1863
> thicks@bannekerventures.com
>
>
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>

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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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009543

Montague, Joshua W.

From: Doggett, Rosalyn
nt: Friday, May 29, 2009 4:53 PM
.o: 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,

y 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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009544

6/22/09

Florida Ave - Economic Terms

- meet w/ RD for Conference Call w/ Developer tomorrow

1.) Adjacent Property - must get response from Developer

4.) Pre-Stab Rents → Depends on Appraisal
- O/K → our offer unchanged from last table
- Malcolm → chose appraiser ; Zoning Attorney · Wayne Quinn H/K

5.) meet w/ Rod Schraven?

6.) want B of A; not B of A CDC (will need Financials)

7.) Adjustment mix that affects all $

8.)

9.) COK → NO; is tantamount to purchase (BCP?)

11.) Term Sheet → Agreed to ?

Look up payments/penalties

Florida Ave: Conf. Call 6/23/09

- RD - OK - MP

1.) wait for Appraisal
- Adjacent Prop
  - Default → WMATA purchase Fee/Adjacent
  - Revenue neutral to WMATA
  - w/in next week

2.) ok
3.) ok
4.) Open; Depends on Appraisal
5.) Rod Schrawen
6.) MP will provide updated $ info + Contact info
7.) Depends on Appraisal
  - O/K - Not willing to move Date up
    - 18 mo Entitle
    - 18 mo Construct
    - Lease up
  - Matter of Right
    - we intend on doing it Right now > O/K
    - if it changes we'll let you Know
  - O/K → Appraisal - very upset that not further Along
  - MP → we are doing 20% AH; why does Appraiser need to Consider DC IZ or other Req'mts (Duke Plan)?
8.) Need to See IZ Reqs
9.) Terms → Part of Rent Discussion
  - will need to be negotiated after Appraisal
  - O/K → 5% is a "Way Fair" Amount

9.) - GC will not allow anything beyond 99 yrs
- No option to purchase after 99 yrs.
- O/K → Didn't Broadcast One get option?
- R/D → every Deal is Different

10.) Open → Appraisal

11.) Capital Events
- R/D → Stick to Term Sheet
- O/K → we Can't Stick to term Sheet b/c of A/H
- we Could agree to original Debt/Equity and this "Hurdle"
- Hurdle → Equity must get interest back before WMATA; then we Can Split 90/10

→ member loan vs. Equity
- BofA CDC → when put $ into Deal is Done as a member loan
- why is 20% Equity interest?
- All are asking for 20-25%
- ☐ What was original Return?
- R/D - 20% is Reasonable at Development Stage but not when is up & Running (which is when BofA CDC will get out) ←
- B/c mgp said need to offer 20% Return when get out

- P. Scales

☐ - R/I Ave → A/H : 20% ↔ Kermit

☐ - HUD Financing (also in PG Plaza) → How Does it fit w/ Cap participation Rent - Allow Hurdle?

Montague, Joshua W.

From: Doggett, Rosalyn
Sent: Friday, June 26, 2009 10:45 AM
To: Montague, Joshua W.
Subject: RE: The Jazz Economic Terms (as of June 23, 2009)

Malcolm says it would be appraised for highest and best use, including assemblage, if appropriate.

From: Montague, Joshua W.
Sent: Friday, June 26, 2009 10:24 AM
To: Doggett, Rosalyn
Subject: FW: The Jazz Economic Terms (as of June 23, 2009)
Importance: High

Hi Roz,

RE: number 1 below, have we appraised our Florida Ave property in light of the possibility of combining it with the adjacent property? Wouldn't the small lot be worth more if it was necessary for (and capable of) a larger building?

Please let me know what you think, as I am compiling a list of issues to consider for when (if) the developer comes up with a coherent offer that describes the combining of our lot with the adjacent lot.

Josh

From: thicks [mailto:thicks@bannekerventures.com]
Sent: Thursday, June 25, 2009 1:51 PM
To: Doggett, Rosalyn
Cc: Maurice' 'Perry; arashid@bannekerventures.com; okarim@bannekerventures.com; eric.smart@bolansmart.com; Montague, Joshua W.; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
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.

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.

. FTA APPROVAL – Yes, we agree to add the language contained in the WMATA Draft Column. Parties are in agreement. Issue resolved.

FOIA CONFIDENTIAL TREATMENT REQUESTED

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 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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009549

Montague, Joshua W.

From: Montague, Joshua W.
Sent: Friday, June 26, 2009 1:01 PM
To: Doggett, Rosalyn
Subject: RE: The Jazz Economic Terms (as of June 23, 2009)

Thanks!

RE: Mr. Schraven. Here is the latest:

- As you can imagine, I am not getting any response from them this week.
- I have been researching our other JD project documents (Grosvenor North, Ft. Totten, Silver Spring, Wheaton, and Rhode Island) and I have found that every agreement requires the tenant/developer, all contractors, and all subcontractors to get the required insurance policies.
- The following limitations are negotiated in some of the agreements:
  - Almost all agreements allowed different levels of insurance required during pre-construction, construction, and operations periods (though our developer has not specifically requested this change yet);
  - Two agreements only required *major* subcontractors to get the required insurance. What is a major subcontractor? The Rhode Island Ave agreement defined *major subcontractors* as those contractors and subcontractors of Tenant whose cumulative contract or subcontract amount exceeds $2,000,000.

As you may recall, Banneker's extensive redline comments only took exception with who was required to obtain insurance (they wanted developer OR contractor) and how long the insurance requirements were to survive the expiration or earlier termination of the agreement. They did not make any comments on the policy type or dollar levels required.

While I would like to have Mr. Schraven's version of the JD language, I think that we can get our response to their question out of the uniform language of the old agreements. We could also make the promise that the required language will be in the first draft that we provide to them.

Please let me know what you think,

Josh

From: Doggett, Rosalyn
Sent: Friday, June 26, 2009 10:45 AM
To: Montague, Joshua W.
Subject: RE: The Jazz Economic Terms (as of June 23, 2009)

Malcolm says it would be appraised for highest and best use, including assemblage, if appropriate.

From: Montague, Joshua W.
Sent: Friday, June 26, 2009 10:24 AM
To: Doggett, Rosalyn
Subject: FW: The Jazz Economic Terms (as of June 23, 2009)
Importance: High

Hi Roz,

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009550

RE: number 1 below, have we appraised our Florida Ave property in light of the possibility of combining it with the adjacent property? Wouldn't the small lot be worth more if it was necessary for (and capable of) a larger building?

Please let me know what you think, as I am compiling a list of issues to consider for when (if) the developer comes up with a coherent offer that describes the combining of our lot with the adjacent lot.

Josh

From: thicks [mailto:thicks@bannekerventures.com]
Sent: Thursday, June 25, 2009 1:51 PM
To: Doggett, Rosalyn
Cc: Maurice' 'Perry; arashid@bannekerventures.com; okarim@bannekerventures.com; eric.smart@bolansmart.com; Montague, Joshua W.; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
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.

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 fo 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.
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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.
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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 our development. Moreover, we will be required to set aside 8% of the residential gross floor area for eligible

FOIA CONFIDENTIAL TREATMENT REQUESTED

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 ears, 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.

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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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009552

FL Ave. 7/9/09

- DC Code Ch. 10 Title 47

☐ - Guaranty provided by BOAEDC

☐ - Email OK → RD @ TOD Conf.

- Insurance
  - Look to Rhode Island Ave Agreement
  - Developer maintain policies?
    - Developer Shall Cause Contractors/major subs

☐ - DOCS
  - Draft w/ open items
  - if and only if HUD insured financing → No Escalation

- Will present DOCS
  - please Send additional Comments for Financing plan So Can incorporate if acceptable

FOIA CONFIDENTIAL TREATMENT REQUESTED

Florida Avenue – Economic Terms

JDA	Term Sheet	WMATA draft	Agreed Upon Terms or Status
Developer	Banneker, District Development, Metropolis	Banneker, District Development, Metropolis	**Agreed:** Banneker and BACDC
Project	Single phase, including minimum: Gross FAR: 130,014 sf Units: 104 Retail: 11,750 sf Parking: 47 spaces	Single phase, including minimum: Gross FAR: 130,014 sf Units: 104 Retail: 11,750 sf Parking: 47 spaces	**Agreed:** Single Phase Gross FAR: 130,1014 sf (WMATA parcels only)
Improvements	No mention of ownership or purchase of improvements.	Developer owns all improvements but ownership rights automatically transfer to WMATA at end of Lease.	**Agreed:** Developer owns all improvements but ownership rights automatically transfer to WMATA at end of Lease.
Pre-stabilization period	Stabilization or 45 months	Stabilization or 45 months	**Agreed:** Stabilization or 54 months
Lease closing	On or before 20 months	On or before 20 months	**Agreed:** On or before 20 months
Pre-stabilization period payments	*Note: paragraph 7.8 appears to have a typo in reference to payments during extensions of pre-stabilization period due to WMATA delay.*	Payments are due from effective date of JDA to Stabilization (at which time rent payments begin)	**Agreed:** Payments are due from effective date of JDA to Stabilization (at which time rent payments begin)
Deposit	Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer	Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer	**Agreed:** Upon receipt of $250,000 deposit, WMATA returns $100,000 proposal security to developer within 10 business days
Completion Bond	Not mentioned (only have performance and payment)	120% of replacement costs	**Agreed:** N/A
FTA Approval	WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; JDA will include appropriate termination provisions in the case FTA denies approval	WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement; Said agreement is automatically terminated if FTA denies approval and all appeals are exhausted.	**Agreed:** WMATA will apply for FTA approval within 30 days after execution of Definitive Agreement

Florida Avenue – Economic Terms

JDA	Term Sheet	WMATA draft	Agreed Upon Terms or Status
Change of control	Section 1.2 states that WMATA consent is needed to: 1) include other parties in the Developer (except for equity finance partners) and 2) assign or sell Developer's interest in the Project or the Improvements.	Prior to Final Completion – no change of control; After Final Completion – only change of control upon WMATA approval.	**Agreed:** Prior to Final Completion – no change of control; After Final Completion – Developer can change control freely among Developer members, including Tax Credit Syndicators.
Pre-stabilization period payment amounts	First 15 months: $100,000/year Next 12 months: $115,000/year Thereafter: $130,000 per year	First 15 months: $100,000/year Next 12 months: $115,000/year Thereafter: $130,000 per year	**Open:** First 18 months: $50,000/year Next 12 months: $65,000/year Thereafter: $80,000 per year
Insurance	WMATA policy: According to Kim Brown, we will require insurance on everybody.	Everybody: Developer, contractor, subcontractor, etc.	**Open:** WMATA to provide alternative insurance language

FOIA CONFIDENTIAL TREATMENT REQUESTED

Florida Avenue – Economic Terms

Lease	Term Sheet	WMATA draft	Agreed Upon Terms or Status
Developer	See JDA	See JDA	See JDA
Guarantor	Requires guarantor for "remediation of all hazardous materials as required by the Definitive Agreement or by applicable law…and the timely payment and performance of all Developer obligations under the Definitive Agreement." *Q – was guaranty contemplated to be for lease also?*	Required guarantor with net worth exceeding 3 times value of project	**Agreed:** Required guarantor with net worth equal to cost to complete project per approved plans and specifications.
Stabilization	TBD in JDA	90% occupancy	**Agreed:** 92.5% project occupancy
Density Adjustment Rent	Add to base rent based on formula in Section 7.11 of term sheet.	Add to base rent based on formula in Section 7.11 of term sheet.	**Agreed:** Add to base rent based on formula in Section 7.11 of term sheet.
Affordable Housing	No mention	No mention	**Agreed:** A minimum of 20% of the total number of units
Right to assign Lease	Section 1.2 states that Developer's interest in the Project or the Improvements may not be assigned or sold without the written consent of WMATA.	Not assignable prior to Final Completion; only assignable upon WMATA consent after Final Completion	**Agreed:** WMATA agreed to insert "reasonableness" language in JDA and Lease
Right of First Offer	N/A; *Q – was this mentioned in negotiations? What is normal consideration to WMATA for this right?*	N/A	N/A
Environ Condition	Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS	Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer gets study period; Developer takes property AS IS, WHERE IS	**Agreed:** Developer gets study period; WMATA makes knowledge-qualified representations customarily made by WMATA; Developer takes property AS IS, WHERE IS
Insurance	See JDA	See JDA	**Agreed:** See JDA

FOIA CONFIDENTIAL TREATMENT REQUESTED

Florida Avenue – Economic Terms

Lease	Term Sheet	WMATA draft	Agreed Upon Terms or Status
Term	60 year lease	60-year lease	**Open:** 60 year lease with option to extend. Rosslyn Doggett to provide language.
Base Rent	$597,000 in quarterly payments	$597,000 in quarterly payments	**Open:** $250K base rent, plus $800K pre-payment paid at construction loan closing, plus 1.5% of Effective Gross Income paid thru term of lease.
Escalation (Years 1 to 10)	1.5% increase *(note: may have been typo on term sheet)*	1.5% increase	N/A
Escalation (Years 11 to end)	3% increase	3% increase	N/A
Periodic Rent Revaluation	Upon Capital Event or every 10 years	Upon Capital Event or every 10 years	N/A
Capital Event Participation	10% of gross income from Capital Event	10% of gross income from Capital Event	**Open:** 10 % of any income from Capital Event after repayment of all debt, member loans, outstanding member loans, accrued interest, equity and preferred return on equity. Member loans to receive no more than 16% annual interest and equity to receive no more than 20% annual interest before WMATA participation
Late Charge	TBD in JDA	20% of delinquent amount	**Agreed:** 5%
Default interest rate	Not mentioned.	15% or 10% over prime (whichever is higher)	**Agreed:** 4% over prime

FOIA CONFIDENTIAL TREATMENT REQUESTED

Montague, Joshua W.

From: Doggett, Rosalyn
ıt: Wednesday, August 05, 2009 12:45 PM
. J: Montague, Joshua W.
Subject: RE: Jazz @ Florida Avenue Project - Adjacent Construction Manual, WMATA Reserved Areas and Appraisal

We have not in the past, to the best of my knowledge. At one point in Twinbrook I had rental guarantee insurance but we dropped it. Our guaranty I guess is that we get the property if they don't pay rent.

From: Montague, Joshua W.
Sent: Wednesday, August 05, 2009 12:43 PM
To: Doggett, Rosalyn
Subject: FW: Jazz @ Florida Avenue Project - Adjacent Construction Manual, WMATA Reserved Areas and Appraisal

Hi Roz,

I spoke to Tiwana and she is trying to dig up a Word version of the Guarantee for us to mark up (Maurice sent us a .pdf).

Do we normally require any type of guarantee on our leases?

Josh

ɹm: Doggett, Rosalyn
Sent: Wednesday, August 05, 2009 12:41 PM
To: Omar A. Karim
Cc: 'thicks'; Moneme, Emeka; Montague, Joshua W.; Meister, Mark K.
Subject: RE: Jazz @ Florida Avenue Project - Adjacent Construction Manual, WMATA Reserved Areas and Appraisal

Josh is marking up the guaranty sent by BACDC to conform to what we normally get. A problem with BACDC has been that we cannot get a proper balance sheet, but I am hopeful that we can resolve this satisfactorily. Normally, we release such guaranties upon project construction completion.

Per my conversation with Tiwana, the reserved areas would be for our tunnels, their support and access to same. The only other facility I see on plans is the Eighth Street vent shaft and access to same; if this is in public right of way as it appears from plans to be and which your survey can confirm, then it would not be a Metro reservation. I am going to do one more check with engineering this afternoon to make sure we haven't missed anything, e.g. other vent shafts.

We received a rough draft of the appraisal on Monday morning, had some questions about methodology, and asked the appraiser to recheck. Our internal appraiser is awaiting word on when the redraft will come in.

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, August 05, 2009 11:41 AM
To: Doggett, Rosalyn
Cc: 'thicks'; Moneme, Emeka; Montague, Joshua W.; Meister, Mark K.
Subject: Jazz @ Florida Avenue Project - Adjacent Construction Manual, WMATA Reserved Areas and Appraisal
portance: High

Ms. Doggett,

FOIA CONFIDENTIAL TREATMENT REQUESTED

Hope you are well. Couple of things:

- Can you forward us the most recent version of the Adjacent Construction Manual
- Were you able to get any information regarding any WMATA reserved areas related to our site?
- Any word on the appraisal?
- Can you please forward a copy of the Guarantee that would be required. As discussed, any guarantee would need to allow us to release it upon completion of construction of the project as oppose to running the term of the lease.

We would really like to turn around our comments on the JDA and Lease and these items are a very important aspect of our comments.

Thank you 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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009559

Montague, Joshua W.

From: Doggett, Rosalyn
nt: Friday, August 28, 2009 9:17 AM
.o: Montague, Joshua W.
Subject: FW:

Importance: High

From: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Thursday, August 27, 2009 6:00 PM
To: Doggett, Rosalyn
Cc: 'Tiwana Hicks'; eric.smart@bolansmart.com
Subject: RE:
Importance: High

Ms. Hicks,

Thanks for your email. Eric and I had a great conversation yesterday. Below please find answers to your questions:

1. 157,000 sf. 132 units, 20% of which are affordable. 79% of the projected is allocated to WMATA property and the balance to the adjacent properties that we control, which is the % of land that WMATA and BV/BoA controls.
2. Project costs is $41.5M. Sources include HUD-insured loan, TIF which is allocated 100% to non-residential uses (dollar amount TBD as the note is still being underwritten), tax credits, which is being allocated to the affordable housing units only (dollar amount TBD as the project is still being underwritten by DHCD) and developer equity, exact dollar amount to be determined once our TIF and tax credits are finalized. Regardless of the uncertainty of the exact amount of any public subsidies we may receive, we remain committed to moving forward with this project in an expeditious manner and break ground by the schedule that we promised from the date of JDA/Lease approval.
3. Not sure what your question is here. The sources of equity will come from Banneker and BoA CDC.
4. We expect to send you comments by next week. Since we were trying to figure out a way to address WMATA's concerns about the adjacent parcels, this took some time to figure out how it would be done in the documents. Our solution is to capitalize our lease payments (which Eric and I discussed briefly on Tuesday and more in depth on Wednesday). We hope that we could all agree to have the Staff recommend the JDA and Lease be approved by the Committee and Board at the October 2009 meeting. In order to get there, we believe that we would have to follow a schedule that looks something like the following:
    - BV/BoA sends you our comments to the JDA and Lease by 9/3;
    - WMATA has 2 weeks (9/4-9/18) to review our comments;
    - WMATA and BV/BoA meet in person for several days (say 9/21-9/25) going through all of the comments and agreeing to terms page by page. We each could bring our laptops to make changes on the spot;
    - Take 9/28 and 9/29 to clean up any final edits
    - 9/29, WMATA staff sends to senior staff its recommendations for the Florida Avenue JDA and Lease be approved by the Committee and Board at the October Board meeting.

Please let me know if this is acceptable to you.

Btw, in one of your previous emails, you mentioned that you all would be forwarding the results of the appraisal. Can we still expect to receive it? If so, when do you think this will occur?

FOIA CONFIDENTIAL TREATMENT REQUESTED

Thank you for all of your working in moving this project along. I know that it has taken up a great deal of your time and we appreciate it.

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: Doggett, Rosalyn [mailto:RDoggett@wmata.com]
Sent: Thursday, August 27, 2009 10:04 AM
To: 'Omar A. Karim'
Cc: eric.smart@bolansmart.com
Subject:

Omar,
I understand that you have now been in discussions with Eric Smart. In anticipation of receiving your most recent JDA comments it would be helpful if you would confirm via e-mail the following:

1) The current size, FAR, unit count, and percent affordable units for a) the entire project and b) that portion proposed for WMATA property
2) The sources, amounts and uses of funds, especially public funding assistance or other subsidies you have or for which you expect to apply
3) When we can expect to have the finalized information needed of your partners and financial sources
4) When you expect to submit your JDA comments and the needed updated pro forma; though we need both, our current expectation is to have the JDA this Friday based on your earlier stated schedule.

Please let me know as soon as convenient.
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

8/28 : • E. Smart
- $250,000 Lease Base
- 1½% AGI or EGI
- 12½% on Cap Event
• Capitalize Rent
- $250 K over 60 yrs = 3.5 mily
- what is Discount for upfront?
- OK wants 7%
• what you Should do? Don't Do the Deal

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009561

FL Ave 8/19/09

- Design Criteria
  - Can be Removed from Lease + JDA

- Definitions
  -

- Vents
  - Dev does Survey
  - Engineer plots out Area for easement

- 14th + V → Piles driven b/w tunnels

- Surface easement
  - GA Ave
  - Ed Medina → Do we need?

FL Ave Adjacent Parcels History 8/20/09

11/4/08 - Developer Sent Revisions to WMATA Draft - No mention

12/3/08 - ~~After~~ Tele Conf w/ Devorah Lewin
  - Asked for Details; will discuss w/ Dev & get back to us
  - informed not Part of Term Sheet

·2/5 - R. Doggett met w/ N. Albert; "Not Adverse" to Dev. building on our land & adjacent land

6/19 - ~~Brought~~ WMATA asked about adjoining prop in mtg w/ Dev. - Not feasible & Not part of offer
  - Dev promises offer by July 9th

Montague, Joshua W.

From: O'Keeffe, Carol B.
nt: Friday, August 21, 2009 4:06 PM
.o: Montague, Joshua W.
Subject: RE: Florida Ave - CCRs to be sent to Developer

No, go ahead and send.

From: Montague, Joshua W.
Sent: Friday, August 21, 2009 2:53 PM
To: O'Keeffe, Carol B.; Heppen, Bruce P.
Subject: Florida Ave - CCRs to be sent to Developer

Hi Carol and Bruce,

I have worked with Tariq Bushnaq to develop CCRs for the Florida Avenue project. Since this is a lease transaction, these are very simple. The agreement contains the following:

1. Establish easements for the vent and tunnel (exhibits detailing the easements are to be made off of the developer's survey); and

2. Establish that no construction activities can take place on the property without WMATA prior approval. The process for construction approval is also described in this agreement because the project's approval process is not in the Lease, but rather in the Joint Development Agreement.

uld you like to review these with me before I send a draft to the Developer?

Thanks,

Josh

FOIA CONFIDENTIAL TREATMENT REQUESTED

Montague, Joshua W.

From: Doggett, Rosalyn
nt: Tuesday, September 01, 2009 12:11 PM
.o: Montague, Joshua W.
Subject: FW: Jazz @ Florida Avenue Appraisal

I have no idea who Yohance is . I forget and was unable to check because I was at a PGP meeting this am, do we have firm evidence of site control.

Please give me your list.

- Firm offer ($)
- Terms of adjacent Parcel
  - Default → Terminate lease of ½ bldg.
  - What is Developer offering for this add'l Right
- Protect WMATA
  - Cap Event
  - Costs on WMATA Share
  - AH on/off WMATA
- Terms of Hud Finance to be included in lease/JDA
- Proof Guarantor
- Response to WMATA Drafts (Cannot Say how far Apart we are on legal issues

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From: Bottigheimer, Nat
Sent: Tuesday, September 01, 2009 11:10 AM
To: Meister, Mark K.; Doggett, Rosalyn
Cc: Moneme, Emeka; Yohance S. Fuller; Marshall, Malcolm
Subject: FW: Jazz @ Florida Avenue Appraisal

Mark and Roz –

I've made arrangements for Yohance to visit with Malcolm tomorrow morning at 10 to be walked through the most current appraisal information we have about the Florida Avenue project. Yohance needs this information so he can brief Neil.

Yohance also asked for a list of information we need from Omar so we can make quicker progress towards finalizing the terms sheet and JDA. I mentioned the information about sources and funds, but I believe there are other items as well. : and Mark, could you prepare an email for me that I can forward to Yohance <u>today</u> about what items Omar needs to deliver so we can get to the next level of detail?

I have explained that we are trying to accomplish terms sheet and JDA in December, not just the terms sheet. We could conceivably be done with a terms sheet IN October, but with the two tracking so closely together it didn't make sense to me from Board agenda and Board agenda process points of view to have a terms sheet Board item in October and a JDA item in December – I thought it would be more efficient to do them together. Neil may still want this item in October, though, but it would have to be a terms sheet and we'd have to have information from Omar sufficient for that.

Yohance, for your meeting tomorrow morning, Malcolm's direct number is 962-1584. Mark Meister's is 962-1589.

Thanks very much,

Nat

From: Meister, Mark K.
Sent: Tuesday, September 01, 2009 9:42 AM
To: Wallace, Maria A; Bottigheimer, Nat
Subject: RE: Jazz @ Florida Avenue Appraisal

We expect receipt of the final appraisal report this week. The appraisal was scheduled to be delivered on or about August 15th, but we had some concerns with the appraiser's architectural consultant's estimate of the cost to build over : WMATA tunnel. We have obtained what we believe to be a more realistic estimate from our in-house estimator.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009564

Montague, Joshua W.

From: Doggett, Rosalyn
Sent: Thursday, September 03, 2009 11:05 AM
To: Montague, Joshua W.
Subject: FW: Shaw Howard Sites

Importance: High

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; Doggett, Rosalyn; Lawson, Arthuro V.; Moneme, Emeka; Meister, Mark K.
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

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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009565

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**, 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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009566

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.

.ease 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

'e have not as yet received a draft of the appraisal of the above property. However, based on discussions ..ith 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 CONFIDENTIAL TREATMENT REQUESTED

Montague, Joshua W.

From: Doggett, Rosalyn
nt: Thursday, September 03, 2009 4:26 PM
o: 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
bject: 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 CONFIDENTIAL TREATMENT REQUESTED

Montague, Joshua W.

From: Doggett, Rosalyn
nt: Thursday, September 03, 2009 11:05 AM
o: Montague, Joshua W.
Subject: FW: Shaw Howard Sites

From: Omar Karim [mailto: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, Arthurp 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 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
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(202) 393-5462 fax
(301) 523-1810 cell
okarim@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009569

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 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**, 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED

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 4,000 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 CONFIDENTIAL TREATMENT REQUESTED

Capitalized Lease Payment

Value of site with a capitalized lease payment is $1,980,000 as of today based on (1) valuation of site @ $55/sf for residential/retail, (2) proposed WMATA parcels build-out of 124,000 sf, (3) a deduction for the added costs of building over Metro tunnels, and (4) a deduction for 20% affordable housing at 50% of AMI absent any federal or local government subsidy assistance that reduces expenses or increases revenue other than 4% tax credit financing.

Payment at closing (lease execution) must equal today's value of $1,980,000 at WMATA's discount rate of 6.8% per year.

Payment to be increased by 80% of any additional subsidy dollar obtained.

Pre-Closing Payments

$50,000 first 12 months after joint development agreement (JDA) execution, payable in advance
$65,000 second 10 months, payable in advance

Additional Density

Payment for additional density at $55/FAR sf for additional density including the to-be-closed alley for non-residential sf over 11,000 sf attributable to the WMATA parcels and $27/FAR sf (assuming 20% of units rented at 50% AMI) for residential sf over 113,000 sf attributable to the WMATA parcels escalated at 6.8% per year from JDA execution.

Annual Operating Income Participation

1.5% of Effective Gross Income. Debt Service Coverage Ratio to be at 1.25% or higher to ensure surplus cash for WMATA participation. If no HUD insurance, then payment is unsubordinated to operating expenses.

Capital Event Participation

No exclusions from capital events except admission of initial equity partner. WMATA receives 10% of net proceeds after deduction of debt repayment, original cash equity to develop the project with a return of 20%, member loans to develop the project with a return at market but not to exceed 12%, and transaction costs. Member loans not to exceed 10% of original development costs; equity not to exceed 30% of original development costs.

Term

After 60 years, when land is revalued as if vacant, rate is market but no less than 5% of land value and annual escalation is 3%.

Any other terms per T. Hicks e-mail summary of 6/25/09 modifying Florida Avenue Economic Terms Chart (last updated 5/26) except that Base Rent and Stabilization are no longer germane to discussions and Project Definition should reflect build-out of 124,000 sf of potential @ 127,692 sf. FAR

Shaw-Howard/Florida Avenue

WMATA 9-10-09 Response to Banneker's E-Mail of 9-9-09 Regarding WMATA's Proposed Basic Financial Terms of 9-9-09

1. Capitalized Lease Payments
   Now that Banneker has provisionally agreed to a capitalized lease payment of $1.98 million in today's dollars, WMATA respectfully reiterates its request to receive a current 15-year operating and a development pro forma along with a table detailing each named source of funds and the uses of the funds. This is WMATA's customary method of evaluating whether the financial structure of the deal can be validated and whether the revenue stream supports the financial structure.

* WMATA believes that it is bearing the brunt of support, if not all the support, for affordable housing but cannot confirm this without basic financial information from the developer. Since WMATA believes that it is subsidizing the affordable housing, it continues also to believe that any additional grants or subsidies for the project should be largely returned to the transit agency in the form of additional rent. However, it is not possible to have a rational discussion of these issues absent some current financial framework.

2. Additional Density
   WMATA can accept Banneker's basic method of calculating additional rent from the alley closing subject to verification of alley sf, appropriate allocations between developer land and WMATA land based on alley frontage, and application of npv calculations at closing. It does appear that WMATA should be deeded somewhat more than 50% of the closed alley but a survey can readily satisfy that question. WMATA's proposal remains the same as in its previously transmitted 9/9 terms for any other additional density.

3. Annual Operating Income Participation
   WMATA does not object to the initial underwriting at 1.11 Debt Service Coverage. After any capital event, however, WMATA will require at least a standard commercial 1.25 DSC so that the project is not overleveraged, which will effectively eliminate the HUD-termed "Surplus Cash" from which the participating income is paid. Since WMATA can expect to receive only a flat rate rent for the anticipated 40-year HUD insurance period, it is vitally important that the authority be able to actually receive timely even a modest Effective Gross Income participation over that term. Indeed, the requested operating pro forma should show that estimated participating income.

4. Capital Event Participation
   Again, this relates to a sources and uses of funds table. WMATA does not know how much tax credit equity is anticipated to be put into this project but, in any event, such equity earns no return. Therefore the focus should be on non-tax credit equity. If this amount is 30% or less of

the remaining funds needed for the project, then WMATA can agree to a 20% return whether on member loans or other non-tax credit equity.

5. Term

   WMATA has residential leases that are only 60 years total. In this case, WMATA has agreed to the developer's request that it be granted an extension after 60 years with the land valued as vacant, the rent as a percentage of land value at market rate but no less than 5% and annual escalations at 3% per year, less than the historic annual rate of increase in central Washington. Since WMATA is accepting a flat rate rental lease for a likely 40-year term, and since the ground lease extends 20 years beyond that, it is entirely reasonable that WMATA receive some improvement over the less than market-rate rental terms of the first 40-60 years.

In summary, WMATA believes that it has made an entirely fair offer on a capitalized base rent lease in support of low income affordable housing and would expect Banneker to recognize modest offsetting compensation for that offer.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Joint Development Summary of Outstanding Issues in Updated Term Sheet
Shaw-Howard/Florida Avenue Sites
(as of September 11, 2009)

Section in Term Sheet	Open Issue	Developer Proposal
7.3	Base Rent	$1,980,000 payment at execution of Lease. This represents the entire Base Rent for the initial 60-year Initial Term will be paid at Closing under a capitalized lease structure for the Initial Term.
7.3.5	Lease Period	Initial Lease Term to be 60 years. Developer to have option to extend lease for an additional 39 years at then market rate of interest, not less than 5%, times fair market value of land as vacant but to be used with then-present improvements. Annual escalation to be 1%.
7.4	Capital Event Participation	10% of Net Proceeds from any refinancing after the initial permanent loan closing and after all member loans and equity have been repaid with member loans and equity having received a 20% annualized return and tax credit investors having received an agreed upon return. 1.25 debt service coverage requirement applies only to refinancing after initial permanent loan.
7.7	Proposal Security	At JDA approval, $100,000 to be credited toward $250,000 Security Deposit
New sub-section	Participation Rent	1.5% of Effective Gross Income of ~~Entire Project~~ (WMATA-developed parcels ~~and Developer-owned parcels~~) [expect FHA to allow 1% of EGI w/o Surplus Cash limitation]
9.8	Guaranty	Guarantor to guarantee commencement and Final Completion of the Entire Project per Approved Development Plan. At closing, Guarantor net worth to exceed "hard" costs of Entire Project. Upon completion of the Entire Project, the Guarantee shall be released.
New Section	Cotenancy Agreement	At closing, WMATA and Developer will enter into and record a cotenancy agreement (a form of which will be attached as an exhibit to the JDA) which will control the operation, leasing, and disposition of the Entire Project after expiration or termination of the Lease. WMATA and Developer will select a professional manager to manage the Entire Project and direct the manager to include a larger reserve in the project budget to ensure that neither owner would ever be required to separately fund any capital improvements, etc.
New Section	Developer Land/Additional Density/Alley Closing	WMATA land and Developer land in Sq. 393 to be resubdivided into single lot after partial closing of public alley. Developer to pay WMATA density that would be allocated to WMATA parcels when alley is closed. Current alley is 1,025 SF. About ½ of alley will be deeded to WMATA. This would represent 512 SF. Buildable SF would be about 2,560 on WMATA land. Based on WMATA's value of land, land is valued at $16 per FAR/SF. Developer would pay WMATA $16 x 2560= $40,960 at closing.

WC 202036v1B

WMATA-INV 009575

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Joint Development Summary of Outstanding Issues in Updated Term Sheet
Shaw-Howard/Florida Avenue Sites
(as of September 11, 2009)

Section in Term Sheet	Agreed Upon Issue	
1.2	Developer	Banneker Ventures and Banc of America CDC
2	Definitive Agreement	Lease term to begin with earlier of 20 months after approval of JDA or start of construction. At our kick-off meeting with the District of Columbia Department of Housing and Community Development, we were informed that our project must be 10% complete by 12/31/10 and 100% complete by 12/31/11. As such, we will have to get in the ground before 20 months after the JDA. In fact, we will have to start construction by September 30, 2010 at the latest in order to retain any gap financing for the Project. We will develop a critical path schedule and forward to WMATA which will include all WMATA design reviews, etc. so as to maintain this schedule.
3	Property to Be Leased by Developer	Estimated 28,400 square feet of land on Florida Avenue NW.
4	Entire Project	Approx. 157,000 FAR gross sq. ft., including 132 apartments, 20,000 square feet of retail and 71 below-grade parking spaces
5	Due Diligence	Agreed
6	Security Deposit	Agreed. $100,000 Proposal Security to be credited toward $250,000 Security Deposit
7.2	Pre-Closing Payments	Agreed but payments to be made quarterly and prorated for partial quarters
7.3.1 – 7.3.4	Periodic Rent Increases	Non-applicable because Developer to pay capitalized lease
7.5	Periodic Rent Revaluation	No longer applicable → After 60 yrs.?
7.6 – 7.11	Miscellaneous Items	Addressed in JDA. No major changes to original Term Sheet
8	Conditions to JDA Consummation	Addressed in JDA. No major changes to original Term Sheet
9.1 – 9.7 and 9.9 – 9.11	Special Considerations	Addressed in JDA. No major changes to original Term Sheet
10	Indemnification	Addressed in JDA. No major changes to original Term Sheet
11	Insurance Requirements	To be addressed in Lease.
Other	Affordable Housing	20% of all residential units shall be affordable at 50% of the area median income. Lease to comply with FHA lending requirements.

V 4202036v1B

WMATA-INV 009576

FL Ave 9/11/09

- meet w/ Developers, WESC, RD, MM, & Yohanna Fuller

- Standard DSC → 1.25 vs. 1.11
  - Multi-Fam
  - Commercial

- Restrictions Due to Fed-insured 223(F)
  - if have Fed-insured
  - if conventional loan
  - Restriction — imposed on Cash Flow

- Equity & member loans

- initial - 1.11 is ok (WMATA)
- Refi → if FHA - Restricted at govt set level
  if Conventional → 1.2

- Participation Rent

- Guarantee
  - issue is BOACDC has control of its funds and can commit w/o going up chain
  - what is verification?
    - Someone from Bank?

- Cotenancy Agreement
  - Resub on Sq 393
  - Tax lot → keep WMATA property exempt
  - COK → what are issues?
- Reserve → Ensure that $ is in the Reserve
- Cap Rent Payment
  - Pre-Close payment → keeps land off market
  - Penalty for not Closing on date Certain?
  - Sept 12, 2010
    - Closing delayed beyond
      - 6.8% pro Rata on price
    - But still have 20 mos to Close
- Critical Path
  - Submissions must Comply
  - Not if Default
  - what happens if WMATA cant/doesn't Comply?
- Capital Event triggers of Periodic Rent Reevaluation
  - if Cap event doesn't involve Refi
- increased density
  - over 10% → increase to WMATA
- Equity - limit is 30%

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA Joint Development Summary Outstanding Issues in Updated Term Sheet
Shaw-Howard/Florida Avenue Sites
(as of September 15, 2009)

Section in Term Sheet	Agreed Upon Issue	Developer Proposal
1.2	Developer	Banneker Ventures and Banc of America CDC
2	Definitive Agreement	Lease term to begin with earlier of 20 months after approval of JDA or start of construction
3	Property to Be Leased by Developer	Estimated 28,400 square feet of land on Florida Avenue NW
4	Entire Project	Approx. 157,000 FAR gross sq. ft., including 132 apartments, 20,000 square feet of retail and 71 below-grade parking spaces
5	Due Diligence	Agreed
6	Security Deposit	Agreed. $100,000 Proposal Security to be credited toward $250,000 Security Deposit
7.2	Pre-Closing Payments	$50,000 for first year; $65,000 for second year; payments to be made quarterly and prorated for partial quarters
7.3	Base Rent	$1,980,000 payment at execution of Lease. This represents the entire Base Rent for the initial 60 year Initial Term and will be paid at Closing under a capitalized lease structure for the Initial Term. Should execution of Lease occur after 9/12/10, Base Rent is to be increased by 6.8% on annualized basis. WMATA to agree to critical path schedule which will be an Exhibit to the JDA whereby WMATA will agree to timely reviews of all drawings, applications, etc. so that project can stay on schedule and Developer will not be subject to increase in Base Rent.
7.3.1 – 7.3.4	Periodic Rent Increases	Initial Lease Term – Non-applicable because Developer to pay capitalized lease
7.3.5	Lease Period	Initial Lease Term – 60 years. Developer to have option to extend lease for additional 39 years.
7.4	Capital Event Participation	Initial Lease Term – 10% of Net Proceeds from any refinancing after the initial permanent loan closing and after all member loans and equity have been repaid with member loans and equity having received a 20% annualized return and tax credit investors having received a return that the tax credit investor requires. Member loans or equity not to exceed 30% of development costs. During Initial Lease Term, Developer to have at least 1.2 DSC on any senior loans other than FHA-insured senior loans or public subsidies.
7.5	Periodic Rent Revaluation	Initial Lease Term – No longer applicable
7.6 – 7.10	Miscellaneous Items	Addressed in JDA. No major changes to original Term Sheet
7.7	Proposal Security	At JDA approval, $100,000 to be credited toward $250,000 Security Deposit
7.11	Additional Density	Developer to pay WMATA for any additional density beyond 164,754 which is 4.5 FAR if the project is maxed out (or 130,014 SF attributable to WMATA parcels). This is necessary as the project is only in schematic phase and changes are certain to happen, including a possible decrease in the proposed FAR (due to historic or other issues) or increase in the proposed FAR or type of uses (residential vs. retail). Cannot agree to a cap on the amount of changes in type as this may reduce the project's competitiveness to other projects in the market and limit our ability to

WMATA-INV 009579

FOIA CONFIDENTIAL TREATMENT REQUESTED

Section in Term Sheet	Agreed Upon Issue	Developer Proposal
		lease the project's spaces. If Developer provides less residential space, then we will receive less tax credits and thus make the project even than much more difficult to finance. Developer to pay WMATA for any density increases above a 4.5 FAR at $55/FAR SF for retail SF attributable to WMATA parcels and $16/FAR SF (same rate as for alley) for residential SF attributable to WMATA parcels.
New sub section	Participation Rent	Initial Lease Term WMATA to receive 1.5% of Effective Gross Income on WMATA developed parcels only, which is 79% of total project. With any FHA insured loans, WMATA to receive 1% of EGI w/o Surplus Cash limitation before project expenses. After project expenses, but before Developer participation to cash flow, WMATA to receive balance due (0.5% of EGI). No Participating Rent after initial term.
		Extension Term Base Rent to be 5% percent of the market value of land as vacant with the then-present improvements. WMATA to receive annual escalation of Base Rent of 2% upon the earlier of ten years after commencement of extended term, or either a complete refinancing of the Entire Project during the Extension Term, or a transfer of the Developer's entire interest in the Entire Project during the Extension Term (by assignment of Lease and sale of Developer's land and improvements or transfer of all the Developer's membership interests within the Extension Term period – effectively a sale), the Base Rent will be reset at higher of the existing Base Rent or new Base Rent equal to 5% of the market value of land as vacant with the use limited to the then-existing improvements. Once reset under this method, the Base Rent is reset every ten years thereafter based on the fair market value of the land as vacant with the use limited to the then-existing improvements.
8	Conditions to JDA Consummation	Addressed in JDA. No major changes to original Term Sheet
9.1 – 9.7 and 9.9 – 9.11	Special Considerations	Addressed in JDA. No major changes to original Term Sheet
9.8	Guaranty	Guarantor to guarantee commencement and Final Completion of the Entire Project per Approved Development Plan. At closing, Guarantor net worth to exceed "hard" costs of Entire Project. Upon completion of the Entire Project, the Guarantee shall be released.
10	Indemnification	Addressed in JDA. No major changes to original Term Sheet
11	Insurance Requirements	To be addressed in Lease.
New Section	Affordable Housing	20% of all residential units attributable to WMATA parcels shall be affordable at 50% of the area median income. Lease to comply with FHA lending requirements. Developer cannot agree that WMATA will participate in split of additional subsidies that project may apply for in the future as project costs could increase prior to construction and Developer may be forced to seek the

WMATA-INV 009580

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Section in Term Sheet	Agreed Upon Issue	Developer Proposal
		gap funding from somewhere, including member loans, private equity or public subsidies. In fact, yesterday our General Contractor informed us that the infrastructure costs that it was running in our latest budget should be increased by 300% because infrastructure sub-contractors are charging a premium to work on WMATA-related projects these days.
New Section	Cotenancy Agreement	At closing, WMATA and Developer will enter into and record a cotenancy agreement (a form of which will be attached as an exhibit to the JDA) which will control the operation, leasing, and disposition of the Entire Project after expiration or termination of the Lease. WMATA and Developer will select a professional manager to manage the Entire Project and direct the manager to include a larger reserve in the project budget to ensure that neither owner would ever be required to separately fund any capital improvements, etc.
New Section	Developer Land/Additional Density/Alley Closing	WMATA land and Developer land in Sq. 393 to be resubdivided into single lot after partial closing of public alley. Developer to pay WMATA density that would be allocated to WMATA parcels when alley is closed. Current alley is 1,025 SF. About ½ of alley will be deeded to WMATA. This would represent 512 SF. Buildable SF would be about 2,560 on WMATA land. Based on WMATA's value of land, land is valued at $16 per FAR/SF. Developer would pay WMATA $16 x 2,560 = $40,960 at closing as additional Base Rent.

WMATA-INV 009581

9/15/09

Meet w/ Carol & Bruce

- FL Ave
  - unacceptable Business Model
  - Compact questions → unfunded obligations - N/A?
  - Early Termination
  - what does Bolan Smart say?
  - Sale:
    - How would this Change Price
    - what process does WMATA need to do to Change?
  - A/H:
    - Effect of Non-Residential bid
  - Tunnel effect on Price
    - 2.5 milly Deduct

- not allowed to enter into De Facto partnerships
- Lose Control of our fate
- Power not enumerated

Meeting with Banneker tomorrow

Mark and I have discussed the proposal below and want to put it out to you for consideration:

Background

- The developer has asked for a co-tenancy agreement in Square 393, the western-most of the two blocks where they want to combine property they "control" (7700 sf) with property WMATA owns (12,400 sf).
- We discussed with Carol O'Keeffe today. She believes such a deal would be tantamount to a partnership which is forbidden by the WMATA Compact.
- Further, we believe that the 50-50 decision making and control proposal is not attractive to us and would definitely be not attractive to anyone to whom we might have to market WMATA's part of this property in the event of developer default. (Further, we would not include the separate Square 416 property in any "co-tenancy" as the developer has requested.) We have asked Bolan Smart to have their partner Alvarez and Marsal (the Lehman Bros. bankruptcy czar) opine on this. The co-tenancy outline arrived from the developer's attorney around noon today 9/17.
- Therefore, the proposal is a potential deal breaker.
- Remedies would be: 1) for them to drop the properties they control (Square 393) which make for a better total building site; or2) for WMATA to sell the properties in that square and, potentially, both squares.

Appraisal

- The final appraisal from Harps & Harps arrived around noon today 9/17. I t considers only matter of right zoning and inclusionary zoning.
- It values the site at $4 million [$55/FAR sf x 124,000 sf (slightly less than full build out) at $6.8M with deductions of $500,000 for IZ and $2.3M for extraordinary costs of building over the tunnel.]
- It values a capitalized lease at $3.134 million.

Developer Pro Formas

- Though not fully complete, they arrived Tuesday morning. Examined by Eric Smart + WMATA staff.
- Incorporates the $1.98 M we proposed for affordable housing and, compared to March previous proposals, shows that: 1) addition of nearly $2M to developer fee in additional to other payouts to management team ; 2)even counting extraordinary tunnel costs they are paying 2.6 times for the 7700 sf private parcels than what they are proposing to pay for WMATA land ,for land not

even on Florida Avenue ;and 3) they have underestimated rent collection by their own estimation.

- All told, these additions plus full build out of our site and allowance for value of alley closing would allow us to :
  1) Request a SALE PRICE of $4.6M for of all three of our parcels on Florida Avenue.
  2) Eric Smart believes that Banneker was expecting an appraisal price between $4 and $5 million based on his prior discussions with them.
- The advantages to all would be clear: no co-tenancy issue, no elaborate dealings with Banneker for WMATA and, for Banneker's part, all the upside and no elaborate dealings with WMATA.
- Counsel would not object to a sale, nor, we suspect, would FTA, based on past conversations (though they might object to an offer below the last lowest offer) and we could meet the appraisal.
- Cleaner and simpler for all.

We are working on adjustments to the term sheet Banneker sent on Tuesday afternoon and will have them later today. HOWEVER, SHOULD WE PUT A SALE PROPOSAL ON THE TABLE TOMORROW?

- Meeting - FL Ave 9/18/09

  - NB, mm, RD
  - OK, MP, JH, TH
  - YF

- Co-Tenancy Agreement → Non-Starter

  - Change to a Straight Sale as opposed to Co-T

  - Sale based on 80% IZ
  - CCR's, etc. to make Sure protect Tunnel

  - OK → Duke Plan makes 20% AH

  - Harp's appraisal came in on, based on IZ
    - what was amount of appraisal on IZ
      - RD : ~~$4~~-5 million
    - OK - what is 20% Range?
    - In house assumed 4% + no tax gap finance

  - Duke Plan → Guideline vs. Requirement
    - Have not asked GC to opine which Duke Plan is.

- MP → Want WMATA's $ at 8% + 20%
- mm → Sale Costs more b/c no Participation Rent, Cap Event, etc.

→ ← - Appraisal → Can't include Pilots, Tif, etc.

- ☐ COK → How will Counsel & FTA React
  - offer of 20%/50%
- ☐ Appraisal → Current does not Reflect New Structure
- ☐ JH → Can we take in Agreement
  - option based on 20/50 v. 8/~~80~~-50
- ☐ Under what Circumstances would approve under IZ
- ☐ Will Know tax Credit financing at Closing
  - will be locked in at Closing for AH
- ☐ FTA = other transactions
- ☐ Term Sheet for Sale

Sidebar w/ Yohance

- ☐ How will BOD treat write down when developer is getting public Support
- ☐ Duke → work w/ Yohance

Meeting w/ whole group

- Agree to Share Appraisal (Bad precedent)
- Need Pro Forma "audit"
- Need info about Support DC is providing
- questions about Rent, Costs, etc.

9/18/09

- need to Know Sources of Funds
  - Can't Bring Double Dip to BOD

- need info about adjacent Parcel; which BOD will want to Know

- OK: offered same offer

- YF → will provide actual appraisal

- NB → This is a Request for info; not a Change in Position
  - when Below Market Value, need more info in BOD

- MP → Tif in Retail in Emerging ~~other~~ Market
  - Does Tif Consider A/H

- RD → give Appraisal Today
  - w/ IZ

- RD → Prob w/ Soft Costs
  - Dev. Fee
  - Rents

WMATA Joint Development Summary of Outstanding Issues in Updated Term Sheet
Shaw-Howard/Florida Avenue Sites
(WMATA comments in red font as of September 17, 2009)

Section in Term Sheet	Agreed-Upon Issue	Developer Proposal
1.2	Developer	Banneker Ventures and Banc of America CDC
2	Definitive Agreement	Lease term to begin with earlier of 20 months after approval of JDA or start of construction
3	Property to Be Leased by Developer	Estimated 28,400 square feet of land on Florida Avenue NW
4	Entire Project	Approx. 157,000 FAR gross sq. ft., including 132 apartments, 20,000 square feet of retail and 71 below-grade parking spaces
5	Due Diligence	Agreed
6	Security Deposit	Agreed. $100,000 Proposal Security check to be credited toward $250,000 Security Deposit
7.2	Pre-Closing Payments	$50,000 for first year; $65,000 for second year; payments to be made quarterly and prorated for partial quarters [assumes closing in 20 months after jda – but jda crosses out- intent unclear] longer than 2 years = additional pre-closing payments
7.3	Base Rent	$1,980,000 payment at execution of Lease. This represents the entire Base Rent for the initial 60-year Initial Term and will be paid at Closing under a capitalized lease structure for the Initial Term. Should execution of Lease occur after 9/12/10, Base Rent to be increased by 6.8% on annualized basis. WMATA to agree to reasonable critical path schedule which will be an Exhibit to the JDA whereby WMATA will agree to timely reviews of all drawings, applications, etc. so that project can stay on schedule and Developer will not be subject to increase in Base Rent.
7.3.1 – 7.3.4	Periodic Rent Increases	Initial Lease Term – Non-applicable because Developer to pay capitalized lease
7.3.5	Lease Period	Initial Lease Term – 60 years. Developer to have option to extend lease for additional 39 years.
7.4	Capital Event Participation	Initial Lease Term – 10% of Net Proceeds from any refinancing after the initial permanent loan closing and after all initial member loans and equity have been repaid with member loans and equity having received an after tax 20% IRR and tax credit investors having received a market rate return that the tax credit investor requires. Member loans and equity not to exceed 30% of development costs after tax credit investment deduction. During Initial Lease Term, Developer to have at least 1.2 DSC on any senior loans other than FHA-insured senior loans [or public subsidies; explain-- won't FHA make the call?]
7.5	Periodic Rent Revaluation	Initial Lease Term – No longer applicable.
7.6 – 7.10	Miscellaneous Items	Addressed in JDA. No major changes to original Term Sheet [TBD]
7.7	Proposal Security	At JDA approval, $100,000 check to be credited toward $250,000 Security Deposit
7.11	Additional Density	Developer to pay WMATA for any additional density beyond 164,754 which is 4.5 FAR if the project is maxed out (or 130,014 SF 127,800 sf attributable to WMATA parcels plus alley portion). [WMATA should get 9.1% increase on $1.98 million to account for difference between 124,000 sf on which appraisal was based and 127,800 FAR portion of 164,754 sf.] This is

FOIA CONFIDENTIAL TREATMENT REQUESTED

Term Sheet	Agreed Upon Term	Developer Proposal
		necessary [illegible] [illegible] including a possible increase [illegible] proposed FSR [illegible] changes in WMATA [illegible] market [illegible] space [illegible] difficult [illegible] [illegible]
New Sub-section	Participation Rent	[illegible] WMATA [illegible] [illegible] increase of [illegible] [illegible] WMATA [illegible] Florida [illegible] [illegible] with any FHA insured [illegible] before project expenses [illegible] before [illegible] flow, WMATA to receive [illegible] Participating Rent after [illegible] FHA insured loan. Any ES [illegible] year accumulates [illegible] and is paid out of cash flow or capital event proceeds [illegible]
		Extension Term [illegible] should be entered [illegible] Base Rent [illegible] the market value of land as [illegible] escalation [illegible] extended term [illegible] term, and transfer [illegible] term (by assignment [illegible] Base Rent will be reset [illegible] Base Rent [illegible] market rate % of land value [illegible] limited to the then-existing improvements. [illegible] years thereafter based on the fair market value of the land as vacant [illegible] limited to the then-existing improvements.
8	Conditions to JDA	Addressed in JDA. No major changes to original Term Sheet

FOIA CONFIDENTIAL TREATMENT REQUESTED

Section in Term Sheet	Agreed-Upon Issue	Developer Proposal
	Consummation	
9.1 – 9.7 and 9.9 – 9.11	Special Considerations	Addressed in JDA. No major changes to original Term Sheet
9.8	Guaranty	Guarantor to guarantee commencement and Final Completion of the Entire Project per Approved Development Plan. At closing, Guarantor net worth to exceed "hard" costs of Entire Project. Upon completion of the Entire Project, the Guarantee shall be released.
10	Indemnification	Addressed in JDA. No major changes to original Term Sheet
11	Insurance Requirements	To be addressed in Lease.
New Section	Affordable Housing	20% of all residential units [delete attributable to WMATA parcels] shall be affordable at 50% of the area median income. Lease to comply with FHA lending requirements. [Developer cannot agree that WMATA will participate in split of additional subsidies that project may apply for in the future as project costs could increase prior to construction and Developer may be forced to seek the gap funding from somewhere, including member loans, private equity or public subsidies. In fact, yesterday our General Contractor informed us that the infrastructure costs that it was running in our latest budget should be increased by 300% because infrastructure sub-contractors are charging a premium to work on WMATA-related projects these days.] Developer agreed to 50-50 on 9/11. Infrastructure accounted for in appraisal
New Section	Cotenancy Agreement	[Major WMATA compact and business problem and, even if no problem, could only apply to Square 393] At closing, WMATA and Developer will enter into and record a cotenancy agreement (a form of which will be attached as an exhibit to the JDA) which will control the operation, leasing, and disposition of the Entire Project after expiration or termination of the Lease. WMATA and Developer will select a professional manager to manage the Entire Project and direct the manager to include a larger reserve in the project budget to ensure that neither owner would ever be required to separately fund any capital improvements, etc.
New Section	Developer Land/Additional Density/Alley Closing	WMATA land and Developer land in Sq. 393 to be resubdivided into single lot after partial closing of public alley. Developer to pay WMATA density that would be allocated to WMATA parcels when alley is closed. Current alley is 1,025 SF. About ½ of alley will be deeded to WMATA. This would represent 512 SF. Buildable SF would be about 2,560 on WMATA land. Based on WMATA's value of land: land is valued at $16 per FAR/SF. Developer would pay WMATA $16 x 2560= $40,960 at closing as additional Base Rent. [NB: actual amounts to be determined by survey]

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TOC: Weil's Code of D.C. Municipal Regulations > TITLE 11. ZONING > CHAPTER 26. INCLUSIONARY ZONING > **11-2603. SET-ASIDE REQUIREMENTS.**

CDCR 11-2603

CODE OF D.C. MUNICIPAL REGULATIONS
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*** D.C. REGISTER, VOL. 56, ISSUE 31, July 31, 2009 ***

TITLE 11. ZONING
CHAPTER 26. INCLUSIONARY ZONING

CDCR 11-2603 (2009)

11-2603. SET-ASIDE REQUIREMENTS.

2603.1 An inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an R-2 through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 District shall devote the greater of 10% of the gross floor area being devoted to residential use density or 75% of the bonus density being utilized for inclusionary units.

2603.2 An inclusionary development of steel and concrete frame construction located in the zone districts stated in § 2603.1 or any development located in a C-2-B, C-2-C, C-3, CR, R-5-C, R-5-D, R-5-E, SP, W-2 or W-3 District shall devote the greater of 8% of the gross floor area being devoted to residential use or 50% of the bonus density being utilized for inclusionary units.

2603.3 Inclusionary developments located in R-3 through R-5-E, C-1, C-2-A, W-0 and W-1 Districts shall set aside 50% of inclusionary units for eligible low-income households and 50% of inclusionary units for eligible moderate-income households. The first inclusionary unit and each additional odd number unit shall be set aside for low-income households.

2603.4 Developments located in CR, C-2-B through C-3-C, W-2 through W-3, and SP Districts shall set aside 100% of inclusionary units for eligible moderate-income households.

2603.5 The Mayor or the District of Columbia Housing Authority shall have the right to purchase up to twenty-five percent (25%) of inclusionary units in a for-sale inclusionary development in accordance with such procedures as are set forth in the Act.

STATUTORY AUTHORITY: D.C. Code §§ 6-641.01, -641.03

History of Regulations since Last Compilation (February 2003):

March 24, 2008 2603.1, 2603.2 amended at 55 DCR 2604 by the Zoning Commission

August 25, 2006 2603.1 to 2603.5 new at 53 DCR 7013 by the Zoning Commission

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009591

Source: District of Columbia > Find Statutes, Regulations, Administrative Materials & Court Rules > **DC - Weil's Code of D.C. Municipal Regulations**
TOC: Weil's Code of D.C. Municipal Regulations > TITLE 11. ZONING > CHAPTER 26. INCLUSIONARY ZONING > **2603. SET-ASIDE REQUIREMENTS.**
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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009592

9/29/09 Prepared by R. Doggett

Banneker/Florida Avenue Background

1. A summary of the offer made by Banneker when selected by the Board in ~~June 2008~~ July 07 is attached. When the Board approved Banneker, it specifically asked for "an affordable housing component" to be included in the project. Board did not define level/amount of affordable.

Omar Karim, who was only very reluctantly supported by CM Graham, spoke with Mr. Graham (staff was not allowed to) and said CM Graham wanted 20% affordable. Mr. Karim subsequently focused on 4% tax credits for 20% of units at 50% AMI and later claimed that this was mandatory; ~~only~~ recently ~~has~~ he backed down and seemingly tacitly accepted that Inclusionary Zoning for approximately 8% FAR at 80% of AMI is mandatory. (However, he essentially wants the same target land value as for 20% at 50% AMI.)

3. Omar Karim nor Banneker has ever developed a commercial or residential development project in its own right. His selection by the Board depended on an experienced development partner, first Donatelli, then Metropolis, both of whom completed WMATA joint development projects, and now Banc of America Community Development Corporation. The first two dropped out, said they could not work with Banneker. BACDC (Maurice Perry) is trying to restart activity in DC; Perry is reasonably well regarded by those who have worked with him.

4. Why has the negotiation taken so long?
   a. Banneker affordable hsg. pro forma in 10/08 was for ¼ of offer at Board selection in 6/08.
   b. WMATA had always deducted land value only for affordable housing per jurisdiction's regs., up to 15% of land value for @ 80% AMI. Staff prepared a policy memo for the Board saying this is all the subsidy it would do as more would deprive WMATA of needed transit funds. Board said instead it wanted to look at housing on a case by case basis. ~~Feb 2009~~. 2/09
   c. After Metropolis dropped out, Board asked staff for ~~thorough~~ due diligence on BACDC. ~~March 2009~~ 3/09
   d. In April, staff asked for extension to August to redo term sheet with affordable housing. Since appraisal was out of date—over a year old-- also needed to redo appraisal. ~~July~~ ~~Aug 2009~~ 7/8/09
   e. Original deal was a lease based on Board preference. Staff in last two weeks determined that WMATA general counsel would not accept a lease that combined WMATA property with developer-owned property (co-tenancy) and is now recommending a sale. The combined site provides a more regular configuration and building.

Current Concessions/Issues

1. Current ~~Sept~~ 09 appraisal discounts value for cost of building over tunnel by $2.3 million. Banneker has accepted this and has acknowledged its own estimate was $1.5 million.
2. When WMATA offered a $1.98 million capitalized rent deal several weeks ago, under duress, Banneker subsequently sent in a ~~Sept~~ 2009 pro forma that incorporates the WMATA offer:
   a. Developer fee increased from March 2009 pro forma ($770k on $28M project to $2.8M on $40M project)
   b. Rent decreased from $2.90/sf to $2.43/sf and increase was projected only at 2%/yr ad infinitum.
   c. An adjustment in any of the first two sets of assumptions would allow a $2M increase in payment to WMATA.
   d. Banneker never answered an e-mail sent to it about these issues.
   e. I also asked for Omar's app for tax credits
3. Banneker is paying **$91 per FAR sf** (we have the Aug 2008 contracts) for two adjacent 9th St 7,700 total sf parcels that it wants to combine with WMATA's. The combined sites will require Historic Preservation Review Board approval because he wants to tear down 2 "contr. bldgs" bldgs.
4. In addition to combining our site with their property, the developer will attempt to combine WMATA's two parcels between 8th and 9th streets by obtaining an alley closing. CM Graham's approval is vital. Though we initially agreed on a price increase to WMATA based on the alley closure under the lease structure we have not yet explicitly discussed it in this sale deal and should. WMATA would contribute 600-900 alley sf x 4.5 FAR at price we would end up with after tunnel deduction, somewhere around $100,000 @ $32/FAR sf.

+based on 20% at 50%

The Issue at Hand

Could WMATA accept a $50/sf FAR value instead of $55? Yes.
A drop in WMATA's earlier appraised value of $57.50/FAR sf by a different outside appraiser ((Integra/Pat Kerr) in @8/08) could probably justifiably come down to $50. This would be a further price reduction roughly of $500,000 for the current 98,000 to 100,000 base FAR sf we agreed on Friday 9/25/09.

Is the decrease warranted? No. In light of Banneker's cherry picking the parts of the appraisal that are favorable to it and disputing the ones it thinks are not and the current concessions/issues, this staff member thinks further decreases are not warranted from a business standpoint. Further, the word on the street is that Banneker gets what it wants. The final result will be no secret. It will be watched by Banneker's competitors and affect WMATA negotiations with others.

N.B. The outside appraiser (Integra/Pat Kerr) who did the first appraisal in @ 2/08 for Florida Ave is preparing a new appraisal for our BCP (Broadcast Center Partners) site at 7th and S streets, another site in which city officials have facilitated a deal with a private developer. The BCP site is 1 ½ blocks from the Florida Avenue parcels and is on the doorstep of the Metro station that the Florida Avenue development residents/customers would use. THE APPRAISAL FAR SF VALUE NUMBER for the BCP site IS DUE WED SEPT 30 according to our in-house appraiser. It would be prudent to have consistency on values for these two proximate sites, and perhaps our in-house appraiser could lean on Integra to get results a day earlier in the a.m.?

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 and Metropolis Development Company 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	NPV to WMATA over Term of Lease $14 million
Appraisal by Integra Realty 8/07	

T:\Doggett\ShawHoward\Shaw-Howard FL AVE Confidential.wpd

WMATA-INV 009595

FL Ave - Meet w/ S. Goldin 9/30/09

- Appraiser will give whisper $ today
  - will accept $
  - 98,000 SF → Anything over

- Protect
  - Final CO SF + Bldg Permit
  - Put in CCR

- On BOD Agenda
  - nothing in mail out
  - will 1st get at meeting

- Term Sheet → Ask Roe

- R. Doggett

Florida Avenue 10/1/09

- S. Goldin - 2616 - LM - Lease vs sale

- Tele: R. Doggett
  - MAI Appraiser : 2.2 milly
  - Met w/ MR. Graham
    - Doesn't want to sell; wants to lease
    - Thinks Developer is not Competent to do project
  - Q - is this JD or Excess land?
    - Had a Couple of offers of Sale
      - Did not Send in final offers
      - Sent letter to Metropolis, but did not Respond
      - Another was Rejected → RD will Check Records but does not think had to do w/ Lease or Sale
    - What are legal impediments to Switch?
    - FTA : 72 FR 5788 → 1500 feet

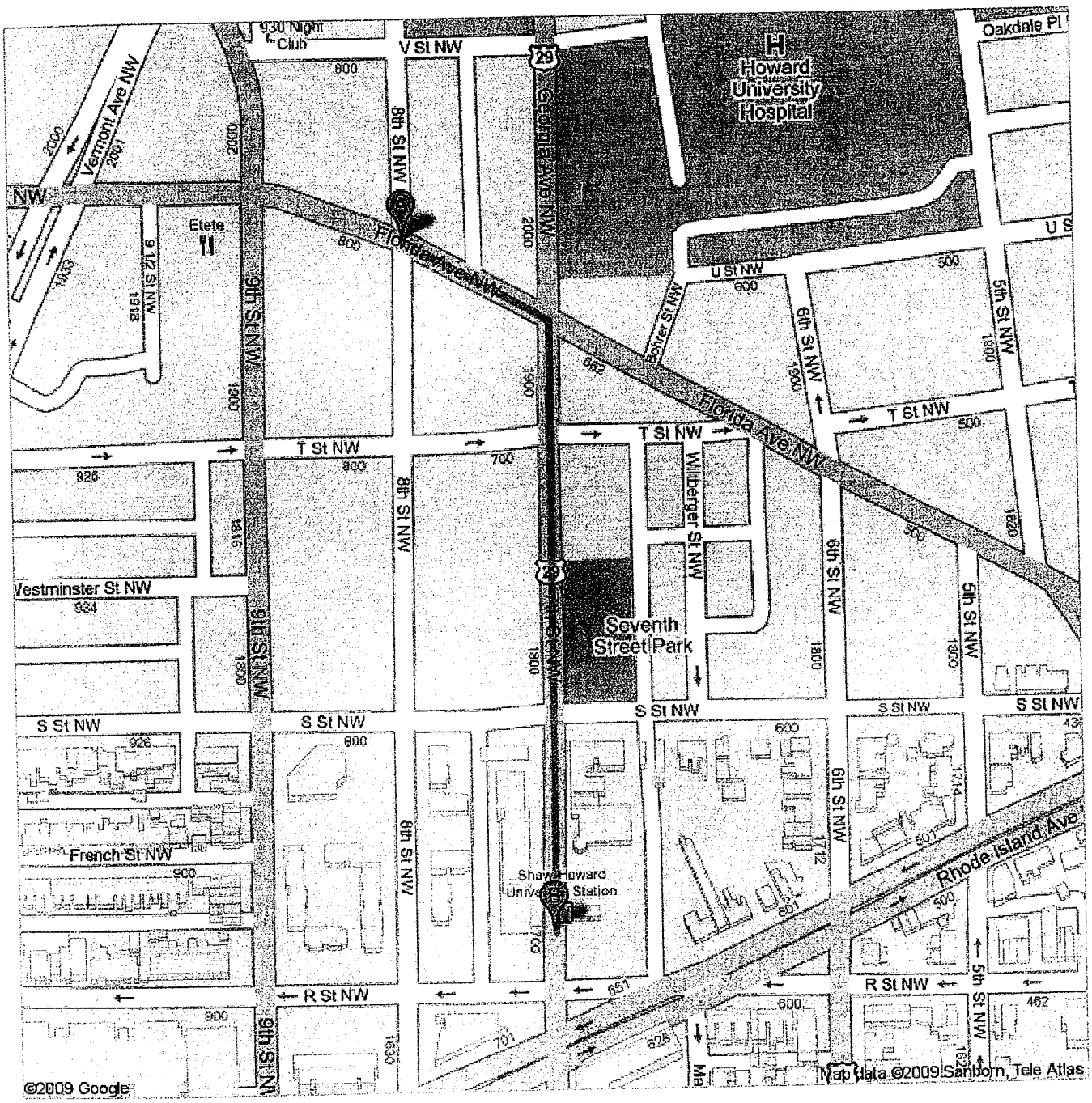
- meet - B. Heppen : OIG Issue
  - look at Board Standards of Conduct
  - Lease to Sale
    - SE Bus Garage Decisions

- meet: Cok
  - Lease preference was part of Selection Criteria
  - Procedures
    - JD → Guidelines
    - Surplus → nothing formal

Google maps

Directions to Shaw-Howard University Station
1701 8th St NW, Washington, DC 20001
0.3 mi – about **57 secs**

Save trees. Go green!
Download Google Maps on your phone at **google.com/gmm**



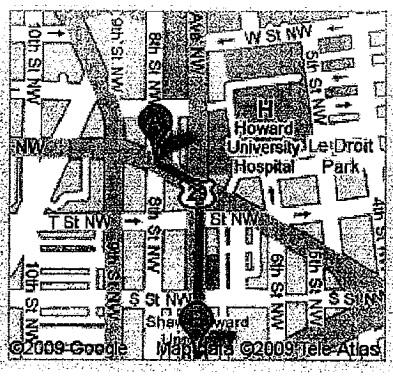
0.3mi = 1584 feet

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009598

Florida Ave NW & 8th St NW, Washington, DC 20001

1. Head **southeast** on **Florida Ave NW** toward **7th St NW** — go 331 ft, total 331 ft

2. Take the 1st **right** onto **7th St NW** — go 0.2 mi, total 0.3 mi
   Destination will be on the left
   About 1 min



Shaw-Howard University Station
1701 8th St NW, Washington, DC 20001

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2009 , Sanborn, Tele Atlas

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009599

FL Ave 10/2

- Terms
  - price / Deposit / pre-closing payments
  - Closing Date

- Guaranty
  - BoA → proof
  - Bannecker or Karim → Add?
- PUE of adjacent lots
- CCR
  - How do you measure FAR on WMATA lot After Combined?
- Construction inspect Rights After Closing - what is Hammer?

FL Ave

CCRS

- Risk/insurance
- increase build = increase cost
- Reversion if don't get ~~Sales~~ CO by Dec. 2011
- Tod

• Co-Tenancy Agreement Review 10/5/09

- Developer provided an outline of Cotenancy Agreement provisions
- makes default → tie to unmarketable interest (WMATA Can't get out)
- ← Give Copy to COK

• Sale

- Surplus Agreement templates
- PUE Docs

Concerns about adjacent property issue:

1. Bidding Process:
    a. Combining WMATA lots with adjacent property was supposed to be included in Developer's offer, pursuant to RFP;
    b. Does this compromise the bidding process – FTA concerns?
    c. Does this make Banneker bid stronger or weaker?

2. Consideration:
    a. What is the incentive for WMATA?
    b. Developer is asking for more than WMATA has offered, but what additional is being offered to WMATA?
    c. Has this scenario been appraised by WMATA?

3. Default: If Tenant defaults on Lease, how does WMATA terminate lease?
    a. Does WMATA want to own and/or operate half of a building where the other half is owned and/or operated by another party?
    b. Does WMATA have funds for buying the adjacent property from Tenant?
    c. Why would WMATA want to take over failing project? That is not our mission.
    d. How do the interests of institutional lenders, government lenders, equity investors, and/or tax-credit syndicate relate to WMATA (pre-default and post-default)?
    e. Would Developer consider setting up escrow fund or letter of credit or other protective measure in case that WMATA has to take over?

4. Control/Safety
    a. Access to Metrorail – does this affect WMATA's operation at all?
    b. Insurance – what are the insurance implications?
    c. Does WMATA need to retain any authority over property that is owned by Developer (WMATA has no legal interest/authority in adjacent property)?

5. Participation/Revenue
    a. How do we ensure that capital events and participation revenue is accurately attributed to WMATA and non-WMATA property?
    b. How do we ensure that costs are accurately attributed to WMATA and non-WMATA property?

6. Tax issues
    a. How is the adjacent/connected property taxed?
    b. What if WMATA takes over Developer property, is WMATA still immune from taxes?

Montague, Joshua W.

From: O'Keeffe, Carol B.
nt: Tuesday, October 06, 2009 9:54 AM
.o: Montague, Joshua W.
Subject: FW: Attorney - Client Privileged Inquiry from Neil Albert's staff: Florida/Shaw Project

Importance: High

fyi

From: Bottigheimer, Nat
Sent: Tuesday, October 06, 2009 8:57 AM
To: O'Keeffe, Carol B.
Cc: Goldin, Steven; Pant, Shiva K.; Moneme, Emeka; Requa, Jack
Subject: Attorney - Client Privileged Inquiry from Neil Albert's staff: Florida/Shaw Project
Importance: High

Carol—

I called Yohance Fuller yesterday to find out what the status was of conversations between Neil Albert and Mr. Graham regarding this project. It seemed that Neil and Yohance were still not clear on our position, which I tried to explain.

Yohance has some questions – see first paragraph below – could I suggest that he contact you directly in reference to these?

o note that Yohance is requesting this be brought to the Board on the 22nd.

Thanks,

Nat

From: Yohance (EOM) Fuller [mailto:yohance.fuller@dc.gov]
Sent: Monday, October 05, 2009 8:58 PM
To: okarim@bannekerventures.com; Bottigheimer, Nat
Cc: Neil.Albert@dc.gov; Goldin, Steven
Subject: Florida/Shaw Project -- Update and Next Steps
Importance: High

Nat --

Thanks for reaching out this afternoon to provide an update on what was causing the hold up last week.

After speaking with you, it is my understanding that WMATA's counsel wants to communicate its concerns to the committee and ultimately the Board about the risks associated with entering into a fee simple transaction for the Florida/Shaw project. I would like to understand specifically what are the risks that your counsel is referring to, what is counsel doing to mitigate those risks, and more importantly why these risks were not communicated when you and your counsel made the initial proposal to move forward with a fee simple transaction after negotiating a leasehold transaction for months.

Second, you and your staff should make every attempt to move forward with this transaction and include it on the agenda for the ard Meeting on the 22nd of October. I understand that Banneker would still like to move forward with a fee simple transaction. Since your team was not able to make last week Friday's deadline to include the Florida Avenue/Shaw project on the committee agenda, I assume we will move forward with the option to call a special session prior to the board meeting. Please confirm that this is in fact, correct.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009603

Third, let's plan to have both parties meet no later than COB Wednesday, October 7th. Please have your counsel present at this meeting. There are still a couple of items that I believe the Developer is waiting to receive from your staff. This includes an updated appraisal that reflects the appraisers' changes from our meeting last week (This was requested last week, so there should be no problem in getting a copy before Wednesday); a draft term sheet that reflects the principle agreement that both parties arrived at last week; and a memo from your counsel that details the aforementioned risks, as well as what efforts they are making to mitigate those risks. I would also like to see a memo detailing the risks associated with a leasehold interest. I think it makes sense to engage a full due diligence exercise with both parties in the room. These items must be sent out in advance of the scheduled meeting.

Omar -- Please plan to have your counsel present for the meeting that Nat and his team will coordinate this week.

Thanks for both parties' willingness to get this deal done.

Regards,

Yohance

FOIA CONFIDENTIAL TREATMENT REQUESTED

M E M O R A N D U M

DATE: October 6, 2009

SUBJECT: Florida Avenue Adjacent Property Comparison of Risks

FROM: COUN – Josh Montague

TO: COUN – Carol B. O'Keeffe
COUN – Bruce P. Heppen

Lease:

First, it is important to note the following while reviewing the risks associated with the proposed lease arrangement:

1. The Developer has not responded to the WMATA draft of the Lease. The Developer has only provided (i) comments to the Joint Development Agreement and (ii) an outline of the proposed Co-Tenancy Agreement.

2. One of Developer's main arguments in favor of this arrangement will likely be that Developer's lenders will not let a default under the lease occur. But, the Developer has not provided any comments related to their lender, including (i) what their lender will require to be included/excluded from our lease and (ii) what happens if the lender does not step in.

The following is the list of risks under the current Lease and Co-Tenancy arrangement:

1. Other bidders - The other bidders could sue because the NPV of the Developer's current bid is so far below the NPV of the losing bids.

2. Rent payments – Although the Base Rent will be capitalized, the following payments may still be due under the Lease:
   a. Participation rent – a set percent of the Developer's Effective Gross Income will be paid to WMATA annually.
   b. Capital Event rent – Developer is to pay 10% of the net income of certain defined capital events (e.g., refi, membership sale, etc.).
   c. Additional density – if the Developer adds additional density after lease closing, the Developer is to pay WMATA additional Base Rent, based on a defined formula (e.g., $50/sf).
   d. Subsequent Base Rent – If Developer exercises its option (additional 33 years), Developer will begin paying annual Base Rent during the extended term.
   e. Late fees and other penalties.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

3. Costs – WMATA will need to ensure that costs are accurately attributed to the WMATA and non-WMATA portions of the project for purposes of Participation rent, Capital Events, and under a Co-Tenancy arrangement.

4. One of the most powerful ways a Landlord can ensure that a Tenant complies with the essential terms of the Lease is through the threat of termination. Under the agreement, the essential terms include:

    a. Approved Project Completion - Developer fails to (i) let WMATA inspect the construction; or (ii) build the project as approved; or (iii) timely finish the project.
    b. Change of control – Developer sells or assigns its interest without required WMATA approvals.
    c. Financial Statements – to ensure that Developer is meeting its Participation Rent and Capital Event Rent obligations, Developer must disclose certain financial records. Additionally, WMATA must have the right to audit the Developer's financial records.
    d. Unauthorized construction – to ensure that Developer does not perform any construction over our tunnel without our approval.
    e. Insurance - Developer fails to maintain the proper insurance to protect the tunnel during construction and/or operations.
    f. Indemnification – Developer fails to indemnify WMATA as required under the Lease.
    g. Bankruptcy – if Developer files for, or gets dragged involuntarily into, bankruptcy.
    h. Gratuities or other bad acts unique to WMATA as a public agency.
    i. Lender fails to exercise rights to cure Default – in today's market, it is a possibility that a lender may not have the means to timely cure a tenant default.

5. Co-Tenancy Agreement – the following is a summary of the basic problems with the Co-Tenancy arrangement:

    a. Lot 416 – The Developer is trying to include the separate lot/building in Co-Tenancy arrangement.
    b. Costs – WMATA agrees to split costs with co-tenant. Presumably these costs come out of the rent generated by the Project. But, this will be a failed project and so may not be able to cover costs.
    c. Partnership with failed developer – <u>All</u> actions could only be taken pursuant to a unanimous vote.
    d. Marketable title - Co-Tenancy arrangement will severely limit WMATA's right to sell or re-lease the Property.
    e. Taxes – the Project may face foreclosure due because of unpaid taxes.
    f. Insurance – Co-Tenancy agreement requires WMATA to procure

certain insurance policies upon Default.

g. Management company – WMATA to share costs of management company.
h. Indemnification – WMATA must agree to indemnify the co-tenant and the management company.

Sale

The following is the list of risks under the Sale arrangement:

1. Other bidders - The other bidders could sue because the bidding process was unfair due to WMATA discouraging sales bids.

2. Construction - Lose power to evict Developer if Developer performs construction activity over tunnel without WMATA permission.

M E M O R A N D U M

DATE: October 6, 2009

SUBJECT: Florida Avenue Adjacent Property Timeline

FROM: COUN – Josh Montague

TO: COUN – Carol B. O'Keeffe
COUN – Bruce P. Heppen

Here is a chronological listing of issues related to the Florida Avenue properties:

1. Spring 2007: WMATA issued a Joint Development Solicitation (JDS). The JDS addressed this topic in two areas:

    a. The JDS declared that lease offers would be preferred over sale offers (Section 1.1 and others).
    b. Developers who intended to incorporate adjacent properties were supposed to disclose such plans so WMATA could review the technical requirements (Section 2.3(X)).

2. 7/2008: The Term Sheet is approved by the WMATA Board. The Developer made no mention of the adjacent parcels in any of the development specifications submitted or at any time during Term Sheet negotiation.

3. 10/2008: Developer informally told Counsel (in an elevator) that they were purchasing the adjacent parcels and intended to build a building which would traverse WMATA's smaller parcels and said adjacent parcels. At next meeting, Counsel asked Developer how relationship would work for WMATA. Developer did not effectively respond.

4. 11/2008: Met with Carol O'Keeffe and Bruce Heppen to discuss the Developer's intention to build a building that spans WMATA's parcels and adjacent parcels. Afterwards, reached out to the Developer's attorney to inform Developer that the adjacent building idea was:

    a. Not part of the agreed Term Sheet; and
    b. Not a feasible option for WMATA as a landlord.

    The Developer's attorney asked if we would first listen to their proposal before rejecting it, to which I agreed.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

5. 12/2008: Rosalyn Doggett met with Neil Albert. In their meeting, Mr. Albert mentioned that he "would not be adverse" to the Developer building on our land and the adjacent land.

6. 12/2008: During meeting, Counsel asked Developer for adjacent property terms. Developer said would get us something soon.

7. 3/2009: During meeting, Counsel asked Developer for adjacent property terms. Developer said would get us something soon. SAAM asked for proof of control of adjacent parcels, Developer was reluctant to provide.

8. 4/2009: Developer proposed solution where WMATA would have an option to purchase the Developer's portion of the adjacent building/property at FMV, in the event that Developer defaults on lease. Advised Developer that this was not a solution that WMATA would be interested in.

9. 5/2009: During meeting, Counsel asked Developer for adjacent property terms. Developer said would get us something soon.

10. 6/2009: COUN restated objections to adjacent property idea. Developer again stated that they thought they could make this beneficial to both parties. Developer promised to provide a detailed description of beneficial relationship within two weeks.

11. 8/2009: Despite WMATA never agreeing to the adjacent parcels issue, Developer provided updated project drawings which showed the project extending to adjacent parcels.

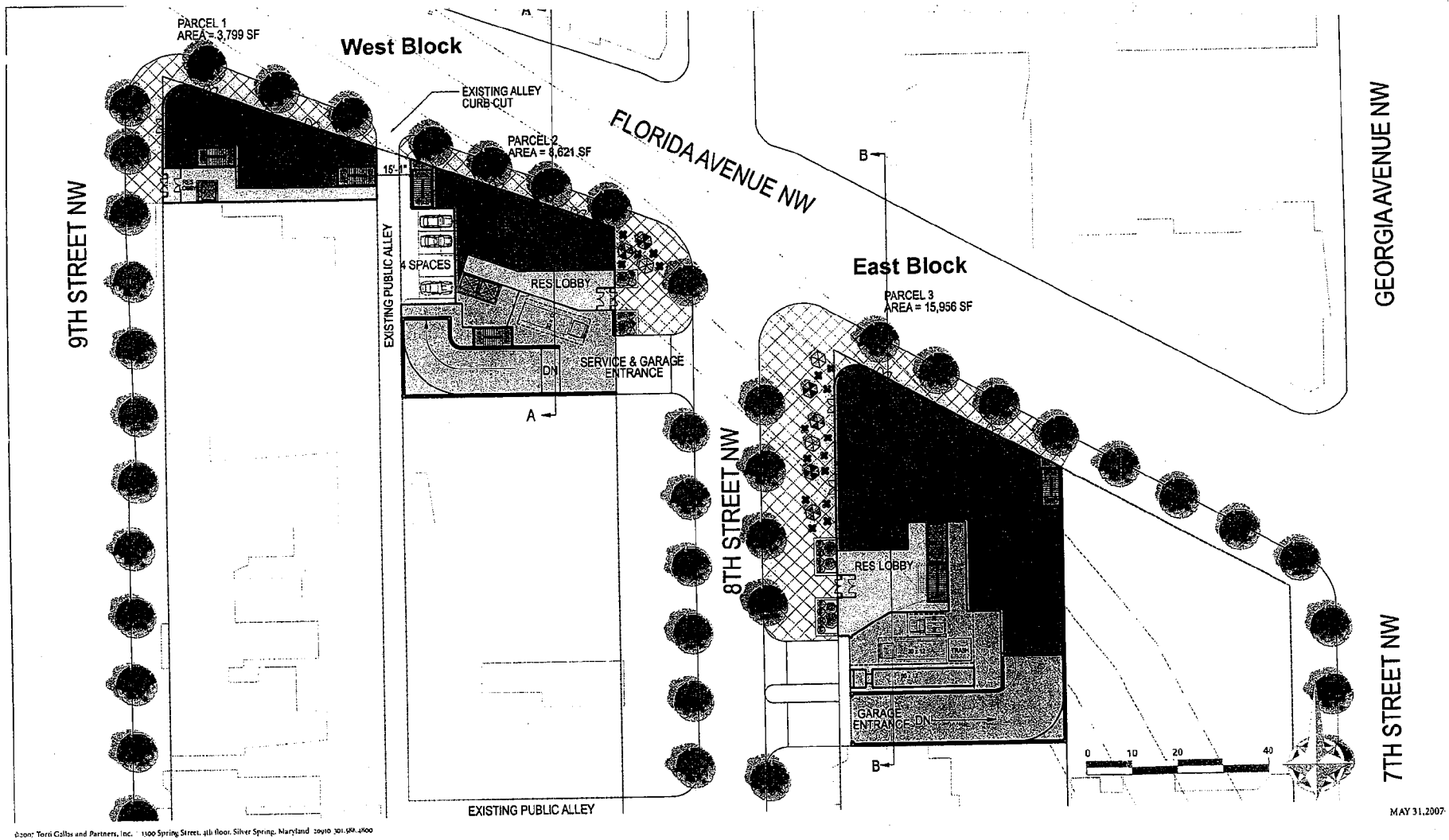
12. 9/2009: Developer proposed a Co-Tenancy agreement in their comments to the WMATA draft of the Joint Development Agreement. Developer did not provide any details of the Co-Tenancy agreement. COUN objected to this arrangement at a meeting on 9/11/09.

13. 9/17/2009: Developer's attorney provided an outline of the proposed Co-Tenancy Agreement.

14. 9/18/2009: During meeting with Developer, Nat Bottigheimer stated that Counsel thought the Co-Tenancy agreement was a non-starter and stated that a sale would be the only way that a building could be built on both our parcels and their parcels. Transaction turned from lease negotiation to sale negotiation.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

FOIA CONFIDENTIAL TREATMENT REQUESTED



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First Floor Plan

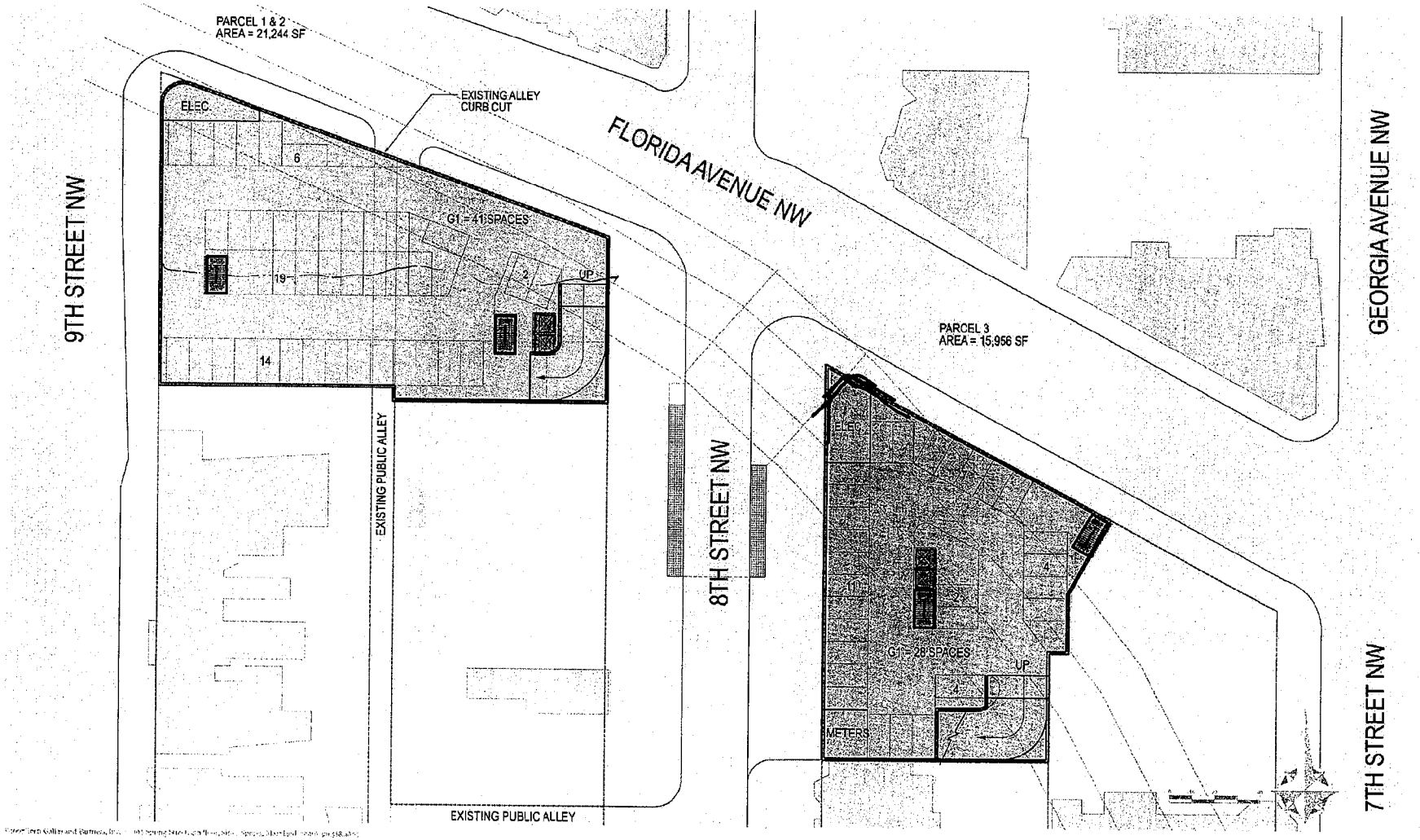
BANNEKER VENTURES / DISTRICT DEVELOPMENT GROUP
TORTI GALLAS AND PARTNERS

THE JAZZ AT FLORIDA AVENUE

Original Proposal Submitted by Developer

WMATA-INV 009610

Developers updated Proposal (with Assemblage)



Garage Level Plan

June 2009

BANNEKER VENTURES / BANC OF AMERICA CDC
TORTI GALLAS AND PARTNERS

THE JAZZ @ FLORIDA AVENUE

FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 009611

- Florida Avenue 10/9/09

- Omar
- Tony Ives
- Tiwana
- John Hagner
- Net
- Steve
- Cok

→ Sale Risks:
- There were Sale bids
- BOD prefers lease
- Other bidders could come back and object

→ Why switched to Sale:
- Co-Tenancy agreement is not feasible option

- Sale benefits
  - more of the alley captured → higher price

- OK → you never told us that we couldn't do this (lease w/ Co-Tenancy Arrangement)

- Term Sheet / Appraisal

  - SG pointed out provisions
    - 7.8 - JH: • this will be an issue for HUD
      • I don't have issue w/ this Risk for Developer b/c is Standard to ensure Build (not flip); but is HUD issue

10/9/09

- 7.6 → Recapture

- OK → why isn't lease info in appraisal?
  - "It is our understanding that Mr. Graham spoke to Appraiser = if that is not illegal, it is certainly unethical"

- Developer will Review Term Sheet

FL Ave 10/15/09

T/S Review w/ Roz

- Subject to Lender policy
-

- Tunnel Exposure → guarantor will ensure

- indemnification → post-closing: CCR's
  - HUD policy → must be out of Surplus Cash

- OK → in Service by 12/31/11 to get tax Credits

- "Of 3" → Agree is not part of WMATA parcels

- Dev Surveyor will prepare legal descr. and work w/ WMATA on 3-D tunnel

☐ - Email ROE to OK

☐ - Tung → Access to Facilities

- FAR Approval
  - generated
  - 79/21 Split

☐ - Excavation Replacement Guaranty Language

FL Ave Review w/ Carol + Bruce 10/15/09

- Ratio → Only to future Density (End of Paragraph 2)
  - is this for anything else?
  - why not in 7.6??

- 7.9 → Roz talk to Nat
  - what does this mean?
  - if they engage in fraudulent behavior, we get 1/2

✓ - Guaranty
  - indemnifications that Survive Closing

✓ - Developer will do Survey (alta) + Title

FL Ave 10/16/09

- Meet w/ Rod Schraven & Kim Brown
- Construction:
  - GC → Sign Permit
  - Indemnification
  - Railroad 5/10
    CGL 5
    (~~Pollution~~)
  - Waive
    - BR
    - Prop
    - Workers Comp
    - Auto
    - Pro

- Operation:
  - Indemnification
- Policies
  - RR - Construction Activity on RR property
    - Will Subrogate
    - Will Require us to get full indemnity
      - All Workers / GC / Dev
  - GL - Contractors have to indemnify
    - Contractual liability instead of vicarious liability
    - Remove Exclusion to work w/in 50 Ft

Montague, Joshua W.

From: Doggett, Rosalyn
Sent: Friday, October 16, 2009 10:05 AM
To: Montague, Joshua W.
Cc: Bushnaq, Tariq
Subject: RE: Florida Avenue question

The soft cost was an estimate from the appraiser. The hard cost from our construction estimating staff was @ $1,770,000, and the appraiser added 30% to cover soft costs and get to a total of $2,300,000. Soft costs typically cover A & E, construction loan interest, insurance, etc. and could cover costs of escorts. Our estimator assumed a design-build contract. Also, he/we estimated each parcel separately (I say "we" because the estimator only did Parcels 2 and 3 and I, with Tariq looking over my shoulder, extrapolated the Parcel 2 costs to Parcel 1 on a pro rata sf basis. Therefore the costs for the two smaller parcels were higher (less efficient construction) on a per square foot basis than the third, larger parcel. In my opinion, and Tariq's, as we both went over the estimate, the estimate is a conservative one. [On the other hand, and as an afterthought, we did not consider any extra costs of building over a tunnel should the developer be able to close and build over the alley at Florida between 8th and 9th.]

The developer, Banneker Ventures, had an allowance of $1.5 million in its 12/07 budget for the added cost of building over a tunnel. That is the last budget I saw that explicitly addressed the tunnel. It was not possible to tell whether that allowance included soft costs.

From: Montague, Joshua W.
Sent: Friday, October 16, 2009 8:03 AM
To: Doggett, Rosalyn
Subject: Florida Avenue question

Hi Roz,

What was included in the "soft costs" write-down for working over our tunnel? Was insurance included?

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009617

Montague, Joshua W.

From: Goldin, Steven
Sent: Monday, October 19, 2009 10:07 AM
To: Montague, Joshua W.; Doggett, Rosalyn
Cc: Heppen, Bruce P.; Robinson, Thomas; Mohsberg, Sid; Bottigheimer, Nat; Moneme, Emeka
Subject: RE: Florida Avenue - Outstanding legal issues

Josh: Good memo

Tom: Just want you to be in the loop

Steve

From: Montague, Joshua W.
Sent: Monday, October 19, 2009 10:00 AM
To: Doggett, Rosalyn; Goldin, Steven
Cc: Heppen, Bruce P.
Subject: Florida Avenue - Outstanding legal issues

Hi Steve and Rosalyn,

Here are my comments on the three outstanding legal issues in the Florida Avenue Term Sheet:

1. **Version of WMATA Design and Construction Standards (Section 9.5):**
   a. *Developer*:
      i. Developer is arguing that it is impossible to prepare its plans for DC approval if WMATA can change its standards.
      ii. Developer is arguing that a lender cannot underwrite the project if WMATA can change its standards.
      iii. Developer is trying to avoid the costs/risks associated with the two above.
   b. *WMATA*:
      i. JDAC is adamant that Developer be held to the current construction manual, as revised from time-to-time.
      ii. WMATA has agreed to this in the past and been burned because many of these projects get extended for years and years. This leads to the Construction Manual being greatly out-dated by the time construction is completed.
      iii. "Safety first"
   c. *Comments*:
      i. This is a risk/cost that the developer has to take on in order to build on this project. WMATA has been up-front about this risk/cost since day one.
      ii. Possible compromise: Developer can rely on today's Construction Manual (as of date of execution of the Definitive Agreement) as long as it gets to final completion within 2 years. If construction goes past two years, then the Developer must adhere to the then current standards. Under this scenario, Developer must accept all additional costs/risk for adjustment after the 2 year mark.

2. **Guarantor (Section 9.8(e)**:
   a. Developer:
      i. Guarantor wants to only guarantee the construction of the project.
      ii. Guarantor does not want to guarantee the other indemnifications, covenants, and payments of the Definitive Agreement.

FOIA CONFIDENTIAL TREATMENT REQUESTED

b. *WMATA*:
   i. In its previous acceptance of this project, WMATA's Board has expressed reservations about Banneker. The Board stated that it wanted a strong presence from Banneker's partners. This can be accomplished most effectively through the Guaranty.
   ii. The switch from a lease to a sale makes this guarantee much more important. If this was still a lease, WMATA could terminate the lease agreement if the Developer violated the Definitive Agreement. Now, as a sale transaction, WMATA's remedies are limited.
   iii. Since this is a sale, the guarantee of the construction of the project is of less concern to WMATA. WMATA should be concerned protecting its interest in the indemnifications and future payments.
   iv. The Jazz @ Florida Avenue, LLC will be a highly leveraged SPE, which will allow for limited recourse by WMATA. Having a strong Guaranty Agreement will be essential to shifting risk away from WMATA and back onto the Developers.
c. Comments:
   i. We should stick to our guns and force the guarantor to accept this responsibility.
   ii. Possible compromise: force the guarantor to specify which terms they object to. Since there is no Definitive Agreement at this time, this probably is not a valid/timely option.

3. **Insurance (Section 11)**:
   a. *Developer*:
      i. Developer agreed to include a CGL policy, but only wants to add WMATA as an Additional Insured on their policy.
   b. WMATA:
      i. WMATA's Office of Risk is requiring the Developer, the GC, and all Subs that work on the project to name WMATA as an Additional Insured on their policies.
      ii. The Office of Risk would also like to implement a policy where every GC, Sub, etc. is required to sign a ROE permit with WMATA. This will create privity of contract between the relevant party and WMATA. This will strengthen our insurance position.
   c. Comments:
      i. We should defer to our Office of Risk's assessment. Since this will be a sale rather than a lease, the required indemnifications and insurance will be WMATA's only protection of its tunnel.
      ii. I have asked Rod Schraven to put something in writing, which explains why we need all of the relevant parties to name WMATA as an additional insured on their CGL policies.

Please let me know if you have any questions/comments.

Sincerely,

Josh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009619

FL Ave 10/19/09

→ Tariq + Tom + Roz + Steve

- 9.5 : (Adjacent Construction Manual)
  - it changes periodically, Reviewed annually
  - changes have been more informational than Substantive
  - Determined Case by Case
  - Manual is very conservative
    - wont likely change as to tunnel + vent
  - DC Approvals → BOCA, etc.
    - we are Concerned w/ influence on us
  - Lender : Can change more frequently
  - SG → This is your Concern (TR/TB)
  - TR/TB → we Can live w/ their Complience w/ Version 3
  - Ex. Silver Spring → working on earlier version
  - Ability to modify w/ in
- ~~9.8(c)~~

☐ ← - Version 3 → So long as Commences w/in 3 yrs

☐ ← - Total Project must Comply

- 9.8(c) - Guarantor - no room for Compromise
- 11 → if want exception to policy ; get from up above

FL Ave → Hagner 10/19/09

- Construction Manual
  - 3 year mark
  - Commences Construction
  - why not Excavation? Tom Robinson

- Guarantor
  - Bank Subsidiary Can't Do that
  - CCR's → will prime the 1st mortgage
  - Indemnity
    - Bottomless Pit

Insurance Broker w/ K. Brown 10/20/09

- RRP -
  - Carriers require Contractors to carry CGL equal to RRP Limits
  - WMATA as Add'l
  - Waive Subrogration
  - Delete 50 ft exclusion

  > Ask for, may not get

- CGL is Contractors protection
  - WMATA gets defense costs

- Ex. Loss
  - RRP - will pick up loss (and defense)
  - No double dipping but need more

- CGL limit could be used up on another job & WMATA would never know

- Scope of Work is limited
- RRP covers only through work (occurrence policy)
  - CGL covers after job over
  - RRP ends when job completed

- ~~RR~~ Contractual liability
  - Contractor's protected by CGL
  - RRP will not protect Contractors

FL Ave - Steve & Roz 10/20/09

- Explain we are as far as we can go

- Guarantor
  - LOC option

- Cite other Cases
  - Rhode Island Ave

- Focus on our position
  - we won't do this deal unless we are protected
  - insurance has limits

- Mead - leave Reversion/meeting Discuss
  - Rod Schraven be at BOD meeting

other Transactions: X Dunn Loring (Trammell Crowe) - 2005, may 17th
X White Flint → all obligations of Definitive Agreement
X Silver Spring

• Cok • RD • SG 10/20
• BPH • NB

☐ - • Memo of Sale vs. Lease → Neil Albert

• indemnity during Construction period

Bulleted ok?

- Compromise
  - insurance
    - ensure all insurance (Subs, GC, Dev)

- Cap → $5 million

- Letter of Credit

- Failure of insurance
  - what about flow down?

- Reversion Language
  - is this window Dressing?
  - JG is insisting on this
  - Do we Recommend if there is no Reversion?
    - if has lender Clause → no Reversion
      → JG unhappy
    - if Reversion is a Condition of Sale, → no close?
      → NA unhappy
  - Take it out and make NA deal w/ JG
    - NB to call NA

- Guaranty

- 29, 19, or 10

Florida Avenue 10/20/09

- Omar - Conference Call → John Hagner
- SG, RD

- insurance → OK Agreed
- Guarantee/indemnification

- RRP

- OK → is it because we have a minority led Developer?

- Ellington
  Highland Park
  Park Place
  Chiller - lease - prob not NY-C

- SG offered OK to do personal Guarantee if Financials check out

- JH - insurance → 1st look for WMATA
  - Guarantor → Limit to Insurance numbers

Montague, Joshua W.

From: Goldin, Steven
Sent: Wednesday, October 21, 2009 5:15 PM
To: Doggett, Rosalyn; Marshall, Malcolm; Montague, Joshua W.
Cc: Bottigheimer, Nat; O'Keeffe, Carol B.; Moneme, Emeka; Heppen, Bruce P.; Catoe, John B.
Subject: Forida Avenue

Just received word we are not taking this to the Board tomorrow. Apparently this will now be a lease deal going to a special Committee meeting in two weeks. Accordingly:

Josh: In consultation with Carol and/or Bruce, please make appropriate revisions, including a reduction in the security deposit from $250,000 to $150,000

Malcolm: The appraisal needs to be updated to reflect a lease scenario...capitalized upfront payment with a 1% participation and a 2% sale/refinance provision. The appraiser needs to address this quickly.

Steven E. Goldin
Director, Station Area Planning & Asset Management
Washington Metropolitan Area Transit Authority
sgoldin@wmata.com
202-962-2616

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009626

Montague, Joshua W.

From: O'Keeffe, Carol B.
Sent: Wednesday, October 21, 2009 3:32 PM
To: Bottigheimer, Nat; Goldin, Steven; Montague, Joshua W.; Doggett, Rosalyn
Cc: Catoe, John B.

All, these are additional thoughts as to how we could ensure that the Developer actually breaks ground if we proceed with a sale, notwithstanding today's discussions. If the return to the lease concept does not gel, we should put these on the table with the Developer.

(i) keep the public alley closing with the easement as something to be completed pre-Closing to a sufficient degree that the D.C. Surveyor will record the alley closing plat; (ii) require that the Developer receive at least its excavation, sheeting and shoring permit, and if reasonably practical the final building permit, before the Closing; (iii) require that the construction contract for the Total Project be completed and the payment and performance bonds be issued all before Closing; and (iv) require that the Developer issue the order to commence construction (mobilization) to the general contractor at the Closing so it is delivered immediately after the Closing.

The key will be to get the D.C. building department to approve the building permit without the lots being re-subdivided. The deadline for re-subdividing the lots will be before the final certificate of occupancy is issued rather than before the building permit is issued. With that waiver, the building permit can be obtained at the Closing.

This alternative proposal is in case the FHA lender will not accept the reversion condition. Under all circumstances, we might consider keeping the concept that the Term Sheet be revised so the alley closing can be completed pre-Closing to a sufficient degree that the D.C. Surveyor will record the alley closing plat. That materially reduces the risk on all sides and gives WMATA the permanent benefit of owning a portion of the public alley for density purposes with the continued use of the alley area via the easement.

The FHA lender will require a completed construction contract and bonding for the Closing anyway. So the real difference in this proposal is to process the building permit in full or in part before the Closing and before the re-subdivision so construction (excavation) can begin immediately after Closing.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009627

FL Ave - meet w/ carol 10/22/09

- Lease:
  - Reversion out
  - Instead Control Sublessees + Assignees
  - Co-Tenancy → Also have to be able to Sue
- Appraisal:
  - Being re-done by SAAM
- FHA Limits on Indemn
  - Does not Apply To Insurance
- Rhode Island Ave Lease
  - HUD/FHA
- HUD guidelines → Get these ASAP

- BOA CDC is out
  - SAAM → Need Another Guaranty
- Ellington → Mable
- Guaranty
  - no Completion bond
  - Co-Obligee on Dev Policies
  - Financial Standards → Re-look

- Insurance
  - Office of Risk
  - JDAA
  - Other Deals
  - Separate from Indemnity

> What Requirements

FOIA CONFIDENTIAL TREATMENT REQUESTED

FLORIDA AVENUE SALE VS. LEASE:

Lease:

Advantages:

- **Control** – Prior to construction of the building, WMATA retains fully effective power to terminate Developer. This is the most effective leverage that WMATA has in ensuring that Developer honors the terms of the transaction. These terms include, but are not limited to, insurance, indemnification, safety, future construction, and payments.
- **Capitalized Lease Payment** – The Developer has offered to pay all Base Rent upfront at lease closing.
- **Future Compensation** – The lease arrangement would also provide for ongoing compensation to WMATA. Future compensation includes: (i) participation rent (a percentage of Developer's gross proceeds), (ii) capital event participation (10% of the proceeds of defined "Capital Events", such as a mortgage refinance or membership sale), and (iii) additional compensation if Developer obtains additional density in the future.
- **Recapture Property at the End of the Lease** - At the termination of the lease, WMATA would regain outright ownership of the property (subject to the below described Co-Tenancy Agreement). WMATA could then sell or lease the property.
- **Negotiation Leverage** – If the Developer wanted to do further construction, add density, or change the project or lease agreement, then it would need the landlord's permission. WMATA could use this to its advantage by negotiating greater compensation.

Sale:

Advantages:

- **Control** - *Recorded Covenants* – The parties will record covenants which prohibit future construction without WMATA approval. WMATA's approval will always include review of construction plans and insurance provisions.
- **Control** : *Avoid Co-Tenancy Arrangement* – The Co-Tenancy arrangement is fraught with issues that make this arrangement ill-advised for WMATA. ~~Some of these issues run counter to the WMATA Compact~~.
- **Payment Upfront** – WMATA will get all payments upfront at closing.
- **Avoid Future Liability** – WMATA will have no future liability as a landowner for injuries, damages, or other problems that occur on the property. WMATA will also have no future legal relationship with the Developer.
- **Guaranty Agreement** – Banc of America Community Development Corporation has agreed to guarantee the completion of the project. The guarantor has also agreed to guarantee the insurance provisions of the final contract. This will alleviate some of the risk of lost control under a sales arrangement.

WMATA-INV 009629

FOIA CONFIDENTIAL TREATMENT REQUESTED

FLORIDA AVENUE SALE VS. LEASE:

Lease:

Disadvantages:

- **Developer's Adjacent Parcel** – The Developer will own parcels adjacent to WMATA's smallest parcel. The Developer plans to construct a building which spans both WMATA's parcel and Developer's parcel. This creates a problem if the Developer defaults on its lease obligations after construction of the building and WMATA wants to exercise its right to terminate the lease. WMATA cannot effectively sever the building. The Developer's only proposed solution to this problem is the below described Co-Tenancy Agreement.

- **Default** - Even though the capitalized lease payment will alleviate most of the risk, there are still many ways that the Developer could default on the Lease. Some examples include (i) failure to make future payments (e.g., paying participation rent), (ii) failure to maintain the required insurance, or (iii) performing construction activities without WMATA approval. If a Developer default resulted in a termination of the lease, then the parties would enter into the Co-Tenancy Agreement.

- **Co-Tenancy Agreement.** The Co-Tenancy Agreement is disadvantageous to WMATA. Under this arrangement, WMATA would be better off living with a tenant in default than terminating the lease. The Co-Tenancy Agreement sets out the terms of the shared management of the building which spans the WMATA parcels and the Adjacent Parcels. Upon default, the parties would share equally all of the costs of management, risk, and maintenance. Neither party would

Sale:

Disadvantages:

- **Other Bidders May Object to Switch to Sale** – WMATA has faced litigation in the past on the grounds of unfair bidding process. During the initial solicitation of this project, WMATA made it clear that leases were favored over sales and did not consider sales for the award. WMATA received inquiries about sales, but none of these inquiries made the final round of bids. Developer's original bid was for a lease. So, another bidder may object to the switch to a sale after making an award on the basis of a lease. ~~WMATA would not have a strong defense to the lease-sale switch~~. Further ~~damaging~~ ~~WMATA's defense is:~~ (i) the fact that the sale price is so much lower than the original bids and (ii) that the bidders were required in the original solicitation to disclose if it intended to include adjacent property into its project, which Developer did not disclose until after the award. Concerns are

- **Lost Control** - WMATA loses the power to terminate the Developer for its bad acts.

- **Enforcement Processes** – Without the rights of a landlord, WMATA will be forced to resort to the court systems to enforce the provisions of the recorded covenants. This is a much more expensive and lengthy process than lease remedies.

- **No Future Compensation** – WMATA loses the power to get additional compensation if the Developer adds additional density after final completion of the project. Also, WMATA is selling the property when the real estate market is depressed. The Developer will get all of the benefit of the inevitable increases in the market.

WMATA-INV 009630

FOIA CONFIDENTIAL TREATMENT REQUESTED

FLORIDA AVENUE SALE VS. LEASE:

Lease:

be able to act without the consent of the other party. The parties would indemnify each other. The Co-Tenancy Agreement will also make WMATA's title unmarketable.

- **Adjacent Parcel Costs** – It would be difficult to ensure that costs are appropriately distributed between the WMATA parcels and the adjacent parcels.

- **Other Bidder's Objection of Final NPV to WMATA** – The NPV of the Developer's offer has fallen far below the other bidders' final offers. This is due to a combination of factors which are difficult to predict whether they would apply to the other bidders.

Sale:

WMATA-INV 009631

FL Ave 10/27/09

- BOD – Nov. 5th

- New Appraisal by 11/30

- Zoning DC 202-727-6311
  - Zoning technician
  - Richard Nero - 202-727-2806

  - Subdivide to make a Record Lot
    - Create two one underlying tax lots
    - multiple people own lot together
  - Surveyor's office → 202-442-4699
    - Rick Dreist - out until 11/2
    - Diana 202 4424984
    - Robert Reid 202-442-4566

  - Subdivision
    - Application on DC.Gov
    - Deeds for both properties
    - Tax Lot
    - Building must be on one lot
      - Tax lot does not accomplish

FL Ave

- Indemnification
  - Surplus behind what?
  - Kick in only in event of Lender control

- Federal Housing Commissioner/HUD
  - Current form
  - Multifamily Clearinghouse - 800-685-8470
    - webpage
  - Field 202-275-9200

- Office of Surveyor

- Co-T
  - Buy/Sell: Contingent on FTA Approval of Satisfactory FMV
  - Indemnity
    - Parent Guaranty

FL Ave 10/29/09

Meet w/ J. Hagner Cok
BPH
KAW

- Obligation to Commence/complete Construction
- insurance
- indemnity
- Guaranty

} Issues

- Obligation to Commence/Complete Construction

  - Deadlines driven by Tax Credits authorized in January Stimulus bill
    - Criteria?
    - Must be expended by Oct 2010 (10%)
      Dec. 31 2011 (completion)
    - Completion <u>And</u> permission to occupy
    - if miss timing, credit is diminished
    - must go through certifications

  - RI → provides for project schedule
    - if developer defaults → non-monetary default
    - enforces completion
    - Jazz → Reduces monetary liability under guaranty

SPE

- Guaranty
  - net worth → $1 million can give (Banneker)
  - guarantee lease to avoid Co-T
  - ~~[illegible]~~
- CCR's
  - "Separate indemnification that gives you everything you want"
    - no limit by HUD
- Co-T
  - 416 → All decisions are WMATA
    - But Some facilities will be on 393 → Still limited
  - Give WMATA Control: 79% vs 21% voting
    - Able to force Sale as long as WMATA is Selling
- Buy-Sell → would need FTA/Appraisal: FMV Required
- Failed Project
  - what if Developer cannot pay Amounts due under Co-T
- what about Costs between Default & Sale?
- 3RD parties → what if Co-T
  - Default on Lease → Co-T; but no Release of lien
  - Ex. Lender or Mechanic's lien or Enormous Judgment
  - what if no lender?
- Financing → Can Banneker get?

- Insurance
  - Failure → 3 bus. Day
    - WMATA force place coverage
    - becomes Rent obligation

- Indemnity → Put in CCR's
  - Ahead of Lender
  - Approved in RI

- Insurance
  - Construction
    - RR protective
    - Builder's Risk
    - CGL
    - Environ.
  - operation

Term Sheet:

- Adjacent Parcel
  - FHA loans should Cover Cost of purchase

- Co-T/guaranty
  - Control Rights

- 45 mos → if not done: pay Participating Rent at lease up provision
  → Base on HUD Schedule

10/29/09

- Cap Event
  - what is/is not → Dev Suggested language is in JDA

- TDR → KAW

- Guaranty
  - Pre-Completion (JH)
    - At a $1 million Cap, not worried about anything
  - Post-Completion
    - Environ
    - Payments → Default under lease

- Default/Termination
  - Remedies:
    - Terminate
    - Sue for Damages
    - Tenant waive Right of Redemption → ?
    - LL Recover and Re-Let

• FL Ave 10/29/09

• Meet w/ Carol + Bruce

- Bring in Kermit
- CCR's → more Control
  - Limit further Construction
  - Kermit Draft

- Lease Default w/o Lender Step-in?

- Co-T → ADR : Binding
  - Subject to Availability of Funds
  - Right to Sue is Essential
  - Lease Guaranty - Banneker
    - Net worth can be less
    - Post-~~closing~~ Construction

- BOACDC → why did they leave

- Issues w/ J. Hagner
  - Indemnity
  - Insurance
  - Completion
  - Co-T

- Term Sheet
  - "Determination" in Section 7.3
    - Limit to Add'l Density
  - Guaranty - TBD
  - RD → will Email to JH

Montague, Joshua W.

From: Goldin, Steven
nt: Thursday, October 29, 2009 8:27 AM
To: Montague, Joshua W.
Subject: Re: Short answers to Fl Ave questions

Call to discuss asap 202_450-9011

----- Original Message -----
From: Montague, Joshua W.
To: Goldin, Steven; Doggett, Rosalyn
Cc: O'Keeffe, Carol B.; Heppen, Bruce P.
Sent: Wed Oct 28 18:53:00 2009
Subject: FW: Short answers to Fl Ave questions

Steve and Rosalyn,

Comments to the below email:

JDA - the developer did provide comments to this agreement. But, most of the terms/comments depend on the other documents and so we cannot make a comprehensive response without the other documents. They made this same request when we provided the JDA/Lease and we promptly turned around the CCRS and Guaranty.

Lease - I asked John Hagner to add the HUD financing terms to the lease that we provided and we will negotiate from there. He disagreed. The Rhode Island Ave deal is a completely fferent deal, with different concerns, terms, and parties. Plus, those agreed upon terms re negotiated and so it will actually take LONGER to go back and find out why we agreed to all of those terms. Last, the whole argument that WMATA accepted something in the past should be a non-starter. I don't know too much about the Rhode Island Ave deal, but it may not have been an ideal transaction for us.

CCRS - agreed

ROE - I provided John Hagner with our last version of the ROE on 10/16. This draft includes WMATA's last comments/changes from September 2008.

Co-Tenancy - Even if WMATA has agreed to go forward with this arrangement, the arrangement must be negotiated. This is a troublesome area that we should tread carefully.

Title/Survey - agreed

Term Sheet - I will have a new draft, to include Roz's comments, early tomorrow morning.

Please let me know if you want to discuss any of this,

Josh

---Original Message-----
rrom: Omar A. Karim [mailto:okarim@bannekerventures.com]
Sent: Wednesday, October 28, 2009 5:49 PM
To: Doggett, Rosalyn; Goldin, Steven

FOIA CONFIDENTIAL TREATMENT REQUESTED

Cc: aives@bannekerventures.com; 'Tiwana Hicks'; Neil.Albert@dc.gov; Yohance S. Fuller; Montague, Joshua W.; O'Keeffe, Carol B.; Bottigheimer, Nat
Subject: RE: Short answers to Fl Ave questions
Importance: High

Roz and Steve,

We believe that some schedule would be appropriate to get all of the items mentioned in your email complete. Can you work with us to commit to some dates on the following open items?

- Joint Development Agreement. We have provided comprehensive (not provisional) comments to the JDA almost 2 months ago when we were initially going down the lease route and await WMATA's comments. Please advise when we will receive these comments.

- Lease. To save time AND even more money, we requested almost 2 months ago that we use the lease for the RI Avenue deal since WMATA Staff and the Board has signed off on it and the counsel for the Developer for that deal and this deal is the same (John Hagner). Mr. Graham agreed that if we changed from a sale to a lease, WMATA staff would get this thing done in 2 weeks. If we don't use some type of form that WMATA and the Developer has already worked with (RI deal), then this would clearly kill any timing to get the deal finalized in the time promised by Mr. Graham. Steve and Carol, please confirm that we are going to use the RI form. If so, as soon as the Term Sheet is finalized b/t the staff and the Developer, John is willing to update it to reflect the terms of this deal and get it to you asap.

- CCRs. As soon as the Term Sheet is complete, we will turn around comments to the CCRs within a few days.

- Right of Entry Agreement. Josh has our comments from August 2008.

- Guaranty. Our counsel has a call in to Carol O'Keeffe today about the guaranty and is awaiting her call which based on an email that I read, she was going to make this afternoon. Carol, any word on the call?

- Co-tenancy agreement. Mr. Graham and Mr. Catoe agreed that the co-tenancy would no longer be an issue. To save time and more money, can our counsel and Carol have a quick call to discuss this to ensure that everyone is on the same page with what needs to be the agreement before we spend a ton of money on having John draft something. Carol, are you available this afternoon or tomorrow to discuss this with John?

- Metes and Bounds Survey and full ALTA Title Report. As Roz indicated, this does not have to be provided prior to the Term Sheet or JDA being approved. An ALTA survey costs additional money and until the Term Sheet and JDA are approved, we cannot authorize the surveyor to spend even more money to do this. However, we commit to getting it done in plenty of time prior to the closing on the lease.

Two final questions:

- Which of the above items, if any, are necessary for the Term Sheet to go to the Board next week?
- Which Board meeting are we planning to submit the JDA and Lease at?
- Think we can get verbal results of the appraisal tomorrow so that we can look at the Term Sheet knowing what the financial terms from the appraisal will be?

Omar

FOIA CONFIDENTIAL TREATMENT REQUESTED

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: Wednesday, October 28, 2009 4:52 PM
To: Bottigheimer, Nat; Fuller, Yohance (EOM)
Cc: Goldin, Steven; Montague, Joshua W.
Subject: RE: Short answers to Fl Ave questions

A Joint Development Agreement with the following exhibits needs to be taken to the Board:
1. Lease
2. Covenants, Conditions and Restrictions (CCR's)
3. Right of Entry Agreement
4. Guaranty
5. Co-tenancy agreement
6. Metes and Bounds Survey and full ALTA Title Report from developer (we can delay this until the Closing on the lease and continue to use the property outline and lot descriptions for purposes of the JDA; the metes and bounds survey would be the basis for descriptions of WMATA reserved areas: tunnels, etc. in the lease)

Status: The developer has the JDA plus items 1-4 drafted by WMATA. The developer is in the process of drafting a co-tenancy agreement, which would not have been necessary under a sale. The other items, with a sales agreement instead of a lease, would be needed under either type of disposition.

Our counsel and Banneker's have agreed that once we have agreed to a Term Sheet, they will mark up the JDA and items 1-4 (note: Banneker has previously provided provisional comments to the JDA, but not the other documents). We are uncertain of the timing by Banneker's counsel to send us the initial draft of item 5.

Banneker's counsel would like to draft a new lease based on the Rhode Island Ave lease, instead of working with the lease draft we sent to Banneker. However, our counsel does not agree because that is a different situation. So that is an impasse currently.

-----Original Message-----
From: Bottigheimer, Nat
Sent: Wednesday, October 28, 2009 3:50 PM
To: Yohance S. Fuller
Cc: Goldin, Steven; Doggett, Rosalyn; Montague, Joshua W.; jkass@dccouncil.us; Requa, Jack; Marshall, Malcolm; O'Keeffe, Carol B.
Subject: Short answers to Fl Ave questions

To be followed by a more complete response later this afternoon from Roz. Before closing, we would need

* final lease agreement - this has been partially negotiated, but stalled when we went to the approach. This would include terms related to composition of team and their strength

CCRs - I think Omar has these from us, we but don't have a response

FOIA CONFIDENTIAL TREATMENT REQUESTED

Survey - We need this from Omar; we would have needed this to close for a sale, too.

Right of Entry agreement

FOIA CONFIDENTIAL TREATMENT REQUESTED

Montague, Joshua W.

From: Goldin, Steven
Sent: Monday, November 02, 2009 4:55 PM
To: Bottigheimer, Nat; Montague, Joshua W.
Cc: Doggett, Rosalyn; O'Keeffe, Carol B.
Subject: Re: Florida Avenue

Josh: what say you? --Steve

From: Bottigheimer, Nat
To: Goldin, Steven
Cc: Doggett, Rosalyn; O'Keeffe, Carol B.
Sent: Mon Nov 02 16:53:29 2009
Subject: RE: Florida Avenue
Not sure we're obligated. Right now that's what I understand to be the terms.

From: Goldin, Steven
Sent: Monday, November 02, 2009 4:47 PM
To: Bottigheimer, Nat
Cc: Doggett, Rosalyn; O'Keeffe, Carol B.
Subject: Re: Florida Avenue

Are we obligated to MTM at end of 35 year HUD financing? If not then just ignore it and everything else works. Don't want to take only 35 yrs of capitalized pmts because our number drops. I defer to Carol on the cotenancy question.

From: Bottigheimer, Nat
To: Goldin, Steven
Cc: Doggett, Rosalyn; O'Keeffe, Carol B.
Sent: Mon Nov 02 16:37:39 2009
Subject: FW: Florida Avenue
Steve—

Need your advice. The terms have an odd overlapping of lease term and mark to market. Terms right now say:

Mark to market at end of HUD financing term, 35 years
60 year lease payment, 39 year option
Pre-payment of 60 years rent (at a rate reflecting the HUD financing)

Could we go with a 99 year term lease with mark to market at year 35 and language crediting the payment today for years 35-60 against whatever the market value is 35 years from now?

Or would we just accept 35 years prepayment now and mark to market 35 years from now?

How would the cotenancy agreement affect our negotiations at year 35 if we went forward with either one of these two approaches?

have not contacted Omar yet. Please advise earliest.

Thanks,

FOIA CONFIDENTIAL TREATMENT REQUESTED

FL Ave Term Sheet 11/3/09

- Nat
- Cok
- Art

- Cap Event → Ask J/H for proposal
- $100,000 → O/K has not verified

- 60 yr Lease
  - no Confirmation from MR. Graham

- Co-T

- Payment/Deposit:
  - Confirm w/ MR. Graham
  - Called J. Kass: Cannot decide which until receives documentation

- Eric Smart - why is IRR 20%
  - Nat Called E. Smart

- Guaranty
  - why do we need:
    - Risk allocation Layer
    - SPE
    - Avoid Co-T
  - J/H offered Bannekar @ $1 million if they give us vote/sale control of Co-T

- BACDC → Cannot go forward we don't know who developer partner

11/3/09

- Guarantor Cap:
  - $1 million is not strong enough
  - tie amount to pre-development + Restoration costs
    - Ask for $5 million
    - under Construction, Lender will be involved
- Banneker must have development partner, they will need to be guarantor

---

Conference Call w/ Mr. Hagner

4 issues:

1.) Lease Term
2.) Cap Lease Payment → Documentation / up to $100k
3.) Guaranty
4.) Co-T → Always by Pro Rata

- Term
  - 60/39 MTM at option
  - No Confirm on 99 years
  - Remove MTM upon end of HUD finance

- Co-T
  - voting on Pro Rata basis
  - JH → then need to Re-look at Right of Sale
    - Developer will never have Rights
  - CO → Puts WMATA in Situation where we can't get out

- Reduce purchase price → up to $100,000
  - Costs Solely attributable to Sale
    - Need to be verified by developer
  - Cok → credit to deposit is Accepted
  - JH → have no knowledge of this, but will pass on what was Said

- Participation → JWM fix language

- Capital Event
  - Business people want 2%

- Guaranty
  - SAAM want $3 million Cap & Want BACDC or another guarantor Reasonably Acceptable to WMATA
    - Concern about Strong development partner from Banneker
    - Selections typically made on Strong development partner
    - guaranty ensures Strong presence

- Co-T
  - Pro Rata
  - Buy out / Sale upon expiration

FL Ave 11/4/09

- Meet w/ Nat, Mark, and Carol + Malcolm

  - Exec Summary
    - Compare term sheets → side by side
    - Give Nat original term sheet

  - Issues:

    1.) Guaranty
      - ~~not~~ BACDC, not Bannecker > NB → OK w/ this
      - 1.5m

    2.) Term
      - NB → MTM at 60 yrs

      - Expiration/Default
        - D → pro rata + force Sale > Bannecker
        - E → Even vote + No force
        - NB - Don't want to be in Co-T at end of 60 if don't exercise option
        - Why not MTM at end of K'nD
          - Cap for 35
          - MTM at 35 + 70?

    3.) Co-T → Big issue
      - Don't want to have either party be able to force Sale in event of Expiration

    4.) Cap Event

- Cap Event
  - E. Smart
    - Nuances to 20% irr
    - Timing aspects - in beginning 20 is ok, in middle is not
    - Equity
  - Complex issue → Difficult to do w/o Steve & Rosalyn
  - Not prepared to take 1.5%
    - Add Some TBD to Term Sheet
    - Punt to get SG into this
  - Take RI deal or we negotiate 10% net in JDA
- Termination / Expiration
  - Can't lose leverage to MTM at 60 yrs by developer willingness to get into Co-T and force Sale
  - NB - other 99 yrs lease has Timing mechanisms
    - Rent Reevaluation & Escalator
    - won't Accept Reciprocal for Sale
- Terms - 75 + 24 years
  - Can we MTM at 60 w/ a default if don't Come up w/
  - we have given up bumps
- HUD finances
  - what is Requirement ??
  - AH book

9/18 Sale Proposed
10/22 MR. Graham makes offer of credit

- Torti Gallas - $19,800
  - what does Architect/Eng have to do w/ this? Not Privileged
- HK
  - $1,774.50
  - What does Zoning have to do w/ Lease-Sale issues
  - Says is outstanding balance, makes no mention of 9/09 - 10/09
- Womble
  - Does not make distinction of what is Sale Related
  - Does not make clear time periods
  - $15,770 during period in question
  - Can Certify is only work had to do because of Sale & not Something was going to do anyway
- Salaries - BS

Malcolm
- 8% at 80 AMI → per District Zoning Regs
- is it now 99 year lease w/ MTM @ 60yrs
- Security is $250K
- isn't Add'l density Reversed 46.59 for Add'l FAR minus 74.55 FAR for every SF of Add'l A/H under DC Regs
- Rent → Less "Expense Credit"
  - only For 1st 60 yrs

- Cap Event
  - 2% gross for Sale of Dev/project
  - 2% of Adjusted gross for Refi (Adjustment for payoff of Debt being refinanced)

- NPV of previous offer = 14

- Nat, Malcolm, Cok 11/4/09
- Call to John Hagner
  - LM

- EGI → Defined term
  - Examples

FLORIDA Ave - Meet w/ Roz 11/13/09

- Issues:
  - OK's punt / JH Email / Cap Lease Payment
  - Cost Credit
  - 2% G v. 10% N
  - RI Lease vs. FL Lease

- FL Lease

- 2% G v. 10% N
  - E. Smart will have to make a lot of assumptions
  - RD prefers Gross

- Cost Credit
  - Send to Roz the Email

- Nat to Send Email? (Roz to Request)

To Roz + Steve
- No more negotiate after Term Sheet

To NAT
- No use RI Lease
- Closing Cost Credit = Limit to 9/18 - 10/21
  - ~~9/18~~ - 1/2 of 1/2 Salary
  - ~~10/18~~ - Presuming John Hagners time was All Spent on Lease Sale item during that time here are his hours
  - Torti / HK → No Lease-Sale implications in this info

- Cap event → RI

531.00
25
2655.00
10620
13275
+14
$13,289
Womble Carlyle

12+22=34
/61

29,166.66
x .56%
$16,333.
Salaries

Eric Smart
Cap Event 2%G v. 10%N

Montague, Joshua W.

From: Doggett, Rosalyn
nt: Monday, November 16, 2009 3:45 PM
To: Montague, Joshua W.
Subject: FW: FL Ave Cap events
Attachments: FL Ave Nov 09-rev.pdf

Sending on immediately to you for comment as I will not be able to look at this for another hour or so

-----Original Message-----
From: eric.smart@bolansmart.com [mailto:eric.smart@bolansmart.com]
Sent: Monday, November 16, 2009 3:34 PM
To: Doggett, Rosalyn
Subject: FL Ave Cap events

Roz

1) Attached is a four page illustrative model in letter page format comparing a 10% participation in net proceeds with a two definitions of 2% participation in gross proceeds, one reflecting participation in total gross, and a second reflecting participation in gross after deducting the original debt. Based on a review of the current term sheet we are not sure if the deduct of the initial debt, or initial project cost as accounted for in the attached spreadsheets, continues for the entire term, but if it expires after the first full pay down, then the NPV results will go up closer to scenarios of participation in gross without defined deducts.

2) The background assumptions include a combined 25% profit and other cost deducts associated with the initial development period and a 3.0% average annual appreciation in the property value, with cap events recurring every ten years. If gross proceeds are not subject to any major deducts, there is approximate equivalency between 10% of net and 2% of gross, but not so if debt deducts are allowed as suggested in the term sheet.

3) The only difference between submitted BSA Tables 1 to 3 is varied rates of property value appreciation, indicating that value appreciation averaging above 3.0% starts to favor participation in net proceeds while value appreciation averaging less than 3.0% will tend to favor participation in gross proceeds.

4) We would note that since value appreciation actually starts to go negative in the last years of the ground lease, participation in gross proceeds, if any, will be higher in outer years than with net participation.

5) Based on our brief review of the current term sheet we are little curious as to why the 1.5% participation in Effective Gross Income is different from the 2.0% participation in Gross Proceeds? In principal they should be equivalent, in part to ensure that there is no built in incentive for the tenant or future assignee to prefer to value or share income differently between an annual participation in gross and a periodic share in gross proceeds. Perhaps there are other constraining factors preventing parallel rates of participation in gross.

6) Other comments include the advantages of simplicity in calculating and collecting on gross rather than net. In practice, 10% of net compared with 2% of full gross equivalency for WMATA may not be equivalent for the lessee, since it may mean that there is some acceleration in the timing of income being shared with WMATA, but this would seem a moot point since this participation change appears to be layered on top of other term provisions already fixed

FOIA CONFIDENTIAL TREATMENT REQUESTED

within the term sheet. There is also the issue of how frequent capital events could unfairly compensate the lessor who is entitled to unlimited participation, which is why in concept we also understand the importance of some manner of deducts. We have taken the liberty in Table 4 of the attached to solve for NPV neutrality between 10% participation in the net and an induced 3.5% participation in gross after the deduct of the initial project cost.

7) As you know we have prepared this submission in very short order, and while we believe the basic comparisons are valid, there are no doubt other or more detailed approaches that we could pursue. Hope this outline of the relationships works for now, at least for order of magnitude consideration.

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 WMATA-INV 009655

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BSA Table 4 (Nov 09) **Florida Avenue / Shaw - Participation Scenarios Assuming Sale Every Ten Years**

	building completion							1	10	20	30	40	50	60	70	
	ground lease		1	2	3	4	5	6	15	25	35	45	55	65	75	99
	November		2009	2010	2011	2012	2013	2014	2023	2033	2043	2053	2063	2073	2083	2107
1. Net Proceeds Participation																
Initial Development Cost (including prepaid ground rent)								$30,000,000								
Initial Development Profit and Fee Costs	25.00%							$7,500,000								
Total Development Cost Basis								$37,500,000								
Sale Proceeds	3.00%	annual increase to year 65 of ground lease							$40,317,491	$54,183,337	$72,817,874	$97,861,134	$131,517,181	$176,748,093	$176,748,093	
	0.00%	annual compounded increase year 65+														
Cost Basis	100.00%	of acquisition cost							$37,500,000	$40,317,491	$54,183,337	$72,817,874	$97,861,134	$131,517,181	$176,748,093	
Defined Cost Basis	100.00%	of acquisition cost							($37,500,000)	($40,317,491)	($54,183,337)	($72,817,874)	($97,861,134)	($131,517,181)	($176,748,093)	
Capital Event Proceeds									$2,817,491	$13,865,846	$18,634,537	$25,043,260	$33,656,047	$45,230,913	$0	
WMATA Participation	10.00%	of defined capital events	$0	$0	$0	$0	$0	$0	$281,749	$1,386,585	$1,863,454	$2,504,326	$3,365,605	$4,523,091	$0	$0
WMATA NPV	5.78%	discount rate	$1,261,342													
2. Gross Proceeds Participation Net of Any Deducts																
Initial Development Cost (including prepaid ground rent)								$30,000,000								
Initial Development Profit and Fee Costs	25.00%							$7,500,000								
Total Development Cost Basis								$37,500,000								
Sale Proceeds	3.00%	annual increase to year 65 of ground lease							$40,317,491	$54,183,337	$72,817,874	$97,861,134	$131,517,181	$176,748,093	$176,748,093	
	0.00%	annual compounded increase year 65+														
Cost Basis	0.00%	of acquisition cost							$37,500,000	$40,317,491	$54,183,337	$72,817,874	$97,861,134	$131,517,181	$176,748,093	
Defined Cost Basis	0.00%	of acquisition cost							$0	$0	$0	$0	$0	$0	$0	
Capital Event Proceeds									$40,317,491	$54,183,337	$72,817,874	$97,861,134	$131,517,181	$176,748,093	$176,748,093	
WMATA Participation	2.00%	of defined capital events	$0	$0	$0	$0	$0	$0	$806,350	$1,083,667	$1,456,357	$1,957,223	$2,630,344	$3,534,962	$3,534,962	$0
WMATA NPV	5.78%	discount rate	$1,307,967													
3. Gross Proceeds Participation After Initial Debt Deduct																
Initial Development Cost (including prepaid ground rent)								$30,000,000								
Initial Development Profit and Fee Costs	25.00%							$7,500,000								
Total Development Cost Basis								$37,500,000								
Sale Proceeds	3.00%	annual increase to year 65 of ground lease							$40,317,491	$54,183,337	$72,817,874	$97,861,134	$131,517,181	$176,748,093	$176,748,093	
	0.00%	annual compounded increase year 65+														
Cost Basis	100.00%	of acquisition cost							$37,500,000	$40,317,491	$54,183,337	$72,817,874	$97,861,134	$131,517,181	$176,748,093	
Defined Cost Basis	80.00%	of acquisition cost							($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	
Capital Event Proceeds									$10,317,491	$24,183,337	$42,817,874	$67,861,134	$101,517,181	$146,748,093	$146,748,093	
WMATA Participation	3.70%	of defined capital events	$0	$0	$0	$0	$0	$0	$381,747	$894,783	$1,584,251	$2,510,862	$3,756,136	$5,429,679	$5,429,679	$0
WMATA NPV	5.78%	discount rate	$1,266,984													

WMATA-INV 009656

BSA Table 3 (Nov 09) **Florida Avenue / Shaw - Participation Scenarios Assuming Sale Every Ten Years**

	building completion						1	10	20	30	40	50	60	70	
	ground lease	1	2	3	4	5	6	15	25	35	45	55	65	75	99
	November	2009	2010	2011	2012	2013	2014	2023	2033	2043	2053	2063	2073	2083	2107
1. Net Proceeds Participation															
Initial Development Cost (including prepaid ground rent)							$30,000,000								
Initial Development Profit and Fee Costs	25.00%						$7,500,000								
Total Development Cost Basis							$37,500,000								
Sale Proceeds	1.50% annual increase to year 65 of ground lease							$34,816,225	$40,405,650	$46,892,407	$54,420,552	$63,157,273	$73,296,593	$73,296,593	
	0.00% annual compounded increase year 65+														
Cost Basis	100.00% of acquisition cost							$37,500,000	$34,816,225	$40,405,650	$46,892,407	$54,420,552	$63,157,273	$73,296,593	
Defined Cost Basis	100.00% of acquisition cost							($37,500,000)	($34,816,225)	($40,405,650)	($46,892,407)	($54,420,552)	($63,157,273)	($73,296,593)	
Capital Event Proceeds								($2,683,775)	$5,589,425	$6,486,756	$7,528,146	$8,736,720	$10,139,321	$0	
WMATA Participation	10.00% of defined capital events	$0	$0	$0	$0	$0	$0	($268,378)	$558,943	$648,676	$752,815	$873,672	$1,013,932	$0	$0
WMATA NPV	5.78% discount rate	$252,267													
2. Gross Proceeds Participation Net of Any Deducts															
Initial Development Cost (including prepaid ground rent)							$30,000,000								
Initial Development Profit and Fee Costs	25.00%						$7,500,000								
Total Development Cost Basis							$37,500,000								
Sale Proceeds	1.50% annual increase to year 65 of ground lease							$34,816,225	$40,405,650	$46,892,407	$54,420,552	$63,157,273	$73,296,593	$73,296,593	
	0.00% annual compounded increase year 65+														
Cost Basis	0.00% of acquisition cost							$37,500,000	$34,816,225	$40,405,650	$46,892,407	$54,420,552	$63,157,273	$73,296,593	
Defined Cost Basis	0.00% of acquisition cost							$0	$0	$0	$0	$0	$0	$0	
Capital Event Proceeds								$34,816,225	$40,405,650	$46,892,407	$54,420,552	$63,157,273	$73,296,593	$73,296,593	
WMATA Participation	2.00% of defined capital events	$0	$0	$0	$0	$0	$0	$696,324	$808,113	$937,848	$1,088,411	$1,263,145	$1,465,932	$1,465,932	$0
WMATA NPV	5.78% discount rate	$881,407													
3. Gross Proceeds Participation After Initial Debt Deduct															
Initial Development Cost (including prepaid ground rent)							$30,000,000								
Initial Development Profit and Fee Costs	25.00%						$7,500,000								
Total Development Cost Basis							$37,500,000								
Sale Proceeds	1.50% annual increase to year 65 of ground lease							$34,816,225	$40,405,650	$46,892,407	$54,420,552	$63,157,273	$73,296,593	$73,296,593	
	0.00% annual compounded increase year 65+														
Cost Basis	100.00% of acquisition cost							$37,500,000	$34,816,225	$40,405,650	$46,892,407	$54,420,552	$63,157,273	$73,296,593	
Defined Cost Basis	80.00% of acquisition cost							($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	
Capital Event Proceeds								$4,816,225	$10,405,650	$16,892,407	$24,420,552	$33,157,273	$43,296,593	$43,296,593	
WMATA Participation	2.00% of defined capital events	$0	$0	$0	$0	$0	$0	$96,324	$208,113	$337,848	$488,411	$663,145	$865,932	$865,932	$0
WMATA NPV	5.78% discount rate	$258,297													

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BSA Table 1 (Nov 09) **Florida Avenue / Shaw - Participation Scenarios Assuming Sale Every Ten Years**

	building completion							1	10	20	30	40	50	60	70	
	ground lease	1	2	3	4	5	6	15	25	35	45	55	65	75	99
	November	2009	2010	2011	2012	2013	2014	2023	2033	2043	2053	2063	2073	2083	2107
1. Net Proceeds Participation															
Initial Development Cost (including prepaid ground rent)							$30,000,000								
Initial Development Profit and Fee Costs	25.00%						$7,500,000								
Total Development Cost Basis							$37,500,000								
Sale Proceeds	3.00% annual increase to year 65 of ground lease							$40,317,491	$54,183,337	$72,817,874	$97,861,134	$131,517,181	$176,748,093	$176,748,093	
	0.00% annual compounded increase year 65+														
Cost Basis	100.00% of acquisition cost							$37,500,000	$40,317,491	$54,183,337	$72,817,874	$97,861,134	$131,517,181	$176,748,093	
Defined Cost Basis	100.00% of acquisition cost							($37,500,000)	($40,317,491)	($54,183,337)	($72,817,874)	($97,861,134)	($131,517,181)	($176,748,093)	
Capital Event Proceeds								$2,817,491	$13,865,846	$18,634,537	$25,043,260	$33,656,047	$45,230,913	$0	
WMATA Participation	10.00% of defined capital events	$0	$0	$0	$0	$0	$0	$281,749	$1,386,585	$1,863,454	$2,504,326	$3,365,605	$4,523,091	$0	$0
WMATA NPV	5.78% discount rate	$1,261,342													
2. Gross Proceeds Participation Net of Any Deducts															
Initial Development Cost (including prepaid ground rent)							$30,000,000								
Initial Development Profit and Fee Costs	25.00%						$7,500,000								
Total Development Cost Basis							$37,500,000								
Sale Proceeds	3.00% annual increase to year 65 of ground lease							$40,317,491	$54,183,337	$72,817,874	$97,861,134	$131,517,181	$176,748,093	$176,748,093	
	0.00% annual compounded increase year 65+														
Cost Basis	0.00% of acquisition cost							$37,500,000	$40,317,491	$54,183,337	$72,817,874	$97,861,134	$131,517,181	$176,748,093	
Defined Cost Basis	0.00% of acquisition cost							$0	$0	$0	$0	$0	$0	$0	
Capital Event Proceeds								$40,317,491	$54,183,337	$72,817,874	$97,861,134	$131,517,181	$176,748,093	$176,748,093	
WMATA Participation	2.00% of defined capital events	$0	$0	$0	$0	$0	$0	$806,350	$1,083,667	$1,456,357	$1,957,223	$2,630,344	$3,534,962	$3,534,962	$0
WMATA NPV	5.78% discount rate	$1,307,967													
3. Gross Proceeds Participation After Initial Debt Deduct															
Initial Development Cost (including prepaid ground rent)							$30,000,000								
Initial Development Profit and Fee Costs	25.00%						$7,500,000								
Total Development Cost Basis							$37,500,000								
Sale Proceeds	3.00% annual increase to year 65 of ground lease							$40,317,491	$54,183,337	$72,817,874	$97,861,134	$131,517,181	$176,748,093	$176,748,093	
	0.00% annual compounded increase year 65+														
Cost Basis	100.00% of acquisition cost							$37,500,000	$40,317,491	$54,183,337	$72,817,874	$97,861,134	$131,517,181	$176,748,093	
Defined Cost Basis	80.00% of acquisition cost							($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	
Capital Event Proceeds								$10,317,491	$24,183,337	$42,817,874	$67,861,134	$101,517,181	$146,748,093	$146,748,093	
WMATA Participation	2.00% of defined capital events	$0	$0	$0	$0	$0	$0	$206,350	$483,667	$856,357	$1,357,223	$2,030,344	$2,934,962	$2,934,962	$0
WMATA NPV	5.78% discount rate	$684,856													

WMATA-INV 009658

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BSA Table 2 (Nov 09) **Florida Avenue / Shaw - Participation Scenarios Assuming Sale Every Ten Years**

	building completion							1	10	20	30	40	50	60	70	
	ground lease	1	2	3	4	5		6	15	25	35	45	55	65	75	99
	November	2009	2010	2011	2012	2013		2014	2023	2033	2043	2053	2063	2073	2083	2107
1. Net Proceeds Participation																
Initial Development Cost (including prepaid ground rent)								$30,000,000								
Initial Development Profit and Fee Costs	25.00%							$7,500,000								
Total Development Cost Basis								$37,500,000								
Sale Proceeds	5.00% annual increase to year 65 of ground lease								$48,866,839	$79,598,931	$129,658,271	$211,199,661	$344,021,994	$560,375,577	$560,375,577	
	0.00% annual compounded increase year 65+															
Cost Basis	100.00% of acquisition cost								$37,500,000	$48,866,839	$79,598,931	$129,658,271	$211,199,661	$344,021,994	$560,375,577	
Defined Cost Basis	100.00% of acquisition cost								($37,500,000)	($48,866,839)	($79,598,931)	($129,658,271)	($211,199,661)	($344,021,994)	($560,375,577)	
Capital Event Proceeds									$11,366,839	$30,732,092	$50,059,340	$81,541,390	$132,822,332	$216,353,583	$0	
WMATA Participation	10.00% of defined capital events	$0	$0	$0	$0	$0		$0	$1,136,684	$3,073,209	$5,005,934	$8,154,139	$13,282,233	$21,635,358	$0	$0
WMATA NPV	5.78% discount rate	$3,976,729														
2. Gross Proceeds Participation Net of Any Deducts																
Initial Development Cost (including prepaid ground rent)								$30,000,000								
Initial Development Profit and Fee Costs	25.00%							$7,500,000								
Total Development Cost Basis								$37,500,000								
Sale Proceeds	5.00% annual increase to year 65 of ground lease								$48,866,839	$79,598,931	$129,658,271	$211,199,661	$344,021,994	$560,375,577	$560,375,577	
	0.00% annual compounded increase year 65+															
Cost Basis	0.00% of acquisition cost								$37,500,000	$48,866,839	$79,598,931	$129,658,271	$211,199,661	$344,021,994	$560,375,577	
Defined Cost Basis	0.00% of acquisition cost								$0	$0	$0	$0	$0	$0	$0	
Capital Event Proceeds									$48,866,839	$79,598,931	$129,658,271	$211,199,661	$344,021,994	$560,375,577	$560,375,577	
WMATA Participation	2.00% of defined capital events	$0	$0	$0	$0	$0		$0	$977,337	$1,591,979	$2,593,165	$4,223,993	$6,880,440	$11,207,512	$11,207,512	$0
WMATA NPV	5.78% discount rate	$2,412,175														
3. Gross Proceeds Participation After Initial Debt Deduct																
Initial Development Cost (including prepaid ground rent)								$30,000,000								
Initial Development Profit and Fee Costs	25.00%							$7,500,000								
Total Development Cost Basis								$37,500,000								
Sale Proceeds	5.00% annual increase to year 65 of ground lease								$48,866,839	$79,598,931	$129,658,271	$211,199,661	$344,021,994	$560,375,577	$560,375,577	
	0.00% annual compounded increase year 65+															
Cost Basis	100.00% of acquisition cost								$37,500,000	$48,866,839	$79,598,931	$129,658,271	$211,199,661	$344,021,994	$560,375,577	
Defined Cost Basis	80.00% of acquisition cost								($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	($30,000,000)	
Capital Event Proceeds									$18,866,839	$49,598,931	$99,658,271	$181,199,661	$314,021,994	$530,375,577	$530,375,577	
WMATA Participation	2.00% of defined capital events	$0	$0	$0	$0	$0		$0	$377,337	$991,979	$1,993,165	$3,623,993	$6,280,440	$10,607,512	$10,607,512	$0
WMATA NPV	5.78% discount rate	$1,789,065														

WMATA-INV 009659

FL Ave Insurance 11/17/09

- Builders Risk
  - Limit = Cost to replace building at its finished State

- RRPP
  - Can this project be included in WMATA blanket Policy?
  - Developer → How do they divide Costs b/w 2 bldgs.

Jim Hamilton 11/24/09

- JH, RD, KW
- FL Ave
  - Dev. vs. WMATA
  - Indemnification Restrictions effect on overall Risk plan

□ NY-C
  - Insurable Interest - Kenyon Sq. (Columbia heights); Farragut N.
    - Should be insured under boilers + machinery policy → Jim will talk to AON about this?
    - Why wouldn't Developer cover?

□ Indemnification
  - Jack up limits
  - Surplus Cash

□ RI Ave Insurance Comparison Exhibit J
  - Combined Single limit = Bodily damage plus Property damage
  - 1.1.1:
    - * - Should state "not less than $10m per occurrence"
    - umbrella is OK, but risk being used elsewhere → indemnify!
    - Insurance must be Contract Specific
      - Developer
    - Contractor Attest that full policy limits are Available
      - Reps/warranties

M E M O R A N D U M

SUBJECT: Supplementary Information Regarding Shaw-Howard/Florida Avenue Joint Development Project

DATE: November 25, 2009

FROM: PLJD – Nat Bottigheimer

TO: GMGR – John B. Catoe

At last week's meeting of the Planning, Development and Real Estate Committee, Committee members requested that staff submit a memo to the Board by 11/30/09 with the developer's responses to these Board concerns:

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 wanted to see earlier resets and we proposed a reset every ten years as a starting point for discussion.

Appended below is the developer's response to each of these items

Cap -
- what would have been 2 yrs ago?
- Don't want → Co-Tenancy

Washington Metropolitan Area Transit Authority

Item 1:

A. The capitalized lease payment was determined by WMATA's independent third-party appraisers based on their opinion of fair market value after considering the development restrictions/requirements to be imposed by the District and the additional costs of constructing on top of the tunnel.

B. The determination of the fair market capitalized rent did not consider the additional consideration WMATA will receive from Participating Rent at 1.5% of effective gross receipts or Premium Rent at 2% of gross capital proceeds after repayment of debt. The appraiser specifically noted that in the appraisal because such rent is in addition to the fair market value appraisal.

C. Based on the Additional Density which we expect to build on the Total Project (WMATA's land and the adjoining land in Square 393) and the formula for increasing the capitalized base rent payment in the Term Sheet for WMATA's land, the final, capitalized lease payment (as determined by WMATA in the 11/6/09 memo to the Board) is expected to be between $3.03M and $4.28M, which is between 50% and 100% [higher than] of the land appraised value as determined by WMATA's independent appraiser.

Item 2:

A. As you recall, the list below summarizes the initial/renal terms for 11 other WMATA joint development projects as provided to us by Nat a few weeks ago:

Ballston	60+39
Bethesda	50+49
Dupont Circle	50+49
Dunn Loring	20+(4) 10
Farragut	50+49
Friendship Heights	30+multiple 30
1400 Eye	50+49
Metro Center	58+41
Prince Georges Plaza	59+40
Van Ness	50+49
White Flint	55+20+20

Based on zoning information, the Dunn Loring Station project included the fee purchase of a majority of the site and a ground lease of a small portion of the site next to the WMATA Garage where a private garage and 30,000 square feet of retail were jointly being developed. Without the fee purchase of the much larger parcel where 672 condominium units and 20,000 square feet of commercial development will occur, no developer would have accepted the rent adjustment on the leased parcel after 20 years. Therefore, to present Dunn Loring as solely a "2+(4) 10" ground lease is not accurate. Also, to our knowledge, the Dunn Loring project has not gone forward because the developer cannot get financing and should not be considered an existing project until it is successfully financed on the terms WMATA presented.

Re-sets
- Dupont
- Bethesda

We don't have any information on the Friendship Heights Station ground lease. If it does not include a high percentage of residential rental units with a good percentage of affordable units, we respectfully believe it is not comparable to the Shaw/Florida Ave. project.

B. It is currently not possible to finance a mixed-use, retail and multifamily project with affordable units with any currently available loan program that does not involve the U.S. Government (HUD/FHA) or the GSE's (Fannie Mae, Freddie Mac) and some sort of government financial support for the affordable units. All of these lending programs are fixed-rate with long maturities. The FHA 220 loan program which has a loan term of 40 years after converting to a permanent loan is the only currently available loan program available for the planned improvements. FHA will not permit a rent increase to have priority over its loan payments and will limit the Percentage Rent ahead of its loan payments to one percent of effective gross rent.

Contradicts 1.5%

FOIA CONFIDENTIAL TREATMENT REQUESTED

C. The proposal that we submitted since day one showed that we intended to obtain HUD financing, which requires a fixed term of the length of the loan (40 years) plus at least 10 years, making a lease term at least 50 years. WMATA has done several deals that were HUD insured and knows HUD's requirements about not re-setting during the term of the "insured period", which is 50 years at a minimum.

We would consider shortening the fixed term to 50 years and then proposing market adjustments every twenty years if the deal was a 50 year lease with a 49 year option (similar to Bethesda, Dupont, Farragut, 1400 Eye, etc.). However, any term less than 60 years, which WMATA's RFP stated the minimum lease term would be, would make the deal less valuable, and thus, would certainly impact our ability to pay more under a capitalized lease structure discussed in #1 above.

RECAP

The developer will not increase his capitalized lease payment. He will agree to an initial period of 50 years, followed by a reset and then a 49 year lease.

FOIA CONFIDENTIAL TREATMENT REQUESTED

FL Ave 12/2/09

- OK KW
- TH RD
- TI SG

- BOD → More money + More Resets
- OK → NPV
  - Why 14m?
  - RD → Done based on Dev numbers
    - RD - used our Discount rate → Still looking for
- NB → Have to Consider in Comparison to other Bids
- Resets
  - want more → 10 yr increments
  - HUD prohibits under Regulations
- FHA Requires 40 plus 10
- PG Plaza → Approved
  - Had 40 plus 10
- More Money → Don't Know what BOD wants; Can't Speculate

OK:
- Every 10 yrs after 50yr lease → Reset
  - Extra $750,000

- Add'l Density
- OK → yesterday lost tax credit Stimulus $
  - Have to Restructure tax Credits
  - How did Dev Come up w/ $750K?

- $750K: How did we get here?
  - Investor → lower Return

-

Thom, Keysia A.

From: hunter.gorinson@gmail.com on behalf of Hunter Gorinson [hunter@culturemob.com]
Sent: Thursday, December 10, 2009 2:57 PM
To: Thom, Keysia A.
Subject: PARP REQUEST: Banneker Ventures, LLC

December 10, 2009

Keysia A Thom, PARP/Privacy Policy Administrator

Office of General Counsel

Washington Metropolitan Area Transit Authority (WMATA)

600 Fifth Street, NW

Washington, DC 20001

Reference: Request for Information, Banneker Ventures, Washington, DC

To Whom It May Concern:

'er the Public Access to Records Policy (PARP), Capital Community News (CCN) requests copies of any file information from your office may maintain regarding **Banneker Ventures, LLC**, the land disposition agreement for their WMATA-awarded parcel at **700-800 Florida Ave. NW**, and the proposal for the future project at that site, **The Jazz @ Florida Avenue.** In addition to documentation pertaining to their Request for Qualifications (RFQ) or Proposals (RFP) responses, any correspondence from Banneker **principal Omar Karim** or **any company representatives or employees** would be greatly appreciated as well.

If you have any questions, please contact me at 202-246-5927. Please also inform us if there is a charge for this information. Thank you for your assistance.

Respectfully submitted,

Hunter Gorinson
Capital Community News
6300 Winston Drive
Bethesda, MD 20817

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009667

Montague, Joshua W.

From: Doggett, Rosalyn
Sent: Friday, December 11, 2009 12:25 PM
To: Montague, Joshua W.
Subject: FW: PARP 09-0526
Attachments: 09-0526 Hunter Gorison.PDF; PARP Estimate Worksheet.doc; PARP worksheet.doc

What is the appropriate protocol here?
I am reading chiller right after lunch

From: Wallace, Maria A
Sent: Friday, December 11, 2009 12:07 PM
To: Goldin, Steven; Doggett, Rosalyn; Meister, Mark K.
Cc: Wallace, Maria A
Subject: FW: PARP 09-0526

Please provide the information as requested by Keysia. As the PARP Coordinator for PLJD, please copy me on your responses. Thank you.

Cordially,

Maria

Maria A. Wallace
Washington Metropolitan Area Transit Authority
Department of Planning & Joint Development
600 Fifth Street, NW
Washington, DC 20009
office - (202) 962-2330
fax - (202) 962-6258
email: mawallace@wmata.com

From: Thom, Keysia A.
Sent: Friday, December 11, 2009 11:49 AM
To: Edwards, Sylvia; Wallace, Maria A
Subject: PARP 09-0526

Maria and Sylvia,

Attached is a Public Access to Records Policy (PARP) request for records relating to records regarding Banneker Ventures, LLC regarding the contract awarded for the parcel of land at 700-800 Florida Avenue, NW. If you are aware of another office that may have records responsive to this request or if your office does not have responsive records, please contact me immediately. Otherwise please follow the directions below:

Please track the time spent searching for and reviewing the records that are responsive to this request. If the effort is minor and does not exceed the $250 threshold please complete the attached PARP worksheet and provide it with the records by December 18, 2009.

If that effort is more than minor we can charge for staff time (hourly rate plus a 50% markup) plus copying costs (15 cents per page beyond the first 100). If the charge will exceed our $250 threshold, please complete the attached PARP estimate worksheet and provide it by December 18, 2009.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Be aware that our policy does not require us to create records in response to a request. If a record containing the information requested does not already exist, we can simply tell the requester so. Additionally, some of the requested records may be exempt from disclosure, information that could compromise WMATA's infrastructure or security; contractor proprietary information; internal deliberations on policy matters; attorney-client privileged communications; information that if released would cause a clearly unwarranted invasion of personal privacy; certain information compiled for law enforcement purposes; and SmarTrip and customer financial information. Let me know if you believe any of these exemptions apply or if you have any other concerns regarding disclosure of the records.

Thanks

Keysia A. Thom
PARP/Privacy Policy Administrator
WMATA Office of General Counsel
600 Fifth Street, NW
Washington, DC 20001
(202) 962-2058
(202) 962-2550 fax
kthom@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.

- Transaction still ongoing. May need to negotiate w/ other bidders
- Protect business interests
  - Appraisal
  - BOD involvement
- O/K investigation
- Atty-Client info

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009669

FL Ave - RD, TB, SG, ES 2/25/10

- 2007 - 7.5m (based on 130,000 SF)
- 2009 - 7.65m (w/ adjustment for 153,000 SF)

No Deducts

- OK offer = 5.2m

- offer
  - 5.2m paid 20 months after JDA
    - BoD approve TS in 3/10
    - 3 to 4 mos for JDA ≃ 7/10
    - JDA Closing ≃ 2012
  - $34/SF Seems Reasonable → ES
  - Compared to 14m
    - Real $ was 11 to 12m (OK overbid)
    - Assume 30% Reduction for Market
    - Assume deducts for IZ & Tunnel (≃ 3m)
    - ≃ $5m

- OK → has not provided updated Site Plan, Developer Proformas, elev.
  - TB needs to Review Site/elevations
  - ES → need updated Pro Forma
- Feasibility
  - Parking has gone down, but units have gone up (?)
  - ES/RD → need pro Forma to go to BOD
    → need to be able to hold developer to these benchmarks

2/25/10

- Term: 50 + 49 w/ Resets every 10 yrs
  - Es → market may not have 3% increase Annual → Should be market
  - SG → OK w/ 50 + 49 Structure
    50 - 70 w/ Adjust every 10 yrs
- Cap Event / Participation
  - What is Cap Event?
    1.) - Intra-Family Transfers for Estate
    2.) - Transfer for initial Debt/Equity (No profit to Developer)
  - Limit on Initial Equity / member loans
    - 30% of project
  - IRR - now that our return is 2%; then the investors should not get 100%
  - * ← - 10% of Adjusted gross
  - EGI → As is in T/S
- WMATA's Current Discount Rate = 6.2%
- Indemnification
  - is $10 m enough?
  - what does $10m policy cost? > Rod Schreven
  - what is cost of $20m

- Other ways indemnification?
  -
- Add'l Cost Credit → Remove
  - $30 K
  - Verification from Graham/Cator
- Guaranty
  - Construction only
  - Bannaker?
  - Standards → AA Credit Rating
- Project Schedule
  - Actual Foundation installed by X years
  - T/B → Foundation to Street level
- Offer less than previous offers
  - SG → Graham is OK w/ this now
  - - Zimmerman: don't come back w/ less than $7m
- Move forward on 3/25 or let it Die
- Timing:

Indemnification issue in Ground Leases:

1. Transit agency – not normal industry or public player. We serve the public in a unique way, which requires unique risk protections. We are a steward of public funds.

2. Non-negotiable requirement – WMATA includes this in all of its JD Solicitations. It is an upfront requirement that Developer must contend with financially.

3. Part of WMATA's overall risk allocation plan –
    a. Insurance is primary.
    b. Indemnification provides a second layer for issues that exceed insurance coverage or are outside the scope of required insurance policies (e.g., environmental problems).

4. Since indemnification is secondary to insurance, the risk for Developer is small.

5. What does the indemnification protect -
    a. all claims involving personal injury and property damage,
    b. use and occupancy of the Ground Lease Premises,
    c. violations of law,
    d. construction liens and other claims involving construction of improvements,
    e. acts or omissions of any sub-tenant and
    f. all environmental matters.

Montague, Joshua W.

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,

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009674

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 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 CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009675

- Teleconference w/ AON
  - Lisa Janney - JH
  - David Riskoe
  - Caroline Elements
- $40 m project, work over tunnel

- Range of Costs:
  - $10 m
  - $30 m
  - $50 m

- Contractor's Policy
  - Key question is → who is the GC?
    - Experience is big component in price
  - Generally have a Corporate program that provides GL on per project basis
    - Then have umbrella on top of that
      - $100 m in excess of GL
  - WMATA must be add'l insured on primary basis
  - Limit of $2 m per occ.; $4 m per project; $50 m umbrella
  - No Residential Exclusions
- RRP - Rose Laing is working on $10/$20m
  - $20m ≃ $800K
  - $10 m

- Does developer's CGL sit above? or does WMATA have to get own policy → to provide Excess Coverage
  - up to u/w (Lexington)

Montague, Joshua W.

From: Doggett, Rosalyn
nt: Thursday, February 25, 2010 9:18 AM
: Montague, Joshua W.; Goldin, Steven; Bushnaq, Tariq
Cc: eric.smart@bolansmart.com
Subject: FW: Your Mail
Attachments: FL Ave Feb 10.pdf

Eric's computation of npv. Do not be alarmed by his use of "Dec 09." I sent him the last comparison which had a 2010 column presenting the January offer that the Board reviewed.

Eric, that 2010 column showed 100,711 sf attributable to the WMATA parcels so 153,000 sf would be a 50% increase. However, not all of it may be buildable. We can discuss at 10.

Our conference room phone # is 962 6102 but it may be easier to call you on your cell or office phone. Let me know which is best.

-----Original Message-----
From: eric.smart@bolansmart.com [mailto:eric.smart@bolansmart.com]
Sent: Wednesday, February 24, 2010 5:46 PM
To: Doggett, Rosalyn
Subject: Re: Your Mail

Roz

The Dec 09 comparison was very helpful.

:ached is an updated cash flow employing the new prepaid rent offer and the stated prior terms. Net of reviewing any revised proforma we have increased our prior BSA adjusted estimated project revenue by 30% to reflect the proposed larger project size. Additional assumptions which we are not sure of are timelines associated with prepayments to closing and if there are any limitations on when the WMATA participation in Effective Gross Income would commence.

Note that short of executing more detailed modeling of the proposed new terms for the lease option period (which would need more time to process) we have limited the analysis to 50 years. Regardless, discounting to the present the escalated future value of the land residual as if recaptured by WMATA after 50 years is methodologically not that different from resetting the annual rent to reflect a market rent 50 years hence. In addition, per prior examples, we have not valued the proposed 2% in proposed capital event distributions.

We will look to you to send phone info so I can call in to the 10:00 am meeting, Thursday, Feb 25.

Thanks, Eric

On Wed, 24 Feb 2010 4:36:10 -0500 (EST), "Doggett, Rosalyn"
<RDoggett@wmata.com> wrote:
> Is this what you need?
>
> Rosalyn P. Doggett
Station Area Planning and Asset Management Washington Metropolitan
Area Transit Authority 600 Fifth Street, NW Washington, DC 20001
>
> rdoggett@wmata.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009677

> 202-962-2208 phone
> 202-962-2396 fax
>
>
>
>
>
--
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 WMATA-INV 009678

Florida Avenue 3/2/10

Omar Karim Sid M. Eric Smart ~~Art Lawson~~
Tiwanna Hicks Tariq B. SG RD

- Parking:
  - Supposed to have 55
  - Current plan is 41; might go to Automated parking
  - SG → Don't want to change after agreement
  - Resident/Retail
    - want to give pop-in spaces (ok) b/c not much Retail
  - Still one level of parking
  - RD will look at Regs to verify

- Foundation:
  - OK: Spread Footing
  - RD: Can you use for 7 Stories
    - TB - Depends on Soil Conditions
  - OK - Light Steel → an infinity System
    - Torti Gallas is working on it
    - Will call TB directly to discuss
  - ~~SB~~ = Retail Concrete
  - CK: 18' to 20' high for Retail

- Cap Event Refinancing → 10% of Adjusted gross proceeds
  - Should ~~include~~ partners trading but ~~allow~~ exclude Equity Investors
  - OK - need to talk to counsel will get back by COB tomorrow

- Term - OK: needs to be 75, not 70
  - Love Funding is lender > must be 25 yrs
  - B-more Hud office > beyond 50
  - SG → Don't have problem 70 to 75

- BACDC → out
  - J. Graham & J. Catoe Said was "Fine" when went through Lease-Sale
  - Clark is GC
  - SG - want to have Some WMATA Sign off so we are Comfortable
    - equal or better than BACDC

- Cost Credit
  - 30K verified by WMATA
  - TH will get back to WMATA by Tomorrow
  - J. Graham & Catoe gave verbal

- Guaranty
  - LOC option → How much?
  - Fill in Hole? Protect until next Developer takes over
  - TB → $1 m ; ES → not enough, 10% of Hard Costs
    - TB - needs to Discuss w/ Irving + get back to Developer
    - TB - Have Clark give $ and TB verify
  - LOC → RD prob needs to be predicated on partners Credit
  - Fill it, preserve foundation, protect public

- Schedule - Add to Agreement → will give tomorrow
  - SG → when do you realistically see beginning?
    - if JDA/Lease approve in June
    - 18-24 mos to be at grade
  - How long for DC Approvals?
    - OK: 15 to 18 mos
    - SG - too long

- Pro Forma - Tomorrow
  - OK - what do you need?
  - RD - Development + Operating Pro Formas
    - Sources of Funds

- OK - biggest Changes →
  - $ for Adjacent parcels Freed to pay WMATA
  - Reduced development fee Significantly
  - Construction costs went up 30% b/c not Stick built
  - DSC → 1.21

FOIA CONFIDENTIAL TREATMENT REQUESTED

			July	1 2010	2 2011	3 2012	4 2013	5 2014	6 2015	7 2016	8 2017	9 2018	10 2019	11 2020	12 2021	13 2022	14 2023	15 2024	16 2025	50 2059
Banneker (February 2010) with 50 year ground lease																				
Revenues																				
Option Fee				$100,000																
Predevelopment Rent				$50,000	$65,000	$0														
Base Rent	prepaid					$5,200,000														
	annual						$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total WMATA Base Rent				$150,000	$65,000	$5,200,000	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Effective Gross Income		Banneker projected ???					$0	$0	$2,831,000	oct 2009 before 30% increase in project size										
	3.00%	EGI growth BSA adjusted (130% of October 2009 per 30% morar sf)					$0	$0	$3,250,000	$3,347,500	$3,447,925	$3,551,363	$3,657,904	$3,767,641	$3,880,670	$3,997,090	$4,117,003	$4,240,513	$4,367,728	$11,932,220
	1.50%	WMATA payment												$56,515	$58,210	$59,956	$61,755	$63,608	$65,516	$178,983
Total WMATA Base Rent With Percentage of EGI									$0	$0	$0	$0	$0	$56,515	$58,210	$59,956	$61,755	$63,608	$65,516	$178,983
WMATA Participation	2.00%	of defined capital events																		
Implied Initial Land Value	$5,000,000	FY09 value																		
	3.00%	annual compounded increase																		
Terminal Value	$21,281,097	on land only																		$21,281,097
Cash Flow				$150,000	$65,000	$5,200,000	$0	$0	$0	$0	$0	$0	$0	$56,515	$58,210	$59,956	$61,755	$63,608	$65,516	$178,983
Cash Flow w/ residual				$150,000	$65,000	$5,200,000	$0	$0	$0	$0	$0	$0	$0	$56,515	$58,210	$59,956	$61,755	$63,608	$65,516	$21,460,080
NPV	Base Rent	5.73%	discount rate	$4,863,126			6.80%	discount rate		$4,769,770										
	With Residual	5.73%	discount rate	$6,175,575			6.80%	discount rate		$5,563,058										
	With EGI and Res	5.73%	discount rate	$6,944,924			6.80%	discount rate		$6,152,523										
	With Participation			not considered																

WMATA-INV 009682

Indemnification issue in Ground Leases:

1. Transit agency – not normal industry or public player. We serve the public in a unique way, which requires unique risk protections. We are a steward of public funds.

2. Non-negotiable requirement – WMATA includes this in all of its JD Solicitations. It is an upfront requirement that Developer must contend with financially.

3. Part of WMATA's overall risk allocation plan –
    a. Insurance is primary.
    b. Indemnification provides a second layer for issues that exceed insurance coverage or are outside the scope of required insurance policies (e.g., environmental problems).

4. Since indemnification is secondary to insurance, the risk for Developer is small.

5. What does the indemnification protect -
    a. all claims involving personal injury and property damage,
    b. use and occupancy of the Ground Lease Premises,
    c. violations of law,
    d. construction liens and other claims involving construction of improvements,
    e. acts or omissions of any sub-tenant and
    f. all environmental matters.

What is "surplus cash"?

1. HUD Definitions:
    a. HUD Comments to latest FR
        i. Comment: The indemnification provision is overly broad. Out of what funds (project funds, surplus cash, others) is the Borrower to indemnify?
        ii. HUD response: The provisions of section 48(o), previously designated as section 51(o), explicitly provide that the covered indemnifications are at the Borrower's "own cost and expense." The funds available for indemnification are those that would be available to the Borrower after project costs have been paid, such as surplus funds or distribution funds.
    b. For there to be a permitted distribution of surplus cash, there cannot be any defaults then existing under the FHA-Insured Mortgage, or which through the passage of time and/or giving of notice would exist, and all parties otherwise must be in compliance with their respective Regulatory Agreement.

2. RI Ave / PG Plaza agreements:

   a. ~~Rhode Island~~ PG Plaza:

      i. **Surplus Cash** - Any cash from Tenant's operation of the Project remaining after 1) payment of: (i) all sums due or currently required to be paid under the terms of any Federally-Insured Loan; (ii) amounts required to be deposited in the reserve fund for replacements as a HUD requirement under any Federally-Insured Loan; (iii) all obligations of the Project other than the Federally-Insured Loan unless funds for payment are set aside or deferment of payment has been approved by HUD; and 2) after segregation of: (i) an amount equal to the aggregate of all special funds required by HUD under the Federally-Insured Loan to be maintained by the Tenant for the Project and (ii) Space Tenant security deposits held.

      ii. **Obligations Payable from Surplus Cash during terms of Federally-Insured Loan:**

         1. Annual Participating Rent in excess of 2.85% of AGI
         2. Interest payable on overdue payments (18%)
         3. Arbitration costs payable
         4. Interest payable on deferred payments at "Prime Rate"
         5. Environmental Matters
         6. Insurance Reserve Fund
         7. Indemnification
         8. Defense Cost Reserve Fund
         9. Attorney's Fees, Defense Cost Reserve Fund
         10. Repair costs (casualty)
         11. Restoration costs (condemnation)

      iii. **Indemnification Funding** - Tenant shall pay any indemnification obligations under this Lease, or cause such payments to be made, from the following sources: 1) proceeds from insurance policies purchased under this Lease naming WMATA as an additional insured; 2) by enforcing provisions in any contracts Tenant may have with its contractors or subcontractors that oblige such parties to indemnify WMATA for the Covered Claim; 3) for any expert or attorneys' fees arising out of a covered claim, from the Defense Cost Reserve Fund, to the extent funds are available; and 4) from Surplus Cash.

iv. **Anti-Deficiency Act** - The Anti-Deficiency Act, 31 U.S.C. § 1341, bars the United States Government from making any contract or obligation for the payment of money before an appropriation is made unless authorized by law. Accordingly, if at any time, as a result of a foreclosure on any Federally-Insured Loan, any agency or instrumentality of the United States Government becomes the Tenant under this Lease, then in such event, the indemnification obligations of Sections 8.01 and 10.01 of this Lease will not run against the United States Government. In no event shall this limitation run to the benefit of any person or entity other than the United States Government or any agency or instrumentality of the United States Government covered under the Anti-Deficiency Act. Notwithstanding the foregoing, the United States Government, if it becomes the Tenant, shall be required to fund and maintain the Defense Cost Reserve Fund out of Surplus Cash, to maintain all policies of insurance required under this Lease (except the Rental Value Insurance Policy), and to name WMATA as an additional insured on such policies as required.

b. Rhode Island Avenue

i. Language is still being negotiated but has not been agreed to.

ii. Language is same or similar to PG Plaza language.

Dedicated Funds drawdown loser

Revised

AGENDA

Executive Session of the Board of Directors

March 25, 2010
11:30 a.m.

A. Legal Matters
   1. Discussion of Judge's Decision on Local 689 appeal
   2. Discussion of Maryland Court of Appeals' decision regarding Maryland Cap ~~for state agencies~~
   3. **Discussion of Florida Avenue Joint Development Proposal**

deferred in open session unanimous vote

B. ~~Safety and Security Matters~~
   1. ~~MTPD Pending arbitration~~
   2. ~~MTPD Deployment to increase visibility of officers~~

C. Personnel Matters
   1. **Performance Objectives for Interim General Manager**

Bruce.
Please do a litigation hold asap. I received a call from Omar Karim threatening litigation

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

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

◉ Action ○ Information	MEAD Number: 100628	Resolution: ○ Yes ◉ No

TITLE:

New Amended Term Sheet Shaw-Howard/FL Av JD Site

PURPOSE:

Obtain Board action on an amended term sheet and additional time to negotiate a joint development agreement and lease for the Shaw-Howard/Florida Avenue joint development site to be brought to the Board not later than July 30, 2010.

DESCRIPTION:

In January 2010, the Board approved an extension to March 31, 2010 to bring an amended term sheet, with an improved financial offer, for the Shaw-Howard U station/Florida Avenue joint development site. Metro`s site consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC

The project presented in January had these features:

- A proposed development of 100,000 sf on Metro property consisting of ground floor retail along Florida Avenue and four stories of stick-built residential apartments above the retail space. Eight percent of the housing would be affordable under the District of Columbia`s mandatory Inclusionary Zoning regulations.

- Combining the Metro parcels between 8th and 9th streets with developer-controlled property on 9th Street to allow potentially greater density on Metro`s land. If any density increase were granted by the District of Columbia, Metro would receive an increase in rent representing Metro`s share of the combined properties.

- A 99-year ground lease with provisions for rent adjustment.

- A development team led by Banneker Ventures, LLC, with Banc of America Community Development Corporation (BACDC) as its development and financing partner.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009687

- A financial offer that the Board did not find satisfactory.

Having reviewed its options during the extension period, Banneker Ventures now proposes the following project:

- A proposed development of 153,000 sf with ground floor retail along Florida Avenue and four stories of stick built housing on the smallest parcel and six stories of light steel-gauge-construction housing on the larger two parcels. The project would still include 8% affordable housing. The higher amount of development is made possible by taking advantage of the light steel-gauge construction method so that bonus density allowed for affordable housing can be realized. If yet additional density were achieved, Metro would receive additional rent.

- A 75-year ground lease of the site with provisions for periodic rent adjustment.

- A development only on Metro parcels. The funds budgeted for acquisition of the adjacent non-Metro property would be used instead to pay ground rent to Metro.

- The development team led by Banneker currently retains BACDC as its development and financing partner. However, Banneker has indicated that BACDC is uncomfortable with a lease. Consequently, subsequent to term sheet approval, Banneker will seek another experienced development partner to be approved by Metro. BACDC is the third development partner that Banneker has proposed.

- A significantly improved financial offer.

- A provision in the joint development agreement and lease that, if foundations to street level are not fully completed within 7 months of the lease closing, Metro can default the developer and terminate the lease.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities would be reserved in perpetuity for Metro.

Staff is requesting that the Board act on the amended term sheet and a time extension to July 30, 2010 to bring to the Board a joint development agreement and lease for the site that conform to the amended term sheet.

FUNDING IMPACT:

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009688

The revenue to Metro is significantly improved from that presented in January 2010 and is commensurate with the 2008 appraised value at developer selection.

Revenue from the project will be deposited into the Transit Infrastructure Investment Fund (TIIF).

RECOMMENDATION:

No recommendation

FOIA CONFIDENTIAL TREATMENT REQUESTED

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Time Extension for Negotiation and Amended Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site

Board Executive Session

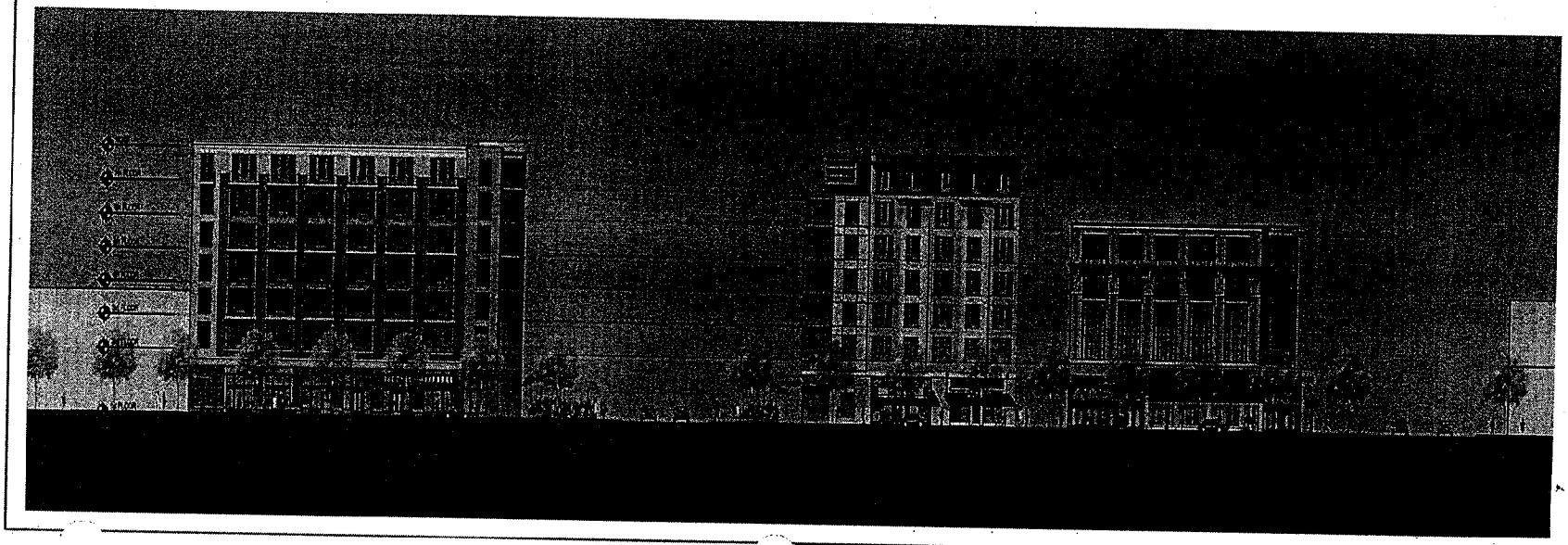
March 25, 2010

WMATA-INV 009690

FOIA CONFIDENTIAL TREATMENT REQUESTED

Purpose

- Obtain Board consideration of an amended term sheet
- Obtain Board consideration of a time extension to negotiate a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than July 2010



WMATA-INV 009691

FOIA CONFIDENTIAL TREATMENT REQUESTED

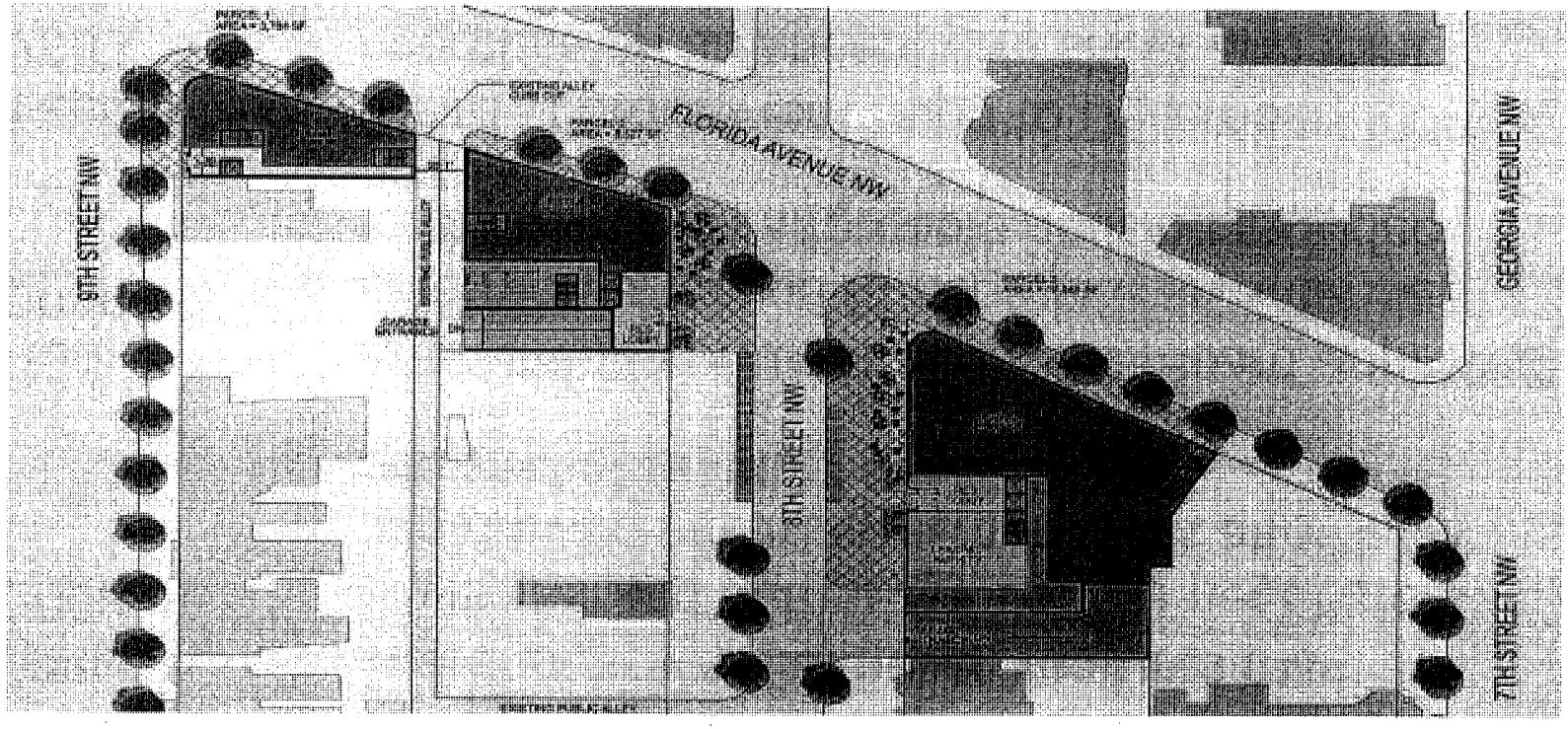
Prior Board Action

June 2008	Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included.
April 2009	After change of team members, Board approved extension of period to negotiate an amended term sheet with affordable housing included.
September 2009	Board approved extension to December 2009 to negotiate an amended term sheet and joint development agreement.
January 2010	Board approved extension to March 2010 to negotiate an improved, amended term sheet.

WMATA-INV 009692

FOIA CONFIDENTIAL TREATMENT REQUESTED

Current Status



Developer proposes to develop three separate Metro parcels with retail at ground level, apartments above.

WMATA-INV 009693

FOIA CONFIDENTIAL TREATMENT REQUESTED

Current Status

- Banneker Ventures is developer
- Term sheet reflects appraised value, affordable housing under Inclusionary Zoning and extraordinary costs of constructing facilities over Metro tunnels
- Additional revenues to Metro may be generated through participation in capital events
- Ground lease has provisions for periodic rent adjustment

WMATA-INV 009694

FOIA CONFIDENTIAL TREATMENT REQUESTED

Current Status

- Obtain Board consideration of an amended term sheet
- Obtain Board consideration of a time extension to negotiate a final joint development agreement and lease for the Shaw-Howard U. station/Florida Avenue joint development site to be brought to the Board not later than July 2010

WMATA-INV 009695

FOIA CONFIDENTIAL TREATMENT REQUESTED

4 table:

Motion to approve table

COMPARISON OF TERMS - SHAW-HOWARD U/FLORIDA AVENUE SITE

	Original - 2008	1st Revision - January 2010	2nd Revision - March 2010
Developer:	A LLC to be formed by Banneker Ventures, the District Group, LLC & Metropolis Development Co.	The Jazz at Florida Avenue, a District of Columbia LLC, whose principals are Banneker Ventures LLC and Banc of America Community Development Corp.	The Jazz at Florida Avenue, a District of Columbia LLC, whose principal is Banneker Ventures LLC.
Site Description:	The 28,376 SF site consists of 3 separate parcels on the south side of Florida Ave. between 7th & 9th Streets, NW in Washington, DC. The parcels are undeveloped & were used for construction of the Green Line tunnel, which lies partially beneath each parcel. The sites are no longer needed by WMATA.	Same as original, but WMATA parcels to be combined with developer's adjacent 7,720 sf parcels on 9th St. Developer will construct building that straddles the Metro and Developer parcels.	Same as original
Developer's Proposal:	104 apartments with 11,750 SF of ground floor retail-arts uses totaling 130,000 SF of above-grade development	100,711 SF on Metro site: 10,000 ground floor retail-arts with housing above. 8% affordable. Combined sites development of 157,000 SF. Metro gets 79% of value of combined sites.	153,000 sf consisting of 14,600 sf of ground floor retail-arts with 138 apartments above. At least 8% of housing is expected to be affordable at maximum 80% AMI per DC Inclusionary Zoning regulations.
Terms & Conditions of Proposed Ground Lease:			
Lease Term:	60 years	99 years	75 years
Lease Closing:	20 months after development agreement execution	600 days after development agreement execution	630 days after development agreement execution
Default Provision:	No provision	No provision	Lease is in default if garage/foundation level is not complete by 210 days (7 months) after lease closing
Construction Completion	18 months after lease closing	Same as original	Same as original
Performance Security:	$250,000	Same as original	Same as original
Option Fee:	$100,000 upon Term Sheet approval	Same as original	Same as original
Pre-Closing Rent:	$100,000/year upon development agreement rising to $130,000/year	$50,000 for 1st year after development agreement; $65,000 for 2nd year; $80,000/year thereafter	Same as January
Additional Density:	$4.20/year rent for additional FAR sf prior to closing; to be determined by appraisal after closing	$46.59/FAR sf with $74.55/FAR sf deduction for any added Inclusionary Zoning (IZ) affordable housing prior to closing; to be determined by appraisal after closing	Same as January
Base Rent	$597,000/year upon the earlier of stabilization or 45 months from development agreement date	$2,800,000 capitalized lease payment at closing less Additional Costs Credit TBD	$5,200,000 capitalized lease payment to be paid at closing less Additional Costs Credit TBD

① disapprove
② table
③ nothing

Move to Table

table - non-debatable

Extension - Mar. 31

adjacent parcel

Extension runs to end of month

WMATA-INV 009696

FOIA CONFIDENTIAL TREATMENT REQUESTED

COMPARISON OF TERMS - SHAW-HOWARD U/FLORIDA AVENUE SITE

	Original - 2008	1st Revision - January 2010	2nd Revision - March 2010
Base Rent Escalation:	1.5%/year for 1st 10 years, then 3%/year thereafter	None	None
Base Rent Revaluation:	Every 10 years	On 50th year, property is appraised to determine monthly rent; monthly rent escalates 3% every year; monthly rent is re-set every 10 years via appraisal	Same as January
Participating Rent:	None	1.5% of effective gross income	None
Capital Event Participation:	10% of net proceeds	2% of gross for sale or assignment & 2% of adjusted gross on refinance	Same as January
Estimated Value to Metro:	$14,000,000 NPV of Developer's offer	$2,800,000 NPV of Developer's offer for first 50 years. No residual land value included	$5,783,000 NPV of Developer's offer for first 50 years including residual land value
Appraised Value of Property:	$7,500,000 Appraised Land Value (did not include reduction for costs of building over Metro Tunnels est. at $2.3 million by Metro in 2008) $525,000 Base 1st Year Rent (Appraisal by Integra in August 2007)	$2,020,000 Capitalized Lease Value (Appraisal by Harps & Harps in August 2009 and Integra in October 2009)	Same as January

WMATA-INV 009697

→ Margaret Allen
→ Send Comments to Credit to Developer
→ HUD - DSCR Req'mts
→ RI Ave 3/2 → Cap Event

TERM SHEET ADDITIONAL RENT PROVISIONS:

Participation:

- 1.5% of Effective Gross Income
- Effective Gross Income equals all income derived from the Property.
  - Residential/Commercial Rent
  - Parking
  - Advertisements on the Property (e.g., in the elevator)
  - Services/Fees
- Paid annually (?)
- May be subject to HUD limitations (?) 1% not Subject to Surplus Cash; the Rest is

Capital Event Rent:

- What *is* a Capital Event:
  - assignments of the JDA or the Lease,
  - sales or re-financings of the Developer Improvements,
  - dispositions or transfers of membership interests, including:
    - transfers among existing members, and
    - conversions that change the membership of the Developer to include new members not originally included as of the execution date of the JDA

- What *is not* a Capital Event:
  - transfers for estate planning purposes;
  - transfers required for the initial debt and equity of the Project before the permanent loan closing.
  - Non-Capital Events, which will require WMATA approval, but not WMATA monetary participation, also exist and will be defined in the JDA.

- Sales – 2% of Gross Return
  - Capital Events that involve transfer or disposition of interests in the Developer or the Developer's interest in the Project, WMATA's share will be two percent (2%) of the gross proceeds.
  - Gross proceeds are defined as all transaction revenues received by the Developer (and any affiliated entities receiving income from this event).

- Refinance – 10% of Adjusted Gross Return
  - Capital Events that involve any refinance or financial restructuring from which the Developer realizes proceeds, WMATA's share will be ten percent (10%) of the adjusted gross proceeds.

- The adjusted gross proceeds are defined as all transaction revenues to the Developer (and any affiliated entities receiving income from this event) less any original project debt on the Developer Improvements that is paid-off out of said Capital Event proceeds.
- Original debt
  - Does this mean that after the first permanent loan financing is paid off, WMATA gets 10% of proceeds of any future refinance?
- Adjusted gross proceeds – what gets taken out before WMATA's percentage is calculated?
  - Payoff of institutional lenders
  - Member loans
  - Equity
  - Government loans
  - Costs of transaction

1. Ground Lease:
    a. Landlord concerns:
        i. Return
        ii. Risk Allocation
        iii. Transit Oriented Development
    b. Tenant concerns:
        i. Cost
        ii. Flipping
        iii. Risk Allocation

2. Non-negotiable Items:
    a. Approval rights related to Tunnel.
    b. Indemnification:
        i. From JDS: 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
    c. Insurance:
        i. From JDS: 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
    d. Environmental indemnification:
        i. From JDS: WMATA will accept financial responsibility for environmental damage to the site caused by WMATA prior to the transfer of the site.
        ii. Developer must accept all other financial responsibility.
    e. Developer team members – must know to approve Term Sheet
    f. No subordination of WMATA Interests
    g. FTA Requirements

3. Developer arguments:
    a. WMATA has done this on other deals
        i. Bullshit
        ii. Even if it was true, what does it matter on this deal? These are different times, terms, parties, return, etc.
    b. WMATA is getting above market value – see cap lease payment below
    c. Lender won't let us
        i. This is not a concern of landlord in a ground lease.
        ii. Find creative ways to make up the money or risk lost due to lender requirements
    d. Financeable
        i. This is not a concern of landlord in a ground lease.
        ii. Make developer come up with counter-offers if cannot meet our requests.

4. Return
    a. Capitalized Lease payment
        i. WMATA is taking all of the risk of the down market
        ii. Alleviate risk through the bumps (Participation, Capital Event, Revaluation)
    b. Periodic Rent Revaluation
        i. Developer: not financeable
            1. Have in other JD deals (Bethesda and Dupont)
            2. Was in Developer's original offer, but removed for HUD purposes only
        ii. Solutions:
            1. Pay additional Capital Event or higher EGI %
            2. Re-appraise at intervals acceptable to market
    c. Capital Event
        i. Need a financial analysis of 2%G vs. 10%N
    d. Additional Costs Credit
        i. Have we received additional proof?

5. Risk Allocation
    a. Indemnification
        i. Guarantor(s)
        ii. Letter of Credit or Escrow Account
        iii. Pay additional Capital Lease Payment
    b. Guaranty
        i. Indemnification
        ii. Environmental issues
    c. Alley closing
        i. Developer responsible for all work and damages (out of deposit)

Compare offers:

	2007 Offer	2009 Offer
Capitalized Lease Payment		$2,050,000
Base Rent	$597,000	$170,500 / FMV after 60 years
Capital Event Rent	10% Net	2% Gross
Periodic Rent Evaluation	Every 10 years	Every 10 years after 60
Escalation	1.5% to 3.0%	3% after 60
Term	60 Years	99 Years

Compare appraisals:

	Developer Offer	2007 Appraisal	2009 Appraisal
Unencumbered Appraisal	$14,000,000	$7,500,000	$5,035,550
IZ Adjustment	-$513,120	-$513,120	-$513,120
Tunnel Costs	-$2,300,000	-$2,300,000	-$2,300,000
Appraisal	$11,100,000	$4,680,000	$2,200,000
Cap Lease Payment (90%)	$9,990,000	$4,212,000	$1,980,000 ($2,050,000)

Don't Do it.

From: John Hagner [mailto:JHagner@wcsr.com]
Sent: Thursday, November 05, 2009 2:16 AM
To: aives@bannekerventures.com; okarim@bannekerventures.com; thicks@bannekerventures.com; Montague, Joshua W.; 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-Florida Avenue Sites

Nat: Thanks for your response. Notwithstanding the late hour, I feel compelled to respond tonight while this is fresh in everyone's thinking. This is not my best response because of fatigue at this hour. I'll try to be brief and to the point.

One of the reasons I made my earlier response is for the first time since working on multiple WMATA joint development projects since 2003, I have access to the Appraisal from Harps & Harps and the Rent Calculation from Integra Realty Resources. My arguments are based on statements in the October 30, 2009 Rent Calculation you provided.

Comment [JM1]: This email is a lesson in why WMATA should never share its appraisal.

Before responding to the specific statements, let me first offer an observation on WMATA's return on its land. In my experience, institutional investors consider their "total return" on their investments, not just their net income. Total return on land for a tax-exempt landlord from a ground lease has three components: (1) the rent (or net operating income) from the leasing of the land; plus (2) the appreciation (or depreciation) in the value of the land over the term of the lease, assuming the tenant does not have a fixed-price purchase option for the land (which the Developer does not have); plus (3) the discounted present value of the improvements which revert to the landlord upon the expiration of the lease. In the District of Columbia, commercial land has not depreciated over any long period of time since the British burned the Capitol in 1814. None of your comments acknowledge that WMATA receives the entire appreciation in the value of the land over the term of the lease and the value of the reverted improvements as part of its "return" on the land. Even if WMATA considers such appreciation an "unrealized gain" on its land, it is still a gain that institutional investors recognize. WMATA could realize and monetize such gain through a financing transaction if it chose to do so.

Comment [JM2]: WMATA is not an institutional investor. As a ground lease landlord, WMATA is only concerned with 1) Financial Return; 2) Risk Allocation; and 3) TOD

Comment [JM3]: Recognition of appreciation is 60 years away, it is a very small factor

Comment [JM4]: The improvements will be worth "zero" in 99 years.

Comment [JM5]: Not a factor.

My second observation is the calculation of market rent excludes (i) the Participating Rent based on 1.5% of gross sublease receipts, (ii) the Capital Events Rent based on 2% of proceeds of the sale of any interest in the leasehold estate and 2% of the net excess refinancing proceeds from any refinancing. These will be significant over 99 years and they will provide a material protection against inflation. In my experience, these should have been included in the determination

Comment [JM6]: This is not a significant return.

Comment [JM7]: Need to compare 2%G to 10%N

of "market rent." That's why your appraisers noted in the second paragraph on page one of the Rent Calculation that Participating Rent and Capital Events Rent were excluded at WMATA's request. That constitutes an above-market benefit for WMATA before the market rent is determined.

Comment [JM8]: Additions because WMATA taking capitalized lease payment at low point in market plus WMATA's return restricted by HUD plus WMATA forced to take cap payment because of co-tenancy arrangement

My third observation is the Rent Calculation expressly includes an adjustment for rental rate escalation over the 60-year term. Please refer to the two paragraphs following the table of "Capitalization Rate Comparables" on page two of the Rent Calculation which state rental rate escalations affect the capitalization rate and the fact that "the lease as proposed will not include escalations" was explicitly considered in selecting the percentage rate of fair market value of the land used to set the annual ground rent payment. A higher annual ground rent payment was selected because of the absence of rent escalations. Therefore, WMATA will receive a market rent that includes an adjustment for the absence of rent escalations over the first 60 years.

Comment [JM9]: Compare 2007 Cap Lease Payment to 2009 Cap Lease Payment

My assertion that "WMATA will charge more than the Fair Rental Value of the Lease Property after the 61st lease year" is based on the following analysis: (a) the market rent determined for the 61st lease year through the 70th lease year and every ten lease years thereafter will be set by three appraisers using the same methodology as setting the rent for the first 60 lease years; (b) such methodology includes an upward adjustment for the absence of rent escalations during each ten lease year period; (c) WMATA is mandating that the market rent be increased by a compounding 3% each year after the market rent is set; and (d) the 3% annual compounding increase is "double collecting" because market rent already was increase under the false assumption that there would be no escalations in the rent.

Comment [JM10]: 3% is for ongoing increases. Does appraisal get to account for market growth that LL missed on during each 10-year period?

My proposed solution on re-setting the rent after the 60th lease year is either to delete the 3% escalation because it is already included in the appraisers' determination of market rent, or instruct the appraisers to consider the 3% escalation in determining the market rent.

On my assertion that re-setting the rent every ten lease years after the 60th lease year makes the lease un-financeable is based on hard experience. I gave my reasons and analysis in my assertion. The re-setting of market rent is based on a fixed period given to the appraisers. If done properly, market rent can be set for a period much longer than ten years and WMATA will be compensated for the increasing (or decreasing) rental value over such period. WMATA has recognized the risk of decreasing rental value by mandating the re-setting of the rent must be "up only."

Comment [JM11]: Other deals that have this include Bethesda and Dupont

My proposed solution on how long to reset the rent for after the 60th lease year would be to provide that the rent must be reset once between the 79th and 81st lease years simultaneously with the refinancing of the tenant's leasehold estate during that two year window, but not later than the beginning of the 81st lease year. The appraisers would be instructed to set the rent for 21 years beginning in the 61st lease year and for the remaining term of the lease when the rent is reset between the 79th and 81st lease years. This gives the Developer approximately 20 years between rent adjustments to amortize its permanent loan. I would also propose that the Developer be permitted to elect a capitalized lease payment for each approximate 20-year period and pay the entire base rent at the beginning of each approximate 20-year period.

Comment [JM12]: SAAM??

I do not have the Developer's approval to make the above proposals a "counter-offer." If you want me to ask the Developer to approve them, I'll be glad to make that request.

We also inserted comments to your specific statements below. Each comment is typed in ALL CAPS and preceded by *[Hagner, John]*.

We appreciate the time and effort everyone at WMATA has expended to finalize the Term Sheet. Thank you for being so diligent in trying to get these issues resolved.

With kind regards,

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: Bottigheimer, Nat [mailto:NBottigheimer@wmata.com]
Sent: Wednesday, November 04, 2009 9:02 PM
To: O'Keeffe, Carol B.; Montague, Joshua W.; aives@bannekerventures.com; okarim@bannekerventures.com; thicks@bannekerventures.com; Hagner, John
Cc: Goldin, Steven; Doggett, Rosalyn; Meister, Mark K.; Marshall, Malcolm; jkass@dccouncil.us; Yohance S. Fuller
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.*[Hagner, John]* IT IS WMATA'S LAND AND WMATA ALONE IS RECEIVING THE BENEFIT OF THE APPRECIATION IN THE VALUE OF THE LAND OVER THE ENTIRE TERM OF THE LEASE.

Comment [JM13]: WMATA loses this benefit by being forced into Cap Lease Payment. Also, what is benefit 99 years from now worth to us today?

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. *[Hagner, John]* YOUR APPRAISER ASSUMED A 3% INFLATION IN WMATA'S LAND VALUE IN THE SECOND PARAGRAPH ON PAGE FOUR OF THE RENT CALCULATION. THEREFORE, IF THE LAND APPRECIATES AT A RATE HIGHER THAN 3%, WMATA WILL RECEIVE THE BENEFIT OF WHICH MEANS THE MARKET RENT IN THE LEASE WAS SET HIGHER THAN IT SHOULD HAVE BEEN SET.

Comment [JM14]: No benefit during lease term, it will be developer's benefit if the location appreciates.

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.*[Hagner, John]* THE RENT CALCULATION USED BY WMATA'S APPRAISERS INCLUDED APPRECIATION AS A FACTOR IN SETTING THE FAIR MARKET RENT. IF DONE PROPERLY, WMATA SHOULD BE PROTECTED.

Comment [JM15]: Makes up for Cap Lease Payment and HUD restrictions; Appraised at bottom of market.

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.*[Hagner, John]* BASED ON MY REASONS PROVIDED ABOVE, I RESPECTFULLY DISAGREE WITH YOUR ANALYSIS. THE APPRAISERS CONSIDER THESE FACTORS IN SETTING THE FAIR MARKET RENT.

Other premises:

At Twinbrook, we negotiated a lease with JBG with precisely the terms we proposed.*[Hagner, John]* DID JBG HAVE THE BENEFIT OF REVIEWING THE APPRIASAL AND RENT CALCULATION SO IT KNEW HOW WMATA DETERMINED THE RENT? IF IT DID NOT, IT MAY NOT HAVE KNOWN HOW WMATA DETERMINED THE RENT. IF IT DID, THEN, ASSUMING ALL OTHER ECONOMIC TERMS OF JBG'S LEASE WERE SIMILAR TO THE DEVELOPER'S, JBG ACCEPTED WHAT WE ARE OBJECTING TO.

Long-term leases are finance-able at terms less than 99 years.*[Hagner, John]* TRUE, BUT IN MY EXPERIENCE, THEY CANNOT BE FINANCED WITH UNLIMITED INCREASES IN THE RENT EVERY TEN 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.*[Hagner, John]* PLEASE SEE MY PROPOSALS ABOVE.

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

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.

Comment [JM16]: This is to cover the increase in FMV between appraisals.

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 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 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

Comment [JM17]: Have this in Bethesda and Dupont transactions. What are some alternatives?

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

Assistant 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.
Cc: Montague, Joshua W.
Subject: Re: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

Carol: 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:

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.

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
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

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Montague, Joshua W.

From:	John Hagner [JHagner@wcsr.com]
Sent:	Thursday, November 05, 2009 2:16 AM
To:	aives@bannekerventures.com; okarim@bannekerventures.com; thicks@bannekerventures.com; Montague, Joshua W.; 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-Florida Avenue Sites

Nat: Thanks for your response. Notwithstanding the late hour, I feel compelled to respond tonight while this is fresh in everyone's thinking. This is not my best response because of fatigue at this hour. I'll try to be brief and to the point.

One of the reasons I made my earlier response is for the first time since working on multiple WMATA joint development projects since 2003, I ~~have access~~ to the Appraisal from Harps & Harps and the Rent Calculation from Integra Realty Resources. My arguments are based on statements in the October 30, 2009 Rent Calculation you provided.

Before responding to the specific statements, let me first offer an observation on WMATA's return on its land. In my experience, institutional investors consider their "total return" on their investments, not just their net income. Total return on land for a tax-exempt landlord from a ground lease has three components: (1) the rent (or net operating income) from the leasing of the land; plus (2) the appreciation (or depreciation) in the value of the land over the term of the lease, assuming the tenant does not have a fixed-price purchase option for the land (which the Developer does not have); plus (3) the discounted present value of the improvements which revert to the landlord upon the expiration of the lease. In the District of Columbia, commercial land has not depreciated over any long period of time since the British burned the Capitol in 1814. None of your comments acknowledge that WMATA receives the entire appreciation in the value of the land over the term of the lease and the value of the reverted improvements as part of its "return" on the land. Even if WMATA considers such appreciation an "unrealized gain" on its land, it is still a gain that institutional investors recognize. WMATA could realize and monetize such gain through a financing transaction if it chose to do so

EGI

My second observation is the calculation of market rent excludes (i) the Participating Rent based on 1.5% of gross sublease receipts, (ii) the Capital Events Rent based on 2% of proceeds of the sale of any interest in the leasehold estate and 2% of the net excess refinancing proceeds from any refinancing. These will be significant over 99 years and they will provide a material protection against inflation. In my experience, these should have been included in the determination of "market rent." That's why your appraisers noted in the second paragraph on page one of the Rent Calculation that Participating Rent and Capital Events Rent were excluded at WMATA's request. That constitutes an above-market benefit for WMATA before the market rent is determined.

- Cap Lease At Bottom of market
- Too much $ Risk on WMATA
- Additional Rent is Standard

#2 → 2007 vs 2009
→ what is Residual value 99 yrs

#3. Value of Improve in 99 yrs = Ø

My third observation is the Rent Calculation expressly includes an adjustment for rental rate escalation over the 60-year term. Please refer to the two paragraphs following the table of "Capitalization Rate Comparables" on page two of the Rent Calculation which state rental rate escalations affect the capitalization rate and the fact that "the lease as proposed will not include escalations" was explicitly considered in selecting the percentage rate of fair market value of the land used to set the annual ground rent payment. A higher annual ground rent payment was selected because of the absence of rent escalations. Therefore, WMATA will receive a market rent that includes an adjustment for the absence of rent escalations over the first 60 years.

- At Bottom of market
- Does Factor = actual growth?

My assertion that "WMATA will charge more than the Fair Rental Value of the Lease Property after the 61st lease year" is based on the following analysis: (a) the market rent determined for the 61st lease year through the 70th lease year and every ten lease years thereafter will be set by three appraisers using the same methodology as setting the rent for the first 60 lease years; (b) such methodology includes an upward adjustment for the absence of rent escalations during each ten lease year period; (c) WMATA is mandating that the market rent be increased by a compounding 3% each year after the market rent is set; and (d) the 3% annual compounding increase is "double collecting" because market rent already was increase under the false assumption that there would be no escalations in the rent. - Putting Risk Back on Developer After taking it on for Cap payment

- 3% is estimate of growth over 10 yrs / Balances out

My proposed solution on re-setting the rent after the 60th lease year is either to delete the 3% escalation because it is already included in the appraisers' determination of market rent, or instruct the appraisers to consider the 3% escalation in determining the market rent.

3% is Factor After Reset

On my assertion that re-setting the rent every ten lease years after the 60th lease year makes the lease un-financeable is based on hard experience. I gave my reasons and analysis in my assertion. The re-setting of market rent is based on a fixed period given to the appraisers. If done properly, market rent can be set for a period much longer than ten years and WMATA will be compensated for the increasing (or decreasing) rental value over such period. WMATA has recognized the risk of decreasing rental value by mandating the re-setting of the rent must be "up only." . Shifting Risk Back to Developer

. Concern is in flipping, not Financing

My proposed solution on how long to reset the rent for after the 60th lease year would be to provide that the rent must be reset once between the 79th and 81st lease years simultaneously with the refinancing of the tenant's leasehold estate during that two year window, but not later than the beginning of the 81st lease year. The appraisers would be instructed to set the rent for 21 years beginning in the 61st lease year and for the remaining term of the lease when the rent is reset between the 79th and 81st lease years. This gives the Developer approximately 20 years between rent adjustments to amortize its permanent loan. I would also propose that the Developer be permitted to elect a capitalized lease payment for each approximate 20-year period and pay the entire base rent at the beginning of each approximate 20-year period.

Acceptable? SAAM

WMATA Accepts Risk

I do not have the Developer's approval to make the above proposals a "counter-offer." If you want me to ask the Developer to approve them, I'll be glad to make that request.

FOIA CONFIDENTIAL TREATMENT REQUESTED

We also inserted comments to your specific statements below. Each comment is typed in ALL CAPS and preceded by ***[Hagner, John].***

We appreciate the time and effort everyone at WMATA has expended to finalize the Term Sheet. Thank you for being so diligent in trying to get these issues resolved.

With kind regards,

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

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From: Bottigheimer, Nat [mailto:NBottigheimer@wmata.com]
Sent: Wednesday, November 04, 2009 9:02 PM
To: O'Keeffe, Carol B.; Montague, Joshua W.; aives@bannekerventures.com; okarim@bannekerventures.com; thicks@bannekerventures.com; Hagner, John
Cc: Goldin, Steven; Doggett, Rosalyn; Meister, Mark K.; Marshall, Malcolm; jkass@dccouncil.us; Yohance S. Fuller
Subject: RE: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

John-- Never Give up Appraisal

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.***[Hagner, John]*** IT IS WMATA'S LAND AND WMATA ALONE IS RECEIVING THE BENEFIT OF THE APPRECIATION IN THE VALUE OF THE LAND OVER THE ENTIRE TERM OF THE LEASE. - Almost Ø value
- Compare 2007 to 2009

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. ***[Hagner, John]*** YOUR APPRAISER ASSUMED A 3% INFLATION IN WMATA'S LAND VALUE IN THE SECOND PARAGRAPH ON PAGE FOUR OF THE RENT CALCULATION. THEREFORE, IF THE LAND APPRECIATES AT A RATE HIGHER THAN 3%, WMATA WILL RECEIVE THE BENEFIT OF WHICH MEANS THE MARKET RENT IN THE LEASE WAS SET HIGHER THAN IT SHOULD HAVE BEEN SET.
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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009713

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Bethesda / Dupont have Re-Sets

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- Have this in other transactions
- Propose Alternate Solutions to get this Return and Shift this Risk

FOIA CONFIDENTIAL TREATMENT REQUESTED

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I respectfully believe the last change vitiates the benefit of a lease over 60 years.

John

John D. Hagner
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Subject: FW: FINAL Term Sheet b/t WMATA and Developer - Shaw/Howard-Florida Avenue Sites

Attached is the updated Term Sheet described below.

Sincerely,

osh Montague

Assistant General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
phone: (202) 962-1275

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009715

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John
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202.857.4404 Direct
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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:

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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 `lovember 2, 2009 at 6:20p.

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
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

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ARTICLE 10

INSURANCE REQUIREMENTS

1.1 **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 (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 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, such coverage and policies having the scope and limits not less than as set forth below. Developer's insurance shall be project-specific with respect to this Lease.

1.2 **During the Construction Period.**

Commercial General Liability Insurance. The Insurance Obligors shall each procure and maintain 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 Lease Agreement and the other Transaction Documents. The Policy shall include the following coverages: 1) Products & Completed Operations Liability, 2) Independent Contractor's Liability, and Contractual Liability with all railroad exclusions deleted; and all XCU deletions (explosion, collapse and underground) exclusions are to be deleted, wherever required. If the insurance is written on a claims made basis, then the extended discovery period must be at least three (3) years following completion and acceptance of the project. The coverage under such an insurance policy or policies shall be at least $10,000,000 per occurrence combined single limit. WMATA shall be included as an additional insured with respect to activities related to this Lease Agreement and the other Transaction Documents.

1.2.1

1.2.2 **Builder's Risk Coverage.** The Developer shall cause its general contractor to procure and maintain 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. 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, in respect of all construction, installation, alteration and other similar construction activities of the Insurance Obligors.

1.2.3 **Worker's Compensation.** The Insurance Obligors shall each procure and maintain one or more insurance policies, which in the aggregate fully comply

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<#>**Non-Construction Activities and Obligations.** Personal Injury and Property Damage Liability: $5,000,000 Combined Single Limit Each Occurrence.¶
<#>**Construction Activities and Obligations.** Personal Injury and Property Damage Liability: $10,000,000 Combined Single Limit Each Occurrence.¶

Deleted: To the extent not fully covered by the policies required under subsection 10.2,

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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, and 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:

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

1.2.4 **Automobile Liability Insurance.** The Insurance Obligors shall each procure and maintain 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 $2,000,000 per occurrence.

1.2.5 **Pollution Legal Liability Insurance.** The Developer shall require its contractors and any subcontractors that provide excavation work or work with Hazardous Materials to provide one or more insurance policies covering contractors' and subcontractors' pollution legal liability, including, without limitation, the liability of the contractors and subcontractors 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 insurance policies shall have limits not less than $3,000,000 per occurrence of claims made.

1.2.6 **Railroad Protective Liability Insurance.** The Developer shall cause its contractor to procure and maintain one or more insurance policies, issued to WMATA, 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 Obligors on, above, below, adjacent or within fifty (50) feet of the Metro Facilities.

The coverage under such policies shall have limits not less than $10,000,000 combined single limit for bodily injury and property damage with a $10,000,000 aggregate.

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1.2.7 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.

Deleted: <#>One or more insurance policies covering the liability of the Insurance Obligors for any and all indemnification obligations and indemnification liabilities under this Lease and the Transaction Documents. ¶

1.3 **During Operation Period. Prior to the end of the Construction Period, Developer shall** procure and at all times maintain without interruption throughout the remainder of the Lease Term, at its sole cost and expense, insurance coverage to protect itself and WMATA and all of their respective officers, directors, agents, and employees, such coverage and policies having the scope and limits not less than as set forth below.

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1.3.1 **Commercial General Liability Insurance.** The Developer shall procure and maintain one or more commercial general liability insurance policies issued to and covering the liability of the Developer for all activities and obligations under or in connection with this Lease Agreement and the other Transaction Documents. WMATA shall be included as an additional insured under the coverage for Commercial General Liability Insurance on an appropriate endorsement. Coverage shall include, without limitation, premises, operations, products liability, products completed operations, independent contractors, protective broad form property damage, personal injury, blanket contractual liability insurance and explosion, collapse, and underground hazards. The coverage under such an insurance policy or policies shall have at least the following limits:

1.3.1.1 **Non-Construction Activities and Obligations:** $5,000,000 Combined Single Limit Each Occurrence.

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1.3.1.2 **Construction Activities and Obligations:** $10,000,000 Combined Single Limit Each Occurrence.

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1.3.2 **Commercial Property Insurance.** The Developer shall procure and maintain one or more special form insurance policies, which in the aggregate cover the full replacement value of all Improvements on the Property.

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1.3.3 **Rental Value Insurance Policy.** Beginning with the Base Rent Effective Date and continuing during the entire period of operation of this Lease, Developer shall procure and maintain a Rental Value Insurance Policy. During the first two (2) years of the Term following the Base Rent Effective Date, the insurable limit of said policy shall be in the amount of twelve (12) months Base Rent. Within forty-five (45) days before the beginning of the third year of the Term following the Base Rent Effective Date, and before the beginning of each subsequent year of the Term, WMATA and Developer shall

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review Developer's revenue projections and determine the total amount of rent expected to be payable during the lease year. Said policy shall then be amended to reflect this review but the maximum limit of the policy shall be the aggregate amount of the Base Rent for a twelve (12) month lease year. The Rental Value Insurance Policy shall name WMATA as a loss payee to the extent of the Base Rent.

1.3.4 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.

Deleted: <#>One or more insurance policies covering the liability of the Developer for any and all indemnification obligations and indemnification liabilities under this Lease and the Transaction Documents. ¶

1.4 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 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.

1.5 **WMATA's Interests.** Each of the Insurance Obligors shall cause its insurance carrier(s) to name WMATA as an additional insured under its general and auto liability insurance policies and to provide not less than thirty (30) days' written Notice of modification, termination, or cancellation of any required 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 (i) shall be written on an occurrence basis (except for pollution and professional liability) and Insurance Obligor'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, 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; (vii) shall provide for a deductible or self insured retention not to exceed $100,000; and (viii) shall not include restrictive language to WMATA's additional insured status. 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

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release, limit or restrict in any way the Insurance Obligors' liability arising under or out of this Lease or otherwise.

1.6 **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 within thirty (30) days of the renewal date, 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) original signed certificates of insurance for each such required insurance coverage 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 thirty (30) 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 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 to WMATA within thirty (30) days of the renewal date of the applicable policies.

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1.7 **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 any of the Insurance Obligors, 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.

1.8 **Compliance with Insurance Requirements.** The Developer shall not itself and shall not suffer any of the Insurance Obligors 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 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. **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 "VII" 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 Lease Premises 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 Lease or otherwise.

Deleted: 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 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. ¶

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1.9 **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.

Indemnification.

a. Contractor shall defend, indemnify and save harmless WMATA, its directors, officers, employees and agents, irrespective of any negligence or fault on their part, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, including the property of the Contractor and WMATA, occurring in connection with, or in any way arising out of the use, occupancy and performance of the work and/or any acts in connection with activities to be performed under this contract. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any obligation of Contractor under this Contract.

Comment [RS1]: [illegible]

Comment [RS2]: It is not sufficient that the Contractor's indemnity be unilateral in favor of WMATA; the indemnity should also be activity based, not fault based. That is the reason for including the irrespective of WMATA's negligence or fault and deleting any reference to the Contractor's negligence or fault.

Deleted: resulting in whole or in part from the acts, errors or omissions of Contractor, or any employee, agent or representative of Contractor

b. Contractor shall indemnify, defend and hold harmless WMATA its directors, officers, employees and agents against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the contract.

c. If any action or proceeding relating to the indemnification required is brought against WMATA, then upon written notice from WMATA to the Contractor, the Contractor shall, at the Contractor's expense, resist or defend such action or proceeding by counsel approved by WMATA in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same.

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d. Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to WMATA pursuant to this Section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

Insurance.

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a. WMATA is acknowledged and understood to be a third party beneficiary of any insurance policy, other than workers' compensation insurance and professional liability insurance, carried by any contracting Party.

b. As may be required in any insurance policy carried by any contracted Party, this Contract is understood and agreed to be a written contract or an Insured Contract between that Contractor and WMATA.

c. Contractor understands and agrees that **provision of a complete copy of the Policy or Policies which provide the below required insurance, including a copy of any endorsement or exclusion thereto, for review and approval by WMATA is a prerequisite** for entry onto WMATA property. It is the Contractor's responsibility to ensure adequate and complete coverage as contemplated in this agreement. This responsibility is not waived, nor is any requirement to indemnify waived by WMATA's review and approval of any Policy.

d. Contractor understands and agrees that the insurance and indemnification provided by any Contractor under the terms of this Contract shall be Primary. Contractor agrees that to the extent any endorsement contemplates issuance of a contract by a state or political subdivision, WMATA shall be considered a state or political subdivision for the purposes of those policies and endorsements.

e. Insurance Companies. Insurance companies providing the required insurance must be rated by A.M. Best or a comparable rating company and carry at least an "A" VII rating. All insurance shall be procured from insurance companies reasonably acceptable to WMATA and licensed and authorized to conduct business in the jurisdiction where the work is to be performed. WMATA's approval or disapproval of the insurance shall not release the Contractor of full responsibility for liability for damage and accidents arising under this Contract.

f. Changes in Insurance. The required insurance policies shall not be canceled, non-renewed or modified (except to increase the coverages and limits) without thirty (30) calendar days prior written notice from Contractor to WMATA's Office of Insurance, Room 8D01, and Office of Procurement, 600 Fifth Street, NW, Washington, DC 20001. All correspondence and insurance certificates must include the Contract Number. If any required insurance policies should be canceled, non-renewed or modified so that the insurance is not in full force and

Comment [RS4]: Although WMATA carries significant retentions it is not self-insured for all of its exposures. It is not clear why WMATA's insurance status pertains to this agreement.

Deleted: that WMATA is a self-insured governmental entity and

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Comment [RS5]: It's not clear what an indemnity company is (risk retention group? Or state pool?) or why WMATA's insurance requirements permit an alternative to commercial insurance.

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effect, then WMATA can hold Contractor in default of this Contract. Under such circumstances, WMATA shall give Contractor a notice of default and after the expiration of the cure period, WMATA may terminate this Contract for an event of default or obtain insurance equivalent to that required herein, the full cost of which shall be paid by Contractor to WMATA on demand.

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g. Evidence of Insurance Coverage. Evidence of the required insurance in the form of the complete insurance policy including any endorsements and certificates of insurance with WMATA designated as the Certificate Holder describing work to be performed and Contract Number shall be submitted to WMATA at least ten (10) business days prior to commencement of operations and from time to time at WMATA's request. Contractor shall not be allowed to enter WMATA Premises until the evidence of insurance has been received and approved in writing by WMATA. All evidence of insurance shall be sent to:

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Comment [W6]: Can we not accept original COIs instead of the actual policies? JH

Comment [RS7]: This information is included in the Description box of the COI.

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Office of Procurement
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

With a Copy to:
Office of Insurance
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW - Room 8D01
Washington, DC 20001

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h. Contractor shall require each subcontractor, at all tiers, to provide evidence of insurance coverage specified herein and such evidence of coverage shall be provided to WMATA.

i. Any insurance where WMATA is designated as an additional insured shall be endorsed to delete any exclusions of coverage for a governmental instrumentality, public or quasi-public body.

j. Limits and Modification of Coverage. The limits of liability included herein are minimum limits. WMATA reserves the right to review or change these limits if the terms of the Contract or standards in the industry change. If requested by WMATA, Contractor shall make or require its subcontractors to make any necessary adjustments in such limits or in the type of coverage to reflect then currently acceptable, commercially reasonable policy limits and types of coverage for similar uses and operations. Contractor's failure to cooperate with WMATA regarding this shall constitute a Default in accordance with this Contract. During the term of this Contract and any extensions, except for such longer terms as may be required herein, **Contractor shall provide or cause to be provided the types and amounts of insurance indicated below.**

Comment [RS8]: It is not clear what is meant by contract of indemnification

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Comment [RS9]: This provision is appropriate where the contractor is required to procure project-specific insurance (e.g. major construction), where the insurance is at WMATA's cost and expense, but it might not be appropriate where the Contractor is using its existing insurance whose cost is included as an overhead.

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WORKERS COMPENSATION. An insurance policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, and if there is any exposure to personnel of any Contractor with the U. S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or the Federal Employers' Liability Act, Contractor will provide coverage for these exposures on an "if any basis" with limits not less than:

Worker's Compensation:	Statutory
Employers' Liability:	
Each Accident	$1,000,000
Disease - Policy Limit	$1,000,000
Disease - Each Employee	$1,000,000

COMMERCIAL GENERAL LIABILITY INSURANCE. A Commercial General Liability Insurance policy issued to and covering the liability for all work and operations under or in connection with this Contract and all obligations assumed by Contractor under this Contract. Policy shall include the following coverages: 1) Products & Completed Operations

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Liability, 2) Independent Contractor's Liability, and Contractual Liability with all railroad exclusions deleted; and all XCU deletions (explosion, collapse and underground) exclusions are to be deleted, wherever required. If the insurance is written on a claims made basis, then the extended discovery period must be at least three (3) years following completion and acceptance of the project. The coverage under such an insurance policy or policies shall have at least the following limits:

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Deleted: in addition to coverage for explosion, collapse, and underground hazards

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Bodily Injury and Property Damage Liability
$2,000,000 each occurrence / aggregate

Personal Injury/Advertising	$1,000,000
Premises Medical Payments	$5,000

WMATA shall be included as an additional insured under the commercial general liability insurance coverage with respect to activities related to this Contract.

AUTOMOBILE LIABILITY INSURANCE. A commercial auto insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicles bearing valid license plates appropriate for the circumstances for which the vehicles are being used. These vehicles should bear license plates applicable to the state laws for which the vehicle(s) are registered. Liability for contractor's mobile equipment is not subject to this coverage and therefore the aforementioned general liability insurance is required. Contract employees are not permitted to operate any vehicle owned by WMATA whether in commission of the contract or outside the same.

The coverage under such an insurance policy or policies shall include mandatory Uninsured Motorist Coverage and Under Insured Coverage where applicable. If hauling contaminants or pollutants, the Contractor must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall include coverage Form MCS-90.

The coverage under such an insurance policy or policies shall have limits not less than: BODILY INJURY AND PROPERTY DAMAGE LIABILITY$2,000,000 Combined Single Limit and Uninsured Motorist Coverage Minimum Limit $50,000

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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA must be included as an additional insured under the auto liability insurance coverage with respect to activities related to this Contract.

PROFESSIONAL LIABILITY INSURANCE. A separate insurance policy to cover the Contractor's liability for financial loss suffered by third parties resulting from the Contractor's wrongful judgments and errors or omissions in performance of their work under this Contract.

If written on a claims made basis, the Professional Liability insurance shall be maintained for five (5) years after the final acceptance of the work by either continuation of the policy every year or if coverage is moved to another carrier, the same prior acts retro date should be continued. If coverage is not renewed, an extended reporting period of five (5) years should be purchased and such coverage should be evidenced on the certificate of insurance. In addition, Contractor should purchase unintentional errors and omissions and cross liability coverage by endorsement if not already provided.
For contracts with a value ***Over $500,000** the coverage under such an insurance policy shall have a limit of liability not less than:

$3,000,000 per occurrence / aggregate

PROPERTY INSTALLATION FLOATER.

Deleted: pay on behalf of

Deleted: all costs the Contractor shall become legally obligated to pay as damages due to any claim caused by any negligent act,

Deleted: of any Contracting Party out of their acts or omissions

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Comment [RS10]: An installation floater is the same as Builders Risk insurance and should be included in that paragraph.

Deleted: An insurance policy or endorsement to existing property coverage for all risk of physical loss or damage to property building materials to be used in, incidental to, or during installation and any resultant damage caused by installation of materials in connection with this contract. WMATA shall be named as "Loss Payee" to the extent of WMATA's insurable interest, if any, in the property to be installed. The coverage under such policy shall have a limit of liability in accordance with the value of the property insured.¶
¶
Such insurance shall be written on the ISO Form. The coverage under such an insurance policy shall have a limit of liability not less than: *" the estimated cost of materials "*

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FOIA CONFIDENTIAL TREATMENT REQUESTED

CONTRACTOR'S POLLUTION LIABILITY INSURANCE. Contractor shall provide a liability insurance policy covering the Contractor during the process of removal, storage, transport, and waste contaminated ground water soil remediation. Policy should include coverage for bodily injury, and 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, liquids or gas, waste material or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental.

The policy should include the following coverage arising from pollution resulting from covered operations:

a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;

b. Property damage, including physical, to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been destroyed.

The coverage under such policy or policies shall have minimum limits of $3,000,000 per occurrence. The policy form shall include an extended reporting period of at least three (3) years. This coverage shall be secured from an insurance carrier acceptable to WMATA and in accordance with the information provided. Prior to commencement of work on this contract the policy form shall be submitted to WMATA for review and approval.

Comment [RS11]: Should not the Contractor's Pollution Liability insurance requirement not specify limits?

RAILROAD PROTECTIVE LIABILITY (RRPL) INSURANCE. An insurance policy issued to **WMATA** as the named insured and covering the liability of all Contracting Parties for the work to be performed within fifty (50) feet (on, above, adjacent to or underneath) of WMATA's operating railroad property for any personal injuries or deaths or any damage to the property, equipment and facilities caused by the activities of any Contractor or Subcontractor resulting from performance of this contract work. The coverage under such an insurance policy shall have a limit of liability not less than:

FOIA CONFIDENTIAL TREATMENT REQUESTED

BODILY INJURY AND PROPERTY DAMAGE LIABILITY
$2,000,000 per occurrence/ $6,000,000 aggregate

WMATA reserves the right to require higher limits depending on the nature of the contract.THE ORIGINAL POLICY SHOULD BE FORWARDED TO WMATA

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COMPREHENSIVE DISHONESTY, DISAPPEARANCE AND DESTRUCTION INSURANCE. Contractor shall maintain and certify to WMATA a separate and distinct blanket crime insurance policy or a standard crime policy with third party liability coverage and with segregated limits of liability covering losses caused by dishonesty of employees, loss of money or securities while being conveyed by messenger outside premises. Such a policy should also include loss caused by forgery of outgoing monies, but not limited to cash, securities or other forms of negotiable instruments, for loss caused by burglary, theft, robbery, and mysterious disappearance. The indemnity provisions under such policy should have the following limits:

Blanket Employee Dishonesty $
Forgery and Alterations $
Theft, Disappearance and Destruction $

Comment [RS12]: [illegible]

BUILDERS RISK INSURANCE.

Comment [RS13]: WMATA not its contractors' should be purchasing the Builders Risk and Installation insurance. Key reason – WMATA is the named insured and thus controls the repairs or replacements if it purchases the Builders Risk/ Installation insurance. If the Contractor is the named insured it controls the repairs or replacements. After a loss WMATA may wish to use a different contractor to make the repairs.

Deleted: An insurance policy covering all risk of physical loss or damage to, property; including machinery and equipment in the course of construction, and to materials incidental to construction under this contract. WMATA shall be named "Loss Payee" As Their Interest May Appear (ATIMA) in the property insured. The coverage under such policy shall have limits of liability in accordance with the value of the property insured

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Non-Liability of WMATA. WMATA shall have no liability for any injury or property damage whatsoever unless the injury or damage arises solely from WMATA's negligence. Neither the contract nor any provision thereof, shall impose upon WMATA any new or additional duty or liability or enlarge any existing duty or liability of WMATA. Nothing in this Contract shall be deemed to waive WMATA's immunity as a sovereign entity.

T:\contract requirements_2009.doc
Last revision March 2009

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009731

FOIA CONFIDENTIAL TREATMENT REQUESTED

Doggett, Rosalyn

From: Mohsberg, Sid
Sent: Thursday, November 12, 2009 4:15 PM
To: Sequeira, Loyda; Bellamy, Michelle A.
Cc: Pant, Shiva K.; Green, Jennifer A.; Bottigheimer, Nat; Goldin, Steven; Doggett, Rosalyn; Requa, Jack; Hershorn, Julie G.; O'Keeffe, Carol B.
Subject: BAIS 100527 Amended Term Sheet Lease Shaw-Howard/FL Ave Site
Attachments: Shaw Howard LEASE term sheet Presentation for 11-19-09 as of 11-12-09-2.pptx; BAIS 100527 Shaw Howard Lease 11-12-09.pdf

Loyda,

Attached are the updated BAIS and presentation for the subject item for tomorrow's mail out for the 11/19/09 PDRE Cmte meeting. They reflect the edits received this afternoon from CHOS.

Please let me know if you have any questions.

Thanks.

Sid

WMATA-INV 009732

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

◉ Action ○ Information	MEAD Number: 100527	Resolution: ○ Yes ◉ No

TITLE:

Amended Term Sheet Lease Shaw-Howard/FL Ave Site

PURPOSE:

Obtain Board consideration of an amended term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site, and obtain Board direction on next steps.

DESCRIPTION:

In September 2009, the Board approved an extension to December 2009 to renegotiate a term sheet, to include affordable housing, for the Shaw-Howard U./Florida Avenue development site, which consists of three separate parcels totaling 28,376 sf located between 7th and 9th streets NW in Washington, DC.

The project would feature ground floor retail along Florida Avenue, with four stories of housing above, for a base amount of 100,000 sf. If additional density were achieved, Metro would be compensated. At a minimum, the project would include affordable housing required by the District of Columbia`s new mandatory Inclusionary Zoning law and regulations (approximately 8% of the housing that is built); however, the development team is exploring financing to extend affordability.

Staff and the development team, led by Banneker Ventures, LLC with Banc of America Community Development Corporation, have negotiated an amended term sheet for a 60-year lease of the site with an option to renew for an additional 39 years at market terms.

The development team has gained control of adjacent land on 9th Street and proposes to combine that land with the two Metro parcels that are located between 8th and 9th streets. The combined site would allow potentially greater density on Metro`s land than if the Metro parcels were developed alone and therefore greater economic benefit to Metro. Metro would receive 79% of the value of any additional bonus density granted by the District of Columbia; this represents Metro`s share of the combined parcels` size.

Metro facilities on the site consist of two underground rail tunnels and a vent shaft opening to 8th Street. These facilities would be reserved in perpetuity for Metro.

The negotiated joint development agreement and lease would be brought to the Board for approval within the extension period, which ends in December 2009.

Consider amended term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site and provide staff direction on whether to move forward with negotiation of joint development agreement and lease.

FUNDING IMPACT:

Revenue from the project would be deposited into the Transit Infrastructure Investment Fund (TIIF).

RECOMMENDATION:

No recommendation.

FOIA CONFIDENTIAL TREATMENT REQUESTED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Amended Term Sheet for Lease of Shaw-Howard U./Florida Avenue Joint Development Site

Executive Session

Planning, Development and Real Estate Committee

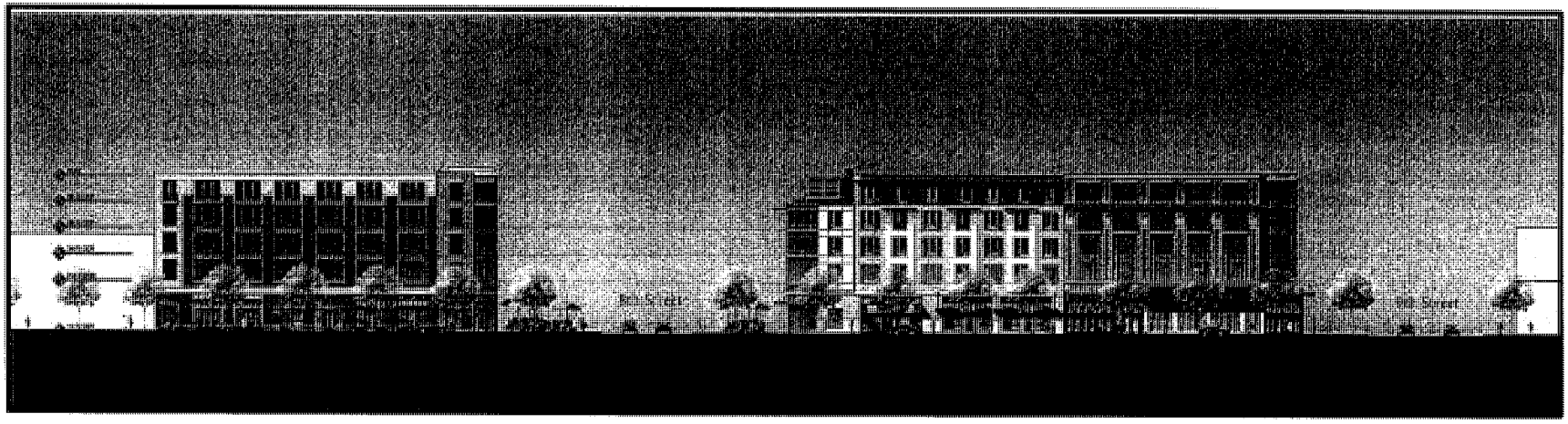
November 19, 2009

WMATA-INV 009735

FOIA CONFIDENTIAL TREATMENT REQUESTED

Purpose

Obtain Board action on an amended term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site, and obtain Board direction on next steps.



WMATA-INV 009736

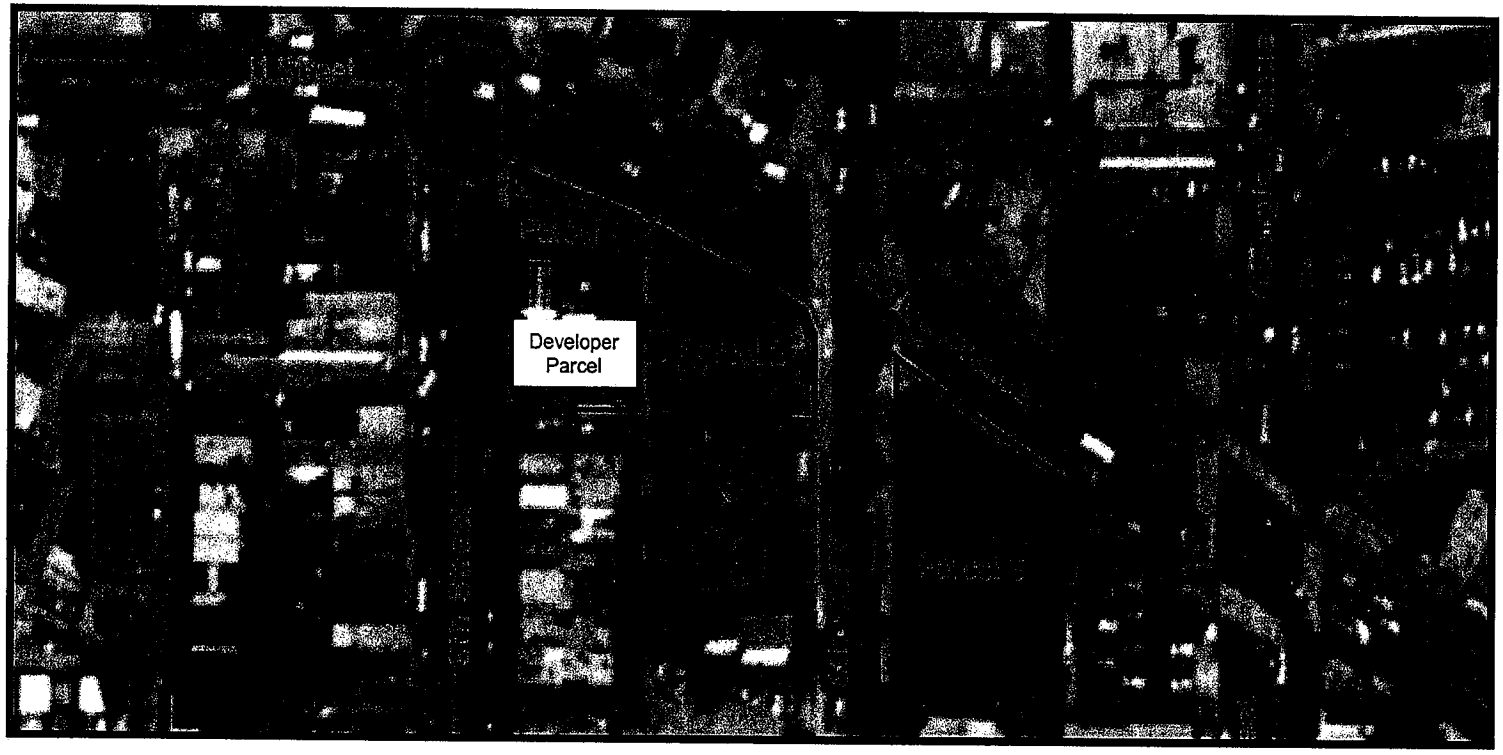
FOIA CONFIDENTIAL TREATMENT REQUESTED

Prior Board Action

June 2008	Board approved Banneker Ventures team as developer and authorized staff to negotiate a joint development agreement with affordable housing included.
April 2009	After change of development team members, Board approved extension of period to negotiate an amended term sheet with affordable housing included.
September 2009	Board approved extension to December 2009 to negotiate an amended term sheet and joint development agreement.

FOIA CONFIDENTIAL TREATMENT REQUESTED

Current Status



Developer proposes to combine three Metro parcels with an adjacent, developer-controlled parcel.

FOIA CONFIDENTIAL TREATMENT REQUESTED

metro

Current Status

- Term sheet reflects current appraised value, and reflects a mandatory Inclusionary Zoning adjustment for affordable housing, and extraordinary costs of constructing facilities over Metro tunnels
- Additional revenues to Metro may be generated through increased density, and through participation in gross revenue and capital events
- Current land values could appreciate significantly upon market recovery

WMATA-INV 009739

FOIA CONFIDENTIAL TREATMENT REQUESTED

metro

Current Status

- Decision on transaction timing is a policy matter for Board deliberation and action
- Consider amended term sheet to lease the Shaw-Howard U station/Florida Avenue joint development site and provide staff direction on whether to move forward with negotiation of joint development agreement and lease.

Flea Market
Lease

LEASE ABSTRACT - WMATA AS LANDLORD

LOCATION:	800 block Florida Avenue, NW Washington, DC
TENANT:	Michael S. Sussman 2101 N Street, NW Suite T-1 Washington, DC 20037
LEASE DATE:	8/15/07
TERM:	1 year
COMM DATE:	10/16/04
EXP DATE:	7/15/10
TERMINATION OPTION:	30 days mutual
OPTION:	1 @ 2 Years Notification Option: 60 days Option exercised by letter dated March 13, 2008

BASE RENT:	Annual	Monthly
7/16/07 - 7/15/08	$20,760.00	$1,730.00
7/16/08 - 7/15/09	$21,590.40	$1,799.20
7/16/09 - 7/15/10	$22,454.04	$1,871.17
Payable	Monthly	

USE:	Flea Market on Saturdays and Sundays
SECURITY DEPOSIT:	None

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- Lot 44 & 45 in Square 393
- Hours of operation - 12am Saturday to 11 pm Sunday
- Termination 30 Days Advanced written Notice
- WMATA agents have Right to Enter onto land at any time for purpose of conducting Soil tests, engineering Surveys, or other work, as necessary
  - Reduction in fee proportionate to number of days during which licensee deprived of use of that portion of Property → Approval?

March 13, 2007

Mr. Michael S. Sussman
2101 N Street, NW, Suite T-1
Washington, DC 20037

Re: 800 block Florida Avenue, NW
Square 393, Lots 44 and 45
District of Columbia

Dear Mr. Sussman:

Reference is made to License Agreement to Operate a Flea Market dated August 15, 2007 by and between the Washington Metropolitan Area Transit Authority (WMATA) and Michael S. Sussman (Licensee). The term of the Agreement expires July 15, 2008.

Section 2 of the Agreement provides for an option to renew the Agreement for a period of two (2) years. Please indicate your wish to exercise the option by signing this letter agreement below and returning one original to this office. By signing this letter agreement, Licensee exercises the option beginning July 16, 2008 and ending July 15, 2010. Rent will increase to One Thousand Seven Hundred Ninety-nine and 20/100 dollars ($1,799.20) on July 16, 2008.

If you have any questions, please do not hesitate to contact Anabela Talaia at 202- 962-1588.

Sincerely,

Joel R. Washington

Joel R. Washington
Director
Office of Station Area Planning
and Asset Management

AGREED:

Michael S. Sussman

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

DE005, DEOO6, DE009, DE026, DE027/E001

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
LICENSE AGREEMENT FOR OPERATION OF A WEEKEND FLEA MARKET

THIS LICENSE AGREEMENT ("**License**") made this 15th day of August, 2007, by and between the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, hereinafter referred to as "**WMATA,**" acting pursuant to Public Law 89-774, 80 Stat. 1324 (1966) and **MICHAEL S. SUSSMAN**, hereinafter referred to as "**Licensee.**"

WITNESSETH:

THAT IN CONSIDERATION of the premises, fees and covenants herein expressed, WMATA hereby grants to Licensee, a License to use the WMATA property described as Lots 44 and 45, Square 393, located on Florida Avenue, NW in the District of Columbia, containing 12,420 square feet, more or less, as shown in yellow on that drawing marked **Exhibit A**, which is attached hereto and made a part of this License, for operation of a weekend flea market between the hours of 12:00 a.m Saturday and 11:00 p.m Sunday, upon the following terms and conditions. The property is licensed in its "AS IS" condition and is hereinafter referred to as the "**Premises.**"

1. **TERM:** This License is for a one (1) year term commencing on July16, 2007 and ending on July 15, 2008 ("**Term**"). This License is subject to the termination provisions set forth in **Paragraph 3**.

2. **OPTION TO EXTEND:** This License may be extended for an additional term of up to two (2) years upon the mutual written agreement of the Parties. Licensee shall notify WMATA in writing of its intention to renew this License at least sixty (60) days prior to the end of the Term. The renewal shall be on the same terms and conditions as set forth herein excepting that the License Fee shall be at the rates specified in **Paragraph 4**.

3. **TERMINATION/EXPIRATION:** This License, or any extension thereof, may be terminated, in whole or in part, at any time by either party, effective at the end of any month by giving a written notice thirty (30) calendar days in advance of such termination. At the termination of this License, whether by expiration of the Term or by termination pursuant to this License, Licensee shall: (i) promptly vacate the Premises; (ii) remove all of its property (real and personal); and (iii) leave the Premises in good and clean order, reasonable wear and tear excepted, all in accordance with **Paragraph 18**.

FOIA CONFIDENTIAL TREATMENT REQUESTED

4. **LICENSE FEE:** The monthly License Fee shall be payable to WMATA as follows:

a. Beginning July 16, 2007 and ending July 15, 2008 in the amount of One Thousand Seven Hundred Thirty Dollars ($1,730.00) per month.

b. Beginning July 16, 2008 and ending July 15, 2009 in the amount of One Thousand Seven Hundred Ninety-Nine Dollars and Twenty Cents ($1,799.20) per month.

c. Beginning July 16, 2009 and ending July 15, 2010 in the amount of One Thousand Eight Hundred Seventy-One Dollars and Seventeen Cents ($1,871.17) per month.

d. The License Fee of $1,730.00 covering the period July 16, 2007 through August 15, 2007 has been paid. Subsequent payments are due in advance on the sixteenth day of each calendar month commencing August 16, 2007, without notice, demand, or deduction.

All payments are to be made payable to WMATA and mailed or delivered to:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
OFFICE OF THE TREASURER
600 FIFTH STREET, NW
WASHINGTON, DC 20001

LATE FEE/COST OF RETURNED CHECKS: If any License Fee payment is not received by WMATA within five (5) calendar days from the due date, Licensee covenants and agrees to pay as Additional Licensee Fee of $50.00 per day beginning as of the twenty second (22nd) day of the month. Licensee further agrees to pay a handling charge of $25.00 for each check tendered to WMATA and returned by the financial institution for insufficient funds or is deemed not negotiable for any other reason. WMATA may require any and all payments to be made in cash, money order or certified funds.

5. **NOTICES:** All notices, demands or requests by Licensee to WMATA shall be deemed to have been properly served or given if addressed to WMATA as follows:

If to WMATA: Joel R. Washington, Director
Office of Real Property and Station Area Planning
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009745

If to Licensee: Michael S. Sussman
~~2109 N Street, NW~~ 2101 N Street Suite T-1
Washington, DC 20037

All such notices, demands or requests shall be: (1) personally delivered; or (2) sent by registered or certified United States mail, postage prepaid, return receipt requested; or (3) sent by a nationally recognized overnight courier service; or (4) sent by any telecommunication device capable of creating a written record of such notice and its receipt. Notices and other communications shall be deemed to have been given on the earlier of actual receipt or, in the case of mailing by United States mail, the fourth business day after the date so mailed or, in the case of overnight courier, on the first business day after delivery to such courier. WMATA's property manager can be reached by telephone at (202) 962-1588 or (202) 962-1589.

6. CONDITIONS ON USE:

a. Licensee shall use the Premises only for operation of a weekend flea market. Licensee shall not use, suffer or allow said Premises to be used for any disorderly or unlawful purpose.

b. Licensee's use and occupancy of the Premises shall be restricted to Saturdays and Sundays only between the hours of 12:00 a.m. Saturday and 11:00 p.m. Sunday.

c. Licensee shall promptly vacate the Premises, remove all of its property (real and personal) and leave the Premises in good and clean order no later than 11:00 p.m. Sunday. In the event that Licensee breaches the foregoing condition, Licensee shall be responsible for all costs incurred by WMATA to restore the Premises to good and clean order.

7. INDEMNIFICATION:

a. Licensee shall save and keep harmless and indemnify WMATA, its directors, officers, employees and agents against any and all liability claims and the cost of whatsoever kind and nature (including defense costs) arising or alleged to have arisen for injury, including personal injury to or death of any person or persons and for loss or damage occurring in connection with this License, and for any acts in connection with activities to be performed under this License resulting in whole or in part from the acts, errors or omissions of the Licensee, or any contractor, subcontractor, employee or agent of the Licensee. Licensee shall be responsible for and must make good at its own expense, all damage to WMATA property caused by its acts or those of its contractor or

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009746

subcontractor in connection with this License.

b. Licensee shall indemnify and hold harmless WMATA, its directors, officers, employees and agents against any and all liabilities, remedial costs, environmental claims, fees or other expenses related to, arising from or attributable to any effluent originating from the Premises.

c. If any action or proceedings as described in this **Paragraph 7** is brought against WMATA, then upon written notice from WMATA to Licensee, Licensee shall, at Licensee's expense, resist or defend such action or proceeding by counsel approved by WMATA in writing, such approval not to be unreasonably withheld; provided, however, that no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same.

8. INSURANCE:

Licensee shall, at its own cost and expense, provide, maintain, and keep in force at all times during the Term of this License and any renewal or extension hereof, the following types of insurance:

a. Worker's Compensation. An insurance policy complying with the requirements of the statutes of the District of Columbia, and if there is any exposure to any of Licensee's or its contractors personnel with the U. S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or the Federal Employers' Liability Act, Licensee or its contractor will provide coverage for these exposures on an "if any basis" with limits not less than:

Worker's Compensation:	Statutory
Employers' Liability:	
Each Accident	$1,000,000
Disease - Policy Limit	$1,000,000
Disease - Each Employee	$1,000,000

b. Commercial General Liability Insurance. A Commercial General Liability Insurance policy issued to and covering the liability for all work and operations under or in connection with this License and all obligations assumed by Licensee under this License. Coverage shall include Products, Completed Operations and Contractual Liability Insurance in addition to coverage for explosion, collapse, and underground hazards, wherever required. The coverage under such an insurance policy or

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009747

claim that WMATA or the United States of America, et al, are not liable in tort by virtue of the fact of being governmental instrumentalities or public or quasi-public bodies.

j. It is Licensee's responsibility to ensure adequate and complete coverage as contemplated in this License. This responsibility is not waived, nor is any requirement to indemnify waived by WMATA's review and approval of any Policy.

k. WMATA is acknowledged and understood to be a third-party beneficiary of any insurance policy carried by Licensee.

l. As may be required in any insurance policy carried by Licensee, this License is understood and agreed to be a written contract or an Insured Contract between Licensee and WMATA.

m. Licensee understands and agrees that WMATA is a self-insured governmental entity and that the insurance and indemnification provided by Licensee under the terms of this License shall be Primary. Licensee agrees that to the extent any endorsement contemplates issuance of a license by a state or political subdivision, WMATA shall be considered a state or political subdivision issuing a license for the purposes of those policies and endorsements.

9. DAMAGE: Licensee shall be responsible for and must make good at its own expense all damage to WMATA property caused by its acts, or those of its employees, contractors or subcontractors, in carrying out the operations allowed by this License.

10. UTILITY CHARGES: Licensee, at its sole cost and expense, shall pay all charges for water, sewer, gas and electricity used on the Premises during its tenancy thereof when and as the same shall become due and payable, making such necessary deposits at the offices of the suppliers of the respective utilities as may be required to secure the same.

11. ASSIGNMENT, SUBLETTING, ETC.: Licensee shall not assign, sublet, transfer or encumber this License or any portion hereof without WMATA's prior written permission. Any purported assignment in violation of this provision shall be null and void. In the event that WMATA grants such permission then this License and every covenant, condition and agreement herein contained shall be binding upon the successors and assigns.

FOIA CONFIDENTIAL TREATMENT REQUESTED

12. ACCESS TO PROPERTY BY WMATA:

a. Licensee agrees to permit WMATA or its agents to have access to and enter upon the Premises or any part thereof at all times, and no claim, action for damages, or set-off of License Fee by reason of or on account of such entry shall be made, had or allowed.

b. WMATA reserves the right for itself or its agents to enter upon the Premises at any time for the purpose of conducting soil tests, engineering surveys or other work as may, in the discretion of WMATA, be necessary in connection with construction on, repair or development of WMATA's adjacent Metro rapid rail transit facilities. Under such circumstances, there shall be a reduction in the monthly License Fee proportionate to the square foot area removed from the control of Licensee for the total number of days during which Licensee shall be deprived of the use of that portion of the Premises.

13. HAZARDOUS SUBSTANCES AND MATERIALS:

a. Licensee will not cause, use or keep on the Premises any explosives, inflammable or combustible materials. Licensee will not cause or allow any oil, grease, flammable liquid, water or any deleterious or hazardous matter whatsoever to be discarded on, remain or flow over any public or private space within, near or adjacent to the Premises or roadways giving access thereto or leading from the Premises, from any vehicle located on or activity or condition conducted or existing within the limits of or in connection with the Premises.

b. Licensee covenants that it shall not install, use, generate, store or dispose of on or about the Premises any hazardous substances, toxic chemicals, pollutants or other materials regulated pursuant to the Federal Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), the Federal Resource Conservation and Recovery Act ("FRCRA"), Toxic Substance Control Act ("TSCA") or any similar federal or state statute or regulation, including without limitation any materials containing asbestos, polychlorinated biphenyls ("PCB's"), petroleum, crude oil or natural gas (collectively "Hazardous Substances").

c. Licensee shall use any substance or material controlled by the Federal Insecticide, Fungicide and Rodenticide Act, as amended ("FIFRA") pursuant to Federal and State regulations. If required by the Clean Water Act or the regulations promulgated thereunder, Licensee shall secure a point or non-point discharge permit for any runoff containing a FIFRA

FOIA CONFIDENTIAL TREATMENT REQUESTED

controlled substance.

d. Licensee further agrees to indemnify and hold WMATA harmless from and against any claim, damage, fine or other expense (including court costs, attorney's fees and other costs of defenses), arising out of Licensee's use, generation, storage or disposal of any Hazardous Substances in or about the Premises in contradiction of the terms of this License.

14. **GOOD REPAIR AND CLEANLINESS:** Licensee at its sole cost and expense, shall during the Term of this License or any renewal or extension hereof, keep all surfaces, sidewalks, roadways giving access thereto or leading from the Premises, free from all snow and ice and keep grass cut and trimmed and maintain the Premises at all times in good repair, and in a clean, safe and sanitary condition.

15. **COMPLIANCE WITH LAWS, REGULATIONS, ETC.:** Licensee shall, at its own risk, cost and expense, obey, carry out and perform any and all laws, rules, regulations and orders now in effect or hereafter made effective by any governmental authority with respect to the Premises and the occupancy and use thereof, including payment of all fees, license and permit charges, and taxes required for the conduct of the business operation of Licensee on, at or from the Premises. Licensee shall be responsible for securing all necessary permits and approvals required to permit construction and operation of the flea market.

16. **WMATA'S RIGHTS UPON BREACH OF LICENSE BY LICENSEE:** If Licensee violates any of the provisions of this License or any of the rules and regulations imposed by WMATA, if any bankruptcy or insolvency proceedings are filed by or against Licensee (or a receiver or trustee is appointed for its property), or if the Premises are vacated or abandoned, WMATA shall be entitled to avail itself of all rights and remedies to which it may be entitled, either by law or in equity (including but not limited to, the right to terminate this License and recover possession) and WMATA also shall be entitled to recover reasonable attorney's fees and costs as allowed by law. WMATA's waiver of any default by Licensee shall not be considered to be a waiver of any subsequent default. Licensee waives the benefit of any exemption under bankruptcy, and any other insolvency law as to its obligations in this License to the extent permitted by law. If WMATA shall commence proceedings at any time for recovery of possession of the Premises and compromise or settlement shall be effected either before or after judgment whereby Licensee shall be permitted to retain possession of the Premises, then such proceedings shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof of this License.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009750

17. **FAILURE TO FULFILL COVENANTS:** It is specifically covenanted and agreed between the Parties that if Licensee, or its executors, administrators, successors or invitees shall neglect, fail or refuse to perform or observe any of the covenants, conditions, agreements or undertakings contained in this License, or if the Premises shall be deserted or vacated, then and in any of said cases, WMATA may take legal action to regain possession of the Premises in addition to its other legal remedies.

18. **SURRENDER OF PREMISES:** Licensee shall surrender the Premises to WMATA in good order and condition at the expiration or termination of this License. In this connection, Licensee covenants that it shall proceed during the thirty (30) day period prior to any such expiration or termination to remove all of its property (real and personal) from the Premises and restore the Premises to the condition existing at the date of commencement of this License, reasonable wear and tear not attributable to the Licensee excepted. Such removal and restoration shall be completed to the satisfaction of WMATA not later than the effective date of termination of this License.

19. **LIENS UPON PROPERTY:** Licensee has no authority to incur any debt or to make any charge against WMATA or create any lien, judgment or other encumbrance upon the Premises in connection with the use and occupancy of the Premises for operation of a weekend flea market.

20. **INAPPLICABILITY OF UNIFORM RELOCATION ACT:** It is understood and agreed that the occupancy of the Premises under this License does not and will not qualify the Licensee for relocation assistance and benefits as a "displaced person" under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646). The benefits of this law are applicable only to persons who were occupants at the time the property was acquired and do not apply to subsequent occupants.

21. **NO BENEFIT TO GOVERNMENTAL OFFICIALS:** No Member of or Delegate to Congress shall be admitted to any share or part of this License or to any benefit to arise therefrom.

22. **GRATUITIES:** In connection with this License, or any amendments or modifications thereto, the giving of, or offering to give, gratuities (in the form of entertainment, gifts or otherwise) by Licensee or any agent, representative, or other person deemed to be acting on behalf of Licensee, or any contractor, subcontractor or supplier furnishing material to or performing work under this License, to any director, officer or employee of WMATA, or to any director, officer, employee of any of WMATA's agents, consultants or representatives, with an intent to secure an agreement or favorable treatment or the making of any determinations with respect to performance under this License is expressly forbidden. The terms of this Paragraph shall be strictly construed and enforced in the event of violation hereto.

FOIA CONFIDENTIAL TREATMENT REQUESTED

23. POSTING OF SIGNS AND OTHER ADVERTISING: Licensee shall provide, at its cost and expense, any sign or signs it requires for the Premises, the size, color, design and location of which shall be subject to both WMATA's prior written approval and the approval of the District of Columbia zoning officials. No other signs, lights, lettering or other forms of inscription or advertising devices, visible outside the Premises, shall be allowed without the prior written approval of WMATA.

24. UNENFORCEABLE CLAUSES: All individual provisions, paragraphs, sentences, clauses, sections and words in this License shall be severable and if any one or more provision, section, paragraph, sentence, clause or word is determined by any court, administrative body, or tribunal, having proper jurisdiction to be in any way unenforceable, or to be in any violation of or in conflict with any law of any applicable jurisdiction such determination shall have no effect whatsoever on any of the remaining paragraphs, provisions, clauses, sections, sentences, or words of this License.

25. GOVERNING LAW: This License shall be governed by the laws of the District of Columbia, except that the Parties acknowledge that WMATA is bound by the WMATA Compact, and that in the case of any direct and irreconcilable conflict between the laws of the District of Columbia and the WMATA Compact, the latter shall govern WMATA.

26. COUNTERPARTS: The Parties hereto agree that this Permit may be executed in one or more identical counterparts, each of which shall be deemed to be an original thereof, and shall be enforceable against each of the Parties hereto.

THIS LICENSE is the entire agreement between the Parties, and no modification or addition to it shall be binding unless in writing and signed by the Parties. The covenants, conditions and agreements contained herein are binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns. Whenever the context so requires, the singular member shall include the plural, and the plural the singular and the use of any gender shall include all other genders.

[SIGNATURES ON NEXT PAGE]

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009752

IN WITNESS WHEREOF, the Parties hereto have executed this License Agreement as of the date first set forth above.

ATTEST OR WITNESS:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (WMATA)

By: _____
Nat Bottigheimer
Contracting Officer

ATTEST OR WITNESS:

MICHAEL S. SUSSMAN (Licensee)

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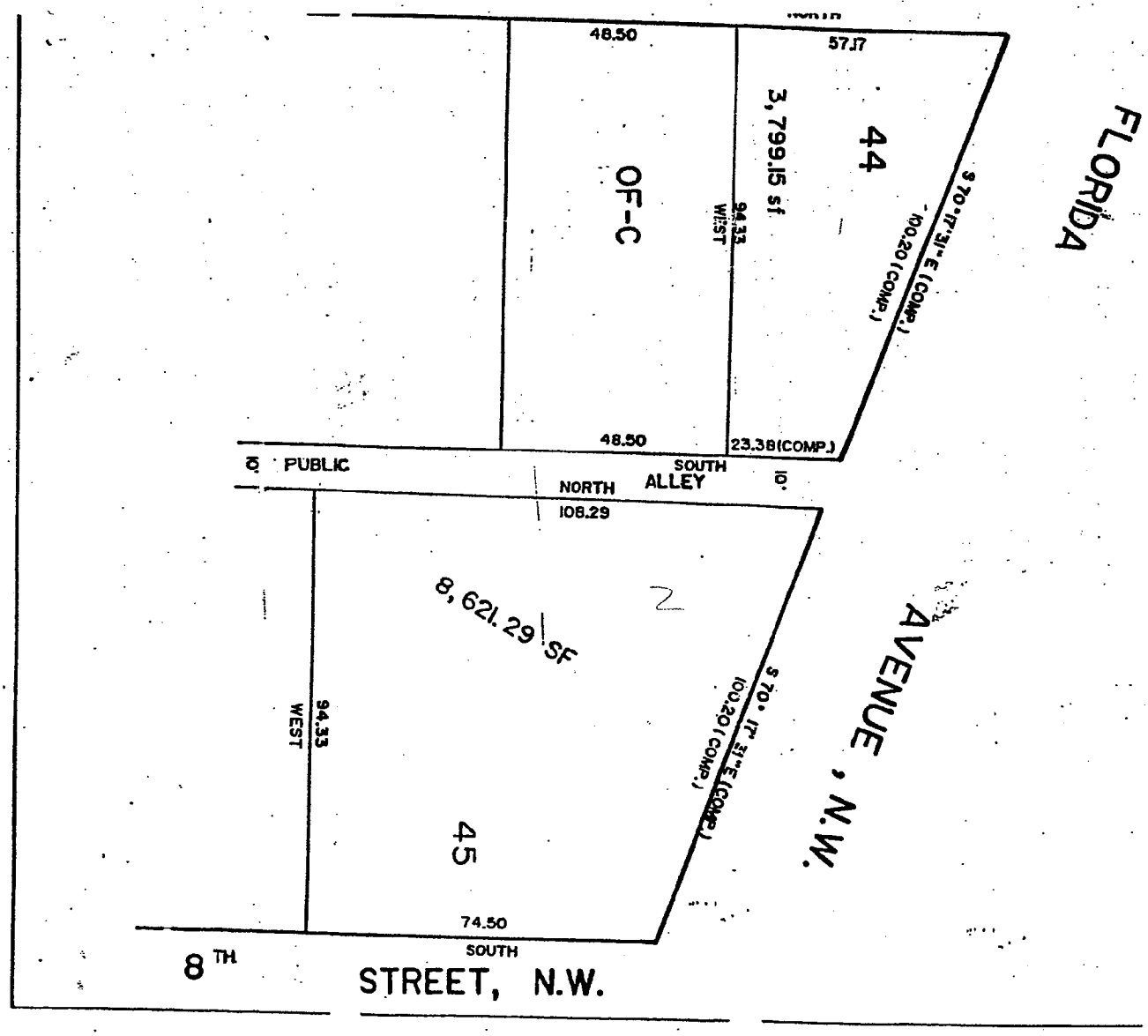
FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009753

EXHIBIT
A


48.50
57.17
3,799.15 sf
44
OF-C
94.33
WEST
S 70° 17' 31" E (COMP.)
100.20 (COMP.)
FLORIDA
48.50
23.38 (COMP.)
10' PUBLIC
SOUTH
NORTH
ALLEY
10'
108.29
8,621.29 SF
2
94.33
WEST
S 70° 17' 31" E (COMP.)
100.20 (COMP.)
AVENUE, N.W.
45
74.50
SOUTH
8TH
STREET, N.W.

Heidi Ackermann NOT TO BE RELEASED DRAFT

WASHINGTON METROPOLITAN AREA TRANSIT
LICENSE AGREEMENT

Revised Draft: 8/14/08

THIS LICENSE AGREEMENT ("**License**") is made this ____ day of _____, 2008 (hereinafter "**Effective Date**"), by and between the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY** (hereinafter "**WMATA**"), **MICHAEL S. SUSSMAN** (hereinafter "**SUSSMAN**"), and **TLG ONE CORPORATION**, a Virginia corporation DBA Girmai Park (hereinafter "**TLG**"). WMATA, Sussman and TLG are sometimes referred to herein as the "**Parties**" or individually as a "**Party**."

WITNESSETH:

WHEREAS, WMATA and SUSSMAN entered into a License Agreement dated August 15, 2007 whereby SUSSMAN has the right to use the WMATA property described as Lots 44 and 45, Square 393, located on Florida Avenue, NW in the District of Columbia as shown on **Exhibit A**, attached hereto and made a part of this License for the operation of a weekend flea market between the hours of 12:00 a.m. Saturday and 11:00 p.m. Sunday; and

WHEREAS, TLG has requested the right to use Lot 45, Square 393 (hereinafter "**Lot 45, Square 393**" or "**Site**") as shown on **Exhibit A** to valet park up to twenty (20) automobiles on Fridays and Saturdays between the hours of 9:00 p.m. and 6:00 a.m.; and

WHEREAS, SUSSMAN has agreed to amend his License Agreement with WMATA (hereinafter "**SUSSMAN License**") which is attached hereto and made a part of this License as **Exhibit B** to accommodate TLG's request to use Lot 45, Square 393 under the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. INCORPORATION OF RECITALS

The Recitals set forth above and attached Exhibits are incorporated herein by this reference and have the same force and effect as if fully hereinafter set forth.

2. CONDITIONS ON USE OF WMATA PROPERTY FOR VALET PARKING

2.1 Upon TLG's compliance with the terms and conditions set forth in this License, TLG is authorized to use Lot 45, Square 393 only for valet parking of not more than twenty (20) automobiles and only during the hours set forth in **Section 2.2**.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009755

2.2 TLG's use of Lot 45, Square 393 shall be restricted to the following hours:
9.00 p.m. Friday to 6:00 a.m. Saturday; and
9:00 p.m. Saturday to 6:00 a.m. Sunday.

2.3 At all times, automobiles shall be driven on Lot 45, Square 393 by TLG employees or contractors. TLG shall operate the valet parking lot in a commercially reasonable manner.

2.4 At no time shall TLG use, suffer or allow Lot 45, Square 393 to be used for any disorderly or unlawful purpose.

2.5 By no later than 6:00 a.m. on Saturday, and 6:00 a.m. on Sunday, TLG shall remove all automobiles, trash and anything else it brings on to Lot 45, Square 393 and shall leave the Site in good and clean order.

2.6 During the hours of TLG's use and occupancy of Lot 45, Square 393, TLG shall be responsible for: (1) keeping the Site secure; (2) ensuring that no pedestrians, etc. enter the Site; (3) ensuring that the Site is used only for the purpose permitted under this License; and (4) ensuring that nothing is brought on the Site by third parties. TLG's obligations in **Sections 2.7 and 2.8** below, extend to anything brought on the Site by third parties while TLG has the use and occupancy of Lot 45, Square 393.

2.7 A. In the event that any automobiles, trash or anything else TLG brings on to Lot 45, Square 393 remain on the Site after 6:00 a.m on Saturday or Sunday, SUSSMAN shall contact TLG at the telephone number provided in **Section 26**. TLG shall immediately remedy the situation. After giving oral notice to TLG, SUSSMAN shall have the right to tow automobiles, remove trash, etc., and TLG shall reimburse SUSSMAN for all reasonable costs incurred.

B. In the event that anything associated with the SUSSMAN flea market remains on Lot 45, Square 393 during the hours that TLG has the right to be on the Site, TLG shall contact SUSSMAN and his Manager at the telephone number provided in **Section 26**, and SUSSMAN shall immediately remedy the situation. After giving oral notice to SUSSMAN and his Manager, TLG shall have the right to remove anything associated with the flea market and SUSSMAN shall reimburse TLG for all reasonable costs incurred.

2.8 TLG shall be responsible to WMATA for any costs that WMATA incurs to restore Lot 45, Square 393 to it proper condition for SUSSMAN's use or WMATA's use.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009756

2.9 WMATA shall provide TLG with one key to the fence lock. If TLG loses the key it shall immediately notify SUSSSMAN and his Manager and if a key cannot be readily provided, and a new lock needs to be purchased, SUSSMAN shall purchase the then current identical lock, and TLG shall reimburse SUSSMAN for the lock and any reasonable expenses incurred. Additionally, if the replacement key is different, SUSSMAN shall promptly provide a key to the new lock to WMATA.

2.10 TLG may only erect signage in accordance with **Section 24.**

2.11 Any use of Lot 45, Square 393 except as provided in this License, or the use of any other WMATA property without WMATA's prior written consent shall be null and void. Furthermore, under such circumstances, WMATA can hold TLG in default, and immediately terminate this License.

3. TERM

This License is for a one (1) year term commencing on the Effective Date (hereinafter "**Term**"). This License is subject to the termination provisions set forth in **Section 7**.

4. OPTION TO EXTEND TERM

This License may be extended for two (2) additional terms of one (1) year each (hereinafter "**Renewal Term**") upon the mutual written agreement of WMATA and TLG. TLG shall notify WMATA in writing of its intention to renew this License at least sixty (60) days prior to the end of the Term or the Renewal Term. The Renewal Term shall be on the same terms and conditions as set forth herein except that the License Fee shall be at the rates specified in **Section 5**.

5. LICENSE FEE

5.1 TLG

5.1.1 The first month's License Fee shall be due and payable on the Effective Date of this License. Thereafter, the monthly License Fee shall be payable to WMATA in advance on the first of each month as follows:

Year 1:	$1,070.33 per month ($247 per weekend)
Year 2:	$1,113.67 per month ($257 per weekend)
Year 3:	$1,157.00 per month ($267 per weekend)

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009757

5.1.2 All payments are to be made in the form of a check payable to WMATA and mailed or delivered to:

Washington Metropolitan Area Transit Authority
Office of the Treasurer
600 Fifth Street, NW
Washington, DC 20001

5.1.3 If any License Fee payment is not received by WMATA within five (5) calendar days from the due date, TLG covenants and agrees to pay an Additional License Fee of $50.00 per day beginning on the sixth (6th) day of the month. TLG further agrees to pay a handling charge of $25.00 for each check tendered to WMATA and returned by the financial institution for insufficient funds or deemed not negotiable for any other reason, WMATA may require any and all payments to be made in cash, money order or certified funds.

5.2 SUSSMAN

As more fully set forth in **Section 30**, for the Term and any Renewal Term of this License, Paragraph 4 of the SUSSMAN License is hereby amended to provide for a $350 reduction in the monthly License Fee. If necessary, the $350 reduction shall be prorated to accommodate the commencement date of this License and the SUSSMAN License.

6. SECURITY DEPOSIT

Upon execution of this License, TLG shall deposit with WMATA the sum of One Thousand Dollars ($1,000.00) to assure TLG's performance of all terms, covenants and conditions herein set forth (hereinafter "**Security Deposit**"). Said Security Deposit shall be held as collateral and applied to any unpaid License Fee that may remain due and owing at the expiration or earlier termination of this License, any damage caused by TLG, its employees, contractors, subcontractors or agents, or other damages suffered, or fees incurred by WMATA as a result of a breach of any covenant or provision of this License. TLG may not utilize the Security Deposit as payment of the License Fee.

Within forty-five (45) days after the end of the Term or any Renewal Term, WMATA shall return the Security Deposit without interest to TLG less any damages rightfully withheld and any funds withheld to pay outstanding fees owed under the terms of this License. WMATA shall provide TLG with a written statement of the damages and costs actually incurred by WMATA or SUSSMAN. In addition, for TLG to receive the Security Deposit back in full, TLG must return Lot 45, Square 393 in clean condition with all property of any kind removed from the Site.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009758

7. TERMINATION/EXPIRATION

This License, or any extension thereof, may be terminated, in whole or in part, at any time by WMATA or TLG, effective at the end of any month by giving a written notice thirty (30) calendar days in advance of such termination. At the termination of the License, whether by expiration of the Term or by termination pursuant to this License, TLG shall: (i) promptly vacate Lot 45, Square 393; (ii) remove all of its property, real and personal; and (iii) leave Lot 45, Square 393 in good and clean order, reasonable wear and tear excepted, all in accordance with **Section 19**.

8. INDEMNIFICATION

8.1 WMATA

8.1.1 TLG shall save and keep harmless and indemnify WMATA, its directors, officers, employees and agents against any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses of whatsoever kind and nature (including attorney's fees) arising or alleged to have arisen for injury, including personal injury to or death of any person or persons and for loss or damage occurring in connection with this License, and for any acts in connection with activities to be performed under this License resulting in whole or in part from the acts, errors or omissions of TLG or any contractor, subcontractor, employee or agent of TLG. TLG shall be responsible for and must make good at its own expense, all damage to WMATA property caused by its acts or those of its contractor, subcontractor, employee or agent in connection with this License.

8.1.2 TLG shall indemnify and hold harmless WMATA, its directors, officers, employees and agents against any and all liabilities, remedial costs, environmental claims, fees or other expenses related to, arising from or attributable to any effluent originating from the licensed premises.

8.1.3 If any action or proceeding as described in this **Section 8** is brought against WMATA, then upon written notice from WMATA to TLG, TLG shall, at TLG's expense, resist or defend such action or proceeding by counsel approved by WMATA in writing, such approval not to be unreasonably withheld, provided, however, that no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same.

FOIA CONFIDENTIAL TREATMENT REQUESTED

8.2 TLG and SUSSMAN

8.2.1 WMATA shall not be liable or responsible for any costs arising out of the activities of TLG and/or SUSSMAN under this License.

8.2.2 TLG and SUSSMAN each agree to save and keep harmless and indemnify the other against any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses of whatsoever kind and nature (including attorney's fees) arising or alleged to have arisen for injury, including personal injury to or death of any person or persons and for loss or damage occurring in connection with this License.

9. INSURANCE

9.1 It is TLG's responsibility to ensure that it has adequate and complete insurance coverage as contemplated in this License. This responsibility is not waived, nor is any requirement to indemnify waived by WMATA's review and approval of any Policy.

9.2 WMATA is acknowledged and understood to be a third party beneficiary of any insurance policy carried by TLG.

9.3 As may be required in any insurance policy carried by TLG, this License is understood and agreed to be a written contract or an Insured Contract between TLG, WMATA and SUSSMAN.

9.4 TLG understands and agrees that provision of a complete copy of the Policy or Policies which provide the below required insurance including a copy of any endorsement or exclusion thereto, for review and approval by WMATA is a prerequisite for entry onto the Site. It is TLG's responsibility to ensure adequate and complete coverage as contemplated in this License. This responsibility is not waived, nor is any requirement to indemnify waived, by WMATA's review and approval of any Policy.

9.5 TLG understands and agrees that WMATA is a self-insured governmental entity and that the insurance and indemnification provided by TLG under the terms of this License shall be Primary. TLG agrees that to the extent any endorsement contemplates issuance of a permit by a state or political subdivision, WMATA shall be considered a state or political subdivision issuing a permit for the purposes of those policies and endorsements.

9.6 **Insurance Companies**. Insurance companies providing the required coverages must be rated by A.M. Best or a comparable rating company and

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009760

carry at least an "A" rating. All insurance shall be procured from insurance or indemnity companies acceptable to WMATA and licensed and authorized to conduct business in the District of Columbia. WMATA's approval or failure to disapprove the insurance shall not release TLG of full responsibility for liability for damage and accidents.

9.7 **Changes in Insurance Coverage**. The requisite insurance policies shall not be canceled, terminated or modified (except to increase the amount of coverage) without thirty (30) calendar days prior written notice from TLG to WMATA's Office of Station Area Planning and Asset Management, Room 5B, 600 Fifth Street, NW, Washington, DC 20001. If any required insurance policies should be canceled, terminated or modified so that the insurance is not in full force and effect, then WMATA can hold TLG in default of this License, and immediately terminate this License.

9.8 **Evidence of Insurance Coverage**. Evidence of the requisite insurance coverages in the form of the complete insurance policies, including any endorsements and certificates of insurance shall be submitted to WMATA at least ten (10) business days prior to using the Site and from time to time at WMATA's request. TLG shall not be allowed to enter the Site until the evidence of insurance has been received and approved in writing by WMATA. All evidence of insurance shall be sent to:

Office of Station Area Planning
and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001
Attn: Mr. Mark Meister

9.9 Any contract of insurance or indemnification naming WMATA as an additional insured shall be endorsed to provide that the insurer will not contend in the event of any occurrence, accident, or claim that WMATA is not liable in tort by virtue of the fact of being a governmental instrumentality or public or quasi-public body.

9.10 **Limits and Modification of Coverage**. The limits of liability included herein are minimum limits. WMATA reserves the right to review or change these limits if the terms of the License or standards in the industry change. If requested by WMATA, TLG shall make any necessary adjustments in such limits or in the type of coverage to reflect then currently acceptable, commercially reasonable policy limits and types of coverage for similar uses and operations. TLG's failure to cooperate with WMATA regarding this sub-section shall constitute an event of default under this License. During the

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009761

Term of this License and any extensions, TLG shall provide or cause to be provided at least the types and amounts of insurance indicated below:

COMMERCIAL GENERAL LIABILITY INSURANCE. A Commercial General Liability Insurance policy issued to and covering the liability for all work and operations under or in connection with this License and all obligations assumed by TLG under this License. Coverage shall include Premises Operations, Products Liability, Products Completed Operations, Independent Contractor's Protective Broad Form Property Damage, Personal Injury, Blanket Contractual Liability Insurance and Explosion, Collapse, and Underground Hazards. The coverage under such an insurance policy or policies shall have not less than the following limits:

Bodily Injury and Property Damage Liability
$1,000,000 Each Occurrence; $2,000,000 Aggregate

Premises Medical Payments	$5,000
Personal Injury/Advertising	$1,000,000
Products Completed Operations Aggregate	$2,000,000

WMATA shall be included as an additional insured under the coverage for Commercial General Liability Insurance with respect to all activities under this License. With respect to shared use of the Site, SUSSMAN shall be included as an additional insured.

AUTOMOBILE LIABILITY INSURANCE. An insurance policy covering the use of all owned, non-owned, hired, rented or licensed vehicles bearing, or under the circumstances in which they are being used, required by the Motor Vehicle Laws of the District of Columbia, Maryland or Virginia to bear license plates and not covered under the aforementioned Commercial General Liability Insurance. The coverage under such policy or policies shall not be less than:

Combined Single Limit for Bodily Injury Liability and Property Damage Liability of $2,000,000.

WMATA shall be included as an additional insured under the coverage for Automobile Liability Insurance with respect to all activities under this License. If TLG or any of its contractors is hauling contaminants or pollutants, they must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall include coverage Form MCS-90.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009762

GARAGE LIABILITY. An insurance policy providing liability coverage with limits of at least $1,000,000 Per Occurrence. WMATA shall be included as an additional insured under this coverage.

GARAGEKEEPERS LIABILITY. An insurance policy providing primary comprehensive and collision coverage on vehicles belonging to others and parked on Lot 45, Square 393. Coverage shall be provided at $100,000 per loss.

WORKER'S COMPENSATION. For all employees of TLG, an insurance policy complying with the requirements of the statutes of the District of Columbia, and if there is any exposure to any of TLG's or its contractors personnel with the U. S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or the Federal Employers' Liability Act, TLG or its contractor will provide coverage for these exposures on an "if any basis" with limits not less than:

Worker's Compensation:	Statutory
Employers' Liability:	
Each Accident	$1,000,000
Disease - Policy Limit	$1,000,000
Disease - Each Employee	$1,000,000

10. DAMAGE

TLG shall be responsible for and must make good at its own expense all damage to WMATA property caused by its acts, or those of its employees, contractors, subcontractors or agents in carrying out the operations allowed by this License.

11. UTILITY CHARGES

TLG, at its sole cost and expense, shall pay all charges for electricity it uses on Lot 45, Square 393.

12. ASSIGNMENT, SUBLETTING, ETC.

TLG shall not assign sublet, transfer or encumber this License or any portion hereof. Any purported assignment in violation of this provision shall be null and void. In the event that WMATA grants such permission then this License and every covenant, condition and agreement herein contained shall be binding upon the successors and assigns.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009763

13. ACCESS TO SITE

13.1 TLG agrees to permit WMATA or its agents to have access to and enter upon Lot 45, Square 393 or any part thereof at all times, and no claim, action for damages, or set-off of License Fee by reason of or on account of such entry shall be made, had or allowed.

13.2 WMATA reserves the right for itself or its agents to enter upon Lot 45, Square 393 at any time for the purpose of conducting soil tests, engineering surveys or other work as may, in the discretion of WMATA, be necessary. Under such circumstances, there shall be a reduction in the monthly License Fee proportionate to the square foot area removed from the control of TLG for the total number of days during which TLG shall be deprived of the use of that portion of Lot 45, Square 393.

14. HAZARDOUS SUBSTANCES AND MATERIALS

14.1 TLG will not use or keep on Lot 45, Square 393 any explosives, inflammable or combustible materials. TLG will not cause or allow any oil, grease, flammable liquid, water or any deleterious or hazardous matter whatsoever to be discarded on, remain or flow over any public or private space within, near or adjacent to Lot 45, Square 393 or roadways giving access thereto or leading from Lot 45, Square 393, from any vehicle located on or activity or condition conducted or existing within the limits of or in connection with Lot 45, Square 393.

14.2 TLG covenants that it shall not install, use, generate, store or dispose of on or about Lot 45, Square 393 any hazardous substances, toxic chemicals, pollutants or other materials regulated pursuant to the Federal Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), the Federal Resource Conservation and Recovery Act ("FRCRA"), Toxic Substance Control Act ("TSCA") or any similar federal or state statute or regulation, including without limitation any materials containing asbestos, polychlorinated biphenyls ("PCB's"), petroleum, crude oil or natural gas (collectively "Hazardous Substances").

14.3 TLG shall use any substance or material controlled by the Federal Insecticide, Fungicide and Rodenticide Act, as amended ("FIFRA") pursuant to Federal and State regulations. If required by the Clean Water Act or the regulations promulgated thereunder, TLG shall secure a point or non-point discharge permit for any runoff containing a FIFRA controlled substance.

14.4 TLG further agrees to indemnify and hold WMATA harmless from and against any claim, damage, fine or other expense (including court costs,

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009764

attorney's fees and other costs of defenses), arising out of TLG's use, generation, storage or disposal of any Hazardous Substances in or about Lot 45, Square 393 in contradiction of the terms of this License.

15. GOOD REPAIR AND CLEANLINESS

TLG at its sole cost and expense, shall during the Term of this License or any extension hereof, keep all surfaces, sidewalks, roadways giving access thereto or leading from Lot 45, Square 393, free from all snow and ice and keep grass cut and trimmed and maintain Lot 45, Square 393 at all times in good repair, and in a clean, safe and sanitary condition.

16. COMPLIANCE WITH LAWS, REGULATIONS, ETC.

TLG shall, at its own risk, cost and expense, obey, carry out and perform any and all laws, rules, regulations and orders now in effect or hereafter made effective by any governmental authority with respect to Lot 45, Square 393 and the occupancy and use thereof, including payment of all fees, license and permit charges, and taxes required for the conduct of the business operation of TLG on, at or from Lot 45, Square 393. TLG shall be responsible for securing all necessary permits and approvals required to permit operation of the valet parking lot.

17. WMATA'S RIGHTS UPON BREACH OF LICENSE BY TLG

If TLG violates any of the provisions of this License or any of the rules and regulations imposed by WMATA, if any bankruptcy or insolvency proceedings are filed by or against TLG (or a receiver or trustee is appointed for its property), or if Lot 45, Square 393 is vacated or abandoned by TLG, WMATA shall be entitled to avail itself of all rights and remedies to which it may be entitled, either by law or in equity (including but not limited to, the right to terminate this License and recover possession) and WMATA also shall be entitled to recover reasonable attorney's fees and costs as allowed by law. WMATA's waiver of any default by TLG shall not be considered to be a waiver of any subsequent default. TLG waives the benefit of any exemption under bankruptcy, and any other insolvency law as to its obligations in this License to the extent permitted by law. If WMATA shall commence proceedings at any time for recovery of possession of the Lot 45, Square 393 and compromise or settlement shall be effected either before or after judgment whereby TLG shall be permitted to retain possession of Lot 45, Square 393, then such proceedings shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof of this License.

FOIA CONFIDENTIAL TREATMENT REQUESTED

18. FAILURE TO FULFILL COVENANTS

It is specifically covenanted and agreed between the Parties that if TLG, or its executors, administrators, successors or invitees shall neglect, fail or refuse to perform or observe any of the covenants, conditions, agreements or undertakings contained in this License, or if Lot 45, Square 393 shall be deserted or vacated, then and in any of said cases, WMATA may take legal action to regain possession of Lot 45, Square 393 in addition to its other legal remedies.

19. SURRENDER OF LOT 45, SQUARE 393

TLG shall surrender Lot 45, Square 393 to WMATA in good order and condition at the expiration or termination of this License. In this connection, TLG covenants that it shall proceed during the thirty (30) day period prior to any such expiration or termination to remove all of its property (real and personal) from Lot 45, Square 393 and restore Lot 45, Square 393 to the condition existing at the date of commencement of this License, reasonable wear and tear not attributable to TLG excepted. Such removal and restoration shall be completed to the satisfaction of WMATA not later than the effective date of expiration or termination of this License.

20. LIENS UPON SITE

TLG has no authority to incur any debt or to make any charge against WMATA or create any lien, judgment or other encumbrance upon Lot 45, Square 393 in connection with its use and occupancy of Lot 45, Square 393 for its valet parking lot.

21. INAPPLICABILITY OF UNIFORM RELOCATION ACT

It is understood and agreed that the occupancy of Lot 45, Square 393 under this License does not and will not qualify TLG for relocation assistance and benefits as a "displaced person" under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646). The benefits of this law are applicable only to persons who were occupants at the time WMATA acquired the property and does not apply to subsequent occupants.

22. NO BENEFIT TO GOVERNMENTAL OFFICIALS

No Member of or Delegate to Congress shall be admitted to any share or part of this License or to any benefit to arise therefrom.

23. GRATUITIES

In connection with this License, or any amendments or modifications thereto, the

FOIA CONFIDENTIAL TREATMENT REQUESTED

giving of, or offering to give, gratuities (in the form of entertainment, gifts or otherwise) by TLG or any agent, representative, or other person deemed to be acting on behalf of TLG, or any contractor, subcontractor or supplier furnishing material to or performing work under this License, to any director, officer or employee of WMATA, or to any director, officer, employee of any of WMATA's agents, consultants or representatives, with an intent to secure an agreement or favorable treatment or the making of any determinations with respect to performance under this License is expressly forbidden. The terms of this Section shall be strictly construed and enforced in the event of violation hereto.

24. POSTING OF SIGNS AND OTHER ADVERTISING

TLG shall provide, at its cost and expense, any sign or signs it requires for Lot 45, Square 393, the size, color, design and location of which shall be subject to both WMATA's prior written approval and the approval of the District of Columbia zoning officials. No other signs, lights, lettering or other forms of inscription or advertising devices, visible outside of Lot 45, Square 393, shall be allowed without the prior written approval of WMATA.

25. TAXES

WMATA is tax exempt and shall not be responsible for any taxes or assessments which may result from this License or the activities permitted hereunder.

26. NOTICES

26.1 All notices, demands or requests shall be (1) personally delivered; (2) sent by registered or certified United States mail, postage prepaid, return receipt requested; (3) sent by a nationally recognized overnight courier service; or (4) sent by any telecommunication device capable of creating a written record of such notice and its receipt. Notices and other communications shall be deemed to have been given on the fourth business day after the date so mailed, or, in the case of overnight courier, on the first business day after delivery to such courier.

26.2 All notices, demands or requests shall be deemed to have been properly served or given if addressed as follows:

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009767

26.2.1 **If to TLG:**

Mr. Tihisha Girmai
TLG One Corporation
7111 Huntley Creek Place
Alexandria, VA 22306

Telephone: 202-538-4407

26.2.2 **If to SUSSMAN:**

Mr. Michael S. Sussman
2101 N Street, Suite T-1
Washington, DC 20037

Telephone: 202-296-4989

And SUSSMAN Manager for oral contacts:

Harold Finch
202-232-2494

26.2.3 **If to WMATA:**

Joel R. Washington, Director
Office of Station Area Planning and Asset Management
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Telephone: WMATA's Property Managers
202-962-1588 or 202-962-1589

26.3 Any Party may designate a change of name, address or telephone number by written notice to the other Parties.

27. GOVERNING LAW

This License shall be governed by the laws of the District of Columbia, except that the Parties acknowledge that WMATA is bound by the WMATA Compact, and that in the case of any direct and irreconcilable conflict between the laws of the District of Columbia and the WMATA Compact, the latter shall govern WMATA.

FOIA CONFIDENTIAL TREATMENT REQUESTED

28. UNENFORCEABLE CLAUSES

All individual provisions, paragraphs, sentences, clauses, sections and words in this License shall be severable and if any one or more provision, section, paragraph, sentence, clause or word is determined by any court, administrative body, or tribunal, having proper jurisdiction to be in any way unenforceable, or to be in any violation of or in conflict with any law of any applicable jurisdiction such determination shall have no effect whatsoever on any of the remaining paragraphs, provisions, clauses, sections, sentences, or words of this License.

29. NOT CONSTRUCTED AGAINST DRAFTER

This License has been negotiated and prepared by WMATA, TLG and SUSSMAN and, should any provision of this License require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

30. AMENDMENT TO SUSSMAN LICENSE

For only as long as this License is in effect, the SUSSMAN License is amended as follows:

30.1 SUSSMAN License, Paragraph 4, LICENSE FEE is hereby amended to provide for a reduction of $350 in the monthly License Fee.

30.2 SUSSMAN License, Paragraph 5. NOTICES is corrected and includes telephone numbers as provided in **Section 26 herein**.

30.3 SUSSMAN License, Paragraph 6. CONDITIONS ON USE, subparagraph b. is hereby amended by reducing Licensee's use and occupancy of Lot 45, Square 393 for the operation of a flea market as follows:

FROM: 12:00 a.m. Saturday, to 11:00 p.m. Sunday,
TO: 6:01 a.m. Saturday, to 8:59 p.m. Saturday, and
6:01 a.m. Sunday, to 11:00 p.m. Sunday.

30.4 SUSSMAN License, Paragraph 6. CONDITIONS ON USE, subparagraph c. is hereby amended as it pertains to Lot 45, Square 393 only, to read as follows:

Licensee shall promptly vacate Lot 45, Square 393 of the Premises, remove all of its property (real and personal) and leave Lot 45, Square 393 in good and clean order no later than 8:59 p.m. Saturday and then again at 11:00 p.m Sunday. In the event that Licensee breaches the foregoing condition,

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009769

Licensee shall be responsible for all costs incurred by WMATA to restore the Premises to good and clean order.

30.5 SUSSMAN License, Paragraph 7. INDEMNIFICATION is expanded by providing for reciprocal cross-indemnification between SUSSMAN and TLG as set forth in **Section 8.2** herein.

Except as herein modified, the SUSSMAN License shall remain in full force and effect. If this License terminates before the SUSSMAN License, this **Section 30** shall become null and void.

31. COUNTERPARTS

The Parties hereto agree that this Permit may be executed in one or more identical counterparts, each of which shall be deemed to be an original thereof, and shall be enforceable against each of the Parties hereto.

THIS LICENSE is the entire agreement between the Parties, and no modification or addition to it shall be binding unless in writing and signed by the Parties. The covenants, conditions and agreements contained herein are binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns. Whenever the context so requires, the singular member shall include the plural, and the plural the singular and the use of any gender shall include all other genders.

IN WITNESS WHEREOF, the Parties hereto have executed this License Agreement as of the Effective Date.

SIGNATURES ON FOLLOWING PAGE

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009770

ATTEST OR WITNESS:

_____

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (WMATA)

By:_____
Joel R. Washington
Contracting Officer

ATTEST OR WITNESS:

_____

TLG ONE CORPORATION

By:_____
Tihisha Girmai
President

ATTEST OR WITNESS:

_____

MICHAEL S. SUSSMAN

_____

ThreePartyLicense.REVISED.wpd

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009771

submitted at end of August

Outline of Cotenancy Agreement
For the Mixed-Use, Transit-Oriented, Multifamily and Retail Project
To be known as The Jazz @ Florida Avenue

Cotenants: Washington Metropolitan Area Transit Authority ("WMATA"); and
The Jazz @ Florida Avenue, LLC ("Developer")

---

1. Recitals Idea of Co-Tenancy → How does this Affect CCRs?

   A. Describe Ground Lease of WMATA Land from WMATA to Developer

   B. Cotenancy Agreement to facilitate the continued operation of the Joint Project after the expiration or termination of the Ground Lease; but not operative until Ground Lease expires with no further renewal right or is terminated without any Leasehold Mortgagee obtaining a new Ground Lease

   C. Description of land and undivided interest in Improvements owned by each Cotenant, excluding the WMATA Reserved Areas and Interests from the Cotenancy Agreement; use of Assessment and Taxation Lots to define undivided interests in Square 393; WMATA owns entire portion of Joint Project in Square 416 why is 416 included → Can terminate this w/o incident.

   D. Cotenancy Agreement to "run with the land" and be senior to all Mortgages and any other voluntary liens on the Joint Project but not senior to Declaration of Covenants, Conditions and Restrictions on WMATA Land and Improvements only.

2. Formation of Cotenancy

   A. Events which Trigger the Operation of the Cotenancy Agreement; Creation of Cotenancy; for all purposes after the expiration or final termination of the Ground Lease and any successor lease, WMATA shall own in fee simple the WMATA Percentage of the Joint Project and Developer shall own in fee simple the Developer Percentage of the Joint Project

   B. Disclaimer of Entity Status, *i.e.*, no partnership, joint venture, etc.

   Report where?

   C. Each Cotenant will Report as Direct Owner, not as a Partner or Venturer and determine its own income, gain, loss, deduction and credit, if any, with respect to its undivided interest in the Joint Property.

   D. No Cotenant is the Agent for the other Cotenant

   E. Each Cotenant indemnifies the other for any violation of the agreement to report to all taxing authorities as a direct owner to the extent the Cotenant is required to report to taxing authorities

1500 fee

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009772

F. All major or material decisions concerning the collective interests in the Joint Project shall be made by unanimous vote of the Cotenants.

3. Use of the Property

A. Then-present use cannot be changed except by joint decision of the Cotenants or a change in law or expiration of some use restriction on the Joint Project

B. No Cotenant or Affiliate shall occupy or rent space in the Joint Project unless on market terms approved by the other Cotenant

4. Professional Property Management of the Joint Project

A. Criteria for and selection of Property Manager by joint decision; compensation of Property Manager

B. Standards by which the Property Manager's performance will be evaluated and compensation will be set

C. Specific provisions to be included in the Property Management Agreement

(i) Property Manager to control the operation, leasing, maintaining, insuring, refurbishing, improving and all other ownership activities concerning the Joint Project, subject to standards and restrictions in the Cotenancy Agreement and in the Property Management Agreement. The Property Manager shall be authorized to take emergency actions reasonably necessary to prevent imminent injury, harm or damage to persons or property.

(ii) The Property Manager shall operate, lease, maintain, insure, refurbish and improve the Joint Project in a manner consistent with the customs and practices in the District of Columbia for mixed-use, Transit-Oriented Development projects with similar quality and location.

(iii) The Property Management Agreement may have an initial term of not more than three years; after which there are automatic annual renewals except that after the initial term either Cotenant can terminate on not less than 90 days' written notice to force the selection of a new Property Manager

(iv) The Property Management Agreement shall contain a customary indemnity of the Property Manager by the Cotenants, however, the Property Manager's recovery will be limited first, to insurance proceeds, and second, to proceeds from the Joint Project

BoD. Approval

(v) All funds to be maintained in segregated bank accounts in a manner to protect them from the Property Manager's bankruptcy

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009773

(vi) The Joint Project shall be operated in a manner to maintain conservative levels of operating and capital improvement reserves so the there is a very small risk of a need for WMATA or the Developer to invest additional funds into the Joint Project. This will require reserves to be maintained at higher levels than a private owner would typically maintain. Reserves will be conservatively invested. Specific reserves for working capital, major repairs and capital improvements will be maintained at a level to be agreed upon by the Cotenants; provided, however, if they cannot agree, the reserves for working capital, major repairs and capital improvements shall be maintained at two times the then custom and practice in the District of Columbia for mixed-use, Transit-Oriented Development projects with similar quality and location

(vii) WMATA and Developer shall each have full access to all books and records maintained by the Property Manager which are applicable to the Joint Project. The Property Manager shall provide sufficient information to WMATA and Developer for each to file any tax returns they are obligated to file.

(viii) The Property Manager shall maintain as a joint expense comprehensive insurance coverage for the Joint Project with the Cotenants as the named insureds with a waiver of any imputation of liability between the Cotenants, if available at a commercially reasonable premium. Insurance coverages shall not be less than the highest of (i) WMATA's then standard insurance requirements for completed and occupied joint development projects; (ii) the U.S. Government's then standard insurance requirements for multifamily projects financed with a government-insured permanent loan; or (iii) the then customs and practices in the District of Columbia for mixed-use, Transit-Oriented Development projects with similar quality and location.

5. Allocation and Distribution of Income, Gain, Loss, Deduction and Credit, if any

A. To the extent either WMATA or Developer can avoid some ordinary or capital expense or obtain a higher rent or other income from its undivided share of the Joint Project due to its being tax-exempt or having some other status which justifies a benefit only on its portion of the Joint Project, then such expense savings or benefit shall be allocated solely to the Cotenant who produced it. Subject to adjustments for the preceding sentence, the net proceeds from the operation of the Joint Project after the payment of all expenses and funding of all reserves will be distributed monthly by the Property Manager with the WMATA Percentage thereof being paid to WMATA and the Developer Percentage thereof being paid to Developer.

6. Sale of All or Undivided Interest in the Joint Project

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009774

A. If there is a sale or disposition of the entire Joint Project in a single transaction, after the repayment of any cash flow shortfall loan(s), WMATA shall be paid the WMATA Percentage of the net sales proceeds and Developer shall be paid the Developer Percentage of the net sales proceeds.

WMATA - Take loans.

B. Any sale by a Cotenant of its undivided interest in the Joint Project shall be subject and subordinate to the lien, operating and effect of the Cotenancy Agreement. After the repayment of any cash flow shortfall loan caused by the selling Cotenant, the proceeds of any such sale shall be separately paid to the selling Cotenant without any control by the other Cotenant or Property Manager.

Approval?

7. No Financing of the Joint Project without Joinder of All Cotenants; Financing of a Cotenant's Undivided Interest; Cash Shortfall Loan

A. Any financing of the Joint Project shall require the joint approval and joinder of both WMATA and Developer in their sole discretion.

B. WMATA and Developer shall be entitled to separately finance their undivided interests in the Joint Project on a basis which is absolutely and unconditionally subordinate to the lien, operation and effect of the Cotenancy Agreement. After the repayment of any cash flow shortfall loan caused by the borrowing Cotenant, the proceeds of any such financing shall be separately paid to the borrower Cotenant without any control by the other Cotenant or Property Manager. Mortgagees of either Cotenant shall receive copies of notices of default under the Cotenancy Agreement, shall have an extended cure period and right to cure any default by their borrower, and shall have the right to enforce their lien on a Cotenant's interest and substitute a qualified Person in place of the borrower Cotenant without any right of first offer or right of last refusal requirements.

- Financing Liens on the Whole But proceeds to one?
- mezzanine Finance?
- WMATA Approve?

C. After expending the reserves, if there is a cash flow shortfall from operations which both Cotenants do not fund proportionately, then either Cotenant shall have the option of loaning both its pro rata share and the other Cotenant's pro rata share of the shortfall on terms which are not less favorable than four percent (4%) per annum above the interest rate the Cotenants could have jointly obtained from an institutional lender based on a secured financing of the net cash flow from the Joint Project. All cash flow and other proceeds distributable to the Cotenants and the net proceeds of the sale or financing of the non-lending Cotenant's undivided interest shall first be used to repay such loans before being distributed or released to either Cotenant.

- Approval?
- why Both?

8. Condemnation and Casualty Loss.

A. Upon a full condemnation, the net condemnation proceeds will be distributed pro rata to the Cotenants.

B. Upon a partial condemnation, the net condemnation proceeds shall be distributed to the Cotenants in proportion to who owned the condemned portion of the Joint

Is Split ownership interest, physical, How is it delineated? Survey?

what about entrance, elevator, + parking?

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009775

Project and the WMATA Percentage and Developer Percentage readjusted on an equitable basis after any partial condemnation.

C. Upon any casualty loss, the insurance proceeds shall be used to rebuild the Joint Project with any rent loss/business interruption insurance proceeds used for their intended purpose. If there is a minor uninsured loss which can be covered with net cash flow from the Joint Project over a maximum five year period, then the Cotenants shall seek to finance the cost to repair using the Joint Project as collateral and repair the uninsured loss. If there is a major uninsured loss which cannot be covered with net cash flow from the Joint Project over a maximum five year period, the Cotenants shall either jointly agree upon a plan for repairing the loss or the Joint Project shall be sold "as is."

9. Right of First Refusal Prior to Partition

A. Each Cotenant shall waive its right of partition so long as there is a loan encumbering both Cotenants' interest in the Joint Project, unless all secured lenders consent to such partition.

B. Both Cotenants shall waive their right of partition to the extent they both can legally do so.

C. If both Cotenants cannot legally waive their right of partition, then neither Cotenant shall be required to waive its right of partition. However, before either Cotenant can seek partition, it must offer its entire undivided interest in the Joint Project to the other Cotenant at its pro rata share of the fair market value of the Joint Project. The fair market value of the Joint Project shall be determined by the three appraiser method for an all-cash sale with the costs of the appraisals treated as an operating expense. Upon determination of the fair market value, the partitioning Cotenant shall have the right for 30 days to withdraw for a minimum of five years its request to partition the Joint Project. If the partitioning Cotenant does not withdraw its request for partition, then the non-partitioning Cotenant shall have 45 days to determine whether to offer to the partitioning Cotenant a cash price equal to the partitioning Cotenant's pro rata share of the fair market value of the Joint Project. If the non-partitioning Cotenant makes such an offer, the partitioning Cotenant must accept it, whereupon the non-partitioning Cotenant shall have 90 days to close. If the non-partitioning Cotenant fails to make such an offer or makes the offer and fails to close, the partitioning Cotenant shall thereafter for a period of six months have the right to seek partition of the Joint Project. No Cotenant shall request partition of the Joint Project earlier than five years after such Cotenant's withdrawal of the request for partition after the determination of the fair market value of the Joint Project.

How does a Buy-Sell Agreement Affect Tunnel

10. Restrictions and Prohibitions on Transfer, Right of First Offer and Last Refusal upon any Cotenant's Sale of its Interest in the Joint Project

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009776

A. Either Cotenant may sell, convey or master lease their entire interest in the Joint Project, but not any partial interest, subject to the restrictions and requirements in this section. If WMATA then enforces a list or definition of Persons who are prohibited from acquiring ownership of WMATA joint development projects, then the Developer shall not sell, convey or master lease its interest in the Joint Project to any Person on such list or who meets such definition. The restriction on transferring an interest to a prohibited Person and any restrictions agreed to with any Mortgagee are the only restrictions that shall apply to transfers and/or encumbrances of interests within the Developer's entity. The Cotenancy Agreement shall expressly prohibit more than two Cotenants for the Joint Project.

• Approval
• Ethical Standards

B. The restrictions on selling, conveying and master leasing a Cotenant's interest in the Joint Project do not apply to any Mortgage encumbering such Cotenant's interest or the foreclosure sale or deed in lieu of foreclosure to a Mortgagee or its wholly-owned subsidiary.

C. Subject to the exclusion for a Mortgagee, any sale, conveyance or master lease of either WMATA's or Developer's entire undivided interest in the Joint Project shall be made expressly subject and subordinate to the Cotenancy Agreement after compliance with the right of first offer and last refusal in the next two paragraphs.

D. If either WMATA or Developer desire to sell their entire undivided interest in the Joint Project at anytime after the expiration or final termination of the Ground Lease, the selling Cotenant must first offer its entire interest to the other Cotenant for a minimum period of sixty (60) Days at a price and on terms the offeror plans to offer the public. If the offeree does not accept the offer within such sixty (60) Day period, then the offeror shall have a period of nine (9) months to sell its entire interest at a price and on terms not less favorable to the offeror than those offered to the offeree.

E. If the offeror desires to sell its entire interest in the Joint Project at a price or on terms less favorable than those previously offered to the offeree, then the offeror shall again offer its entire interest in the Joint Project to the other Cotenant on such reduced price and/or terms, including the right to match any contract the offeror has entered into, for a minimum period of thirty (30) Days. If the offeree does not accept the revised offer within such thirty (30) Day period and match any contract the offeror has entered into, then the offeror shall have a period of six (6) months to sell its entire interest in the Joint Project at a price and on terms not less favorable to the offeror than those re-offered to the offeree.

11. Cross-Indemnities

A. Due to the undivided joint ownership, the Cotenants shall maintain general commercial liability insurance and excess (umbrella) liability insurance in the amounts provided above. The insurance is intended to be the primary source of

WMATA get insurance?

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009777

protection for each Cotenant from the negligence/wrongful conduct of the other Cotenant.

B. Each Cotenant shall indemnify the other Cotenant for any liability in excess of available insurance proceeds cause by the Cotenant's negligence or willful misconduct. Recovery on the indemnification above the available insurance proceeds shall be limited to proceeds from the indemnifying Cotenant's interest in the Joint Project if WMATA is still a Cotenant because of WMATA's inability to give an indemnity without express budget authorization by its Board.

BOD

12. The Cotenancy Agreement shall terminate upon the earliest of: (i) the merger of the interests when the entire Joint Project is owned by one Person without any Mortgage encumbering less than the entire Joint Project and without any recorded agreement prohibiting such merger; (ii) the Improvements become obsolete and no longer have any useful life as confirmed by the Cotenants; or (iii) the unanimous agreement of the Cotenants to terminate the Cotenancy Agreement without any Mortgage encumbering less than the entire Joint Project and without any recorded agreement prohibiting such merger.

Define?

13. Cotenancy Agreement "runs with the land" and is binding on all assignees and successors of WMATA and Developer. Each Cotenant shall be liable only for events which occurred during its actual period of ownership. Upon any assignment of Cotenant's undivided interest in the Joint Project, the assignee must assume the obligations of the selling Cotenant under the Cotenancy Agreement from and after the date of its acquisition. Any Mortgagee of only a Cotenant's undivided interest shall not be obligated to assume the Cotenant's obligations under the Cotenancy Agreement until it acquires such undivided interest by an enforcement action under its loan documents.

14. All customary and necessary "miscellaneous" provisions will be included.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009778

- Why does this include 416?
- Legal:
  - Partnership Agreement upon Default
  - not an enumerated power under Compact
  - goes against WMATA policy; has been suggested and denied in the past.
  - Could eventually trigger Anti-deficiency clause
- Business
  - Not set up
  - Better to not Declare Default
- WMATA policies
  - Does not generally indemnify → Need Specific BOD Approval
  - Self-insure

GROUND LEASE AGREEMENT

BETWEEN

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WMATA

AND

THE JAZZ @ FLORIDA AVENUE, LLC

Developer

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009782

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease**") is entered into as of _____, 2009 (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 **The Jazz @ Florida Avenue, LLC**, a District of Columbia limited liability company having a principal address at 700 12th Street NW, Washington, DC 20005 (hereinafter collectively, along with permitted successors and assigns, called "**Developer**").

RECITALS

WHEREAS, WMATA holds legal title to certain tracts of land comprising approximately 28,892 square feet located at the intersection of 8th Street and Florida Avenue NW and 9th Street and Florida Avenue NW, in the District of Columbia; each as more particularly described in Exhibit ____ attached hereto and made a part hereof (the "**Property**").

WHEREAS, WMATA and Developer entered into a certain Joint Development Agreement, dated _____, 2009 (the "**JDA**"), with respect to the Property, a copy of which is attached hereto as Exhibit _____, and incorporated herein.

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 Exhibit ___, attached hereto and incorporated herein.

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009783

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 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 is 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 and Bank of America Community Development Corporation, a North Carolina corporation (the "**Developer Members**"). Developer represents, warrants, and covenants that the Developer Members have, 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 maintenance of a Qualified Team, as provided below. Further, Developer represents, warrants and covenants that until Final Completion, Developer shall be under the Control of the Developer Members.

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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009784

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 Approved Design and Construction Documents and the Project Schedule.

2.2.4 The above inducements and agreements in this Section 2.2 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 earlier termination of this Lease, 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 **Initial Term.** Unless sooner terminated earlier in accordance with the provisions of this Lease, the initial term (the "**Initial Term**") of this Lease shall be for a period of sixty (60) years, commencing on the Effective Date.

2.4.2 **Extended Term**. Developer shall have the right to extend the Term for two additional periods, the first being a seventeen (17) year period and the second being a sixteen (16) year period (each an "**Extended Term**"), commencing upon the day after the Initial Term or first Extended Term ends, respectively, subject to the following conditions.

2.4.2.1 No event of default shall have occurred during the Initial Term or first Extended Term.

2.4.2.2 Developer shall not have assigned the Lease, attempted to assign this Lease, or had a Change of Control, without prior authorization, during the Initial Term or first Extended Term.

2.4.2.3 Developer must give WMATA written Notice of its intent to exercise the Extended Term option at least one (1) year prior to the expiration of the Initial Term or first Extended Term.

2.4.2.4 At the commencement of each Extended Term, Base Rent shall be adjusted pursuant to Section 5.4.

2.4.3 The Initial Term and the Extended Term shall be collectively referred to as the "**Term**" herein.

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2.4.4 This Lease shall terminate whenever one of the following occurs: (a) the end of the Initial Term, if the Extended Term is not exercised; or (b) the end of the first Extended Term, if the second Extended Term is not exercised; or (c) the end of the Term of this Lease; or (d) as otherwise provided under this Lease, including, but not limited to, as a result of a Developer'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.

2.4.5 Developer, at WMATA's request and expense, 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. This Section 2.4.5 shall survive the termination of this Lease.

ARTICLE 3
USE OF LEASE PREMISES

3.1 **Developer Improvements**. Developer shall be obligated to construct all of the Developer Improvements to be constructed on the Lease Premises. The Developer Improvements shall consist of a minimum of 130,014 FAR Square Feet, including 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, to be developed within the Lease Premises:

Use Types:	Minimum Densities:
Residential:	104 Units
Retail/Arts:	11,750 square feet
Below-grade parking spaces:	47

3.2 **Lease Premises Construction**. The Developer Improvements shall be built in a single phase on the Lease Premises. No Improvements shall be constructed on the Lease Premises other than the Developer Improvements provided in the Approved Development Plan, unless approved in advance in writing by WMATA.

3.3 **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

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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.

3.4 **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.

3.5 **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 the Covenants, Conditions and Restrictions. Additionally, Developer shall require and enforce covenants, conditions and restrictions contained in its Sublease which prohibit: (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) 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 ($250,000.00) (the "**Deposit**"), as security for the faithful performance of the terms and conditions of the JDA and this Lease.

4.2 **Release of the Deposit**. WMATA shall return the Deposit, pursuant to the terms of the JDA, to Developer within twenty (20) Business Days of WMATA's receipt of a copy of the final certificate of occupancy for the Project.

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

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Rent or Additional Rent, including but not limited to Base Rent, Density Adjustment Rent, Capital Event Participation Rent, and Percentage 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. In no event will any Base Rent payment be less than the Base Rent payment for the preceding year.

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 (each of these may be referred to as a "**Quarterly Rent Due Date**").

5.3.3 **Initial Base Rent.**

5.3.3.1 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) plus any Additional Density Rent in accordance with Section 5.6. [OPEN]

5.3.3.2 Within fourteen (14) Days of the end of the Pre-Stabilization Period, Developer shall pay to WMATA the first quarterly installment of the Base Rent. The date payment is received will be the "**Base Rent Effective Date**".

5.3.3.3 If the initial Base Rent payment does not fall on a Quarterly Rent Due Date, then said initial payment shall be prorated to cover the period beginning on the Base Rent Effective Date through the next Quarterly Rent Due Date.

5.3.4 **Escalation of Base Rent.**

5.3.4.1 **Escalation Factor.** Commencing on the first Quarterly Rent Due Date after the first (1st) anniversary of the Base Rent Effective Date (the "**Base Rent Escalation Date**"), and continuing on each anniversary of the Base Rent Escalation Date thereafter, Base Rent shall be increased annually (but never decreased), in accordance with the terms of this Section 5.3.4.

5.3.4.2 **Initial Escalation Factor.** Commencing on the first Base Rent Escalation Date, and continuing through the ninth (9th) anniversary of the Base Rent Escalation Date, Base Rent shall be increased annually (but never decreased) by two percent (2%) over the previous year's Base Rent.

5.3.4.3 **Subsequent Escalation Factor.** Commencing on the tenth (10th) anniversary of the Base Rent Escalation Date, and continuing

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every anniversary of the Base Rent Escalation Date thereafter, Base Rent shall be increased annually (but never decreased) by three percent (3%) over the previous year's Base Rent.

5.3.4.4 **HUD Financing Limitation**. If there is HUD mortgage insurance on the First Leasehold Mortgage, then upon the expiration of the HUD mortgage insurance on the First Leasehold Mortgage, but in no case more than 40 years after the Effective date, Base Rent will be adjusted pursuant to Section 5.4 and increased annually (but never decreased) by three percent (3%) over the previous year's Base Rent.

5.4 **Periodic Base Rent Adjustment.**

5.4.1 Base Rent will also be periodically adjusted pursuant to the terms of this Section 5.4 (a "**Periodic Base Rent Adjustment**").

5.4.2 **The Appraised Land Value**. For purposes of changes to the Base Rent due to Periodic Base Rent Adjustment, the Property value shall be derived through the fair market value process described in Article 27 (the "**Fair Market Value Process**").

5.4.3 **Periodic Base Rent Adjustment**. Every tenth anniversary of the last to occur of either 1) the Base Rent Effective Date; 2) a Capital Event Base Rent Adjustment; or 3) a previous Periodic Base Rent Adjustment; the annual amount of Base Rent will be adjusted to seven percent (7%) of Project land value established through the Fair Market Value Process. Base Rent will never decrease from the then payable Base Rent as a result of any Periodic Rent Revaluation.

5.4.4 **Capital Event Base Rent Adjustment**. At the time of any Capital Event as defined herein, Base Rent will be reset by way of a Periodic Base Rent Adjustment. Base Rent will never decrease from the then payable Base Rent as a result of any Capital Event Base Rent Adjustment.

5.4.5 **HUD Financing Limitation**. If there is HUD mortgage insurance on the First Leasehold Mortgage, then the first Periodic Rent Adjustment shall not occur until the expiration of the HUD mortgage insurance on the First Leasehold Mortgage. The Base Rent shall be periodically adjusted pursuant to this Section 5.4 thereafter.

5.5 **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**".

5.5.1 **Adjusted Gross Capital Event Proceeds**. The Adjusted Gross Capital Event Proceeds are the total gross transaction revenues received by the Developer, and any affiliated Person receiving income from such event, from a Capital

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Event, less (i) the payoff of remaining original Project debt, secured by the Developer Improvements, to an Institutional Lender or governmental entity, if such governmental entity loan's terms are approved in writing by WMATA, and (ii) repayment of the original equity to construct the Project to the extent not yet repaid to the Developer, and (iii) and reasonable Capital Event transaction costs.

5.5.1.1 *Developer Capital Event Limits*. The original Project equity shall not exceed thirty-five percent (35%) of the original Project costs. The original Project equity shall not exceed a 20% return. [OPEN – member loans].

5.5.1.2 Capital Event Participation Rent shall be payable in full within five (5) Business Days after Developer realizes such Adjusted Gross Capital Event Proceeds.

5.5.2 **Confirmation of Developer's Debt and Equity**. Within thirty (30) Days of the Base Rent Effective Date, the Developer shall provide documentation to WMATA confirming the Developer's original Project debt and original equity referred to in Section 5.5.2. 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.

5.6 **Density Adjustment Rent.**

5.6.1 **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, or from that for which Developer has previously paid additional Base Rent pursuant to this section, then upon said final approval, Developer shall pay to WMATA additional Base Rent for the remainder of the Term.

5.6.2 **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).

5.6.3 **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.

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5.6.4 Base Rent adjusted hereunder 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 lease year

5.7 **Percentage Rent**. Terms of % EGI - TBD. [OPEN]

5.8 **Late Charge.** In the event that any payment of Rent due under this Lease shall not be received by WMATA within five (5) Business Days from the specified due date, Developer shall pay to WMATA as Additional Rent a late charge equal to five percent (5%) 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.

5.9 **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.

5.10 **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) 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 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) changes, for such fiscal year, to the Developer's original Project debt and equity to construct the Project, to the extent not yet repaid; and (d) all interests that any of Developer's Affiliates had in Developer, the Project, or the Developer Improvements at any time during such fiscal year.

5.11 **Inspection of Developer's Books and Independent Audits.**

5.11.1 WMATA may, during normal business hours and upon at least five (5) Business Days advance written notice to Developer, inspect, take extracts

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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 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 this Article 5, 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.

5.11.2 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 5.11.2 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

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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.

5.11.3 All information and materials provided by Developer or WMATA pursuant to Sections 5.5, 5.10, 5.11.1 and 5.11.2 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 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 5.11.3 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; LEASE OBLIGATIONS

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, occupancy, 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, placing into service, and Final Completion of the Developer Improvements in accordance with the requirements of the Approved Development Plan,

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the Approved Design and Construction Documents, 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.** 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.

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, 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

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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 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.

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

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Lease or the other Transaction Documents. Any and all taxes and other Impositions relating to the Lease Premises or resulting solely from any and all activities of Developer shall be the Developer's sole responsibility and obligation and not that of WMATA. From and after 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. Developer 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 expenditure 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.

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

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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 9300.1B, 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 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 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 has been approved by the FTA.

8.5 **Disclaimer.** WMATA shall have no obligation to make any change, demolition or improvement of or to the Lease Premises 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 Authority Compact, Public Law 89-774, 80 Stat. 1324, as same may be amended (the "**WMATA Compact**").

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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 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 Stations, 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 any gift, favor, entertainment, hospitality, transportation, loan or other tangible item or any intangible benefit for which the recipient did not pay fair market value and which is not offered to the public generally) 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. In the event of a violation of this Section 8.11, WMATA shall have the right to terminate this Lease Agreement by Notice to the Developer and the parties shall have no further obligations or liabilities hereunder, except for Developer's liabilities under the terms of this Lease Agreement that expressly survive any termination of this Lease

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Agreement. The terms of this Paragraph shall be strictly construed and enforced in the event of violation hereto.

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, its officers, directors, employees, and agents, harmless from and against any and all loss, cost, liability, damage or expense which WMATA may incur or sustain or

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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 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

Jim will Provide Project Specific language

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 (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 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, such coverage and policies having the scope and limits not less than as set forth below.

10.2 **During ~~the Pre-Stabilization~~ Construction Period.**

10.2.1 **Commercial General Liability Insurance.** The Insurance Obligors shall each procure and maintain 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 Lease Agreement

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and the other Transaction Documents. WMATA shall be included as an additional insured under the coverage for Commercial General Liability Insurance on an appropriate endorsement. Coverage shall include, without limitation, premises, operations, products liability, products completed operations, independent contractors, protective broad form property damage, personal injury, blanket contractual liability insurance and explosion, collapse, and underground hazards. The coverage under such an insurance policy or policies shall be maintained for three (3) years after Final Completion and shall have at least the following limits:

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

10.2.1.2 **Construction Activities and Obligations.** ~~Personal~~ Bodily Injury and Property Damage Liability: $10,000,000 Combined Single Limit Each Occurrence. 10/10

10.2.2 **Builder's Risk Coverage.** ~~To the extent not fully covered by the policies required under subsection 10.2,~~ the Developer shall cause each its general contractor to procure and maintain 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. 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. Said insurance policies shall be 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. will provide Replacement language

10.2.3 **Worker's Compensation.** The Insurance Obligors shall each procure and maintain 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, and 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:

Worker's Compensation:	Statutory Limit
Employers' Liability:	
Each Accident:	$1,000,000

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Disease Policy Limits:	$1,000,000
Disease-Each Employee:	$1,000,000

10.2.4 **Automobile Liability Insurance.** The Insurance Obligors shall each procure and maintain 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 $2,000,000 per occurrence.

10.2.5 **Pollution Legal Liability Insurance**. The Developer shall require its contractors and any subcontractors that provide excavation work or work with Hazardous Materials to provide one or more insurance policies covering contractors' and subcontractors' pollution legal liability, including, without limitation, the liability of the contractors and subcontractors 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 insurance policies shall have limits not less than $3,000,000 per occurrence of claims made.

No Exclusions/limits (Even if found in phase II)

10.2.6 **Railroad Protective Liability Insurance**. The Developer shall cause its contractor to procure and maintain one or more insurance policies, issued to WMATA, 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 Obligors on, above, below, adjacent or within fifty (50) feet of the Metro Facilities. The coverage under such policies shall have limits not less th~~an $5,000,000~~ $10 million combined single limit for bodily injury and property damage with a $10,000,000 aggregate.

10.2.7 One or more insurance policies covering the liability of the Insurance Obligors for any and all indemnification obligations and indemnification liabilities under this Lease and the Transaction Documents.

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10.2.8 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

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premises similarly situated, due regard being given to the type of the Improvements, its construction and its use and occupancy.

10.3 ~~After Pre-Stabilization~~ operation **Period**. Prior to the end of the Pre-Stabilization Period, Developer shall procure and at all times maintain without interruption throughout the remainder of the Lease Term, at its sole cost and expense, insurance coverage and policies to protect itself and WMATA and all of their respective officers, directors, agents, and employees, such coverage and policies having the scope and limits not less than as set forth below.

will provide Revised Language

10.3.1 **Commercial General Liability Insurance.** The Developer shall procure and maintain one or more commercial general liability insurance policies issued to and covering the liability of the Developer for all activities and obligations under or in connection with this Lease Agreement and the other Transaction Documents. WMATA shall be included as an additional insured under the coverage for Commercial General Liability Insurance on an appropriate endorsement. Coverage shall include, without limitation, premises, operations, products liability, products completed operations, independent contractors, protective broad form property damage, personal injury, blanket contractual liability insurance and explosion, collapse, and underground hazards. The coverage under such an insurance policy or policies shall have at least the following limits:

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

10.3.1.2 **Construction Activities and Obligations.** . Personal Injury and Property Damage Liability: $10,000,000 Combined Single Limit Each Occurrence.

10.3.2 **Commercial Property Insurance.** The Developer shall procure and maintain one or more special form insurance policies, which in the aggregate cover ~~one hundred twenty percent (120%) of~~ the full replacement ~~cost~~ value of all Improvements on the Property.

10.3.3 **Rental Value Insurance Policy.** Beginning with the Base Rent Effective Date and continuing during the entire period of operation of this Lease, Developer shall procure and maintain a Rental Value Insurance Policy. During the first two (2) years of the Term following the Base Rent Effective Date, the insurable limit of said policy shall be in the amount of twelve (12) months Base Rent. Within forty-five (45) days before the beginning of the third year of the Term following the Base Rent Effective Date, and before the beginning of each subsequent year of the Term, WMATA and Developer shall review Developer's revenue projections and determine the total amount of rent expected to be payable during the lease year. Said policy shall then be amended to reflect this review but the maximum limit of the policy shall be

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the aggregate amount of the Base Rent for a twelve (12) month lease year. The Rental Value Insurance Policy shall name WMATA as loss payee to the extent of the ~~Base Rent~~ Rent.

10.3.4 One or more insurance policies covering the liability of the Developer for any and all indemnification obligations and indemnification liabilities under this Lease and the Transaction Documents.

10.3.5 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.

10.4 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 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.

10.5 **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 Thirty ~~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 (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, 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; (vii) shall provide for a deductible or self insured retention not to exceed ~~$10,000~~ 100,000; and (viii) shall not include restrictive language to WMATA's additional insured status. 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

Exception pollution professional products are all written on claims made basis

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release, limit or restrict in any way the Insurance Obligors' liability arising under or out of this Lease or otherwise.

10.6 **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~~ w/in thirty (30) Days of the Renewal Date, 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 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 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 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 to WMATA at least twenty (20) days prior to the respective expiration of the applicable policies.~~

10.7 **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 any of the Insurance Obligors, 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.

10.8 **Compliance with Insurance Requirements.** The Developer shall not itself and shall not suffer any of the Insurance Obligors 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 to promptly comply with all rules, orders, regulations or requirements relating to such insurance policies, including all rules, orders, regulations, requirements and insurance

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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, 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.

10.9 **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 "A-VII" 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 Lease Premises 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 Lease or otherwise.

10.10 **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 Approvals, the Approved Development Plan, the Approved Design and Construction Documents, 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 **Damage to or Interference with Metro Facilities.** If the Developer damages, impedes access to, or otherwise interferes with Metro Facilities, Developer shall repair such

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damage within five (5) days after 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 **Project Schedule.** Developer shall be solely responsible for following, maintaining, and updating the Project Schedule.

11.3.1 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 two times 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.

11.3.2 Developer shall prepare a monthly schedule summary report in such form, detail and character as reasonably required 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.

11.4 **Inspections.**

11.4.1 **WMATA Inspections**. WMATA shall have the right at any 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 and to operate or perform any work desired by WMATA in respect of the Metro Facilities, 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.

11.4.2 **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 of the Project. 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

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in conformance with the Approved Design and Construction Documents. The authority of WMATA's Inspector to stop construction work shall be incorporated into all of Developer's construction contracts.

11.4.3 **Purposes**. WMATA's Inspector shall have full escorted access to the Lease Premises and Developer's construction of the Project for the following purposes.

11.4.3.1 To determine the safety of operations of Developer's contractor or subcontractor with regard to Project that impact or materially affect Metro Facilities;

11.4.3.2 To determine if the construction is in conformance with the Approved Design and Construction Documents; and

11.4.3.3 To inspect all elements of the Project that impact or materially affect Metro Facilities as determined by WMATA.

11.4.4 **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 Design and Construction Documents. Developer shall promptly cause the removal of the defective work, construction, material, structure, facility, equipment, or installation, and replace it in accordance with the Approved Design and Construction Documents. Failure of Developer's contractor or subcontractor 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.

11.4.5 **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.

11.4.6 **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.

11.5 **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) half-size hard copies of the As-Built Drawings and two electronic media copies of the

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drawings in .PDF, .TIF formats, and Auto CAD 2005 format or other format acceptable to WMATA. Upon Final Completion, Developer shall deliver to WMATA as-built drawings and the same in digital Auto Cad 2005 and .pdf formats.

11.6 **Local Codes, Laws, Regulations and Ordinances, Etc.**

11.6.1 **Compliance**. Developer agrees that all elements of the Project 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 Approvals for the construction of the Project.

11.6.2 **WMATA's Cooperation.**

11.6.2.1 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 Project, provided WMATA shall not incur liability by reason of such support or execution of such documents for which it cannot be indemnified.

11.6.2.2 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 Project, or any modification, remodeling, expansion, rebuilding, alteration, or reconstruction thereof that Developer may perform in accordance with this Lease.

11.6.2.3 Any and all costs of the aforesaid applications and the prosecution thereof shall be at Developer's sole cost and expense.

11.7 **Diligent Prosecution and Completion of Project.**

11.7.1 **Time for Substantial Completion.** Developer's construction of the Project will be substantially complete and ready in accordance with the Project Schedule attached hereto as Exhibit _____.

11.7.2 **Diligent Prosecution**. Developer shall use Best Commercially Reasonable Business Practices to insure timely completion of the Project in accordance with the provisions set forth in this Lease and the JDA. 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 Project in accordance with the provisions of

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this Lease and the JDA, including cancellation of this Lease if in WMATA's sole but reasonable discretion the Project cannot be timely completed. 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.

11.7.3 Within sixty (60) days following Substantial Completion, Developer shall deliver to WMATA copies of all certificates, permits, approvals, and consents.

11.8 **Compliance with WMATA's Standards and all Legal Requirements**. Construction shall comply in all circumstances to the WMATA Adjacent Construction Manual and the WMATA Design Criteria. 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 **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 Approved 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.

11.9.1 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.

11.9.2 In the event that Developer, or its agents 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.

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

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11.9.4 All 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.

11.10 **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).

11.11 **Certificates of Final Completion and Occupancy; Warranties**. The obligations of Developer under Article 11 hereof shall not be deemed satisfied unless and until Developer shall have (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); and (b) delivered to WMATA a certificate of final completion certified to WMATA's reasonable satisfaction stating that all applicable Developer Improvements have been constructed in accordance with the Approved Design and Construction Documents, and in compliance with all applicable legal requirements, which WMATA has approved in writing; 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 above in this Section 11.11 for the Project; and (d) caused substantial compliance with all continuing warranties issued for the benefit of the Project during the applicable warranty period.

11.12 **Safety of Persons and Property**.

11.12.1 Developer must take all precautions for safety required by applicable Laws or reasonably required by WMATA.

11.12.2 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 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.

11.12.3 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.

11.12.4 Developer shall erect and maintain, as required by existing conditions and performance of this Lease Agreement, commercially reasonable safeguards

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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.

11.12.5 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.

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

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

11.13 **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 parts of WMATA's Reserved Areas and Interests and that such infrastructure is set apart from and not integrated with other infrastructure areas.

11.14 **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.

ARTICLE 12
INDEMNIFICATION

12.1 **Indemnity.**

Jim will provide Revised language

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, against 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, 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

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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 agrees to perform and exercise its rights and obligations under this Lease so as not to unnecessarily or unreasonably interfere with the use, occupancy, or enjoyment of the Lease Premises or Developer Improvements by the Developer. Developer agrees to perform and exercise its rights and obligations under this Lease so as not to unnecessarily or unreasonably interfere with the use, occupancy, or enjoyment by WMATA of the 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. Except for security enclosures around the Metro Facilities reasonably 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 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.**

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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 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, electrical, mechanical, structural (including elevators), and storm water management systems, to the extent not maintained by 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 Manual, and shall meet commercially reasonable standards for developed properties comparable to the Lease

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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.** In addition to rights of ingress and egress described in the Covenants, Conditions and Restrictions, 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 the Metro Facilities; 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 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, the WMATA Adjacent Construction Manual, and the WMATA Design Criteria.

16.1.2 Developer shall submit to WMATA for WMATA's prior review and approval the methods, schedules, plans and design and construction documents for the Reconstruction Activity, all in accordance with (i) the design and construction provisions of this Lease and the JDA, (ii) the Approved Development Plan and (iii) the Covenants, Conditions and Restrictions. No Reconstruction

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Activity may begin until Developer has received the prior written approval of WMATA.

16.1.3 WMATA shall give Notice of its approval or disapproval to the Developer within thirty (30) Days of Developer's submission. In no event will WMATA's delay or failure to respond be deemed an approval of the Developer's submissions.

16.1.4 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.

16.1.5 WMATA's inspection of any Reconstruction Activity shall be governed by the provisions of Article 11 of this Lease.

16.1.6 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 WMATA's prior written approval. Developer shall not have any right to assign its interest in this Lease 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 and all of the Transaction Documents, 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 or the

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Transaction Documents accruing prior to the effective date of the assignment, including without limitation, the obligation to pay any Rent, Impositions or any other charges or monetary amounts 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: 1) WMATA shall have received a fully executed original counterpart of the 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; and 2) WMATA shall have delivered written approval of the assignment to the Developer.

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 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

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collateral security for such Leasehold Mortgage(s). No Leasehold Mortgage shall extend to or affect the Property 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 mortgaged premises in accordance with the provisions of the Lease hereby mortgaged."

18.2 The inclusion of the foregoing provisions in a Leasehold Mortgage shall not negate or vitiate any of the provisions of Sections 18.3, 18.4 or 18.5. The terms "First Leasehold Mortgage" means (i) at such times as only one Leasehold Mortgage exists, such Leasehold Mortgage, and (ii) 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

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remain unsatisfied of record or until written notice of satisfaction is given by the holder thereof to WMATA, the following provisions shall apply:

18.2.1 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).

18.2.2 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 18.2.2 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.

18.3 **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 18.2.2, 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 18.5 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, 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)

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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.

18.4 **Nullification.** If WMATA's notice of termination shall have been nullified pursuant to Section 18.3, 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.

18.5 **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 18.3, 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 (i) to the same conditions of title as this Lease is subject to on the Effective Date and any liens or encumbrances or other matters (a) which were caused or created by Developer, (b) which are required by law or (c) which Developer was obligated to discharge under the terms of this Lease and (ii) to the rights, if any, of parties then in possession of any part of the Lease Premises, provided that:

18.5.1 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;

18.5.2 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 18.5.1 above;

18.5.3 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

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reason of such termination, less the amount of any rent under subleases actually received and collected by WMATA;

18.5.4 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

18.5.5 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.

18.5.6 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).

18.6 **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 expenses (including reasonable attorneys' fees) incident to WMATA's entering into such new lease.

18.7 **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.

18.8 **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

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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.

18.9 **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 tenant and assumed by the tenant under such new lease. Such tenant 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.

18.10 **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.

18.11 **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 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 commences any construction or Reconstruction Activities on the Lease Premises without the prior written approval of WMATA;

19.1.3 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;

19.1.4 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;

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19.1.5 If Developer fails to comply with or adhere to any obligations under Section 2.2.1 and 2.2.2 (maintaining Qualified Team) and such failure is not cured within fifteen (15) Business Days after receipt of Notice from WMATA;

19.1.6 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;

19.1.7 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;

19.1.8 If Developer fails to comply with or adhere to any obligations under the Covenants, Conditions, and Restrictions, the JDA, or any other Transaction Document and such failure continues beyond the expiration of any applicable notice and cure period specified in the Covenants, Conditions, and Restrictions, the JDA, or such other Transaction Document;

19.1.9 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;

19.1.10 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;

19.1.11 If Developer or Guarantor make any material misrepresentation to any governmental authority for or in connection with the transactions contemplated by this Lease;

19.1.12 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 Lease;

19.1.13 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

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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

19.2 **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).

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

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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.

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 Developer 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

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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.

ARTICLE 20
DAMAGE AND DESTRUCTION

20.1 **Developer's Rights, Duties and Obligations.** If the Lease Premises and/or Developer Improvements, or any part thereof, become damaged or destroyed by fire or other casualty, Developer shall (1) 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 (a) such time as Developer may elect to proceed under clause (1) or (b) 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 (a) or (b) 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 and ARTICLE 16, 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

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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.

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 Developer Improvements estimated to cost in excess of $[redacted] (adjusted by the CPI-U Adjustment), and shall post appropriate notices of WMATA's non responsibility.

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 $[redacted], 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,

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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) all applicable Laws and governmental rules and regulations including, but not limited to, the Zoning Ordinance; (c) those items listed as exceptions to title in the Title Commitment; and (d) 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 _____.

22.2 **Title Insurance.** Developer has procured, received and reviewed a Commitment for Title Insurance, No. _____ issued by _____, as agent for _____, a copy of which is attached hereto as Exhibit _____ (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.

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

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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 of 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.

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

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23.5.2 WMATA and Developer shall be entitled to receive from the remaining condemnation proceeds, pari passu as to the following:

23.5.2.1 To WMATA, to the extent attributable to WMATA's right, title and interest in its fee simple estate in the Leased Premises, its reversionary interest in the Developer Improvements and all other rent and benefits due WMATA hereunder.

23.5.2.2 To Developer, any condemnation proceeds in excess of the amounts required to repair any damage to the Leased Property and/or Developer Improvements shall be paid to Developer to the extent that it is attributable to Developer's right, title and interest in its leasehold estate in the Leased Premises and the Developer Improvements.

23.5.3 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.

23.5.4 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.

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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.

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

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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 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.

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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 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.

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

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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 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 **Three Appraiser Process.**

27.1.1 Within fifteen (15) Days that either party delivers Notice to the other party that an event that triggers the Fair Market Value Process hereunder has occurred, WMATA and Developer shall each retain, each at their own expense, an appraiser (each, an "Appraiser") to determine the "as is" market unit value for the Property (the "As Is Fair Market Value"). The As Is Fair Market Value will be expressed as dollars per FAR square foot. WMATA and Developer shall deliver to the other written notice setting forth the name of the appraiser selected by such party.

27.1.2 Each of the Appraisers selected or appointed pursuant to this Section shall be disinterested, independent and currently certified by the District of Columbia and regularly engaged in the business of rendering real estate appraisals of commercial properties in the metropolitan Washington, D.C. area. Each Appraiser must be a member of the Appraisal Institute and have an "MAI"

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certification, or be a member of or have a comparable certification from any successor association or any association of comparable standing.

27.1.3 When retained, each party's Appraiser shall be provided with a scope of work and set of assumptions (the "Scope of Work") to determine As Is Fair Market Value, in the form attached hereto as Exhibit _____. The Scope of Work shall include, but not be limited to the following: a) that the valuation date of the appraisals (the "Valuation Date") shall be the date the Notice described in Section 27.1.1 is received; and b) that the As Is Fair Market Value shall be expressed as dollars per FAR square foot. All Appraisers shall be provided a copy of this Lease Agreement and, in satisfying the requirements of the Scope of Work, may, where appropriate, consider the effect of any Lease Agreement provision or obligation, when determining the As Is Fair Market Value. To the extent there is any conflict between the Lease Agreement and the Scope of Work, the provisions of the Lease Agreement shall prevail.

27.1.4 Within thirty (30) Business Days after being retained, each party's Appraiser shall prepare and deliver a full written summary appraisal report satisfying the requirements of the Scope of Work. Each party will immediately provide a complete copy of its summary appraisal report to the other party in order to determine whether the reports agree upon the As Is Fair Market Value, or, failing that, whether the As Is Fair Market Value is within a range that is less than or equal to ten percent (10%) (the "10% Range"). Both parties shall have ten (10) Business Days after receipt of the other's appraisal report to review the appraisals. At the conclusion of such ten (10) Business Day review period, if the difference between the two parties' Appraiser's determination is greater than the 10% Range, then the parties shall negotiate in good faith, for a period not to exceed ten (10) Business Days, in an effort to either agree on such As Is Fair Market Value or to narrow the difference of such As Is Fair Market Value to within the 10% Range.

27.1.5 If within the two ten (10) Business Day Periods stated in the previous Section 27.1.4 the parties reach agreement on the As Is Fair Market Value, then the Appraisers shall prepare and deliver to the parties a joint written report setting forth the As Is Fair Market Value so agreed upon.

27.1.6 If the two parties' Appraiser's As Is Fair Market Value is initially within the 10% Range or if the parties, through subsequent negotiations, narrow the difference between their respective As Is Fair Market Value to within the 10% Range, then the As Is Fair Market Value shall be deemed to be the arithmetic mean of the respective As Is Fair Market Value or, if applicable, the parties' positions reached during negotiations, and, at that point, the parties agree that such As Is Fair Market Value shall be included in, and made a binding term of this Lease Agreement.

27.1.7 If the difference between the party's Appraiser's respective As Is Fair Market Value are greater than the 10% Range and cannot be negotiated down to be

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within the 10% Range, then the two parties' Appraisers shall jointly appoint a third Appraiser to determine such As Is Fair Market Value by notifying such Appraiser and each of the parties of such appointment within ten (10) Business Days after expiration of the ten (10) Business Day negotiating period per Section 27.1.4 above. The third Appraiser shall be given the Scope of Work, and instructed to determine the As Is Fair Market Value either through appraisal or negotiation. The third appraiser shall not be given and shall have no information concerning the two parties' Appraiser's reports, other than the comparables used by the two parties' Appraisers. The third Appraiser shall make determination of such As Is Fair Market Value within twenty (20) Business Days after being so instructed. The third Appraiser need not prepare a formal appraisal report, but shall report, in writing, his or her determination of such As Is Fair Market Value. The third appraiser shall make an independent determination and shall not communicate with the two parties' Appraisers or view the work of such appraisers. The third Appraiser shall be a neutral party and neither party, or the two parties' Appraisers shall, directly or indirectly, engage in any ex parte communications with the third Appraiser after his or her selection.

27.1.8 If the two party Appraisers have not been able to select the third Appraiser by the end of the ten (10) Business Day period prescribed in Section 27.1.7, above and, if the parties' Appraisers report a difference between any of the respective pairs of As Is Fair Market Value greater than the 10% Range, then, on the first Business Day after the end of said ten (10) Business Day period, each party shall provide the names of two appraisers, which shall be written on pieces of paper which shall then be folded so as to hide the writing and placed in a hat. The third Appraiser shall then be selected by the blind drawing of a single piece of paper from the hat, with the person drawing the paper to be selected by Developer. The third Appraiser shall be that person identified on the paper drawn from the hat. If, for any reason, that person declines the assignment, the process of random draws of paper from a hat shall continue until one of the Appraisers accepts the assignment. No binding agreement with the third Appraiser shall be made unless the good faith negotiations fail to produce agreement on all As Is Fair Market Value (either by precise agreement or by narrowing the difference to the 10% Range).

27.1.9 If the third Appraiser determines a respective As Is Fair Market Value to be equal to or higher than the higher determination by one of the party's Appraisers, then such As Is Fair Market Value shall be the higher determination made by the party Appraiser, and the determination of the third Appraiser shall be disregarded. If the third Appraiser determines a respective As Is Fair Market Value to be equal to or lower than the lower determination by one of the party's Appraisers, then such As Is Fair Market Value shall be the lower determination made by the party Appraiser, and the determination of the third Appraiser shall be disregarded. If a respective As Is Fair Market Value of the third Appraiser is in between the first two appraisals, then such As Is Fair Market Value shall be the arithmetic mean of the As Is Fair Market

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Value as determined by the third Appraiser and the As Is Fair Market Value as determined by that party-selected Appraiser whose determination of such As Is Fair Market Value is closest to that of the third Appraiser.

27.1.10 The parties agree to fully cooperate in all respects in expediting appraisals to the end that all such shall be determined by the appraisal procedure as speedily as possible with a minimum of expense.

27.1.11 The costs and expenses of the first two appraisals shall be borne by the party who selects or is required to select each such Appraiser and the costs and expenses of the third appraisal, if one is required, shall be divided equally between WMATA and Developer.

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:

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;

28.1.3 WMATA owns fee title to the Property, 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;

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

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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 on 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

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 federal, District of Columbia, 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

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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 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 The Jazz @ Florida Avenue, 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;

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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 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,

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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.

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 other 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: _____
_____
_____

And with a copy to: _____
_____
_____

If to WMATA: Washington Metropolitan
Avenue Transit Authority
600 Fifth Street, NW

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009841

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
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 of Columbia, 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 embody the entire agreement between the parties and supersede 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.

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 Lease 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 Lease Agreement.

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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.** Developer acknowledges that WMATA may implement a minority business enterprise program and agrees to follow WMATA's guidelines and policies that apply to the Project. 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.

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

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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, 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 provision. The provisions of this Section 29.20 shall survive any termination of this Lease.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009844

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:

_____[SEAL]

[DEVELOPER]

_____

By:_____

Name:_____

Title:_____

ATTEST/WITNESS:

_____[SEAL]

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

By: _____

Title: Contracting Officer

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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. DEFINITIONS
B. PROPERTY DESCRIPTION
C. LEASE PREMISES
D. JDA
E. COVENANTS, CONDITIONS AND RESTRICTIONS
F. WMATA RESERVED AREAS AND INTERESTS
G. APPROVED DEVELOPMENT PLAN
H. APPROVED DESIGN AND CONSTRUCTION DOCUMENTS
I. PROJECT SCHEDULE
J. FORM OF GUARANTY
K. TITLE COMMITMENTS
L. SCOPE OF WORK

Banneker
Ventures
Draft
Sept. 8, 2009

Note: Text in brackets [] needs to be confirmed as correct.

JOINT DEVELOPMENT AGREEMENT

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WMATA

and

THE JAZZ @ FLORIDA AVENUE, LLC

Developer

Dated as of _____, 2009

- Include approval Rights over the "Fee property" under our PUE
- Tunnel Restrictions

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FOIA CONFIDENTIAL TREATMENT REQUESTED

WMATA-INV 009849

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B. DESCRIPTIONS OF PROPERTY, FEE PROPERTY & JOINT PROPERTY
C. DESCRIPTIONS OF LEASE PREMISES, FEE PREMISES & JOINT PREMISES
D. WMATA'S RESERVED AREAS AND INTERESTS
E. LEASE
F. JOINT IMPROVEMENTS
G. RIGHT OF ENTRY AGREEMENT
H. JOINT PROJECT SCHEDULE
I. CONDITIONALLY APPROVED DEVELOPMENT PLAN
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L. COVENANTS, CONDITIONS AND RESTRICTIONS
M. COTENANTY AGREEMENT

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WMATA-INV 009850

JOINT DEVELOPMENT AGREEMENT

THIS JOINT DEVELOPMENT AGREEMENT ("**Agreement**" or "**JDA**"), dated this _____ day of _____ 2009 (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 **THE JAZZ @ FLORIDA AVENUE, LLC**, a District of Columbia limited liability company (hereinafter collectively, along with permitted successors and assigns, called "**Developer**").

Verify in Solicitation

Tit! Report

RECITALS

WHEREAS, WMATA holds legal title to ~~one or more certain tracts of land~~all of Lots 44 & 45 in Square 393 and Lot 31 in Square 416, comprising approximately ~~28,892~~[28,356.90] [1] square feet of land located ~~at~~ in the southwest corner of the intersection of 9th Street and Florida Avenue, N.W., and the southwest corner of the intersection of 8th Street and Florida Avenue~~ NW and 9th Street and Florida Avenue NW~~, N.W., respectively, in the District of Columbia~~; each as~~ (the "**Property**"), more particularly described in **Exhibit** ~~__~~**B**, attached hereto and made a part hereof ~~(the "**Property**")~~.

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~~,~~.

WHEREAS, Developer is the contract purchaser of Lot 41 & A&T Lot 826 in Square 393 comprising approximately [7,720] square feet of land fronting on 9th Street, N.W. and located contiguous to Lot 4[_] near the southwest corner of the intersection of 9th Street and Florida Avenue, N.W., in the District of Columbia (the "**Fee Property**"), more particularly described in **Exhibit B**. The Lease Premises and Fee Property are sometimes referred to collectively as the "**Joint Property.**"

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1. The D.C. Assessor lists the four lots as 28,892 square feet. The Developer's surveyor has reported the following square footages: Lot 31 – 15,944.97 square feet; Lot 44 – 3,784.45 square feet; and Lot 45 – 8,627.48 square feet; for a total of 28,356.90 square feet. The Surveyor also reported that Lot 18 in Square 416 was resubdivided into Lot 31 by WMATA in 1996 when Lots 12 through 18 were resubdivided into Lot 31. What is the evidence the four lots are 28,892 square feet other than the D.C. Assessor's records?

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009851

No Need Alley For Access to tunnel?

WHEREAS, WMATA and Developer have agreed to close the portion of the public alley in Square 393 contiguous to Lots 41, 44 & 45 and A&T Lot 826 and resubdivide such Lots and the portion of the closed public alley into a single, buildable lot of approximately [21,244][2] square feet. What is Developer offering WMATA for this add'l Right?

WHEREAS, Developer has agreed to construct a mixed-use, Transit-Oriented Development project on the ~~Lease Premises~~Joint Property on the terms and conditions set forth herein~~;~~.

WHEREAS, to address how the Joint Project will be owned, operated, financed and eventually sold after the expiration or termination of the Lease, WMATA and Developer will enter into a Cotenancy Agreement simultaneously with entering into the Lease.

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~~Shit Agreement shall have the meanings set forth in **Exhibit** ~~—~~A, attached hereto and incorporated herein.

ARTICLE 2
LEASE OF THE LEASE PREMISES AND DEVELOPMENT OF THE JOINT PROJECT

2.1 **Fundamental Agreement.** WMATA agrees to lease the ~~Lease~~ Joint Property Premises to the Developer, and the Developer agrees to lease the ~~Lease~~ Joint Property Premises from WMATA and develop the Lease Premises, as part of the Joint Premises, in accordance with the terms and conditions of this Agreement, by way of a ground lease agreement (the "**Lease**"), a copy of which is attached hereto as **Exhibit** ~~———~~E, and incorporated herein.

2.1.1 Such 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, the Lease, and the Covenants, Conditions and Restrictions 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 (including, without

[2] Please confirm the combined square footage of Lots 41, 44 & 45 and A&T Lot 826 and the portion of the public alley to be closed.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009852

limitation, any replacement or interim 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) ventilation shafts, and (vi) 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.

2.1.2 The Lease, the Covenants, Conditions and Restrictions, and other related agreements, will strictly reserve 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, as provided in the WMATA Adjacent Construction Design Manual. → Does this Cover "Over Tunnel" Construction?

2.2 **Project, Fee Project and Total Project**. Developer will construct improvements on the Lease Premises (the "**Project**") and on the Fee Property (the "**Fee Project**") on the terms and conditions set forth in this Agreement, the Lease, and the other Transaction Documents. The Project and Fee Project are sometimes referred to collectively as the "**Joint Project**." The Joint Project will consist of:

2.2.1 *Developer Improvements*. The Developer's improvements on the Lease Premises (the "**Developer Improvements**") shall be ~~a minimum 130,014 FAR gross square feet,~~portion of the Joint Improvements including ~~not less than 104~~ dwelling units, ~~11,750 gross square feet of~~ retail ~~arts~~ space~~, plus~~ and associated residential and retail parking.

2.2.2 *Fee Improvements*. The Developer's improvements on the Fee Property (the "**Fee Improvements**") shall be portion of the Joint Improvements including dwelling units, retail space and associated residential and retail parking.

2.2.3 *Joint Improvements*. The Developer Improvements and Fee Improvements are sometimes referred to as the "**Joint Improvements**." The Joint Improvements shall include a Gross Floor Area of approximately 4.5 times the area of the Joint Property plus up to 0.36 times the area of the Joint Property for the affordable dwelling units under inclusionary zoning, divided between dwelling units and retail space, plus basements, elevator shafts, stairwells and other vertical penetrations, penthouses, attic space, interior balconies and mezzanines, underground parking, cellars and outside balconies to the extent they are not included in the calculation of FAR or Gross Floor Area. The Joint Project is expected to include approximately [132] rental apartment units, approximately [20,000] square feet of ground floor retail, and approximately [71] underground parking spaces in two buildings fronting on Florida Ave, NW, which will be separated by Eighth Street, N.W. For purposes of determining the FAR of the Property, WMATA hereby agrees to permit Developer to use the entire Property

Roz (?)

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009853

for purposes of qualifying for and calculating the FAR of the Property. The use of the FAR Square Feet and other development rights attributable to any WMATA's Reserved Areas and Interests shall not be construed to be, or to constitute a lease, license or grant of any right to use or occupy the WMATA's Reserved Areas and Interests to the Developer.

~~2.2.2~~2.2.4 The ~~Developer~~Joint Improvements will include an affordable housing component consisting of twenty percent (20%) of the dwelling units~~ at fifty percent (50%) AMI~~. At what Ami?

~~2.2.3~~2.2.5 The ~~Developer~~Joint Improvements will be built in a single phase on the ~~Lease~~Joint Premises.

~~2.2.4~~2.2.6 No improvements will be constructed on the Lease Premises other than the Developer Improvements, unless approved in advance by WMATA.

2.3 **Pre-~~Stabilization~~Closing Period.**

2.3.1 The "**Pre-~~Stabilization~~Closing Period**" ~~shall commence~~is hereby defined to be that time period commencing upon the Effective Date and ~~continue until~~ending upon the ~~earlier of:~~Closing Date.[3]

~~2.3.1.1 92.5% Project Occupancy; or~~

~~2.3.1.2 Forty-eight (48) months after the Effective Date [OPEN].~~

2.3.2 The Pre-~~Stabilization~~Closing Period shall entail the Total Project's design, government approval, FTA approval, Total Project financing, and achievement of all requirements for Closing, as defined herein.

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 to any lien created by Developer. 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~~subtenant's, ownership ~~in~~of improvements on the Lease Premises affixed to and part of the real property (including, but not limited to, Developer Improvements which are affixed to and part of the real property) that is the subject of the Lease shall also automatically terminate, and WMATA shall thereafter be the sole owner of such improvements.[4] what does developer intend to carve out?

Exceptions?

[3]. This assumes the entire Base Rent for the 60-year Initial Term will be paid at Closing under a capitalized lease structure for the Initial Term.

[4]. The definition of Developer Improvements includes equipment which may or may not be fixtures. The additional language was inserted to recognize equipment which is not fixtures will not revert.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009854

2.5 **Conditions of Demise and of Creation of Leasehold ~~Title~~Estate.** 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 Until the Final Completion, this Agreement shall be deemed to be in the nature of a personal services contract and Developer acknowledges that WMATA has entered into this ~~Lease~~Agreement on the basis of its trust and special confidence in Banneker Ventures, LLC, a District of Columbia limited liability company, and ~~Bank~~Banc of America Community Development Corporation, a North Carolina corporation (collectively, the "**Developer Members**"). Developer represents, warrants and covenants that the Developer Members have, and shall continue to maintain until ~~satisfaction of all Construction Related Obligations~~Final Completion, primary and substantial involvement in the Joint 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~~Final Completion, Developer shall be under the Control of the Developer Members. OK

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~~ Final Completion a team of, as applicable, officers, directors, partners, members, employees, Consultants 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 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 Approved Design and Construction Documents and the Joint Project Schedule, subject to delays beyond the reasonable control of Developer.

2.6.4 The above inducements and agreements are confirmed herein as material obligations of Developer.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009855

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~~Metro Facilities including, without limitation, any environmental testing studies, evaluations or remediation in, on or about the Property.

2.7.1 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.

2.7.2 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 (except to the extent necessary for compliance by Developer with the provisions of this Agreement), or (d) alter its operations on the Property except in accordance with the express terms of this Agreement.

ARTICLE 3
DEPOSIT AND PRE-~~STABILIZATION~~CLOSING PERIOD PAYMENTS

3.1 **Deposit.** Within two (2) Business Days of the Effective Date, Developer shall deliver a cash security deposit, in the amount of Two Hundred Fifty Thousand Dollars ($250,000), to WMATA to secure the Developer's performance hereunder (together with any interest earned thereon, the "**Deposit**"). Developer may convert the proposal security deposit to part of the Deposit, in the amount of $100,000, currently being held by WMATA, by giving WMATA Notice that the proposal security deposit should be converted to part of the Deposit.

ok?

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. 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~~twenty (~~10~~20) Business 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.

ok?

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 within twenty (20) Business Days of WMATA's receipt of a copy of the final certificate of

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009856

Define Final Certificate?

occupancy for the residential portion of the Joint Project and a shell certificate of occupancy for the retail portion of the Joint Project. [5]

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 Closing does not occur for any reason other than (i) WMATA's default; (ii) Developer's right to terminate pursuant to the terms of this Agreement; or (iii) non-satisfaction of a condition precedent to Developer's obligation to close as set forth in Section 10.1.

3.1.4 WMATA may invest the Deposit in such short-term, high-grade securities, interest-bearing bank accounts, money market funds or accounts, or bank certificates of deposit 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 in excess of the amount so applied and shall not be deemed a cure or waiver of any Default by Developer or an election of remedies unless the amount so applied did in fact satisfy Developer's liability, 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~~conditions for its return have been fully and finally satisfied ~~and~~in accordance with Section 3.1.2 of this Agreement has been terminated under circumstances where the Deposit, less any accrued liabilities under Section 17.3, is to be returned to Developer.

3.1.6 If Developer has not converted the proposal security deposit to part of the Deposit, then within ten (10) Business Days of the receipt of the Deposit pursuant to this Section 3.1, WMATA shall return to the Developer the proposal security deposit, in the amount of $100,000.00, currently being held by WMATA. [6]

3.2 **Pre-~~Stabilization~~Closing Period Payments.** Pre-~~Stabilization~~Closing payments shall begin upon the Effective Date and continue throughout the Pre-~~Stabilization~~Closing Period, as consideration for WMATA granting the Developer the exclusive right to

---

5. Why is the Deposit being held through the construction period? Once completion of the Joint Improvements is bonded and the Guaranty is delivered, the Deposit should be released.

6. Is any interest accruing on the proposal security deposit?

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009857

develop the Lease Premises pursuant to this Agreement (the "**Pre-~~Stabilization~~Closing Period Payments**").

3.2.1 Pre-~~Stabilization~~Closing Period Payments shall be due in the ~~annual amount of Two Hundred Thousand Dollars ($200,000.00).~~ following amounts: (a) $[50,000] for the first [18] months after the Effective Date; and (b) $[65,000] for the [19th] through the [30th] month after the Effective Date.[7] All Pre-~~Stabilization~~Closing Period Payments shall be paid in immediately available funds and, except for proration for partial quarters, shall be non-refundable. ~~[OPEN]~~

3.2.2 Pre-~~Stabilization~~Closing Period Payments shall be paid in equal quarterly installments of ~~$50,000.00,~~(a) $[8,334] each for the first [18] months, and (b) $12,500 each for the [19th] through the [30th] months; such quarterly installments being due each January 1st, April 1st, July 1st, and September 1st. ~~[OPEN]~~[8] If a quarterly installment straddles the [19th] or [31st] month, the amount will be pro-rated on a daily basis between the prior quarterly payment and the increased quarterly payment.

3.2.3 The Developer shall pay the first Pre-~~Stabilization~~Closing Period Payments to WMATA, on or before the Effective Date. If the Effective Date is not one of the quarterly due dates, the first Pre-~~Stabilization~~Closing Period Payment shall be pro-rated on a daily basis to cover the period beginning on the Effective Date ~~through~~up to the next quarterly due date. At the Closing, WMATA shall credit to the Developer's payment of base rent under the Lease any unused amount of the immediately prior quarterly payment of Pre-Closing Period Payments based on a daily pro-ration from the beginning of such quarter to the Closing Date.

OK

---

7. The amount of the Pre-Closing Period Payments is open. Developer assumed the Pre-Closing Period ends on the Closing Date when the entire Base Rent will be due.

8. The amount and time period for the Pre-Closing Period Payments is open.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009858

ARTICLE 4
RIGHT OF ENTRY; DUE DILIGENCE AND STUDY ~~PERIOD~~AND ACCESS PERIODS

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 agreement. WMATA and Developer entered into a Right of Entry agreement~~,~~ dated _____, 2009 (the "**ROE**"), a copy of which is attached hereto as **Exhibit** ~~__~~**G**.[9] Pursuant to the terms of the ROE, Developer and certain of its Consultants were granted a license, for a period ~~prescribed in~~ending on the ~~ROE~~Closing Date (the "~~Study~~**Access 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**"). The period starting with the Effective Date and ending one hundred twenty (120) Days later is hereby defined as the "**Study Period**."

Term Sheet 60 Days →

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 during the Study Period, Developer shall have the right to terminate this Agreement by giving Notice (the "**Study Period Termination Notice**") to that effect to WMATA on or before 5:00 p.m. Eastern Time on the ~~sixtieth~~one hundred twentieth (~~60~~120th) Day after the Effective Date (the "**Study Period Termination Deadline**").[10]

70 Days (60+10) → in Term Sheet

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 within fourteen (14) Days, subject to the terms of Article 3.

Roz? →

4.3 **Failure to Give Notice of Termination.** If Developer fails to provide WMATA with proper and timely Study Period Termination Notice prior to the Study Period Termination Deadline, in strict accordance with the Notice provisions of this Agreement, Developer shall be deemed to have approved the Lease Premises and shall have waived its right to terminate under this Article 4 and this Agreement shall remain in full force and effect.

---

9. Is there a ROE? If not, the first sentence in Section 4.1 needs to be revised: How can the ROE specify a Study Period when the Effective Date has not been determined?

10. A Phase II Environmental Site Assessment has been recommended for a portion of the Property. Do we need to add an extension of the Study Period Termination Deadline for the Phase II Environmental Site Assessment and/or other environmental or geotechnical investigations? Since there will be substantial excavation for the Total Project, the risk of finding rock in the ground other than where the tunnel was excavated could be material.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009859

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~~Lease Premises Due Diligence by Developer or any other Person related to or engaged by or on behalf of Developer, including, without limitation, in connection with any ~~studies, entries, surveys, tests, investigations, or any~~ construction or lienable 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 up to the Closing Date and any such liens that may attach to the Property following the Closing~~.~~ Date for activities conducted prior to the Closing Date.[11] Should any such lien attach, Developer shall cause the same to be removed of record or bonded off within ~~ten~~twenty (~~10~~20) Business Days following the date of Developer learning of such attachment. If Developer fails to cause the same to be removed of record or bonded off within ~~ten~~twenty (~~10~~20) Business Days following the date of Developer learning 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, accruing at the "Default Rate of Interest" (as that term is defined in the Lease), on demand. Excluding Lease Premises Due Diligence, 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.

Redundant?

Source is Access period.

Don't want lien to be filed after clos

4.6 **Confidentiality.** All information made available by WMATA to Developer in accordance with this Agreement ~~or~~and information about the physical condition of the Property 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 until the Closing, and, prior to the ~~lease of the Lease Premises by Developer~~Closing, Developer shall use its Commercially Reasonable Best Efforts to prevent its Consultants from divulging such information~~,~~ into the public domain, (i) except as may be required to comply with Laws, to any unrelated third parties, (ii) except as reasonably necessary, to third parties engaged or sought to be 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 but not limited to Developer's ~~attorneys~~Consultants and representatives~~,~~ and prospective investors, tenants or subtenants, lenders ~~and engineers.~~, government agencies providing capital for the Joint Project and Consultants.

out

4.7 **No Liability of WMATA.** WMATA shall not be required to incur any liability, cost or expense or, to provide any information, data, reports, studies or the like in connection with Developer's activities under this Article 4 or the ROE. Developer

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11. The JDA covers mechanics' liens created prior to the Closing Date and the Lease covers mechanics' liens created after the Closing Date. There should be no gap and no overlap in these provisions.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009860

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.

4.8 **No Detriment to Lease Premises.** Unless Developer obtains the prior express written approval of WMATA to allow any equipment, infrastructure or improvement installed on the Lease Premises to remain in place, Developer may be required, at the sole option of WMATA, to remove such equipment, infrastructure and improvements that has been installed on the Lease Premises by Developer at Developer's expense, within ten (10) Business Days ~~of~~ after the expiration of any applicable grace period after Developer's receipt of a Notice of a Default~~,~~ or the termination of this Agreement~~, or failure to consummate Closing~~. [12]

~~ARTICLE 5~~
~~TITLE~~

ARTICLE 5
TITLE

5.1 **Title.** During the Study Period, Developer ~~hereby~~ shall (a) update the Title Commitment, and (b) prepare an ALTA/ACSM Land Title Survey of the Joint Property (the "**Survey**"), separately depicting the Property and Fee Property, and including legal descriptions for the Property, any then-known WMATA's Reserved Areas and Interests, Fee Property and Joint Property with computations of land area and provide a copy of both to WMATA~~X~~ with Developer's written approval of the Survey. Upon Developer approving such Survey and providing a copy of the updated Title Commitment to WMATA, Developer shall be deemed to have unconditionally ~~approves~~approved the Survey and legal description of the Property and ~~accepts~~accepted the state of WMATA's title ~~thereto~~to the Property as of the effective date of the updated Title Commitment, which such title shall be subject, however, in each case to: (i) the specific exceptions, reservations and conditions of this Agreement and the Lease; (ii) all applicable Laws and governmental rules and regulations including, but not limited to, the applicable, existing zoning ~~Ordinance~~ordinances; (iii) ~~those items listed as exceptions to title in the Title Commitment (the "~~the Permitted Exceptions"~~)~~; (iv) the Covenants, Conditions, and Restrictions, and (v) encumbrances arising out of the actions or inactions of Developer or any person or entity acting on Developer's behalf. From and after the effective date of the updated Title Commitment until the Closing or the termination of this Agreement, WMATA shall not cause or permit the status of title to the Property to be changed, except in accordance with the provisions of this Agreement, without the Developer's prior written consent which shall not be unreasonably withheld, conditioned or delayed. WMATA shall pay those Impositions on the Property prior to the Closing Date which Developer is not obligated to pay under this Agreement. [13] Subject to the Permitted

Licenses

[12] Failure to close by the Closing Date is already a Default. It doesn't need to be covered twice.
[13] This ties into Section 18.1.3 where it is a WMATA Default to not pay these Impositions.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009861

Market

Exceptions, if the state of the title to the Property changes between the effective date of the updated Title Commitment and the Closing Date or when Developer attempts to obtain a leasehold owners title insurance policy insuring Developer's leasehold estate in the Lease Premises, and such change was caused by or the responsibility of WMATA, and Developer is unable to obtain a leasehold owners title insurance policy reflecting the state of title shown in the updated Title Commitment (satisfied and modified as required by the preceding sentence), WMATA shall promptly, at its sole cost and expense, take those steps necessary to cure and correct the change in the status of title to the Property to the condition which existed on the Effective Date and satisfy the Title Insurer as Developer shall select to issue the leasehold owners title insurance policy, so that such change in the status of title to the Property caused by or the responsibility of WMATA is cured and corrected and the leasehold owners title insurance policy can be obtained; provided, however, that in no event shall WMATA be required to provide any indemnification, or any other agreement, undertaking, or affidavit in the nature thereof, without the express prior approval of its Board of Directors. Notwithstanding the foregoing or any other provision of this Agreement or the Lease, nothing in this Agreement or the Lease shall make WMATA responsible for clearing any and all: (a) objections relating to any Hazardous Material; or (b) covenants, conditions, restrictions, reservations and easements recorded among the land records of the District of Columbia prior to the update of the Title Commitment during the Study Period; or (c) covenants, conditions, restrictions, reservations and easements not caused by WMATA which were recorded among the land records of the District of Columbia after the update of the Title Commitment during the Study Period but prior to the Closing Date. Compared to the updated Title Commitment during the Study Period, Developer shall not be required or obligated to accept any adverse changes to the status of title to the Property differing from those which existed as of such update (unless such changes result from the act or omission of Developer or any of its contractors, subcontractors, business invitees, or Mortgagees), or any changes caused by Permitted Exceptions, nor shall WMATA be under any obligation to cure any of the changes described in this sentence unless they result from the act or omission of WMATA, or its contractors, subcontractors, secured lenders or business invitees.

ARTICLE 6
FINANCING

6.1 **Obligation to Diligently Pursue Financing and Equity Funding.** Developer shall expend Commercially Reasonable Best Efforts to obtain the funds required for the consummation of the Lease and development of the ~~Lease~~Joint Premises by the Closing Date in conformity with the terms hereof (the "**Lease Premises and Fee Property 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(s) for financing, subject to the terms and conditions set forth below.

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

6.2.2 If Developer is not able to secure on or before the thirtieth (30th) Day preceding the Closing Date for the Lease Premises and Fee Property (the "**Financing Contingency Cut Off Date**") ~~a~~one or more written ~~commitment~~commitments from ~~an~~ Institutional ~~Lender~~Lenders for Lease Premises and Fee Property Financing, for which Developer believes it can satisfy all the conditions therein for Closing and funding, 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~~commitments from ~~an~~ Institutional ~~Lender~~Lenders for the Lease Premises and Fee Property 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~~obtaining the Lease Premises and Fee Property Financing, which Developer otherwise is required to consummate under the terms of this Agreement.

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~~one or more written commitment from ~~an~~ Institutional ~~Lender~~Lenders for ~~a loan~~loans or ~~investment~~investments of funds necessary to obtain the funds required for consummation of the Closing by the applicable Closing Date.

6.3.3 Nothing in this Section 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009863

6.4 [Intentionally deleted.][14]

~~6.4 **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**").~~

~~6.4.1. Each lender of Developer and Guarantor, with respect to 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 all or part of the Project shall provide written covenants and agree to WMATA's requirements as set forth in this Article 6.~~

~~6.4.2 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 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~~

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[14]. Section 6.4 was deleted for the following reasons: (i) since WMATA will have been paid all Base Rent for the 60 years and will be economically protected from a delay in the completion of the Total Project, such Loan Covenants are not customary, appropriate or acceptable; (ii) no HUD/FHA loan program will agree to the Loan Covenants; (iii) we do not believe an Institutional Lender or rating agency for a commercial mortgage-backed security (CMBS) will agree to such Loan Covenants, which makes the Lease and transaction "unfinanceable;" (iv) the provision on Payment and Performance Bonds is inconsistent with the surety's rights and obligations under the Payment and Performance Bonds in that the Bonds assure performance of the construction contract not the Approved Development Plan and cover the AIA definition of substantial/final completion not WMATA's definition of Final Completion, the surety typically causes the work to be performed without running payments through the obligees, and proceeds of the Labor and Materials Payment Bond are for the laborers and materialmen not the Mortgagee, Developer or WMATA; also we have not previously seen a provision like this accepted by any Institutional Lender or rating agency for a CMBS and know that HUD/FHA will not permit WMATA to be an obligee on the Payment and Performance Bonds, so the HUD/FHA lender will never agree to this provision; (v) the provision on the application of insurance fails to recognize there are multiple types of insurance required under the leasehold Mortgage that cover risks other than a casualty loss and therefore conflicts with the use of the insurance proceeds, rent loss/business interruption insurance will be used to pay interest on indebtedness and again we have not previously seen a provision like this accepted by any Institutional Lender or rating agency for a CMBS and know that HUD/FHA lender will never agree to this provision; (vi) no HUD/FHA lender or Institutional Lender or rating agency for a CMBS will agree to WMATA controlling the application of proceeds from the Mortgagee's guarantees. if any; (vii) the priority of the Covenants, Conditions and Restrictions can be permanently achieved by recording order, which makes this provision unnecessary and invites greater scrutiny of the Covenants, Conditions and Restrictions by the Mortgagee; and (viii) since WMATA's Reserved Areas and Interests are set at the time of the loan closing, they will be excluded from the Lease Premises and neither the Developer nor any Mortgagee can encumber them which makes this provision unnecessary.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009864

~~indebtedness or other obligations that may otherwise be secured by such Payment and Performance Bonds until such Final Completion is achieved; and~~

~~6.4.3~~ ~~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 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 thereby until such Final Completion is achieved; and~~

~~6.4.4~~ ~~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; and~~

~~6.4.5~~ ~~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, security agreement, assignment of collateral or similar instrument encumbering the Lease Premises or the Project shall encumber any portion of WMATA's Reserved Areas and Interests.~~

ARTICLE 7
APPROVAL PERIOD

7.1 **Approval Period.** Developer shall be afforded a period within which to pursue the Approvals, which period (the "**Approval Period**") shall begin on the Effective Date and shall terminate upon the earlier of the Closing or ~~twenty~~[_____(~~20~~__)] [15] months after the Effective Date, which deadline shall automatically extended by Schedule Extensions. Developer shall use Commercially Reasonable Best Efforts, to achieve the Approvals at the earliest possible time before the expiration of the Approval Period.

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15. When a critical path schedule is prepared with all the different Approval processes which must be first reviewed and approved by WMATA under the Submission Approval Procedure and then approved by the local government, it is not possible to complete the Approvals within the recommended 20 months. A longer period with allowances for delays caused by the Submission Approval Procedure and government delays needs to be agreed upon.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009865

7.2 **Developer's Rights 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~~[16] of ~~their~~its obligations under this Agreement and the Transaction Documents, WMATA hereby authorizes Developer to seek and secure the Approvals and to make all inquiries of and applications to the appropriate governmental authorities, in accordance with the procedures outlined in this Article 7 and the terms of this Agreement.

7.2.1 **Developer's Obligations to Pursue Approvals; WMATA Cooperation.** 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 that may be required to allow development of the ~~Lease~~Joint Premises and construction of the Joint Improvements thereon consistent in all respects with the Approved Development Plan, including, but not limited to, all of the Approvals necessary for the Joint Project. Developer shall have sole responsibility for seeking and obtaining all such final Approvals and for paying all costs and expenses relating thereto. In connection with Developer's efforts to obtain the Approvals, WMATA shall ~~lend reasonable cooperation and assistance to~~reasonably cooperate and assist 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. WMATA agrees to consent to any Legal Authority approvals or licenses which allow uses of the Lease Premises or WMATA's Reserved Areas and Interests consistent with the Approved Development Plan and otherwise in accordance with this Agreement. At Developer's request, but without incurring any out-of-pocket costs or expenses or significant burden on personnel, WMATA shall join in or be the applicant under applications for rezoning, site plan, alley closing, subdivision, or other approvals, provided that such applications are in accordance with the Approved Development Plan and this Agreement. Notwithstanding the foregoing, upon completion of the Joint Improvements and upon Developer obtaining certificates of occupancy therefor, WMATA shall be solely responsible for all approvals and licenses pertaining solely to the WMATA's Reserved Areas and Interests and/or use and operation of the Metro Stations and any other Metro Facilities.

7.2.2 **Developer's Obligations Applicable to ~~Entire~~Joint Project.** Developer shall seek and secure the Approvals, including, any necessary rezoning of the ~~entire~~Joint Property~~.~~ and the Partial Alley Closing and Resubdivision.[17] 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

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16. The Guarantor is not a party to the Agreement and the Approvals will be obtained before the Guaranty is executed.

17. This assumes WMATA's 1996 resubdivision creating Lot 31 in Square 416 included Lot 18.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009866

requirements to the extent the same are consistent with the Conditionally Approved Development Plan~~.~~— and do not impose an unreasonable economic burden on the Joint 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 materially and adversely impact WMATA's Unconditional Approval Matters.

7.3 **Approval List.** Within ~~ten~~thirty (~~10~~30) Days from the Effective Date, Developer shall submit to WMATA a written report containing a listing of anticipated required Approvals, ~~a~~an estimated schedule for obtaining such Approvals, including, without limitation, any necessary rezoning under applicable jurisdictional zoning ordinances, a statement in Developer's reasonable business judgment of the anticipated period required to obtain such Approvals under the standards of diligence, timing and efforts and the Submission Approval Procedure required by this Agreement ~~and the bases for the Developer's judgment that the 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 (the "**Approvals List**"). Developer may submit updates of the Approvals List to WMATA as work on obtaining the Approvals progresses and time periods become more certain.

7.4 **Approvals Termination Right.** If despite Developer's Commercially Reasonable Best Efforts to obtain the Approvals in accordance with the terms of this Agreement and the Conditionally Approved Development Plan, Developer has not obtained the Approvals in the Approvals List 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 7.4, WMATA shall promptly deliver the Deposit to Developer, subject to the terms of Article 3.

7.5 **As-Built Drawings.** Developer hereby acknowledges that WMATA has delivered applicable drawings (hard copy and, if existing and available, in digital format (auto cad)) for the Metro Facilities on the Property.[18] Developer agrees that such drawings were 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.

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18. Can WMATA please confirm these have all been delivered to Developer?

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009867

7.6 **Submission of Proposed Applications for Approvals and Infrastructure Development.**

7.6.1 **Submissions**. Prior to submission, Developer shall provide to WMATA any and all proposed applications to be submitted for approval, to ~~the District of Columbia or any quasi-governmental~~any Legal Authority (each, a "**Submission**"), for WMATA's review and approval in conformity with the Submission Approval Procedure. Submissions shall include, but not be limited to, ~~1~~(i) any applications for the Approvals~~; 2~~, (ii) the development plans described under Section 7.8~~;~~, and ~~3~~(iii) any submissions to Legal Authorities that concern any infrastructure or other improvement proposed to be constructed by the Developer on any portion of the Lease Premises.

7.6.2 **Timing of Application for Approvals**. Within fifteen (15) Days after WMATA has approved such Submission, Developer shall make formal application to the ~~District of Columbia or the~~ appropriate ~~quasi-governmental~~Legal Authority.

7.6.3 **Compliance of Developer's Submissions**~~. Each Submission by Developer:~~. Unless expressly approved by WMATA in its discretion in writing, each Submission by Developer:

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

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

7.6.3.3 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.

7.6.4 **Submission Approval Procedure.** The procedure described in this Section 7.6.4 is sometimes referred to as the "**Submission Approval Procedure**." Within thirty (30) Days after receipt of a proposed Submission, together with all related and supporting materials, WMATA shall review the Submission and provide approval, or denial with reasonably detailed comments from all persons in WMATA who must review such Submission, in writing to Developer. In no event will WMATA's delay or failure to respond be deemed an approval of the Developer's Submissions.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009868

7.6.4.1 WMATA's thirty (30) Day review deadline shall not begin to toll unless and until the Submission is complete and Developer reasonably believes it satisfies the requirements of this Agreement.

7.6.4.2 If approval is denied on the basis of any inconsistency with the requirements of this Agreement, Developer shall undertake Commercially Reasonable Best Efforts to submit to WMATA a revised Submission for approval that satisfies and cures each of the issues, objections or qualifications raised by WMATA within ~~thirty~~fifteen (~~30~~15) Days following the date Developer receives the written denial from WMATA. These actions shall be repeated, with ~~thirty~~fifteen (~~30~~15) Day deadlines for each party, until WMATA's approval is obtained or a period of one hundred twenty (120) Days plus Schedule Extensions from the initial submission of said Submission by Developer shall have passed without WMATA's approval having been obtained (the **"Submission Correction Deadline"**).

7.6.4.3 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 then remaining 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.

7.7 **Limitation on Termination Rights.** Developer's rights to terminate under this Article 7 shall not apply to any ~~failure~~reasonable refusal by WMATA to approve a Submission or any changes thereto on the basis of any material and adverse inconsistency in such Submission with the requirements of this Agreement ~~of a Submission 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 Submission or make changes or corrections thereto that satisfy and cure the reasonable issues, objections or qualifications raised by WMATA. A delay in WMATA responding beyond the time periods provided in this Article 7 will give Developer a Schedule Extension under this Article 7.

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

7.8.1 **Proposed Development Plan.** Not later than ~~thirty~~[one hundred twenty (~~30~~120)] Days after the ~~Effective~~ date on which WMATA provides to Developer its detailed and written requirements for the WMATA's Reserved Areas and

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009869

Interests (the **"Development Plan Submission Deadline"**),[19] Developer shall prepare in consultation with WMATA a detailed plan for the development of and construction of the Joint Project, including (i) the proposed locations and configurations of all of the Joint Improvements that will comprise the Joint Project; (ii) the applicable uses for such Joint Improvements; (iii) the number of square feet for each such Joint Improvement; and (iv) detailed descriptions and schematic drawings of all components of the Joint Project, including but not limited to all major architectural, civil, electrical, mechanical, and structural components of the Joint Project (the **"Proposed Development Plan"**).[20] All aspects of the Proposed Development Plan, and any changes thereto, shall be subject to the review and approval of WMATA in its reasonable discretion, except those aspects materially and adversely affecting WMATA's Unconditional Approval Matters shall be subject to the review and approval of WMATA, in its sole and absolute discretion.

7.8.1.1 Developer shall consult WMATA prior to and during Developer's preparation of the Proposed Development Plan with respect to WMATA's detailed requirements for the ~~WMATA~~WMATA's Reserved Areas and Interests~~.~~, which WMATA shall provide within fifteen (15) Days of the Effective Date.[21] Developer shall incorporate all of WMATA's requirements with respect thereto into the Proposed Development Plan.

7.8.1.2 As part of the Proposed Development Plan, Developer shall provide reasonable details of the proposed infrastructure construction, as the same pertain to (i) the Joint Project as a whole; and (ii) the preliminary scope, design and timing of the foregoing.

7.8.1.3 Developer shall cause the Proposed Development Plan to be consistent with and conform to this Agreement and the Transaction Documents, subject only to reasonable changes that WMATA may direct or approve in writing.

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19. There must be a deadline for providing WMATA's providing detailed information on its WMATA's Reserved Areas and Interests or the Development Plan Submission Date is not within Developer's control. Considering all the various issues that must be resolved to prepare the Proposed Development Plan, please consider it there should be any specific extensions of the Development Plan Submission Date for need time to resolve the partial alley closing, resubdivision and/or historic preservation issues.

20. The description of the Proposed Development Plan should be consistent with the beginning stage of the design process. If is intended to be the conceptual and schematic design, then that is what should be described. As written, it appears to require more detail than is typically provided in a "preliminary" plan.

21. Are there any WMATA's Reserved Areas and Interests other than the tunnel and possibly the fan room above the tunnel on the middle parcel? If there are no others, can the Agreement state that?

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009870

7.8.1.4 The Proposed Development Plan shall be (i) substantially in accordance with applicable existing zoning ordinances (and applicable waivers thereto or variances therefrom) or shall provide details concerning proposed rezoning, (ii) consistent with the requirements and objectives of any applicable master plan, ~~and~~ (iii) consistent with the Partial Alley Closing and Resubdivision, (iv) consistent with any applicable historic preservation requirements, and (v) 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.

7.8.1.5 The Proposed Development Plan shall not be devised or designed in a manner that would disproportionately or inappropriately shift to the ~~WMATA~~WMATA's Reserved Areas and Interests or on any portion of the Property contemplated to be leased by Developer, 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.

7.8.2 **WMATA Development Plan Approval Procedure.** WMATA shall review and approve or disapprove the Proposed Development Plan pursuant to the Submission Approval Procedure.

7.8.3 **Approved Development Plan.**

7.8.3.1 **Conditionally Approved Development Plan.** The Proposed Development Plan for the Joint Property, as approved by WMATA, is referred to herein as the "**Conditionally Approved Development Plan,**" a copy of which shall be attached hereto as **Exhibit** ~~____\~~**I**, and incorporated herein. The date, if any, on which WMATA gives Developer Notice that it has approved the Proposed Development Plan shall constitute the "**Conditionally Approved Development Plan Approval Date.**" After the Conditionally Approved Development Plan Approval Date, Developer shall not make changes to the Conditionally Approved Development Plan without WMATA's prior written approval.

7.8.3.2 **District of Columbia Zoning Approval.** Developer shall promptly submit the Conditionally Approved Development Plan and any necessary application for a rezoning, variance or other necessary action to the District of Columbia Office of Zoning and/or Board of Zoning Adjustment, as applicable and required, for approvals required to develop the Joint Project.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009871

7.8.3.3 **Final Approved Development Plan**. Upon final approval of the Conditionally Approved Development Plan and any associated application by the District of Columbia Office of Zoning and/or Board of Zoning Adjustment, as applicable and required, Developer shall promptly re-submit the Conditionally Approved Development Plan, along with any changes or additional requirements imposed by the District of Columbia Office of Zoning and/or Board of Zoning Adjustment, as applicable and required, to WMATA for WMATA's approval pursuant to the Submission Approval Procedure. Upon the subsequent WMATA approval, if any, the final approved development plan shall be referred to as herein as the "**Approved Development Plan,**" a copy of which shall be attached hereto as **Exhibit J**, and incorporated herein. The date, if any, on which WMATA gives Developer Notice that it has approved the Approved Development Plan shall constitute the "**Development Plan Approval Date.**"

7.8.4 **Changes to Approved Development Plan.** Developer shall not make material changes to the Approved Development Plan without WMATA's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, except such approvals that would materially and adversely affect WMATA's Unconditional Approval Matters in which case such approval may be granted or withheld in WMATA's sole and absolute discretion. A material change to the Approved Development Plan is one that would increase the density of the Joint Project above the amounts specified in Section 2.2.3 or decrease the number of affordable dwelling units below 20% of those in the Joint Project or materially reduce the planned quality of the Developer Improvements through a different construction method. WMATA shall have no right to make or require changes to the Approved Development Plan, except changes that materially and adversely affect WMATA's Unconditional Approval Matters in which case such changes may be required in WMATA's sole and absolute discretion.

7.8.5 **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 Approved Development Plan, nor shall such approval be construed to be a warranty thereof.

7.8.6 **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 Joint 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

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foregoing shall not apply to alterations that would materially and adversely affect WMATA's Unconditional Approval Matters in which case such alterations may be made in WMATA's sole and absolute discretion. The limitations in this Section 7.8.6 shall not prevent WMATA from implementing reasonable interim covenants, conditions and restrictions consistent with Section ~~11.10~~11.11. 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~~.~~ and WMATA shall give Notice to Developer within ten (10) Business Days of its receipt of Developer's Notice either that WMATA shall reverse such material alteration promptly or provide a detailed explanation on why such material alteration is permitted under this Agreement and/or the Lease. Developer shall receive a Schedule Extension for the delay caused by WMATA's creation of such material alterations unless they were coordinated with Developer from inception.

7.9 **WMATA Compact Public Hearing.** It is not anticipated that ~~this~~the Joint Project will require a WMATA Compact Public Hearing. If WMATA determines, in its sole discretion, that a WMATA Compact Public Hearing is required, Developer shall cooperate with WMATA in the preparation for and the conduct of such hearing and pay for all costs of the WMATA Compact Public Hearing, including making a deposit of all anticipated costs at least ninety (90) Days before said hearing~~.~~ , subject to the limitation and agreement that such costs and deposit imposed on Developer shall not exceed Ten Thousand and No/100 Dollars ($10,000.00) and shall be a credit against the base rent under the Lease. If WMATA does not send Notice that a WMATA Compact Public Hearing is required at least [twelve (12)] months before the Closing Date, Developer shall be entitled to a Schedule Extension for any delays caused by the WMATA Compact Public Hearing.

~~7.10 **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, any and all rights relating thereto and any applications and Submissions therefor. Developer shall not withdraw any application for any 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 or 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~~

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009873

~~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. All materials submitted in connection with any such 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 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, WMATA or its designee) to appeal any adverse determination relating to the Approvals, applications and Submissions.~~

7.10 **No Withdrawal of Rezoning Application; Substitution of Applicant, Use of Materials and Perfection of Right to Appeal.** Developer acknowledges and agrees that, commencing on the Development Plan Approval Date, WMATA has and shall retain a property interest in any and all Approvals relating to the Property, any and all rights relating thereto and any applications and Submissions therefor. If this Agreement is terminated after the Development Plan Approval Date, Developer shall not withdraw any application for any 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 cost or liability under any such Approvals or 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 within sixty (60) Days after the termination of this Agreement 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 costs and liabilities based on appropriated and available funding through WMATA's budgetary procedures. Following the Development Plan Approval Date and any Default by Developer, 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 within ten (10) Business Days after WMATA's right to exercise such option, WMATA shall succeed to all right, title and interest of the Developer in all Approvals, applications and Submissions for the Property and, subject to the rights of design professionals and other third parties, 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 for the Property without payment of any sums to Developer and without further cost to Developer. In furtherance of the foregoing,

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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. All right, title and interest of the Developer in all materials submitted in connection with any such Approvals, applications and Submissions for the Property, subject to the rights of design professionals and other third parties, 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 that may be sought by WMATA. So long as this Agreement has not been terminated, 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, WMATA or its designee) to appeal any adverse determination relating to the Approvals, applications and Submissions for the Property.

7.11 **Joint Project Representatives~~.~~.** Each party hereby designates its Joint Project representative (respectively, the "**WMATA Joint Project Representative**" and the "**Developer Joint Project Representative**"), for purposes of coordinating the exchange of information and the processing of requests relevant to this Agreement. As of the Effective Date, (a) the WMATA Joint Project Representative shall be [_____], and (b) the Developer Joint Project Representative shall be ~~_____~~Omar A. Karim. Thereafter, ~~each party~~WMATA shall deliver to ~~the other~~Developer Notice of any change in the identity of ~~its~~ the WMATA Joint Project Representative and Developer shall deliver to WMATA Notice of any change in the identity of the Developer Joint Project Representative. The WMATA Joint Project Representative and the Developer Joint Project Representative shall keep ~~each other fully informed of all pending meetings, hearings and conferences with governmental agencies occurring in connection with all applications, Submissions and Approvals and the WMATA Project Representative and the Developer Project Representative, or their designees, 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 shall be promptly delivered to WMATA Project Representative or the Developer Project Representative, respectively. Nothing contained in this Section 7.11 shall be deemed to modify any obligation of the parties with respect to the delivery of Notices.~~each other fully informed of all pending and formally scheduled meetings, hearings and conferences with governmental agencies occurring in connection with all applications, Submissions and Approvals and the WMATA Joint Project Representative and the Developer Joint Project Representative, or their designees, shall have the right to attend any and all of the formally scheduled meetings pertaining solely to the same. Copies of all material written communications delivered to or received by Developer or WMATA in connection with applications, Submissions and Approvals shall be promptly delivered to WMATA Joint Project Representative or the Developer Joint Project

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Representative, respectively, by e-mail, facsimile or regular mail. Nothing contained in this Section 7.11 shall be deemed to modify any obligation of the parties with respect to the delivery of Notices.~~Extensions of Time for Developer's Performance.~~

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

7.12.1 Subject to ~~Subsection~~Section 7.12.2, if WMATA fails to approve or disapprove the Submissions by the deadlines expressly established under Article 7, 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 ~~Article~~Articles 7, 8, 10 & 11 of this Agreement (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 by such delays by WMATA) shall automatically be extended~~, on~~ by a ~~day for day basis, for the number of days of such~~Schedule Extension based on the delay caused by WMATA. Delays in Developer's performance caused solely by WMATA's failure to act in a timely fashion, after Developer's request, shall not constitute or permit a Default by Developer.

7.12.2 Developer's rights to extend under Section 7.12.1 shall not apply to any failure by WMATA to 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.

ARTICLE 8
LEASE CLOSING

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

8.1.1 The Closing Date shall occur on or before ~~twenty~~[_____(~~20~~__)][22] months following the Effective Date (the "**Closing Date**"). Developer may elect to close prior to the Closing Date, but must give WMATA ~~sixty~~fifteen (~~60~~15) Days Notice.

8.1.2 Closing shall take place in the offices of Developer or Developer's attorneys or Title Insurer, if in the Washington, D.C. metropolitan area, or at such other place as the parties shall mutually agree.

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22. In order to determine when the Developer can commit to a Closing Date, a critical path schedule needs to be prepared with WMATA's maximum time to review the Proposed Development Plan, the Approved Development Plan, any rezoning/variance applications, the public alley closing, the resubdivision, and all the applications and Submissions because WMATA's review and approval rights prevent a continuous pursuit of the Approvals. During the past five years, how many developers of similar joint development projects have met their original closing deadline? We are not aware of any.

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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.

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

8.1.3.1 Closing costs shall be allocated between WMATA and Developer, as follows: (i) Developer shall be responsible for all applicable recordation, transfer and mortgage taxes and title insurance and escrow costs~~.~~; (ii) Developer shall pay for all costs associated with Developer's Lease Premises Due Diligence including any appraisals, environmental assessments and testing, architectural/engineering assessments and design, 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 costs, fees or expenses~~.~~; (iii) Developer and WMATA shall each be responsible for their own legal expenses~~.~~; (iv) WMATA shall be responsible for any costs to deliver a leasehold estate in the Lease Premises in the manner required in this Agreement and any Impositions which Developer is not obligated to pay; and (v) Developer shall pay for any and all other Closing costs not covered above. WMATA shall cooperate in recordation or certain of the Transaction Documents and execute appropriate tax exemption forms.

8.1.3.2 All normal and customarily pro-ratable items, including, without limitation, utilities, other operating expenses and fees, shall be pro-rated 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.

8.1.3.3 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, personal property tax, sales tax, or similar taxes for the Property, or any assessments or any installments or prorated portions thereof~~.~~, except for any impervious area charges and

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impervious surface area billing charges assessed by the D.C. Water and Sewer Authority prior to the Closing Date.

8.1.4 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~~re-computation 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~~re-computation of the proration and copies of all substantiating information used in such ~~recomputation~~re-computation. 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~~re-computation or a correction of an error or omission with respect to such item after the ~~Closing Date~~Proration Period.

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 of **Exhibit** ~~_____~~**E** attached hereto, appropriately revised and completed in a manner consistent with the Approved Development Plan, public alley closing and resubdivision of a portion of the Property, and the required D.C. Real Property Transfer and Recordation Tax Form, both executed by WMATA.

8.2.1.2 The Covenants, Conditions and Restrictions in the form of **Exhibit** ~~_____~~**L,** attached hereto, appropriately revised and completed in a manner consistent with the Approved Development Plan, public alley closing and resubdivision of a portion of the Property and the required D.C. Real Property Transfer and Recordation Tax Form, both executed by WMATA.

8.2.1.3 A Closing statement executed by WMATA.

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8.2.1.4 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 the Title Insurer to issue ~~a~~ leasehold title insurance ~~policy~~policies, to be issued pursuant to the Title Commitment; provided that such affidavit does not subject WMATA to any greater liability, or impose any additional obligations on WMATA, other than as set forth in this Agreement.

8.2.1.5 An estoppel certificate to Developer's lender in accordance with Section 22.1 and an estoppel certificate to Developer's lender in accordance with Section [ ] of the Lease.

~~8.2.1.5~~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~~Closing Period Payments, the base rent due under the Lease, any other payments due under this Agreement and the Lease, and the adjustments or prorations required by this Agreement and the Lease.

8.2.2.2 The Lease in the form of **Exhibit** ~~_____~~E hereto, appropriately revised and completed in a manner consistent with the Approved Development Plan, public alley closing and resubdivision of a portion of the Property, and the required D.C. Real Property Transfer and Recordation Tax Form, both executed by Developer.

8.2.2.3 The Covenants, Conditions and Restrictions in the form of **Exhibit** ~~_____~~L, attached hereto, appropriately revised and completed in a manner consistent with the Approved Development Plan, public alley closing and resubdivision of a portion of the Property and the required D.C. Real Property Transfer and Recordation Tax Form, both executed by the Developer.

8.2.2.4 A Closing statement executed by Developer.

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8.2.2.5 Executed copies of all bonds, insurance policies or certificates therefor, and ~~Guaranties~~the Guaranty required under the Lease.

~~8.2.2.6~~ ~~The Approved Development Plan.~~

~~8.2.2.7~~8.2.2.6 Reasonable evidence of final approval by the appropriate ~~governmental or quasi-governmental~~Legal Authority of all Approvals on the Approvals List.

~~8.2.2.8~~8.2.2.7 The Joint Project Schedule.

~~8.2.2.9~~8.2.2.8 The Approved Design and Construction Documents to the extent they have not been previously delivered to WMATA.

~~8.2.2.10~~8.2.2.9 Copies of the Developer's articles of organization, operating agreement, and certificate of good standing or existence.

~~8.2.2.11~~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.

ARTICLE 9
REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 **Representations and Warranties of WMATA.** 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 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; validly existing and in good standing, if the concept of "good standing" is applicable, under the laws of the United States, Maryland and Virginia, and is authorized to conduct the business in which it is now engaged.

9.1.2 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.

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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 or any applicable Law or any order of any court or Legal Authority with proper jurisdiction over WMATA. WMATA has not made any other agreement for the sale or lease of, or given any other person the right to purchase or lease, all or any part of any of the ~~Lease Premises;~~Property.

9.1.3 WMATA owns fee simple, marketable title to the Property, subject to Permitted Encumbrances and other matters of record and existing site conditions~~;~~.

9.1.4 Following Closing, there will be no adverse or other parties in possession of or with the right to use the Lease Premises~~;~~.

9.1.5 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, the Lease, the Compact and applicable Laws, or for WMATA to fulfill WMATA's other obligations subject to and in conformity with the terms and conditions of this Agreement~~;~~, the Lease, the Compact and applicable Laws.

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

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

9.1.8 To WMATA's knowledge, there are no special taxes or assessments to be levied against the Property other than the impervious area charges and impervious surface area billing charges proposed by the D.C. Water and Sewer Authority.

9.1.9 WMATA is exempt from all federal, state and local taxation.

9.1.10 WMATA represents that the WMATA Joint Project Representative is an individual to whom material facts relevant to the matters covered by the

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representations and warranties of WMATA that are set forth in this Agreement would be reported in the ordinary course of business.

9.2 **As Is, Where Is Terms**. Except for the representations and warranties expressly set forth above in ~~Subsection~~Section 9.1 and WMATA's performance of its obligations under this Agreement, 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~~Section 9.1 and WMATA's performance of its obligations under this Agreement, 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 WMATA's performance of its obligations under this Agreement 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 the Lease Premises and developing the Project based solely on its inspection and investigation of the Lease Premises. To the extent that WMATA has 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, the 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.** After the Closing, 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

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WMATA with respect to current and future applicable zoning or building code requirements; the Lease ~~Premises's~~Premises' compliance with any other laws, rules, ordinances or regulations; or the Lease ~~Premises's~~Premises' financial earning capacity or expense history.

9.6 **Survival Period.** WMATA and Developer agree that those representations contained in Section 9.1 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 ~~that survives Closing~~ must be commenced within one (1) year subsequent to the Closing Date~~ of such representation~~). In the event that WMATA breaches any representation contained in Section 9.1 and Developer had actual knowledge of such breach prior to the ~~applicable~~ Closing Date, Developer shall be deemed to have waived any right of recovery with respect to such actual knowledge of a WMATA breach of a representation 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 WMATA Joint Project Representative 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 WMATA Joint Project Representative any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such WMATA Joint Project Representative any individual personal liability, which Developer hereby waives.

9.8 **Representations and Warranties of Developer.** 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:

9.8.1 The Jazz @ Florida Avenue, LLC is a District of Columbia limited liability company duly formed, validly existing and in good standing, if the concept of "good standing" is applicable, under the laws of the District of Columbia.

9.8.2 Developer, acting through any of its or their duly empowered and authorized mangers, 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 managers, officers, ~~partners~~ or members is required to so empower or authorize Developer.

9.8.3 No pending or, to the knowledge of Developer, threatened litigation exists that, if determined adversely, would restrain the consummation of the

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transactions contemplated by this Agreement or would declare illegal, invalid or non-binding any of Developer's obligations or covenants to WMATA.

9.8.4 Developer, acting through its duly empowered and authorized [~~Entity Principal Type~~manager] 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 and applicable to Developer, (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, order or authorization of, or any filing with or notice to, any court or ~~other governmental~~Legal Authority.

9.8.5 The joinder of no person or entity other than Developer and the Guarantor solely with respect to the Guaranty 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.

9.8.6 Developer represents that prior to the Effective Date it has investigated the current zoning status of the Property and its consistency with the contemplated requirements, uses and densities set forth herein and that, to Developer's actual knowledge and based on such investigation, ~~such~~any necessary rezoning or variance is feasible, subject to the Partial Alley Closing and Resubdivision, historic preservation on the Fee Property, and customary issues in any land entitlement matter. WMATA has made no representations to Developer regarding zoning matters relating to the Project and Developer waives any and all claims to the effect that such representations have been made.

9.8.7 Developer represents that, to Developer's actual knowledge, obtaining the Approvals with such uses and densities described in this Agreement and the Lease is reasonably feasible under current and reasonably foreseeable future market, legal, and 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 and the Lease~~.

9.8.8 Developer represents and warrants that it has ~~undertaken~~commenced and will continue during the Access Period all due diligence and ~~has reviewed~~will review and ~~conducted~~conduct such independent analyses, studies, reports, investigations and inspections as it deems appropriate in connection with the

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Lease Premises and the Joint 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 Joint 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 Joint Project).

9.8.9 Developer represents that the Developer Joint Project Representative 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.

9.9 **Survival Period.** WMATA and Developer agree that those representations contained in Section 9.8 shall survive Closing for a period of one (1) year (that is, any proceeding based on the breach of a representation contained in Section 9.8 must be commenced within one (1) year subsequent to the Closing Date). In the event that Developer breaches any representation contained in Section 9.8 and WMATA had actual knowledge of such breach prior to the Closing Date, WMATA shall be deemed to have waived any right of recovery with respect to such actual knowledge of a Developer breach of a representation and Developer shall not have any liability in connection therewith under this Agreement.

~~9.9~~9.10 For purposes of this Agreement, the term "knowledge" as it relates to Developer shall mean and refer to only the actual knowledge of the Developer Joint Project Representative and shall not be construed to refer to the knowledge of any other officer, director, manager, member, agent, employee or representative of Developer, or any affiliate of Developer, or to impose upon such Developer Joint Project Representative any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such Developer Joint Project Representative any individual personal liability, which WMATA hereby waives. ~~Developer represents that the Developer Project Representative 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.~~

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ARTICLE 10
CONDITIONS PRECEDENT TO CLOSING

10.1 **Developer's Conditions.** Without limiting any of Developer's rights elsewhere provided for in this Agreement, 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 not have exercised any right to terminate this Agreement;

10.1.4 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;

10.1.5 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;

10.1.6 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;

10.1.7 All written notices that have been received by WMATA of any ~~governmental~~Legal 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~~cured them sufficiently to cause the Title Insurer to remove ~~or insure over~~ them from the updated Title Commitment;

10.1.8 FTA Project Approval has been obtained by WMATA and evidence thereof provided to Developer;

10.1.9 Any required WMATA Compact Public Hearing shall have been held and the WMATA Board of Directors shall have approved the results of such WMATA Compact Public Hearing without any changes to the Approved Development Plan and Approved Drawings and Specifications unless

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approved in writing by Developer, such approval not to be unreasonably withheld, conditioned or delayed.

10.1.10 The Partial Alley Closing and Resubdivision shall have been completed.

~~10.1.8~~10.1.11 There exists no condition, that constitutes a material and adverse change to the environmental condition existing on ~~the expiration~~ date of ~~the Study Period~~Developer's last environmental assessment of the Lease Premises before the Study Period Termination Deadline that is the subject of the Closing which condition could not have been discovered ~~during~~prior to the Study Period Termination Deadline with the exercise of commercially reasonable diligence and thorough investigation, review and testing, including, without limitation, pursuant to a Phase I environmental site assessments of the Lease Premises and any further testing as would be properly recommended by any Phase I environmental site assessment. A "material and adverse change" in this Section 10.1.11 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.

~~10.1.9~~10.1.12 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 Agreement shall be subject to and conditioned upon the fulfillment (or written waiver by WMATA) 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 Developer shall have made payment of the Deposit, Pre-~~Stabilization~~Closing Period Payments, base rent under the Lease, and all other payments required to be made by Developer prior to or simultaneously with the Closing in accordance with the terms and conditions of this Agreement and the Lease, as applicable, shall have made ~~delivery or payment and satisfaction in full of any and all then accrued and outstanding Guaranty obligations~~; [23]

[23]. There cannot be any accrued payment obligations under the Guaranty which is only a completion guaranty.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009887

10.2.4 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;

10.2.5 Developer shall have obtained ~~adequate~~the Lease Premises and Fee Property Financing~~ for the Project~~, subject to all of the requirements set forth in Article 6;

10.2.6 Developer has at the time of Closing a Qualified Team~~ bound in writing to perform the obligations under this Agreement~~; [24]

~~10.2.7 All Interest Holders shall be bound to WMATA under the Loan Covenants;~~

~~10.2.8~~10.2.7 Full copies of all insurance policies required by the Lease or certificates of insurance if insurance policies have not been issued, each such policy or certificate evidencing satisfactory coverage beginning on the Closing Date, shall have been delivered to WMATA and approved by WMATA;

~~10.2.9~~10.2.8 Developer shall have obtained all of the Approvals for the Joint Project required as of the Closing Date;

~~10.2.10~~10.2.9 There shall have occurred no Change of Control of Developer without WMATA's written approval;

~~10.2.11~~10.2.10 Developer shall have delivered copies of the Payment and Performance Bond to WMATA and approved by WMATA~~;~~ with the originals of the Payment and Performance Bond being delivered to the first-lien Mortgagee; provided, however, if the first-lien Mortgage is a Federally-Insured Loan, then WMATA shall not be a co-obligee of or have approval rights over the Payment and Performance Bond;

~~10.2.12~~10.2.11 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~~10.2.12 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.

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

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[24]. WMATA does not control who makes up the Qualified Team, only that one is maintained by Developer.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009888

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.

~~10.4Notwithstanding 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.~~

[25]

ARTICLE 11
DEVELOPMENT RIGHTS AND OBLIGATIONS

11.1 **Joint Project Schedule.** Developer, within fifteen (15) Business Days following the ~~Development Plan Approval Date~~later of the receipt of Notice of WMATA's approval of the Approved Design and Construction Documents or the completion of the Partial Alley Closing and Resubdivision, whichever is later, shall prepare and submit to WMATA a project schedule for the Joint Project in compliance with the following requirements ("**Joint Project Schedule**"). The Joint Project Schedule shall be subject to WMATA's approval within thirty (30) Days of submission, not to be unreasonably withheld, conditioned or delayed, 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. The Joint Project Schedule shall provide for the ~~expeditious preparation, completion and submission by Developer of the Design and Construction Documents and the expeditious~~diligent and practical execution of all work required for the ~~applicable component of the~~substantial completion of the Joint Project. The Joint Project Schedule shall set forth the estimated time for performance and the projected dates for commencement and completion of each significant aspect of the construction work on the Joint Project~~.~~, 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 the~~completion of the prior significant aspects within the projected time period.[26] The Joint Project Schedule ~~by WMATA),~~

[25] Former Section 10.4 did not belong in Article 10. It has been moved to Section 23.22.

[26] If all the Base Rent is paid under the Lease at the Closing, neither the Developer nor its lender will permit the delay in completion of the Joint Project to be a Default under the Lease or this Agreement. WMATA

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009889

~~Developer shall achieve Substantial Completion and Final Completion not later than the dates shown or prescribed in the~~may be extended by the mutual consent of both parties, and shall be extended by Force Majeure or by Schedule Extension. Delays in the Joint Project Schedule~~. 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 Project Schedule, Developer confirms that the dates established for Substantial Completion and Final Completion provides a reasonable period for completion of the Project.~~solely due to WMATA's failure to act in a timely fashion, after Developer's request, or Force Majeure or Schedule Extension shall not constitute or permit a Default by Developer.

11.2 **Design and Construction Documents Preparation.** Not later than promptly following the Development Plan Approval Date and the completion of the Partial Alley Closing and Resubdivision, Developer, at its sole cost and expense, shall prepare all Design and Construction Documents and applications for all Approvals that Developer requires to construct the Joint Project. Developer shall continue such preparation and make all submissions and corrections required herein using Commercially Reasonable Best Efforts. The Design and Construction Documents 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. 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 and after Final Completion)~~;~~, and (2) the submittal must list all penetrations and planned modifications to or ~~in the vicinity~~within [_____ (__)] feet of any portion of the Metro Facilities as provided in the WMATA Adjacent Construction Manual.

11.3 **Compliance with WMATA's Standards and all Legal Requirements**. The Design and Construction Documents shall comply in all circumstances to the ~~current versions of the~~ WMATA Adjacent Construction Manual~~ and the WMATA Design Criteria.~~.[27] 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, regulations, or WMATA Adjacent Construction Manual~~ or WMATA Design Criteria~~, 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 , regulations, or WMATA Adjacent Construction Manual~~ or WMATA Design Criteria~~.

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will be economically protected by a commencement of notional Percentage Rent if there is a material delay in the completion of the Joint Project.

27 For purposes of the Design and Construction Document, all Approvals and construction through Final Completion, the definition of WMATA Adjacent Construction Manual shall be fixed at the version which exists on the Effective Date.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009890

11.4 **Submission to and Approval by WMATA of Design and Construction Documents.** Within [thirty (30)] Business Days ~~of the Development Plan~~following the later of the receipt of Notice of WMATA's approval ~~Date~~of the Approved Design and Construction Documents or the completion of the Partial Alley Closing and Resubdivision, and prior to the formal submission of any Design and Construction Documents to any ~~governmental~~Legal Authority for Approvals, Developer shall submit the Design and Construction Documents to WMATA for WMATA's review and approval pursuant to Section 11.8 and the ~~Submissions~~Submission Approval Procedure. [28]

11.5 **WMATA Approval of Design and Construction Documents.** WMATA shall have the right to approve 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 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, interior layout and design, allocations among residential, retail or parking space and similar issues and WMATA shall reasonably consent to components of the Design and Construction Documents that are consistent, in all respects with the Approved Development Plan. Developer shall promptly incorporate WMATA's Unconditional Approval Matters and all design modifications required to comply with WMATA's other reasonable requirements into the Design and Construction Documents. The Design and Construction Documents as finally approved by WMATA shall constitute the "**Approved Design and Construction Documents**~~"~~."

11.6 **Partial Closing of the Public Alley in Square 393 and Resubdivision of the Portion of the Property in Square 393 and Fee Property into a Single Lot.** Promptly after receipt of Notice of the Conditionally Approved Development Plan Approval Date, Developer, at its cost, shall use its Best Commercially Reasonable Business Efforts to achieve the Partial Alley Closing and Resubdivision. Upon the Partial Alley Closing and Resubdivision, if requested to do so by WMATA, Developer, at its cost, shall use its Best Commercially Reasonable Business Efforts to create two lots separately recognized by the D.C. Office of Tax and Revenue for assessment and taxation purposes, one being the portion of the Property in Square 393 and the other being the Fee Property in order to clarify to the D.C Office of Tax and Revenue the portion of the Joint Property owned by WMATA. WMATA shall cooperate with Developer's efforts to accomplish the Partial Alley Closing and Resubdivision and creation of assessment and taxation lots. All applications, plats and drawings for the Partial Alley Closing and Resubdivision and creation of assessment and taxation lots in Square 393 shall be approved by WMATA under the Submission Approval Procedure. Such cooperation shall include, but not be limited to, execution of all documents reasonably necessary or desirable to be executed by WMATA and appearance at all hearings and proceedings necessary or desirable to be

[28]. Can Developer submit partially completed but approved Design and Construction Documents to Local Authorities if necessary to start the Approvals process? If not, the Approval Period in Section 7.1 and Closing Date in Section 8.1.1 should be sufficiently lengthened to allow for the extra time to go through a sequential approval process rather than a concurrent approval process.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009891

attended by WMATA, all as reasonably requested by Developer, but without significant cost to WMATA or significant burden on its personnel.

~~11.6~~11.7 **Easements for the ~~WMATA~~WMATA's Reserved Areas and Interests.** Upon WMATA's approval of the Design and Construction Documents in accordance with the terms and provisions of this Agreement and the completion of the Partial Alley Closing and Resubdivision, Developer and WMATA shall create and reserve, perpetual exclusive and non-exclusive easements in favor of WMATA for the maintenance, operation, repair, use, replacement and general protection of the ~~WMATA~~WMATA's 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 and non-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~~ changes to the Design and Construction Documents approved by WMATA during the performance of construction of the Joint Project. To the extent any of the ~~WMATA~~WMATA's 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~~Design and Construction Documents, 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~~WMATA's Reserved Areas and Interests and for the use of the shared portions of the ~~WMATA~~WMATA's Reserved Areas and Interests, and (ii) set forth provisions concerning Developer's operation and maintenance of any shared components of the ~~WMATA~~WMATA's Reserved Areas and Interests which Developer is specifically obligated to operate and maintain, at Developer's sole cost and expense. [29] Developer shall covenant to not allow any interference with the use and enjoyment of the ~~WMATA~~WMATA's Reserved Areas and Interests by WMATA, its agents, employees, contractors, subcontractors, invitees and passengers to the extent Developer has access to and controls such WMATA's Reserved Areas and Interests. In addition, the Reserved Areas and Interests Easements shall impose upon Developer certain insurance requirements for the Developer Improvements constructed within the WMATA's Reserved Areas and Interests (including a waiver of subrogation and insured claims), indemnities for Developer's acts, restoration obligations in the event of a casualty caused by Developer, and limitations on Developer's ability to modify or alter any ~~WMATA~~WMATA's 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 and Developer's lender.

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[29] Is there a possibility of sharing components in the WMATA's Reserved Areas and Interests? If so, this needs to be considered in the design process.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009892

~~11.7~~11.8 **Progress Submissions.** Updated Design and Construction Documents shall also be submitted to WMATA representing approximately 35%, 65% and 100% completion of the ~~Project~~Design and Construction Documents. [30]

~~11.7.1~~11.8.1 WMATA shall review and provide the Developer with written notification of its approval or disapproval of these submissions pursuant to the ~~Submissions~~Submission Approval Procedure.

~~11.7.2~~11.8.2 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 ~~11.7~~11.8 shall continue to be applied until WMATA has approved the latest resubmission.

~~11.8~~11.9 **Failure to Submit.** Developer's failure to make the submissions required under this Article 11 shall constitute an Event of Default after the applicable Notice and failure to cure within the applicable grace period.

~~11.9~~11.10 **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.

~~11.10~~11.11 **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 Approved Design and Construction Documents and prior to commencement of any construction, Developer shall prepare and deliver to WMATA proposed covenants, conditions and restrictions to be recorded against the Property. [31] WMATA shall review and approve pursuant to the ~~Submissions~~Submission Approval Procedure, which approval shall not be unreasonably withheld, conditioned or delayed. 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 Joint Project Schedule or shall fail to record approved Covenants, Conditions and Restrictions against the Property on the Closing Date, 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

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30. Should this Section 11.8 be moved into Section 11.6? We assume it was a scrivener's error to require updated Design and Construction Documents during actual construction since that would be an unreasonable burden on the Developer.

31. Is this procedure being followed or is WMATA preparing Covenants, Conditions and Restrictions now?

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009893

interests in and operations at the ~~Property,~~WMATA's Reserved Areas and Interests, [32] including, without limitation, protections, easements, obligations and restrictions for the benefit of WMATA relating to the Metro Facilities (whether or not integrated into Developer Improvements to be constructed by Developer) and WMATA's Reserved Areas and Interests and any potential adverse impacts on ~~WMATA's transit operations~~Metro Facilities, and [33] (ii~~) shall require and limit construction on and use of the Property to the uses and improvements specified or to be determined in accordance with this Agreement and the Approved Development Plan, except only as approved by WMATA in its sole and absolute discretion and (iii~~) shall contain provisions for easements for the use, operation, maintenance, repair, replacement and general protection of the Metro Facilities and [34] ~~(iv) shall reaffirm all covenants and restrictions contained in this Agreement and the Lease and (v~~iii) shall be consistent with requirements imposed by the District of Columbia, and (iv) shall expressly "run with the land" and be binding on the owner and lessees of the Property only during the time of their actual ownership or tenancy. 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 and Developer shall be subject to the approval of WMATA, Developer and Developer's lender, such approval not to be unreasonably withheld, conditioned or delayed. The covenants, conditions and restrictions as finally and mutually approved and executed by WMATA and Developer (the "**Covenants, Conditions and Restrictions**"), shall 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~~.~~ created after their recordation. [35] Subject to such applicable requirements of the District of Columbia, WMATA, with the joinder of Developer and Developer's first-lien Mortgagee, shall have the right from time to time to reasonably amend the Covenants, Conditions and Restrictions (and to record the amended Covenants, Conditions and Restrictions against the Property), without limitation, to reflect the scope, characteristics and actual locations of as-built Developer Improvements, WMATA's Reserved Areas and Interests, and the Metro Facilities, provided that, Developer and Developer's first-lien Mortgagee shall have the right to review and pre-approve each such proposed amendment to the Covenants, Conditions and Restrictions so required by WMATA, such approval not to be unreasonably withheld, conditioned or delayed. Subject to the terms of this Section 11.11, Developer and ~~each of the Interest Holders~~WMATA shall each reasonably cooperate with ~~WMATA~~the other in connection with such amendments and recordation

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32. WMATA has no interests in or operations at the Lease Property that are not fully addressed in the Lease and should be addressed there if there are issues. Since the WMATA Reserved Areas and Interest at the Property are expressly excluded from the Lease Premises, that is an appropriate subject for the Covenants, Conditions and Restrictions.

33. Any limitations on uses of the Lease Premises or Developer Improvements belongs in the Lease, not in a separate document. WMATA doesn't need redundant limitations.

34. This Agreement will terminate on Final Completion and should not be continued beyond that. The Lease speaks for itself and doesn't need to be repeated in the Covenants, Conditions and Restrictions.

35. The Covenants, Conditions and Restrictions cannot be recorded until the Lease has been recorded. Otherwise, the Developer's joinder in them is without an interest in the Lease Premises.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009894

and provide all such other reasonable further assurances relating thereto as shall be reasonably requested by WMATA or Developer.

11.12 **Cotenancy Agreement**. In order to facilitate the continued operation of the Joint Project after the expiration or termination of the Lease, WMATA and Developer shall enter into that certain Cotenancy Agreement (the "**Cotenancy Agreement**") in the form of **Exhibit M** hereto, which will be recorded among the land records of the District of Columbia after the Lease and Covenants, Conditions and Restrictions but before any Mortgage encumbering any portion of the Joint Property so the Cotenancy Agreement is senior in priority to all Mortgages encumbering any portion of the Joint Property. The Cotenancy Agreement shall "run with the land" and be binding on WMATA and Developer and their respective successors as the owners of the Joint Project only during their actual periods of ownership.

Anything?

11.12.1 The Cotenancy Agreement shall not control the joint ownership of the Joint Project until the Lease has expired or been terminated, except for the restrictions and mutual right of first offer provisions in Section 11.12.7. If the Lease or a new lease is terminated and a lender obtains a new lease, the Cotenancy Agreement shall not control the joint ownership of the Joint Project until such new lease expires or is terminated without a new lease.

11.12.2 Upon the expiration or final termination of the Lease and any successor lease, the Cotenancy Agreement shall control the joint ownership, operation, leasing, insuring, financing, disposition and all other ownership activities concerning the Joint Project, which excludes the WMATA's Reserved Areas and Interests. For all purposes after the expiration or final termination of the Lease and any successor lease, WMATA shall own in fee simple the WMATA Percentage of the Joint Project and Developer shall own in fee simple the Developer Percentage of the Joint Project. All major or material decisions concerning the collective interests in the Joint Project shall be made by unanimous vote.

- why does this include Sq 416, LOT 31?
- where Do lines Split project?

11.12.3 The Developer and WMATA shall jointly select and hire a professional real estate management company to lease, manage and operate the Joint Project under a management agreement with not more than an initial three-year term and annual renewals thereafter if WMATA and Developer agree to extend the management agreement. The manager shall lease, operate, maintain, insure, refurbish and improve the Joint Project in a manner consistent with the customs and practices in the District of Columbia for mixed-use, Transit-Oriented Development projects with similar quality and location. All receipts and funds shall be kept in segregated accounts without comingling. The manager shall provide sufficient information to WMATA and Developer for each to file any tax returns they are obligated to file.

- where does $ come From?
- WMATA allowed to agree to this under Compact?

- Insurance
- Compact Restrictions

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009895

11.12.4 The Joint Project shall be operated in a manner to maintain conservative levels of operating and capital improvement reserves so the there is never a need for WMATA or the Developer to invest additional funds into the Joint Project. This will require reserves to be maintained at higher levels than a private owner would typically maintain. Reserves will be conservatively invested. WMATA and Developer shall each have full access to all books and records maintained by the manager and applicable to the Joint Project.

- where does this $ come from?
- Initial perm loan?
- who controls?
- what if Default/Term in 1st year

11.12.5 To the extent either WMATA or Developer can avoid some ordinary or capital expense or obtain a higher rent or other income from its portion of the Joint Project due to its being tax-exempt or having some other status which justifies a benefit only on its portion of the Joint Project, then such benefit shall be allocated solely to the cotenant who produced it. Subject to adjustments for the preceding sentence, the net proceeds from the operation of the Joint Project after the payment of all expenses and funding of all reserves will be distributed monthly with the WMATA Percentage thereof being paid to WMATA and the Developer Percentage thereof being paid to Developer.

How Does this affect net to WMATA?

11.12.6 Any financing of the Joint Project shall require the joint approval and joinder of both WMATA and Developer in their sole discretion. WMATA and Developer shall be entitled to separately finance their undivided interest in the Joint Project on a basis which is absolutely and unconditionally subordinate to the lien, operation and effect of the Cotenancy Agreement.

11.12.7 Neither WMATA nor Developer may sell, convey or master lease less than all their entire interest in the Joint Project. If either WMATA or Developer desire to sell their entire undivided interest in the Joint Project at anytime after the Closing Date, the selling cotenant must first offer its entire interest to the other cotenant for a minimum period of sixty (60) Days at a price and on terms the offeror plans to offer the public. If the offeree does not accept the offer within such sixty (60) Day period, then the offeror shall have a period of nine (9) months to sell its entire interest at a price and on terms not less favorable to the offeror than those offered to the offeree. If the offeror desires to sell its entire interest in the Joint Project at a price or on terms less favorable than those previously offered to the offeree, then the offeror shall again offer its entire interest in the Joint Project to the other cotenant on such reduced price and/or terms, including the right to match any contract the offeror has entered into, for a minimum period of thirty (30) Days. If the offeree does not accept the revised offer within such thirty (30) Day period and match any contract the offeror has entered into, then the offeror shall have a period of five (5) months to sell its entire interest in the Joint Project at a price and on terms not less favorable to the offeror than those re-offered to the offeree. Any sale, conveyance or master lease of either WMATA's or Developer's entire undivided interest in the Joint Project shall be made expressly subject and subordinate to the Cotenancy Agreement.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009896

11.12.8 If there is a sale or disposition of the entire Joint Project in a single transaction, WMATA shall be paid the WMATA Percentage of the net sales proceeds and Developer shall be paid the Developer Percentage of the net sales proceeds. A full or partial condemnation shall be deal with in the Cotenancy Agreement and the WMATA Percentage and Developer Percentage readjusted on an equitable basis after any partial condemnation.

11.12.9 Without creating a partnership or joint venture, the Cotenancy Agreement shall address all the joint ownership, operation, leasing, insuring, financing, disposition and all other ownership activities concerning the Joint Project.

~~11.11~~11.13 **Guaranty**. Guarantor shall guarantee~~: (1)~~ the prompt commencement and Final Completion of ~~the~~ construction of the ~~Project by the Final Completion Date in accordance with the Project Schedule and the Approved Development Plan, (2) the prompt commencement and Final Completion of construction of the~~Joint Project 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 Approved Development Plan, the Approved Design and Construction Documents, and the Approvals (including, without limitation, site plan and building permit requirements)~~, (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, that are to be constructed, paid for or provided by or at the expense of Developer under the terms of this Agreement and the Lease, and (6) the full and timely payment and performance of all other obligations of Developer under this Agreement and the Lease~~. All such obligations shall be evidenced and governed by the Guaranty, which shall be delivered to WMATA on the ~~Effective~~Closing Date~~ concurrently with the execution and delivery of this Agreement~~. Nothing contained in this Section ~~11.11~~11.13 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, the Lease, or any of the Transaction Documents.

Include Restoration?

~~11.12~~11.14 **Payment ~~Bond,~~and Performance Bond~~, and Restoration Bond~~.**

~~11.12.1~~11.14.1 Developer shall furnish a separate Payment~~,~~ and Performance~~, and restoration bonds~~ Bond covering faithful performance ~~of all contracts for construction of the~~by the general contractor of the construction contract for the Joint Project~~ and payment of obligations arising thereunder, respectively, which bonds~~, which Payment and Performance Bond shall be issued by a surety authorized to transact business in the District of Columbia and acceptable to WMATA in its reasonable discretion, as follows.

Term Sheet?

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009897

~~11.12.1.1~~11.14.1.1 A labor and materials 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. Such bond~~for the Joint Improvements in the construction contract between the Developer and general contractor. Such labor and materials payment bond runs to the laborers and materialmen who provide labor and materials for the Joint Improvements and, if permitted by the surety, may ~~be in the form of~~also have a dual obligee ~~bond,~~rider naming ~~both~~ the ~~Project lender~~Developer, the first-lien leasehold Mortgagee and WMATA as obligees thereof~~. The~~; provided, however, the first-lien leasehold Mortgagee advancing the funds for construction shall have decision control over actions taken against the surety under such bond. Any proceeds of such bond received by Developer or WMATA shall be applied ~~to Final Completion of the Project.~~in accordance with the terms of such bond, *i.e.*, to pay for labor and materials for the Joint Improvements.

~~11.12.1.2~~11.14.1.2 A performance bond in a penal sum equal to one hundred percent (100%) of the "contract price"~~ of~~ for the Joint Improvements in the construction contract between the Developer ~~Improvements as reflected in the Approved Design and Construction Documents~~and general contractor. Such performance bond runs to the Developer, as owner, and may ~~be in the form of~~also have a dual obligee ~~bond,~~rider naming ~~both~~ the ~~Project lender~~Developer, the first-lien leasehold Mortgagee and WMATA as obligees thereof~~. The~~; provided, however, the first-lien leasehold Mortgagee advancing the funds for construction shall have decision control over actions taken against the surety under such bond. Any proceeds of such bond received by Developer or WMATA shall be applied ~~to Final~~in accordance with the terms of such bond, *i.e.*, to pay for completion of the ~~Project~~Joint Improvements in accordance with the construction contract. [36]

~~11.12.1.3 A restoration bond in a penal sum equal to one hundred percent (100%) of the "Contract Price" to restore the Lease Premises back to the condition it was in on the Effective Date. Such bond~~

[36]. Under a performance bond, the surety has several options on how to cure the contractor's default under the construction contract. Typically, the surety does not pay money to the Developer (owner) or lender, but causes the general contractor to perform or brings in a replacement general contractor and pays the contractor directly for any amount required in excess of the payments owed by the Developer under the construction contract. WMATA's provisions don't follow the precise purpose of these bonds and what the lender providing the funds for the Joint Improvements is going to let WMATA do.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009898

~~may not be in the form of a dual obligee bond and shall name WMATA as the principal and sole obligee. The restoration bond shall be in a form approved by WMATA pursuant to the Submissions Approval Procedure. The restoration bond may be released upon written approval of WMATA, in its reasonable discretion, which shall be given upon Developer's completion of all below ground construction activity.~~

~~11.12.2~~11.14.2 Developer shall deliver the required ~~bonds to WMATA at least thirty (30) Days prior to~~Payment and Performance Bond at the Closing. [37]

~~11.12.3~~11.14.3 The Developer shall require any attorney-in-fact who executes the required ~~bonds~~Payment and Performance Bond on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

~~11.12.4~~11.14.4 Such ~~bonds~~Payment and Performance Bond shall comply with the other terms and conditions of this Agreement and the Lease for the benefit of WMATA and Developer, including, without limitation, ~~regarding the application and disposition of payments thereunder.~~the fact that if the first-lien Mortgage is a Federally-Insured Loan, HUD will not permit WMATA to have any interest in or control over the Payment and Performance Bond. If the entire base rent under the Lease is paid at the Closing, then the first-lien leasehold Mortgagee shall determine what interest in and control over the Payment and Performance Bond that WMATA shall have, if any.

~~11.12.5~~11.14.5 ~~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, the Lease, or any of the Transaction Documents and that WMATA shall be given notice~~To the extent required in the Lease, the first-lien leasehold Mortgagee shall send WMATA copies of any notice of default ~~by Developer~~ under ~~the construction contract(s) or construction loan documents~~such Mortgage. [38]

~~11.13~~11.15 **Signage.** The existence, content and location of all signs proposed to be placed and on the exterior of 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

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[37]. You can't get the Payment and Performance Bond until there is a signed construction contract. The Developer doesn't sign the construction contract until the Closing and/or the contractor will not incur the bond premium until the Closing. Therefore, the Payment and Performance Bond is always delivered at the Closing and not before.

[38]. The deleted language on activating the surety's obligation under the Payment and Performance Bond was inconsistent with what the Payment and Performance Bond does, which is insure the general contractor's performance under the construction contract so long as the Developer makes all required payments under such construction contract. No default by Developer under this Agreement, the Lease or any of the Transaction Documents is covered by the Payment and Performance Bond.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009899

to prior written approval by WMATA in its discretion. The existence, content and location of all signs proposed to be placed on the Property by WMATA or its agents, ~~and any and all signage that in any way relate, refer to, or provide directions to Developer Improvements~~ shall be subject to prior written approval by Developer in its discretion.

~~11.14~~11.16 **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
RESERVED~~.~~

ARTICLE 13
TRANSIT ORIENTED DEVELOPMENT; FTA PROJECT 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 Joint Project to be designed and to be constructed on the ~~Lease~~Joint 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 13.1 shall be ~~among~~included in 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~~Metro Stations are open and in operation on or about the Joint Property or (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 Joint 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 or Joint 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 promptly after it is received. If Developer does not receive evidence of FTA Project

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Approval within [_____ (__)][39] months, then Developer shall be entitled to a Schedule Extension for any further delay in receiving the FTA Project Approval. In the event FTA Project Approval is denied, and all possible appeals exhausted, this Agreement will 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 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, except as expressly set forth in this Agreement and other Transaction Documents.

13.4 **Americans with Disabilities Act.** All Developer Improvements constructed by Developer on the Lease Premises shall comply with ~~Title~~Titles II and III of the Americans with Disabilities Act, 42 U.S.C.~~,~~ §12101, *et seq.*, as amended~~,~~ ("**ADA**") and any regulations promulgated thereunder, to the extent applicable. If as a result of such Developer Improvements, or any subsequent alteration, addition or modification thereto, ADA-related improvements to the Metro ~~Station~~Stations or any Metro Facilities are required, Developer shall be solely responsible for the cost of all such ADA-related improvements and shall pay or reimburse WMATA for ~~all such~~the costs ~~on demand.~~thereof within thirty (30) Days after Notice thereof and demand for payment. Developer shall not be liable for ADA-related improvements to the Metro Stations if: (a) the requirements for such ADA-related improvements predate the date of completion of Developer Improvements and would have been required to be made to the Metro Stations or Metro Facilities regardless of Developer Improvements; or (b) WMATA is implementing such ADA-related improvements at WMATA facilities in general as part of its system-wide improvements or alterations.

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 and Explosives.** Developer shall not cause or permit any explosives or other Hazardous Materials ~~or equipment~~ to be used, generated, stored or disposed of, on or about, from or adjacent to the Property~~.~~, except in compliance with

[39]. Developer must receive evidence of FTA Project Approval before it can make any binding commitments for debt or equity. These commitments sometimes require significant up-front deposits that are forfeited if the Joint Project doesn't go forward without fault by the proposed lender or investor.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009901

applicable Laws, including Environmental Laws. To the extent the use, generation, storage or disposal of Hazardous Materials is permitted under applicable Laws, including Environmental Laws, then Developer shall exercise the highest reasonable standards prevailing in the industry for the storage and use of such substances or materials, consistent with normal construction practices.

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~~Stations or any Metro Facilities. ~~A provision to this effect shall be included in all Subleases delivered pursuant to this Agreement.~~[40]

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~~Stations, Metro Facilities, or WMATA's Reserved Areas and Interests. Developer shall not conduct or permit any activities to be conducted in, on, or about the Property that would interfere with or diminish WMATA's ability to realize transit revenues ~~in, on, or about~~at the ~~Property~~Metro Stations.

13.9 **Developer Responsibility for ~~Taxes~~Impositions; Acknowledgment of WMATA's 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. Between the Effective Date and the Closing Date, any and all taxes and other Impositions resulting solely from any and all activities of Developer shall be ~~their~~Developer's sole responsibility and obligation and not that of WMATA. The Lease shall provide that from and after the Closing Date, Developer (and not WMATA) shall be responsible for the payment of any and all taxes, Impositions, and other government fees relating to the Lease Premises, including, without limitation, real estate taxes and impervious surface fees. [41]

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 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~~ [42] warrants, represents, and agrees that as of the date of this Agreement, no Person described in the first sentence of this ~~subparagraph~~Section 13.10.1, nor any entity with which such Person is

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[40]. The following provision belongs in the Lease, not in this Agreement: "A provision to this effect shall be included in all Subleases delivered pursuant to this Agreement [sic, Lease]."

[41]. This sentence belongs in the Lease, not in this Agreement.

[42]. The Consultants are not a party to this Agreement and cannot make a representation.

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affiliated, has any such interest in Developer or, to Developer's actual knowledge, 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~~District of Columbia 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 any gift, favor, entertainment, hospitality, transportation, loan or other tangible item or any intangible benefit for which the recipient did not pay fair market value and which is not offered to the public generally) 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. In the event of a violation of this paragraph, WMATA shall have the right to terminate this Agreement by Notice to the Developer, in which event, the then remaining 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. The terms of this ~~paragraph~~Section 13.11 shall be strictly construed and enforced in the event of violation ~~hereto~~of such terms.

ARTICLE 14
ASSIGNMENT OF AGREEMENT

14.1 **Assignment**

14.1.1 Prior to Final Completion ~~of the Project~~, this Agreement shall not be assignable by the Developer ~~or the Guarantor~~. [43]

[43]. The Guarantor isn't a party to the Agreement and holds no interest in it to assign.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009903

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.~~ [44] No assignment of this Agreement shall relieve or release Developer or Guarantor from any of their respective obligations under this Agreement or the Guaranty, as applicable~~,~~ and without limitation. Prior to Final Completion, WMATA shall not be required to consent to any assignment that would adversely affect WMATA's rights, expectations and requirements under this Agreement.

14.1.3 All assignments (in addition to requiring the consent of WMATA) shall be made expressly subject to the terms, guarantees, covenants and conditions of this Agreement and the Transaction Documents 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, as applicable.

14.1.3.3 Such assignment of this Agreement by Developer 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 ~~or the Transaction Documents~~.

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~~.

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[44] We have provided the Agreement and Guaranty terminate upon Final Completion. Therefore, the Lease, not this Agreement, will control the Developer's assignment rights and obligations after Final Completion.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009904

14.2.2 ~~After Final Completion, there shall be~~[45] No Change of Control ~~in the~~shall relieve or release Developer~~,~~ or Guarantor from any of their respective obligations under this Agreement or the Guaranty, as applicable and without ~~WMATA's prior written approval, in WMATA's sole discretion.~~limitation. Prior to Final Completion, WMATA shall not be required to consent to any Change ~~in~~of Control that would materially and adversely affect WMATA's rights, expectations and requirements under this Agreement.

ARTICLE 15
RESERVED

[46]

~~**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 this Agreement, 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**. Exclusive possession of the Lease Premises shall be delivered to Developer at Closing by WMATA, pursuant to the terms of the Lease (except as contemplated by the Permitted Exceptions or otherwise expressly set forth in the Lease); 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. Except only for Developer's license during the ~~Study~~Access 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, right of entry, interest, lien, charge,

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45. We have provided the Agreement and Guaranty terminate upon Final Completion. Therefore, the Lease, not this Agreement, will control any Change in Control after Final Completion.

46. WMATA's remedies for a Default are covered in Article 18 and include certain Notice and grace provisions. It only creates the possibility of conflicting provisions to repeat part of them here.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009905

or other encumbrance on the Property or WMATA's right, title or interest therein prior to the Closing Date. 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 for 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.~~Section 17.1.

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 not to damage, interfere with or adversely affect in any way such Metro Facilities or any ancillary equipment or facilities which are part of the Metro Facilities. Without limiting the foregoing, Developer and each Consultant while on or adjacent to the Property shall protect the Metro Facilities, including, without limitation, any and all adjacent right-of-way areas on the Property from any and all falling objects caused by Developer or such Consultant, as applicable. It shall be the responsibility of Developer to inform each Consultant of the requirements of this ~~subsection~~Section 17.2.1. 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~~Section 17.2.1.

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~~ROE, 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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009906

operations ~~thereof~~of Metro Facilities. 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, conditioned or delayed, 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,~~ROE,[47] 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~~Access Period, shall survive Closing ~~and shall run with the land and shall be deemed a part of and shall be incorporated within~~[48] until Final Completion. The Covenants, Conditions and Restrictions may contain similar provisions.[49]

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~~the Closing as required under the terms of this Agreement; or

18.1.2 If WMATA makes any material and adverse misrepresentation under Section 9.1 of this Agreement or any of the other Transaction Documents; or

18.1.3 If following the Study Period ~~and the Approval Period~~Termination Deadline, WMATA fails to pay when due and payable any Impositions it is legally required to pay in respect of the ~~Lease Premises~~Property and any such failure is not cured within ~~thirty~~ten (~~30~~10) Business Days after receipt of Notice (or such additional period as may be otherwise ~~provided under this Agreement or~~ agreed to 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~~

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47. This Agreement covers the due diligence for and construction of the Developer Improvements. The Lease will contain a separate indemnification. They do not need to be repeated, which may cause conflicts.

48. The concept of "running with the land" is typically limited to recorded documents.

49. This Agreement terminates at Final Completion. The Covenants, Conditions and Restrictions can separately address certain issues from Article 17.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009907

~~Closing or completion of construction of the~~extension of time does not materially adversely affect Developer's Approvals, financing or equity contributions for the Joint Project); [50] 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 to 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~~. [51]

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~~.~~, so long as such postponement does not jeopardize Developer's Approvals, financing commitment or equity contribution commitment. [52]

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 the terms of this Agreement), or~~, with the prior written consent of WMATA,~~ proceed to cure WMATA's Default and offset the cost of such cure against the payment of base rent under the Lease if the cure occurs prior to the Closing or against the payment of any other rent due under the Lease if the cure occurs after the Closing.

18.3 **Developer's Default.**

7.1.1 [50]. This is an unreasonable risk for the Developer to take, even though there is a very small possibility of unpaid Impositions. Any loan commitment or equity commitment will have a deadline for the Closing and a prohibition on stopping construction or not proceeding with all development activities beyond construction. WMATA should not be permitted to delay the Closing or jeopardize the Developers financing or equity contributions because WMATA wants to pick a fight with D.C. over an Imposition. For that reason, the grace period was reduced to ten Business Days.

[51]. WMATA is in Default whether or not it stops the Closing or construction. Those are not appropriate conditions to relieve WMATA of its obligations under this Agreement.

[52]. Please identify any right in this Agreement for WMATA to adjourn or postpone closing. Such a right will jeopardize Developer's financing commitment and any equity commitment and possibly jeopardize the Approvals.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009908

18.3.1 The following shall constitute a **"Default"** by Developer under this Agreement:

18.3.1.1 If 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, and such failure continues for ten (10) Business days after Developer's receipt of Notice from WMATA; or

18.3.1.2 If Developer fails to comply with or adhere to any material obligations under Article 3 or Section 4.5 and such failure is not cured within ~~five~~ten (~~5~~10) 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 material obligations under ~~any~~ Article 14 (Assignment of Agreement) and such failure is not cured within ~~five~~ten (~~5~~10) Business Days after receipt of Notice from WMATA; or

18.3.1.4 If Developer fails to comply with or adhere to any material obligations under Section 2.6.2 (maintaining Qualified Team) and such failure is not cured within twenty (20) Business Days after receipt of Notice from WMATA; or

18.3.1.5 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 ~~five~~ten (~~5~~10) Business Days after receipt of Notice from WMATA; or

18.3.1.6 If Developer fails to comply with or adhere to any material 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~~the same may be extended,[53] within twenty (20) Business Days after receipt of Notice from WMATA; or

18.3.1.7 If Guarantor shall breach any material 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

[53]. The deleted language would permit WMATA to create an artificial deadline where none exists in Article 11. We believe WMATA has provided deadlines as to all material actions Developer is obligated to perform in Article 11 and the delete language is unnecessary and inappropriate.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009909

any, and such breach continues after Guarantor's receipt of Notice beyond the expiration of any applicable notice and cure period specified in the Guaranty or such other Transaction Document which shall not be less than ten (10) Business Days under any circumstances; or

18.3.1.8 If Developer makes any material and adverse misrepresentation in this Agreement or any of the other Transaction Documents, or if Guarantor makes any material and adverse misrepresentation in the Guaranty, or if any of them make any material and adverse misrepresentation in any other material Submission to WMATA; or

~~18.3.1.9~~ ~~If Developer or Guarantor make any material misrepresentation to any governmental authority for or in connection with the transactions contemplated by this Agreement; or~~

~~18.3.1.10~~ 18.3.1.9 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 bankruptcy or insolvency 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~~.~~; or

~~18.3.1.11~~18.3.1.10 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~~Developer's or Guarantor's property or for Developer's interest in this Agreement; or (iv) for the reorganization of Developer or Guarantor or for a material and adverse 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

~~18.3.1.12~~18.3.1.11 If Developer shall breach any other material covenant of Developer contained in this Agreement, any of the

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009910

Transaction Documents, or in any ~~right of entry agreement~~ROE between Developer and WMATA or fail to perform any other material obligation and such failure is not cured within ~~twenty~~thirty (~~20~~30) Business Days after receipt of Notice.

18.4 **WMATA's Remedies.**

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 under this Agreement, the Transaction Documents, 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~~ or 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 and performance under the Guaranty.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009911

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.

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. Developer shall have no right to terminate this Agreement on account thereof, so long as such fire or other casualty does not extend the Closing Date and exclusive possession of the Lease Premises is delivered to Developer at Closing. WMATA shall not, in any event, be obligated to effect any repair, replacement or 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~~Any Taking contemplated by this ~~subsection~~Section 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 in Developer's reasonable opinion 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 consistent with all the requirements in this Agreement and the other Transaction Documents, then Developer or WMATA shall have the right to terminate this Agreement as to the Lease Premises that is not the subject of such Partial Taking, as applicable, upon Notice to the other within ninety (90) Days after the date of the Partial Taking of the Lease Premises Such Notice shall state the date of termination, which shall not be later than the date of the Taking~~.~~, whereupon 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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009912

20.2.2 **Reserved.**

20.2.3 If prior to the Closing, a Partial Taking occurs and neither WMATA nor 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, except that WMATA and Developer shall make reasonable changes to this Agreement and the other Transaction Documents to recognize the reduction in the Lease Premises and adjust all the provisions thereof for such reduction. Developer shall pay the revised 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~~Section 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 20, the date of the Taking shall be the date on which title to such portion of the Property vests in the ~~condemnor~~condemner.

20.3 **Condemnation Proceeds.** 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. Developer hereby irrevocably assigns to WMATA any and all of its 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~~twelve (~~15~~12) Business Days after receipt of the Dispute Notice, the ~~parties'~~WMATA Joint Project ~~Representatives~~Representative and the Developer Joint Project Representative 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~~twelve (~~15~~12)-Business Day period, then upon the written request of the Aggrieved Party to the other party and the other party's written agreement to participate in further non-binding alternative dispute resolution mechanisms (the "**Alternative Dispute Notice**"), the following provisions with respect to non-binding, alternative resolution of the dispute shall govern:

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009913

21.1.1 If the Dispute Notice specifies a monetary amount less than $500,000, then (a) within three (3) Business 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) Business 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) Business 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 after agreeing to the Alternative Dispute Notice, the Aggrieved Party shall file a demand with the American Arbitration Association (the "AAA") in Washington, D.C. ~~simultaneously with delivering~~within five (5) Business Days after the later of agreement on the Alternative Dispute Notice ~~to the other party~~or receipt of the decision of the Dispute Review Panel. Such arbitration shall be conducted in Washington, D.C. in accordance with the applicable rules of the American Arbitration Association (the "**AAA Rules**"). The arbitrator(s) 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 21.1.2 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,~~

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009914

~~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.~~

21.2 **Reserved.** [54]

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. For that reason, both parties must affirmatively agree in the Alternative Dispute Notice to participate in any arbitration or neither party will be obligated to do so.

ARTICLE 22
CERTIFICATES BY WMATA AND DEVELOPER

22.1 **Certificate by WMATA.** WMATA agrees, upon not less than twenty (20) Days' prior Notice from Developer, to execute, acknowledge and deliver a written statement to Developer or to any actual or prospective holder of a Mortgage, securities rating agencies, auditors, purchasers or investors as Developer may specify, which: (1) certifies that this Agreement is unmodified and in full force and effect (or if modified that this Agreement 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 Agreement, and, if in default, specifies each such default of which WMATA has knowledge; (3) certifies to the best knowledge of WMATA as to the existence of any offsets, counterclaims or defenses to this Agreement 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. Any such statement delivered pursuant to this Section 22.1 may be relied upon by any prospective assignee of Developer's interest in this Agreement, any existing or prospective securities rating agency, auditor, existing or prospective holder of a Mortgage or investor providing financing or funds to Developer for the Joint Project, or to any other prospective holder of a Mortgage or investor for the Joint Project, but reliance on such certificate may not extend to any default of Developer as to which WMATA shall have no actual knowledge.

22.2 **Certificate by Developer**. Developer agrees, upon not less than twenty (20) Days' prior Notice from WMATA, to execute, acknowledge and deliver to WMATA or any person, entity, or agency designated by WMATA, a written statement which: (1) certifies that this Agreement is unmodified and in full force and effect (or if modified, that this Agreement 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 Agreement and, if in default, specifies each such default of which Developer has knowledge; (3) certifies to the best knowledge of Developer as to the existence of any offsets, counterclaims or defenses to this Agreement

[54] If WMATA wants to follow the AAA Rules, then follow the AAA Rules on discovery as well.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009915

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. Any such statement delivered pursuant to this Section 22.2 may be relied upon by WMATA or any prospective purchaser of the fee of the Property, any mortgagee to WMATA and any auditor or governmental agency, but reliance on such certificate may not extend to any default of WMATA as to which Developer shall have no actual knowledge.

ARTICLE 23
MISCELLANEOUS

~~22.1~~23.1 **Recitals, Exhibits and Schedules.** All Recitals, Exhibits and Schedules annexed hereto from time-to-time are incorporated herein and made a part of this Agreement for all purposes.

~~22.2~~23.2 **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~~23.3 **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~~23.4 **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~~23.5 **Notices.**

~~22.5.1~~23.5.1 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 other 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: The Jazz @ Florida Avenue
Attn: Mr. Omar A. Karim
c/o Banneker Ventures, LLC
729 15th Street, N.W., Suite 400
Washington, D.C. 20005
Phone: (202) 393-5460

And with a copy to: Banc of America Community

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009916

Development Corporation

Attn: Mr. Maurice Perry
730 15th Street, N.W., Eighth Floor
Washington, D.C. 20005
Phone: (202) 442-7526

If to WMATA:

Washington Metropolitan Avenue
Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001
Attn: Director of Station Area Planning
and Asset Management
Phone: (202-) 962-2616
Fax: (202) [-]

And with a copy to:

Washington Metropolitan Avenue
Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001
Attn: Carol O'Keeffe
Phone: [(202) [-]
Fax: [(202) [-]~~Phone:~~ _____
~~Fax:~~ _____

~~22.5.2~~23.5.2 Any of the parties may designate a change of address ~~by Notice~~for themselves or any other Person receiving Notice and designate additional Persons who are to receive copies of all Notices by sending Notice thereof in writing to ~~the~~all other ~~parties~~Persons who have been designated to receive Notice in conformity with this Section 23.5. 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~~23.6 **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 of Columbia, and the parties hereto expressly consent to the venue and jurisdiction of such court.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009917

~~22.7~~23.7 **Entirety and Amendments.** This Agreement ~~embodies~~and the other Transaction Document embody 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.

~~22.8~~23.8 **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~~23.9 **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~~23.10 **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~~23.11 **Disadvantaged Business Enterprises; Non-Discrimination Obligation.** Developer acknowledges that WMATA may implement a minority business enterprise program and agrees to follow WMATA's guidelines and policies that apply to the Project. 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~~23.12 **Sovereign Immunity; Anti Deficiency Clause.** Subject to the provisions of this Section ~~22.12~~23.12, 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 of 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

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009918

the appropriation and availability of funding through WMATA's normal and customary budgetary procedures.

~~22.13~~23.13 **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 Agreement; both parties, being represented by counsel, having fully participated in the negotiation of the terms of this Agreement.

~~22.14~~23.14 **Confidentiality.** Other than information that is in the public domain, 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 and/or enforce the terms of this Agreement, or any development activity, subleasing, financing or equity funding relating thereto; or (iii) to Developer's or WMATA's actual and prospective lenders, attorneys, accountants, equity providers, tenants, subtenants, licensees, Consultants 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.~~Other than information that is in the public domain, such information shall be kept confidential without WMATA's prior written authorization to disclose, which may be granted or denied in WMATA's sole discretion~~.~~, provided that Developer may disclose such information (i) as required by Law; (ii) to consummate and/or enforce the terms of this Agreement, or any development activity, subleasing, financing or equity funding relating thereto; or (iii) to Developer's or WMATA's actual and prospective lenders, attorneys, accountants, equity providers, tenants, subtenants, licensees, Consultants and the like.

~~22.15~~23.15 **Time Of The Essence.** The parties agree that time is of the essence under this Agreement.

~~22.16~~23.16 **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.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009919

~~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.~~

23.17 [55] **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, or of mortgagee and mortgagor, or of partnership, or of joint venture, or of any association or agency between WMATA and Developer, the sole relationship between these parties being that of parties contracting as to certain rights and obligations with respect to the Property. Except as otherwise expressly provided by specific terms and provisions of this Agreement, neither party shall have the power to bind or obligate the other party.

23.18 **Recordation of Agreement.** Neither this Agreement nor any memorandum thereof (or other document containing any of its terms as an exhibit thereto) shall be recorded without the prior written consent of WMATA in its sole and absolute discretion.

~~22.18~~23.19 **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~~23.20 **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.

23.21 **Effect of Force Majeure.** In computation of any period of time provided for in this Agreement or by applicable Law, the day of the act or event from which such period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until the end of the next Business Day. Any Force Majeure which results in a delay in the performance or completion of any action or matter by a party shall extend the time, by the Schedule Extension, for performance and/or completion of any action or matter under this Agreement; provided that the party seeking to extend such time shall have notified the other of the occurrence and Schedule Extension within a reasonable time, considering the circumstances and extent of such Force Majeure and the nature of and time requirement for such performance or completion.

23.22 **Termination of this Agreement**. This Agreement shall automatically terminate upon the achievement of Final Completion. Upon any termination of this Agreement, WMATA and Developer shall promptly execute and deliver to each other a memorandum of termination of this Agreement or instruct the escrow agent holding the Memorandum of Termination under Section 23.23 to release such Memorandum of Termination to

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[55]. The section on Litigation Expenses was deleted because it is not enforceable against WMATA per the last sentence of Section 23.12.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009920

WMATA and Developer. Notwithstanding anything to the contrary, WMATA's failure prior to the termination of this Agreement to assert a claim for indemnity or other liabilities under this Agreement which expressly continue beyond 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 WMATA prior to termination or constitute a waiver or an admission of any kind with respect to such indemnity or other liability which expressly continues beyond the termination of this Agreement.

~~22.20~~23.23 **Memorandum of Termination.** Upon any termination of this Agreement, WMATA shall have the right to record a Memorandum of Termination of this Agreement if this Agreement has been recorded, notwithstanding the prohibition in Section 23.18. Developer and WMATA shall execute and deliver to ~~WMATA~~a mutually-acceptable escrow agent [56] under written escrow instructions on the Effective Date in recordable form two counterparts of a memorandum of termination, which will be released from escrow when this Agreement is terminated. WMATA is authorized to record its counterpart of the memorandum of termination following the occurrence of any termination. If Developer recorded this Agreement in violation of Section 23.18, then Developer shall pay any and all recording fees and charges to record the memorandum of termination and in respect of said items and shall indemnify WMATA for its costs of ~~enforcing this provision~~causing such recordation. The provisions of this Section ~~22.20~~23.23 shall survive any termination of this Agreement.

[End of this Page; Signatures on Next Page]

[56] If a memorandum of termination is signed by Developer and delivered to WMATA on the Effective Date, WMATA has the power to terminate the Agreement at any time and the Agreement may be terminated as a matter of Law because WMATA holds an executed and delivered memorandum of termination. If a memorandum of termination is going to be signed on the Effective Date, it should be signed by both parties and delivered to an escrow agent under written instructions on when to release it from escrow.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009921

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: _____

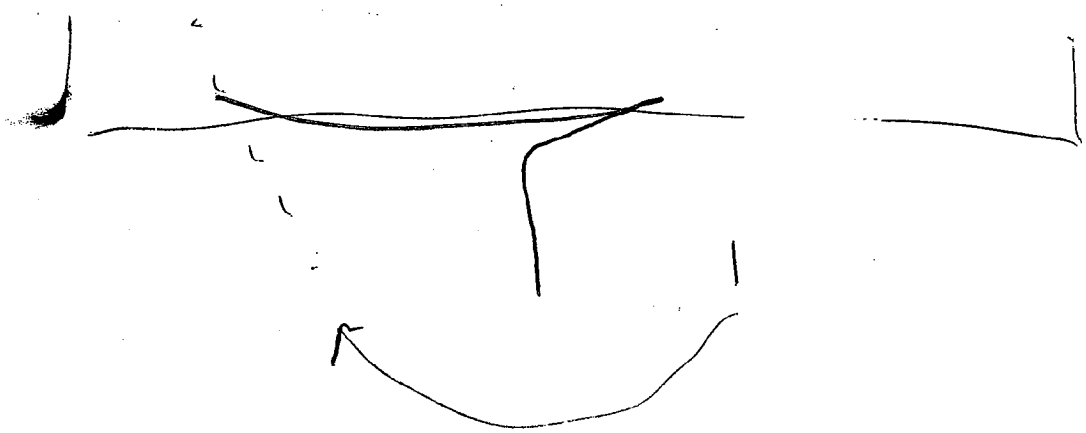
FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009922

~~EXHIBITS~~

~~A. DEFINITIONS~~
~~B. PROPERTY DESCRIPTION~~
~~C. LEASE PREMISES~~
~~D. WMATA RESERVED AREAS AND INTERESTS~~
~~E. LEASE~~
~~F. DEVELOPER IMPROVEMENTS~~
~~G. RIGHT OF ENTRY PERMIT~~
~~H. PROJECT SCHEDULE~~
~~I. PROPOSED DEVELOPMENT PLAN~~
~~J. APPROVED DEVELOPMENT PLAN~~
~~K. FORM OF GUARANTY~~
~~L. COVENANTS, CONDITIONS AND RESTRICTIONS~~

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009923

Summary Report: Litera Change-Pro ML WIX 6.5.0.104 Document Comparison done on 9/7/2009 1:08:29 AM	
Style Name: Default Style	
Original Filename:	
Original DMS:dm://WINSTON/4178271/1	
Modified Filename:	
Modified DMS: dm://WINSTON/4178271/2	
Changes:	
Add	1010
~~Delete~~	608
~~Move From~~	50
Move To	50
Table Insert	47
~~Table Delete~~	30
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Total Changes:	1795



Montague, Joshua W.

From: Montague, Joshua W.
Sent: Friday, May 29, 2009 10:25 AM
To: Heppen, Bruce P.
Subject: FW: Revised Florida Avenue Economic Terms Chart

Importance: High

Hi Bruce,

There is a legal concern in WMATA continuing to proceed with Banneker if the NPV of Banneker's bid drops below, or even comes too close to, the losing bids on the Florida Avenue project.

Even if it could be argued that a NPV drop due to the post-bid affordable housing requirement might affect the Banneker and Moddie Turay bids equally; this does not reconcile with the Lakritz Adler bid that was entirely commercial in nature.

Like our recent Monument Realty dispute, courts have said that a losing bidder can protest a WMATA contract award if they can show that they were significantly prejudiced by errors in the procurement process. So, WMATA must be mindful that a court can set aside a contract award decision if it finds that WMATA's contract award decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

In light of the above, we should discuss the possible consequences of accepting a bid from Banneker that is less than the Moddie Turay or Lakritz Adler bids.

Josh

From: Doggett, Rosalyn
Sent: Friday, May 29, 2009 8:59 AM
To: Montague, Joshua W.
Subject: FW: Revised Florida Avenue Economic Terms Chart

Josh, see the last item in Nat's list.

From: Bottigheimer, Nat
Sent: Thursday, May 28, 2009 8:57 PM
To: Moneme, Emeka; Doggett, Rosalyn; Meister, Mark K.
Subject: RE: Revised Florida Avenue Economic Terms Chart

Emeka--

As I understand it, the earliest we could get an appraisal would be 45 days from now. That's too long to wait for, so I've asked for staff analysis of appraised value -- which is different from an actual appraisal -- that would get us close.

If and when we get an actual appraisal, I believe it should be used to confirm valuations as opposed to being the basis for negotiations.

The key issues for me are:

FOIA CONFIDENTIAL TREATMENT REQUESTED

Is Banneker's proposal more valuable than our assessment of the land's worth?

How much has the value of the property declined since we first appraised and offered the property?

How much of a reduction in land value is caused by the affordable housing requirements in place?

Are there legal obstacles to us continuing to proceed with Banneker?

These are the things that are folks are working on at the moment.

Thanks,

Nat

From: Moneme, Emeka
Sent: Thursday, May 28, 2009 5:34 PM
To: Doggett, Rosalyn; Meister, Mark K.; Bottigheimer, Nat
Subject: RE: Revised Florida Avenue Economic Terms Chart

Have we received the re-appraisal for this site yet?

Emeka

From: thicks [mailto:thicks@bannekerventures.com]
Sent: Wednesday, May 27, 2009 11:14 AM
To: Montague, Joshua W.; Doggett, Rosalyn
Cc: Maurice L. Perry; okarim@bannekerventures.com; eric.smart@bolansmart.com; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
Subject: Revised Florida Avenue Economic Terms Chart
Importance: High

Mrs. Doggett,
As a follow-up to our meeting yesterday, attached please find the revised Florida Avenue Economic Terms Chart. We look forward to receiving a final determination on the 5 remaining open items in the coming days. Please call us if you have any further questions. Thanks.
Tiwana

Tiwana Z. Hicks

Banneker Ventures, LLC

700 12th Street, NW, Suite 700

Washington, DC 20005

Office: (202) 667-4110

Fax: (301) 565-4982

Cell: (202) 486-1863

thicks@bannekerventures.com

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009927

Montague, Joshua W.

From: Doggett, Rosalyn
Sent: Friday, May 29, 2009 8:59 AM
To: Montague, Joshua W.
Subject: FW: Revised Florida Avenue Economic Terms Chart

Josh, see the last item in Nat's list.

From: Bottigheimer, Nat
Sent: Thursday, May 28, 2009 8:57 PM
To: Moneme, Emeka; Doggett, Rosalyn; Meister, Mark K.
Subject: RE: Revised Florida Avenue Economic Terms Chart

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From: Moneme, Emeka
Sent: Thursday, May 28, 2009 5:34 PM
To: Doggett, Rosalyn; Meister, Mark K.; Bottigheimer, Nat
Subject: RE: Revised Florida Avenue Economic Terms Chart

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Sent: Wednesday, May 27, 2009 11:14 AM
To: Montague, Joshua W.; Doggett, Rosalyn
Cc: Maurice L. Perry; okarim@bannekerventures.com; eric.smart@bolansmart.com; Moneme, Emeka; Meister, Mark K.; Bottigheimer, Nat
Subject: Revised Florida Avenue Economic Terms Chart
Importance: High

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009928

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Tiwana

Tiwana Z. Hicks

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Bid Protest

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*75 Fed. Cl. 549, *; 2007 U.S. Claims LEXIS 49, **

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EMERALD COAST FINEST PRODUCE CO. INC., Plaintiff, v. THE UNITED STATES, Defendant, and MILITARY PRODUCE GROUP, LLC, Defendant-Intervenor.

No. 06-742 C

UNITED STATES COURT OF FEDERAL CLAIMS

75 Fed. Cl. 549; 2007 U.S. Claims LEXIS 49

January 26, 2007, Filed under seal

SUBSEQUENT HISTORY: [1]** February 22, 2007, E-Filed for publication
Motion denied by Emerald Coast Finest Produce Co. v. United States, 76 Fed. Cl. 445, 2007 U.S. Claims LEXIS 153 (Fed. Cl., May 7, 2007)

PRIOR HISTORY: Emerald Coast Finest Produce Co. v. United States, 74 Fed. Cl. 679, 2006 U.S. Claims LEXIS 360 (2006)

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff disappointed bidder filed a post-award bid protest challenging a contract award under a solicitation issued by defendant, the United States, acting through the Defense Commissary Agency of the Department of Defense. The parties filed cross-motions for judgment on the administrative record. The United States then filed a motion for remand.

OVERVIEW: The **procurement** was for a contract to supply fresh produce in various commissaries. The award went to a bidder with a higher technical score than the disappointed bidder. During the bid protest, the government conceded that its source selection authority (SSA) failed to take into account an amendment to the solicitation that deleted a delivery location. Therefore, the government sought a remand so its SSA could consider the amendment. However, the court found that the technical evaluation board (TEB) also failed to follow the terms of the solicitation and evaluate each proposal with respect to each geographical Group within each Area. The TEB apparently evaluated an offeror's proposal for an entire Area even though some proposals, including the winning one, had significantly different offerings for different geographical groups. Thus, the court found that the

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009930

evaluations, as conducted by the TEB, were flawed and rendered the award decision **irrational.** This finding, however, did not support judgment in the disappointed bidder's favor because it had not shown that the errors were **prejudicial.** Therefore, the court ordered a remand for a proper evaluation by the TEB and the SSA.

OUTCOME: The court granted the government's motion for a remand in part and otherwise denied it. The court ordered the matter remanded to the agency so it could conduct an evaluation by the TEB and a decision by the SSA on the winning proposal and the disappointed bidder's proposal in accordance with the terms of the solicitation. In order to minimize the opportunity for further error, the court directed a limited re-evaluation.

CORE TERMS: military, solicitation, administrative record, contracting, procurement, offeror, bid, protest, teaming, commissary, defendant-intervenor's, evaluated, evaluation process, interested party, prejudicial, bidder, briefing, partners, rated, Tucker Act, agency action, oral argument, abuse of discretion, post-award, capricious, ontracting, cross-motions, overnment, protester, fficer

LEXISNEXIS® HEADNOTES Hide

Public Contracts Law > Dispute Resolution > Bid Protests
Public Contracts Law > Dispute Resolution > Jurisdiction

HN1 The Tucker Act, as amended by the Administrative Disputes Resolution Act (ADRA), 28 U.S.C.S. § 1491(b), confers jurisdiction on the United States Court of Federal Claims to render judgment on an action by an interested party objecting to a solicitation by a **Federal agency** for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a **procurement** or a proposed **procurement.** 28 U.S.C.S. § 1491(b)(1). More Like This Headnote

Administrative Law > Judicial Review > Standards of Review > Abuse of Discretion
Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Review
Public Contracts Law > Dispute Resolution > Bid Protests

HN2 The United States Court of Federal Claims reviews a bid protest action under the standard set forth in the Administrative Procedure Act (APA), 5 U.S.C.S. § 706. The APA provides that an agency's decision is to be set aside only if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C.S. § 706(2)(A). The court implements this APA standard by applying the standard as previously interpreted by the district court in Scanwell Labs. Inc. v. Shaffer, 424 F.2d 859 (D.C. Cir. 1970). More Like This Headnote

Public Contracts Law > Dispute Resolution > Bid Protests

HN3 A bid award may be set aside if either (1) the **procurement** official's decision lacked a **rational basis;** or (2) the **procurement** procedure involved a violation of regulation or procedure. When challenging a **procurement** on the ground of a regulatory violation, the protester must show a clear and **prejudicial** violation of the applicable statutes or regulations. The protester must also show that there was a substantial chance that it would have received the contract award absent the alleged error. Therefore, an agency's **procurement** decisions will be upheld unless shown to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. More Like This Headnote | *Shepardize:* Restrict By Headnote

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009931

Public Contracts Law > Dispute Resolution > Bid Protests

HN4 Standing to bring a protest as an interested party under the Administrative Disputes Resolution Act (ADRA), 28 U.S.C.S. § 1491(b), is limited to actual or prospective bidders or offerors whose direct economic interest would be affected by the award of the contract. The United States Court of Appeals for the Federal Circuit has defined "interested party" further as that which has greater than an insubstantial chance of securing the contract if successful on the merits of the bid protest. The term interested party excludes those who did not submit proposals, bidders who withdrew from a solicitation, and offerors who were not competitively ranked for the award. More Like This Headnote | *Shepardize:* Restrict By Headnote

Public Contracts Law > Dispute Resolution > Bid Protests

HN5 The United States Court of Federal Claims has the authority to grant a remand of a case to another body at the request of a party or on its own motion. The Tucker Act, which provides jurisdiction to the court generally, also grants the court the power to remand, stating that in any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. 28 U.S.C.S. § 1491(a)(2). U.S. Ct. Fed. Cl. R. 52.2(a)(1) reiterates the court's authority to remand, stating that at the request of a party or on its own motion, the court may in any case within its jurisdiction by order remand appropriate matters to any administrative or executive body or official with such direction as may be deemed proper and just. More Like This Headnote

Administrative Law > Judicial Review > Administrative Record > Disclosure & Discovery

HN6 When adjudicating a motion for judgment on the administrative record, the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court. However, in limited circumstances, a court may grant a party's request to supplement the administrative record. Those circumstances are the following: (1) when **agency action** is not adequately explained in the record before the court; (2) when the agency failed to consider factors which are relevant to its final decision; (3) when an agency considered evidence which it failed to include in the record; (4) when a case is so complex that a court needs more evidence to enable it to understand the issues clearly; (5) in cases where evidence arising after the **agency action** shows whether the decision was correct or not; (6) in cases where agencies are sued for a failure to take action; (7) in cases arising under the National Environmental Policy Act; and (8) in cases where relief is at issue, especially at the preliminary injunction stage. The exceptions to the general rule against extra-record evidence are based upon necessity, rather than convenience, and should be triggered only where the omission of extra-record evidence precludes effective judicial review. More Like This Headnote

Public Contracts Law > Dispute Resolution > Bid Protests

HN7 To prevail in a bid protest, a plaintiff must show not only that significant errors occurred in the **procurement** process, but also that the errors were **prejudicial.** In order to demonstrate that the errors were **prejudicial,** the plaintiff must show that, if defendant had made no errors, there was a reasonable likelihood that it would have been awarded the contract. More Like This Headnote | *Shepardize:* Restrict By Headnote

Administrative Law > Judicial Review > Standards of Review > Abuse of Discretion
Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Review
Public Contracts Law > Dispute Resolution > Bid Protests

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009932

HN8 The applicable standard of review for a post-award bid protest is provided by the Administrative Procedure Act (APA), 5 U.S.C.S. § 706. Section 706 directs a reviewing court to hold unlawful and set aside **agency action,** findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C.S. § 706(2)(A). The scope of review under this standard is a narrow one because the reviewing court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. The court is not empowered to substitute its judgment for that of the agency. More Like This Headnote |
Shepardize: Restrict By Headnote

Available Briefs and Other Documents Related to this Case:

U.S. Court of Federal Claims Motion(s)
U.S. Court of Federal Claims Pleading(s)

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HEADNOTES

Post-Award Bid Protest; Remand to Agency to Conduct Evaluation in Accordance with the Solicitation.

COUNSEL: Cyrus E. Phillips, IV, Washington, DC, for plaintiff.

Leslie Ohta, with whom were Peter D. Keisler, Assistant Attorney General, David M. Cohen, Director, and Steven J. Gillingham, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, DC, for defendant. Elliot Clark, Assistant General Counsel, Defense Commissary Agency, Fort Lee, VA, of counsel.

Daniel Weckstein, Norfolk, VA, for defendant-intervenor, Walter B. Martin and Stephanie M. Himel-Nelson, Norfolk, VA, of counsel.

JUDGES: EMILY C. HEWITT, Judge.

OPINION BY: EMILY C. HEWITT

OPINION

[*550] *ORDER*

HEWITT, Judge

This is a post-award bid protest filed by Emerald Coast Finest Produce Company, Incorporated (Emerald Coast), a fresh produce distributor that serves military facilities, Plaintiff's Statement of Facts (Facts) 2, [1] challenging an award to Military Produce Group, LLC (Military Produce Group) under a solicitation issued by the United States, acting through the Defense Commissary Agency of the Department of Defense, Resale Contracting Division (DeCA), *id.* at 2-3. The parties filed cross-motions for judgment on the administrative **[**2]** record in accordance with Rule 52.1 [2] of

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009933

the Court of Federal Claims (RCFC). Plaintiff's Motion for Judgment on the Administrative Record, No v. 24, 2006; Defendant's Opposition to Plaintiff's **[*551]** Motion for Judgment on the Administrative Record and Defendant's Cross Motion for Judgment upon the Administrative Record, Dec. 15, 2006. On January 16, 2007, defendant filed a motion for stay of proceedings or remand. For the following reasons, defendant's motion is GRANTED-IN-PART and otherwise DENIED. The court REMANDS the case to DeCA, which shall cause to occur an evaluation by the Technical Evaluation Board (TEB) and a decision by the Source Selection Authority (SSA) on the plaintiff's and defendant-intervenor's proposals in accordance with the terms of the solicitation. In order to minimize the opportunity for further error, the court directs that the proposals of Emerald Coast and Military Produce Group be re-evaluated only with respect to Area 5, Group 1.

FOOTNOTES

1 Facts relied on in this opinion and cited to a statement of facts or other filings of only one of the parties do not appear to be in dispute. **[**3]**

2 Although the parties cite to Rule of the United States Court of Federal Claims (RCFC) 56.1, that rule was abrogated and succeeded by RCFC 52.1 on June 20, 2006. RCFC 56.1, Rules Committee Notes (2006).

I. Background

DeCA operates military commissary stores "on Department of Defense installations for the economic benefit of military personnel, their families, and . . . other persons granted access to these . . . stores." Facts 3. The stores stock and sell a wide variety of grocery food products and non-food products, such as health and beauty aids. *Id.* at 3-4. Military commissary stores sell their products at reduced prices by selling them at cost plus a standard surcharge. *Id.* at 4. Congress allows these stores to sell at reduced prices in order to "enhance the quality of life of members and the uniformed services, retired members, and dependents of such members" and to "support military readiness, recruitment, and retention." 10 U.S.C. § 2481(a)-(b) (2000).

DeCA issued Request for Proposal Number HDEC02-06-R-0005 (the RFP) on March 20, 2006, seeking competitive **[**4]** proposals for the daily supply of fresh fruits and vegetables to seventy-seven military commissary stores located in the northeast and southeast of DeCA's East Region. [3] Facts 5-6. With regard to Area 5, Group 1, eight offerors submitted proposals. *See* Administrative Record (AR) 01970. The TEB reviewed the submissions, and the SSA determined that six of the eight fell into the competitive range. *See id.* Emerald Coast and Military Produce Group were two of those six, and they were given an opportunity to respond to the TEB's concerns to their initial proposals and to revise and re-submit their proposals. *Id.* The TEB then evaluated the revised proposals and assigned a numeric score to each based upon technical capability and past performance. *See* AR 02026. The SSA received these scores and based her selection decision upon them. *See* AR 00561.

FOOTNOTES

3 The Defense Commissary Agency of the Department of Defense, Resale Contracting Division (DeCA) divides the regions it serves into "Areas" and "Groups." Facts 6. The regions that are at issue in this case is Area 5, Group 1, which includes military commissary stores located in the mid-South, and Area 5, Group 2, which includes military commissary stores located in the Southeast. *Id.*

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009934

[5]** During the time period in between the TEB's evaluation of the proposals and the SSA's selection decision, DeCA issued Amendment 0004 to the RFP. AR 00723; Defendant's Motion for Stay of Proceedings or Remand, Jan. 16, 2007, (Def.'s Mot. or Motion) 1. Amendment 004 deleted Fort Buchanan, Puerto Rico as a delivery location for the distributors. AR 000723. Neither the TEB nor the SSA took Amendment 004 into account when evaluating Military Produce Group's technical capability and past experience. Def.'s Mot. 1.

On August 22, 2006, the SSA awarded the contract for Area 5, Group 1 to Military Produce Group because she determined that Military Produce Group's proposal provided the best value to the government. AR 02080; AR 02101. In the SSA's statement, she specifically compares Military Produce Group to Emerald Coast in a cost/technical trade-off analysis. *See* AR 02078-80. The SSA stated:

> **Military Produce Group** submitted a proposal that was evaluated as the highest technically rated proposal and slightly lower minimum percentage of patron savings for the base period and both option years. Therefore, in considering the solicitation's evaluation criteria that [t]echnical **[**6]** [c]apability is significantly more important than [p]ast [p]erformance[,] and when those two evaluation factors are combined they are **[*552]** significantly more important than [p]rice, it is determined that the higher technically rated proposal, slightly lower minimum percentage of patron savings proposal submitted by **Military Produce Group** is the better value to the [g]overnment than the lower technically rated, slightly higher minimum percentage of patron savings proposal submitted by **Emerald Coast Finest Produce**.

AR 02080.

On November 1, 2006, plaintiff filed its Post-Award **Procurement** Protest Complaint (complaint or compl.). On January 16, 2007, defendant filed its Motion. Pursuant to the court's order dated January 17, 2007, defendant filed its Memorandum in Support of Motion for Stay of Proceedings or Remand (Def.'s Memo.), and plaintiff filed its Opening Brief in Support of Plaintiff's Opposition to Defendant's Motion for Stay of Proceedings or Remand (Pl.'s Opp. or Opposition) and Response Brief in Support of Plaintiff's Opposition to Defendant's Motion for Stay of Proceedings or Remand (Pl.'s Resp.). Defendant-Intervenor also filed an Opening Brief **[**7]** Regarding Defendant's Motion to Stay Proceedings (Def.-Int. Br. or Brief). An oral argument on defendant's Motion was held at the United States Court of Federal Claims on January 23, 2007.

II. Discussion

A. Bid Protest Standards of Review

*HN1*The Tucker Act, as amended by the Administrative Disputes Resolution Act (ADRA), 28 U.S.C. § 1491(b) (2004), confers jurisdiction on this court

> to render judgment on an action by an interested party objecting to a solicitation by a **Federal agency** for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a **procurement** or a proposed **procurement**.

28 U.S.C. § 1491(b)(1).

*HN2*The court reviews a bid protest action under the standard set forth in the Administrative Procedure Act (APA), 5 U.S.C. § 706 (2004). *NVT Techs., Inc. v. United States*, 370 F.3d 1153, 1159 (Fed. Cir. 2004). The APA provides that an agency's decision is to be set aside only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with **[**8]** law." 5

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009935

U.S.C. § 706(2)(A). *See also* Galen Med. Assocs., Inc. v. United States, 369 F.3d 1324, 1329 (Fed. Cir. 2004); *Impresa Construzioni Geom. Domenico Garufi v. United States*, 238 F.3d 1324, 1332 (Fed. Cir. 2001) (*Impresa*); *Advanced Data Concepts, Inc. v. United States*, 216 F.3d 1054, 1057 (Fed. Cir. 2000). "[T]he court implements this APA standard by applying the standard as previously interpreted by the district court[] in [*Scanwell Labs., Inc. v. Shaffer*, 137 U.S. App. D.C. 371, 424 F.2d 859 (D.C. Cir. 1970)]." [4] *Banknote Corp. of Am., Inc. v. United States*, 365 F.3d 1345, 1351 (Fed. Cir. 2004).

FOOTNOTES

4 In *Scanwell*, the circuit court upheld the district court's review of government **procurement** decisions under the APA. *See* *Scanwell Labs., Inc. v. Shaffer*, 137 U.S. App. D.C. 371, 424 F.2d 859, 874-75 (D.C. Cir. 1970).

*HN3*The Federal Circuit has stated that, under the APA standard applied in *Scanwell*, and now under the ADRA, **[**9]** "'a bid award may be set aside if either (1) the **procurement** official's decision lacked a **rational basis;** or (2) the **procurement** procedure involved a violation of regulation or procedure.'" *Id.* (quoting *Impresa*, 238 F.3d at 1332). When challenging a **procurement** on the ground of a regulatory violation, the protester "must show a clear and **prejudicial** violation of [the] applicable statutes or regulations." *Id.* (quoting *Impresa*, 238 F.3d at 1333). The protester must also "show that there was a 'substantial chance' [that] it would have received the contract award absent the alleged error." *Id.* (quoting *Emery Worldwide Airlines, Inc. v. United States*, 264 F.3d 1071, 1086 (Fed. Cir. 2001)). Therefore, "an agency's **procurement** decisions will be upheld unless shown to be 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" *Process Control Techs. v. United States*, 53 Fed. Cl. 71, 75 (2002) (quoting 5 U.S.C. § 706).

B. Standing

*HN4*Standing to bring a protest as an "interested party" under the ADRA is "limited **[*553]** to actual or prospective bidders **[**10]** or offerors whose direct economic interest would be affected by the award of the contract." AFGE, Local 1482 v. United States, 258 F.3d 1294, 1302 (Fed. Cir. 2001). The Federal Circuit has defined "interested party" further as that which has "greater than an insubstantial chance of securing the contract if successful on the merits of the bid protest." *Info. Tech. & Applications Corp. v. United States*, 316 F.3d 1312, 1319 (Fed. Cir. 2003) (*Info. Tech.*). "The term 'interested party' excludes those who did not submit proposals, bidders who withdrew from a solicitation, and offerors who were not competitively ranked for the award." *Microdyne Outsourcing, Inc. v. United States*, 72 Fed. Cl. 230, 232 (2006) (citing *Impresa*, 238 F.3d at 1334).

The court determines that, as an offeror whose proposal was considered by the contracting officer for the challenged award and who, as far as appears in the record, AR 02080, was the offeror against whose proposal Military Produce Group's proposal prevailed in the SSA's final best value analysis, Emerald Coast is a protester whose direct economic interest was **[**11]** affected by the contract award to Military Produce Group. Emerald Coast, therefore, has standing to bring this action as an interested party.

C. Defendant's Motion for Stay of Proceedings or Remand

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009936

1. Legal Standards

*HN5*The court has the authority to grant a remand of a case to another body at the request of a party or on its own motion. The Tucker Act, which provides jurisdiction to this court generally, also grants the court the power to remand: "[i]n any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just." 28 U.S.C. 1491(a)(2). RCFC 52.2 reiterates the court's authority to remand: "[a]t the request of a party or on its own motion, the court may in any case within its jurisdiction by order remand appropriate matters to any administrative or executive body or official with such direction as may be deemed proper and just." RCFC 52.2(a)(1).

*HN6*When adjudicating a motion for judgment on the administrative record, "the focal point for judicial review should be the administrative record already in existence, **[**12]** not some new record made initially in the reviewing court." *Camp v. Pitts*, 411 U.S. 138, 142, 93 S. Ct. 1241, 36 L. Ed. 2d 106 (1973). However, in limited circumstances, a court may grant a party's request to supplement the administrative record. *See Esch v. Yeutter*, 278 U.S. App. D.C. 98, 876 F.2d 976, 991 (D.C. Cir. 1989). Those circumstances are the following:

> (1) when **agency action** is not adequately explained in the record before the court; (2) when the agency failed to consider factors which are relevant to its final decision; (3) when an agency considered evidence which it failed to include in the record; (4) when a case is so complex that a court needs more evidence to enable it to understand the issues clearly; (5) in cases where evidence arising after the **agency action** shows whether the decision was correct or not; (6) in cases where agencies are sued for a failure to take action; (7) in cases arising under the National Environmental Policy Act; and (8) in cases where relief is at issue, especially at the preliminary injunction stage.

Id. "The *Esch* exceptions to the general rule against extra-record evidence are based upon necessity, rather than convenience, and should be **[**13]** triggered only where the omission of extra-record evidence precludes effective judicial review." *Murakami v. United States*, 46 Fed. Cl. 731, 735 (2000).

*HN7*To prevail in a bid protest, the plaintiff must "show not only that significant errors occurred in the **procurement** process, but also that the errors were **prejudicial**." *Advanced Data Concepts, Inc.*, 216 F.3d at 1057. In order to demonstrate that the errors were **prejudicial**, the plaintiff must show that, if defendant had made no errors, "there was a reasonable likelihood that [it] would have been awarded the contract." *Data Gen. Corp. v. Johnson*, 78 F.3d 1556, 1562 (Fed. Cir. 1996).

*HN8*The applicable standard of review for a post-award bid protest is provided by the **[*554]** APA, 5 U.S.C. § 706 (2004). Section 706 directs a reviewing court to "hold unlawful and set aside **agency action**, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The scope of review under this standard "is a narrow one" because the "reviewing court must 'consider whether the **[**14]** decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.'" *Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 285, 95 S. Ct. 438, 42 L. Ed. 2d 447 (1974) (quoting *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416, 91 S. Ct. 814, 28 L. Ed. 2d 136 (1971)). "The court is not empowered to substitute its judgement for that of the agency." *Id.*

2. The Parties' Arguments

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009937

On January 16, 2007, while briefing on cross-motions for judgment on the Administrative Record was underway, defendant filed a motion, requesting that the court stay the proceedings or grant a remand to the contracting officer. *See generally* Def.'s Mot. Defendant made such a request "for the purpose of allowing the Source Selection Authority ('SSA') the opportunity to address one of the issues raised by plaintiff." *Id.* at 1. That issue was plaintiff's allegation that "the SSA failed to take into account the fact that the commissary for which Military Produce Group . . . had a teaming arrangement, that is, Fort Buchanan had been eliminated by amendment to the solicitation." *Id.* Defendant stated that, "[g]iven that the amendment was issued **[**15]** after the Technical Evaluation Board ('TEB') rated the offerors, and before the SSA made her decision regarding the award, the SSA may have failed to properly consider the impact of the amendment in evaluating [Military Produce Group's] technical capability and past experience." *Id.* The court held a telephonic status conference with the parties on January 16, 2007 to discuss defendant's motion. In its order dated January 17, 2007, the court directed the parties to file opening and responsive briefs in support of their positions regarding defendant's motion.

Defendant admits that the evaluation process that ultimately awarded Military Produce Group the bid for Area 5, Group 1 was flawed. Defendant states in its briefing that the contracting officer "in connection with her evaluation of a number of sub-factors, referred to [Military Produce Group] and its teaming partners[] when[,] in fact[,] [Military Produce Group] did not have any teaming partners." Def.'s Memo. 4. Defendant claims that "this was a harmless error," *id.* at 2, and states that it does not concede that the contracting officer's decision lacked a **rational basis,** *id.* at 4. After oral argument, the **[**16]** court understood the government to have conceded that the evaluation by both the TEB and by the SSA was erroneous and that plaintiff is entitled to have the error on evaluation corrected. *See generally* Transcript of Oral Argument *Emerald Coast Finest Produce Co., Inc., v. United States*, No. 06-742 C, 75 Fed. Cl. 549, 2007 U.S. Claims LEXIS 49 (Fed. Cl. argued Jan. 23, 2007) (Trans.). Defendant also urges the court not to enter judgment in favor of plaintiff on the basis of this error, claiming that plaintiff has not carried its burden of proof to demonstrate that it was prejudiced by defendant's error. Def.'s Memo. 6-7.

Plaintiff argues that the court should enter judgment in favor of it and remand the matter to DeCA with the instruction to appoint a different contracting officer, to obtain a new evaluation from the TEB, and to obtain a new source selection decision. Pl.'s Opp. 27-28. Plaintiff believes that defendant's motion should be denied because "[d]efendant has not, and cannot, suggest good grounds why this Administrative Record needs to be supplemented, by way of remand or by a [d]eclaration from this [c]ontracting [o]fficer, before this [p]ost-[a]ward **[p]rocurement** [p]rotest can be decided by **[**17]** the [c]ourt." *Id.* at 19. Plaintiff states that if the AR is to be supplemented at all, "then this supplementation should only be obtained through a very limited [d]eclaration from this [c]ontracting [o]fficer [that is] limited to an explication of this [c]ontracting [o]fficer's reasons for her [a]ward of Area 5, Group 1 to Military Produce Group." *Id.* at 21 (citing *Impresa*, 238 F.3d at 1339).

[*555] 3. The TEB's Evaluation Process

Defendant admits that the contracting officer did not take Amendment 0004, which removed Fort Buchanan, Puerto Rico from its list of delivery locations, *see* AR 00723, into consideration when determining that Military Produce Group offered the government the best value, Def.'s Memo. 1, 2. Defendant "acknowledges that the [contracting officer], in connection with her evaluation of a number of sub-factors, referred to [Military Produce Group] and its teaming partners, when[,] in fact[, Military Produce Group] did not have any teaming partners." *Id.* at 4.

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However, defendant's briefing appears to make this admission only because of Amendment 0004. Defendant does not appear to acknowledge that, had **[**18]** Amendment 0004 not existed, the TEB still would have, nevertheless, evaluated Military Produce Group as if it had a teaming arrangement for Area 5, Group 1, despite the fact that that particular teaming arrangement in its proposal applied only to Area 5, Group 2. Defendant's error, therefore, is not only that the contracting officer did not take Amendment 0004 into account, but also that the evaluation process did not follow the terms set forth by the solicitation.

According to the solicitation, a source selection decision for contract award was to be made for *each individual Group* within each Area. Under the heading "Source Selection Decision," the solicitation states:

> The source selection decision for contract award will be made *for each individual [G]roup* and award will be made to the responsible offeror whose offer conforming to the solicitation will provide the best value to the [g]overnment considering the evaluation factors as stated.

AR 00603 (emphasis added). The Source Selection Plan that accompanied the solicitation, AR 00557-63, stated that "[a]ward(s) will be determined by *each geographical [G]roup*," *id.* at 00563 **[**19]** (emphasis added).

In its evaluation process, however, the TEB did not, at least with respect to Military Produce Group, follow the terms of the solicitation and evaluate each proposal with respect to each geographical Group within each Area. *See* AR 01965, 01970-07; Defendant-Intervenor's Statement of Facts in Support of Defendant-Intervenor's Cross-Motion for Judgment on the Administrative Record, Dec. 19, 2006, 7-8. Rather, the TEB apparently evaluated an offeror's proposal for an entire Area: Military Produce Group was evaluated as an offeror for Area 5 generally. *Id.* Separate evaluations were not conducted for Group 1 and Group 2 within Area 5, even though Military Produce Group's teaming arrangement was only applicable to Group 2 within Area 5. *Id.*

Thus, the evaluations, as conducted by the TEB, are flawed. The TEB should have evaluated Military Produce Group's proposal for Area 5, Group 1 separately from Area 5, Group 2 because the resources it offered to perform Group 1 (no teaming arrangement) and Group 2 (with teaming arrangement) were significantly different. It is **irrational** to make an award for a Group within an Area based on an evaluation of a significantly **[**20]** different offer for another Group within the Area. The TEB failed to follow the solicitation's terms.

4. Remedy

Because the evaluation procedure employed by the TEB was inconsistent with the solicitation, the current award for Area 5, Group 1 to Military Produce Group cannot stand. The question now arises whether the court should remand the case to the contracting officer, as defendant requests, enter judgment in plaintiff's favor, as plaintiff's requests, or order another alternative.

The court has the authority to remand to an administrative or executive body under both the Tucker Act and RCFC 52.2. *See* 28 U.S.C. § 1491(a)(2); RCFC 52.2(a)(1). The Court of Federal Claims recently exercised that authority in a case involving defendant's admission of error. *See* *Diversified Maint. Sys., Inc. v. United States*, 74 Fed. Cl. 122 (2006) (*DMS*). *DMS* concerned an unsuccessful bidder for a construction and maintenance contract entered by the United States Department of the Army (Army) who claimed that the winning bid came from an ineligible party. *DMS*, 74 Fed. Cl. at 122-23. **[*556]** The defendant filed a motion requesting **[**21]** a remand because it confessed error in determining the successful bidder's eligibility. *Id.* at 123. Finding that "the situation at hand is not one of those rare circumstances where a remand would be

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inappropriate," the court remanded the case to the agency to determine plaintiff's protest regarding the successful bidder. *Id.* at 127.

Unlike the defendant's mistake in *DMS*, however, the court finds in this case that defendant's errors in this evaluation process render the decision **irrational.** That finding, however, does not support judgment in plaintiff's favor. In order to prevail in a bid protest, the plaintiff must prove both that significant errors occurred in the **procurement** process and that the errors were **prejudicial.** *See* *Advanced Data Concepts, Inc.*, 216 F.3d at 1057; *Data Gen. Corp.*, 78 F.3d at 1562. As defendant asserts in its memorandum, plaintiff "must demonstrate that the [g]overnment's actions actually prejudiced Emerald Coast in the **procurement** process by proving that there was a substantial chance it would have received the contract award but for the error." Def.'s Memo. 7. Plaintiff does not make **[**22]** any argument in its briefing regarding whether or not defendant's errors were **prejudicial**. Pl.'s Opp. *passim*; Pl.'s Resp. *passim*.

Given the information that is before the court at this juncture, the court cannot determine whether or not plaintiff had a substantial chance of winning the contract award. The TEB's failure to evaluate the offerors' proposals with respect to Area 5 on a Group by Group basis, so that the evaluation could rationally be used to support an award by the SSA on an individual Group basis, as the solicitation contemplated, taints the offerors' scores in such a way that it is impossible to determine which proposal offered the best value to the government and/or how Emerald Coast's proposal and Military Produce Group's proposal ranked in relation to one another. This circumstance, while not a circumstance that could support a judgment for plaintiff at this juncture, certainly should not, as defendant-intervenor suggests, Trans. 16:21-17:22 (Weckstein), support dismissal, especially where, as here, the uncertainty is a direct result of defendant's erroneous evaluation.

III. Conclusion

For the foregoing reasons, defendant's Motion is GRANTED-IN-PART **[**23]** and otherwise DENIED. The court REMANDS the case to DeCA, which shall cause to occur an evaluation by the TEB and a decision by the SSA on plaintiff's and defendant-intervenor's proposals in accordance with the terms of the solicitation. *See* RCFC 52.2(a). In order to minimize the opportunity for further error, the court directs that such evaluation pursuant to this remand shall be limited to Area 5, Group 1. DeCA shall file the Administrative Record of Remanded Proceedings on or before Thursday, February 22, 2007. Except for activities related to the remand, proceedings in this case shall be stayed up to and including February 22, 2007. On Monday, February 26, 2007 at 2:00 p.m. EST, the court will hold a telephonic status conference with the parties to discuss further proceedings. A Sprint operator will initiate the call. [5]

FOOTNOTES

[5] This Order is filed under seal. If any party believes that this Order contains protected material that should be redacted before publication, that party shall, by motion to be filed on or before February 7, 2007, request the court that such protected material be redacted. The motion shall indicate the specific protected material as to which redaction is requested and, with respect to each such proposed redaction, the reason(s) for the request. Note added February 22, 2007: no requests for redaction having been received, the foregoing opinion is to be published.

[24]** IT IS SO ORDERED.

s/ Emily C. Hewitt

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Judge

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Mandatory Terms: **date from 1/1/1990**

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009941

Florida Avenue – NPV and Affordable Housing issues

Bidding Issues:

1. NPV of the three final offers at the time of board approval:
    a. Banneker (winner) – $14 million
    b. Moddie Turay - $11.8 million
    c. Lakritz Adler (hotel) - $6 million
    d. FYI: WMATA Appraisal at that time - $7.5 million

Affordable Housing:

1. Inclusionary Zoning:
    a. 10% of units
    b. Income Target:
        i. 50% of affordable units must be at 50% AMI
        ii. 50% of affordable units must be at 80% AMI
    c. Note: DC distinguishes between stick-built and concrete-built structures. Only stick built requirements were provided because the Developer has indicated that it will build a stick-built structure.
    d. Note: Final regulations are now in effect.

2. Duke Plan:
    a. It is unclear whether the Duke Plan is a requirement or not.
        i. The Duke Plan does not have an affordable housing requirement, but rather provides guidance for Developers and District agencies.
        ii. According to the DC Office of Planning, this *guidance* is basically a *requirement* when the Developer is seeking to get a PUD approved.
        iii. The Developer has said they are not going to seek a PUD for additional density, but they have indicated: 1) that they hope to close the alley way between two of our lots; and 2) that they hope to build a building which traverses both of our smaller lots and the adjacent lot which they will own in fee.
    b. The Duke Plan's guidance states the following:
        i. The Duke Plan's Planning Goals are to "develop 20 to 30 percent affordable housing in residential development, particularly on publicly owned land."
        ii. The Duke Plan's Howard Theatre Sub-District Plan specifically mentions Florida Avenue's Lot 2 (*8,621 square feet, Square 393, Lot 45*), and recommends 20-30% Affordable Housing Target

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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 009943

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MONUMENT REALTY LLC, *et al.*, Plaintiffs, v. WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, Defendant.	Civil Action No. 07-1821 (EGS)

Memorandum Opinion

Monument Realty LLC ("Monument"), and its affiliate MR Ballpark 7 LLC ("MRB 7"), collectively referred to as plaintiffs, commenced this action against the Washington Metropolitan Area Transit Authority ("WMATA") alleging that WMATA breached its contract to sell Monument real property, known as the Southeast Bus Garage ("Bus Garage"), located in the District of Columbia. Plaintiffs also challenge WMATA's decision to award a competitive bid for the sale of the Bus Garage to the John Akridge Company ("Akridge"). Pending before the Court is plaintiffs' motion to enjoin the disposition of the Bus Garage. Upon consideration of the motion for a preliminary injunction, the response and reply thereto, supplemental memoranda, the arguments made at the hearing on January 23, 2008, and the applicable law, the motion is **GRANTED**.

I. Background

A. Parties

Monument and MRB 7 are limited liability companies doing business in the District of Columbia. Amend. Compl. ¶¶ 1-2. MRB 7 was created by Monument on July 18, 2007 for the purpose of purchasing the Southeast Bus Garage, which is located in the Ballpark District of Washington, D.C.[1] *Id.* ¶ 2.

WMATA was created in 1966, when Congress, acting pursuant to the Compact Clause of the Constitution, U.S. Const. art. I, § 10, cl. 3, approved the Washington Metropolitan Area Transit Authority Compact between Maryland, Virginia, and the District of Columbia to deal with growing traffic problems in the Washington area. *See* Pub.L. No. 89-774, 80 Stat. 1324 (1966) (codified as amended at D.C. Code Ann. § 1-2431 (1992)); H. Rep. No. 89-1914, at 5-6 (1966). Responsible for creating a coordinated public transportation system for the region, WMATA now operates an extensive Metrobus and Metrorail system running throughout northern Virginia, the District, and two Maryland counties. *Beebe v. WMATA*, 129 F.3d 1283, 1285 (D.C. Cir. 1997). WMATA is the record owner of the real property at issue, the Bus Garage.

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[1] The Ballpark District is a planning area in Southeast, Washington, D.C., directly adjacent to and including the new Washington Nationals baseball stadium currently under construction. It is bounded by the Southwest-Southeast Freeway to the North, South Capitol Street to the West, New Jersey Avenue, S.E. to the East, and the Anacostia River to the South. *See* Amend. Compl. at 1-2. The property at issue is located at Lots 857 and 866, Square 700, commonly known as the Southeast Bus Garage, and includes an adjacent surface parking lot. *See id.* at 1.

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B. Procedural History

On October 26, 2007, plaintiffs filed a motion for a temporary restraining order ("TRO"), a motion for a preliminary injunction, and a twelve-count amended complaint alleging that WMATA was liable for breach of contract, fraud, breach of fiduciary duty, failure to formulate and follow policies concerning the disposition of real property, and challenging WMATA's decision to award a bid to the John Akridge Company. Thereafter, WMATA filed a motion to dismiss all counts in the amended complaint. The Court dismissed the tort claims based on WMATA's sovereign immunity, but denied the motion with respect to all other counts.[2] *Monument Realty LLC, et al. v. Wash. Metro. Area Transit Auth.*, No. 07-1821 (EGS), slip op. at 41 (D.D.C. Feb. 27, 2008).

The motions for a TRO and a preliminary injunction were consolidated, and the parties subsequently engaged in limited discovery. On January 2, 2008, plaintiffs filed an amended motion for a preliminary injunction.

[2] Plaintiffs informed the Court at the January 23, 2008 Motions Hearing that they had abandoned their argument that WMATA acted irrationally in concluding that the Akridge bid offered the highest possible economic return over MRB 7's escalating bid (Count 10). Accordingly, the Court dismissed Count 10.

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C. Factual Background

1. Master Development Plan for the Ballpark District

In response to Major League Baseball's 2004 announcement that the League was considering relocating the Montreal Expos baseball franchise to Washington, D.C., the District of Columbia government created the Anacostia Waterfront Corporation (AWC). Amend. Compl. ¶ 9. The AWC's mission was to develop and revitalize the underutilized public lands along the Anacostia River by: 1) developing a comprehensive "Master Development Plan" for the area surrounding the baseball team's new stadium ("the Ballpark District"); 2) acquiring property in the Ballpark District; and 3) selling the acquired property to selected Master Developers. *Id.* ¶ 11.

WMATA owned several properties within the Half Street Area of the Ballpark District, including the Navy Yard Metro Station site and the Southeast Bus Garage, and the AWC sought to acquire and develop those properties as a part of its Master Development Plan. *Id.* ¶ 15. WMATA initially issued a Joint Development Solicitation ("JDS"), inviting real estate developers to jointly develop with WMATA the properties it owned in the Ballpark District. *Id.* ¶ 16. The District of Columbia, however, requested that WMATA cancel the JDS and participate in the master development planning process. *Id.* ¶ 17. WMATA subsequently withdrew the JDS, and thereafter coordinated with the AWC in

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implementing the Master Development Plan. *Id.*

2. Monument Designated as Master Developer of the Half Street Area of the Ballpark District

In December 2005, the AWC designated Monument as Master Developer for the Half Street Area, and Monument and the AWC signed a Letter of Intent memorializing their respective rights and duties. *Id.* ¶ 23. As Master Developer, Monument was afforded the opportunity to negotiate exclusively to acquire and develop projects within the Half Street Area, once those properties had been acquired by the District of Columbia. *Id.* ¶¶ 23-24. At the time that Monument and the AWC entered their agreement, the District of Columbia did not own any properties in the Half Street Area, but was seeking to acquire those properties from WMATA.[3] *Id.* Ex. F. at 1.

Plaintiffs allege that WMATA knew that Monument had been awarded the right to negotiate exclusively with the AWC to purchase any properties the District of Columbia acquired within the Half Street Area of the Ballpark District. Amend. Compl. ¶¶ 25-28. Further, based on WMATA's policies and procedures, WMATA had an obligation to first offer the District of Columbia the right to purchase the Bus Garage at fair market value. *See* Pls.'

[3] On December 12, 2005, the AWC issued a press release that stated, "The team of Monument Realty, LLC . . . will . . . have the opportunity to enter into exclusive negotiations with AWC to develop different mixed-use projects on two publicly owned sites that AWC is presently seeking to acquire near the ballpark." Amend. Compl. Ex. F. at 1.

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Mem. 2 (citing Ex. 4, Bottigheimer Dep. 87:11-18). According to Nat Bottigheimer, WMATA's Contracting Officer, WMATA has a policy of first offering to a Compact jurisdiction the opportunity to purchase any property that WMATA decides to sell within that Compact jurisdiction. *Id.* If the Compact jurisdiction expresses an interest in purchasing the property, the price is negotiated based on fair market value. *See* Pls.' Mem. Ex. 6. Plaintiffs allege that Monument was an intended third-party beneficiary of WMATA's legal obligation to sell WMATA-owned property located in the District of Columbia to the District upon the City's request.

3. WMATA's Agreement with Monument

In addition to plaintiffs' allegation that Monument was a third-party beneficiary of WMATA's agreement with the District of Columbia, plaintiffs also allege that a contractual relationship existed between Monument and WMATA. Beginning in May 2006, Monument engaged in direct negotiations with WMATA to purchase WMATA's property in the Half Street Area. *Id.* ¶ 30. *See also* Pls.' Mem. 1-27.

The sale of WMATA's properties was scheduled in phases. *See* Pls.' Mem. Ex. 18 at 4 (Notes from July 7, 2006 District of Columbia/WMATA Task Force Meeting: "WMATA has been coordinating with AWC and their preferred developer, Monument, for the phased disposition of WMATA parcels in the ballpark district. Phase I: West Entrance to the station and adjoining employee parking lot

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[the Navy Yard Metro Station]; Phase II: Remaining parcels south of M Street [the Bus Garage]").

In December 2006, Monument submitted an unsolicited offer to WMATA to purchase the Navy Yard Metro Station. Pls.' Mem. 11-12. Thereafter, WMATA issued an Invitation for Bids ("IFB") for the Navy Yard Metro Station, and Monument was the only developer to respond. Subsequently, WMATA sold the property to Monument. *Id.*

In April 2007, believing that WMATA would now be in a position to proceed with the second sale, plaintiffs submitted an unsolicited bid to purchase the Bus Garage. Pls.' Mem. Ex. 83.

4. WMATA Issues IFBs for the Bus Garage

After receiving Monument's unsolicited bid to purchase the Bus Garage, WMATA obtained authorization from its Board of Directors ("Board") to dispose of the property.[4] WMATA then issued IFB 07-3, with a bid deadline of July 23, 2007, for the sale of the Bus Garage. *See* Pls.' Mem. 27. Before the bid deadline, however, the District of Columbia informed WMATA via letter that it would exercise its right to purchase the Bus Garage.[5] Pls.' Mem. Ex. 49. In response to the District's

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[4] On May 24, 2007 the Board passed a resolution authorizing the sale of the Bus Garage property. *See* Def.'s Opp'n Ex. B. ("Resolved, That the Board of Directors authorizes the General Manager to offer for sale the Southeastern Bus Garage and its bus parking lot. The sale proceeds will be for the replacement of the Southeastern Bus Garage and the police training facility; . . . .")

[5] *See* Pls.' Mem. Ex. 49 (June 27, 2007 letter from the Office of the Director for the District of Columbia to John Catoe, Jr., WMATA's General Manager, stating "Given the District's substantial interest in the development

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letter, WMATA withdrew the IFB and initially agreed to sell that property to the City. *Id.* Ex. 51, 63.

According to WMATA, however, the District of Columbia subsequently decided not to purchase the Bus Garage, and WMATA then issued IFB 08-1, with a bid deadline of August 28, 2007. *See id.* Ex. 65; *id.* Ex. 70. In the IFB, WMATA invited interested parties to submit "sealed bids in accordance with the terms of this Invitation for Bids for Sale, with leaseback, of WMATA property." *Id.* Ex. 70 at 1. The IFB provided that the contract would be awarded to the bid that represented "the best net return to WMATA after leaseback monthly rent for WMATA's anticipated lease term (which may, in WMATA's sole discretion be less than 36 months) is deducted from the Bid Amount." *Id.* at 7. The IFB also stated that all questions concerning the IFB "will be answered publicly; that is, WMATA will post all questions and answers on its website." *Id.*

On August 24, 2007, Jeffrey Neal, Monument's president, sent a letter to John Catoe, WMATA's General Manager, stating that Monument would consider WMATA in breach of its agreement to sell the Bus Garage to Monument if WMATA awarded IFB 08-1 to another bidder. *See* Def.'s Opp'n Ex. E 7. The letter also stated that

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of this area, I would like to request on behalf of the District that WMATA terminate the Invitation for Bids for Sale on these Ballpark District sites. The District further requests that WMATA enter into direct negotiations with the DC Office of the Deputy Mayor for Planning and Economic [Development] for the purchase of the WMATA sites.").

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if WMATA breached its agreement, the construction on the Navy Yard Metro site and the development of the Ballpark District would be jeopardized, and WMATA's decision could lead to litigation. *Id.* Notwithstanding the letter, Monument's affiliate, MRB 7, submitted two bids in response to IFB 08-1. Pls.' Mem. at 28. The first bid was for the minimum price of $60 million, with no charge for leaseback rental. Pls.' Mem. Ex. 71. The second bid contained an escalating-bid clause, in which MRB 7 agreed to pay $250,000 more than any other qualified bidder. *Id.*

In addition to MRB 7, two other real estate developers, JBG and the John Akridge Company, submitted bids in response to IFB 08-1. Akridge, however, had also submitted a bid in response to IFB 07-3, before WMATA withdrew that IFB. Although Akridge urged WMATA to limit its consideration of bids for IFB 08-1 to developers who had submitted timely responses to IFB 07-3, Akridge also submitted a bid in response to IFB 08-1. Pls.' Mem. Ex. 69. In its bid, Akridge offered to pay $69.25 million to purchase the Bus Garage, and proposed to charge WMATA $110,000 per month in rent for months 1-12, and $430,000 per month in rent for months 13-36, to lease back the Bus Garage. *Id.* Ex. 72, 79. Akridge also included in its bid an offer to commence negotiations with WMATA to temporarily relocate the Bus Garage to

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Akridge property.[6] *Id.* This additional offer, which was not solicited by the IFB, is at the crux of plaintiffs' challenge to WMATA's bid process to sell the Bus Garage.

On August 28, 2007, WMATA staff opened the three bids received in response to IFB 08-1, and on August 29, 2007, Bottigheimer prepared a memorandum for the Board summarizing the staff's recommendation. In the memorandum, Bottigheimer acknowledged that it was difficult to pick a winner, because "after three years of rent [from leasing back the Bus Garage], the high bidder's bid becomes the low bid, and the low bidder's bid becomes the high bid." Def.'s Opp'n Ex. E 10. "As a result, the best net return to WMATA depends on how long we anticipate remaining in the Southeast Garage."[7] *Id.* Bottigheimer also stated that the availability of alternatives and the costs of the alternatives to remaining at the current Bus Garage were key factors in estimating the amount of time WMATA would need to remain at the Bus Garage, and thus were critical factors in

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[6] The Akridge bid stated, "Akridge manages an Affiliate that owns and/or controls substantial portions of Square 664 and, if this bid is accepted, Akridge would immediately commence negotiations with WMATA to establish an arrangement pursuant to which WMATA would be able to use the Akridge Property as a temporary site for locating assets presently located on the Property during the period WMATA is contemplating relocation of the operations presently conducted at the Property." Pls.' Mem. Ex. 72.

[7] MRB 7 bid $60 million, but would not charge anything to lease back the Bus Garage. In contrast, Akridge bid $69.25 million, but would charge WMATA $110,000 per month for months 1-12 and $430,000 per month for months 13-36 to lease back the Bus Garage. As Bottigheimer told the Board, the length of time WMATA leased the Bus Garage would determine which bid provided the highest net return.

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determining which bid provided the best net return. *Id.*

In a separate memorandum drafted by Bottigheimer on August 29, 2007, he stated:

> Analysis of the three bids reveals that acceptance of Akridge's bid would provide the best net return to [WMATA] as long as the leaseback period is from zero months to thirty-months. If the leaseback period is thirty-one months to thirty-six months, Monument's bid would provide the best net return. At no point would JBG's bid provide the best net return to the Authority.[8]

Def.'s Opp'n Ex. E 11. Bottigheimer concluded that a leaseback period of less than thirty months was virtually certain, given the planned April 2008 opening of the baseball stadium, and thus in his view, Akridge's bid provided the best net return to WMATA. *Id.* Although this memorandum was drafted on August 29, 2007, the recommendation to award the bid to Akridge was not publicized until it was posted on WMATA's website on September 21, 2007. Def.'s Opp'n 48.

On September 12, 2007, before WMATA made public its recommendation to award the contract to Akridge, Matthew J. Klein, Akridge's president, delivered a letter to Bottigheimer and Carol O'Keeffe, WMATA's General Counsel. Pls.' Mem. Ex. 80. Klein's letter followed up on "an integral part of the Akridge Offer," namely "the opportunity to engage in discussions in

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[8] The WMATA staff decided as a matter of policy not to consider MRB 7's escalator bid on the grounds that it was non-responsive, uncertain and ambiguous on its face. Def.'s Opp'n 44. Plaintiffs informed the Court at the January 23, 2008 motions hearing that they were abandoning their argument that WMATA's decision to disregard their escalator bid was improper.

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connection with what Akridge believes is a potential for solving WMATA's stated need to relocate and maintain the buses presently housed at the Southeast Bus Garage location." *Id.* Klein stressed that Akridge's offer was "a serious offer and, if selected as purchaser, . . . one that Akridge [was] prepared to act on immediately." *Id.* Klein invited either O'Keeffe or Bottigheimer to contact him if they were interested in further discussing the offer. *Id.* In response to Klein's letter, Bottigheimer telephoned Klein later that day and left a voice mail message stating that WMATA had received the letter and was treating Akridge's proposal "as a serious offer." Pls.' Mem. Ex. 78.

On September 20, 2007, Klein sent another letter to Bottigheimer providing "further clarification of the potential benefit to WMATA for pursuing the Akridge affiliated site [] as a possible interim relocation site for the Southeast Bus Garage." Klein stated that Akridge's offer could result in potential material savings to WMATA of $5.3 million, which would increase "the net benefit to WMATA of Akridge's proposal for the Southeast Bus Garage site."[9] *Id.* Ex. 81. The day after WMATA received this letter, its staff announced its recommendation on WMATA's

[9] The use of Akridge's alternative site would also guarantee that Akridge's bid was the highest offer because it would eliminate the need to lease back the Bus Garage from Akridge. As previously discussed, the longer WMATA had to lease back the Bus Garage, the less competitive Akridge's bid became.

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website to award the bid to Akridge. On September 27, 2007, the staff presented its recommendation to the Board. Def.'s Opp'n 48.

Following WMATA's announcement to award the bid to Akridge, plaintiffs objected to the bid process and alleged that WMATA violated its Procurement Procedures Manual ("PPM"). Specifically, plaintiffs argued that WMATA improperly considered the Akridge bid on the grounds that the bid was submitted conditionally and offered terms other than those sought by the IFB, namely, an offer to help WMATA relocate its Bus Garage, thereby rendering the bid nonresponsive. Amend. Compl. ¶¶ 76-82.

II. Standard of Review for Injunctive Relief

In considering whether to grant an application for emergency injunctive relief, a court must consider four factors: (1) whether there is a substantial likelihood that plaintiffs will succeed on the merits of their claims, (2) whether plaintiffs will suffer irreparable injury absent an injunction, (3) whether an injunction would harm the defendants or other interested parties (the balance of harms), and (4) whether the public interest would be furthered by an injunction. *See Serono Labs., Inc. v. Shalala*, 158 F.3d 1313, 1317-18 (D.C. Cir. 1998) (citing *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)). The factors "must be viewed as a continuum, with more of one factor compensating for less of

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another." *Bradshaw v. Veneman*, 338 F. Supp. 2d 139, 141 (D.D.C. 2004). Thus, "[i]f the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas are rather weak." *Serono Labs.*, 158 F.3d at 1318.

Finally, because interim injunctive relief is an extraordinary form of judicial relief, courts should grant such relief sparingly. *See Cobell v. Norton*, 391 F.3d 251, 258 (D.C. Cir. 2004) ("A preliminary injunction is an extraordinary remedy that should be granted only when the party seeking relief, by a clear showing, carries the burden of persuasion."); *see also Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (a preliminary injunction is "an extraordinary and drastic remedy").

III. Analysis

A. Irreparable Harm

The basis for injunctive relief in the federal courts has always been irreparable harm and the inadequacy of legal remedies. *Wis. Gas Co. v. FERC*, 758 2d 669, 674 (D.C. Cir. 1985). In *Wisconsin Gas*, the court of appeals identified the factors a court should consider in determining whether a party has demonstrated irreparable harm and the inadequacy of legal remedies. *Id.*

First, the injury must be both certain and great, actual and not theoretical. *Wis. Gas Co.*, 758 2d at 674; *see also Ashland Oil, Inc. v. FTC*, 409 F. Supp. 297, 307 (D.D.C. 1976), aff'd, 548

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F.2d 977 (D.C. Cir. 1976) (citations and internal quotations omitted) (the party seeking injunctive relief must show that "[t]he injury complained of [is] of such imminence that there is a 'clear and present' need for equitable relief to prevent irreparable harm."). Second, the harm must be irreparable, in that the harm cannot be remedied solely with monetary damages. *Wis. Gas Co.*, 758 2d at 674. "Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough." *Id.* The possibility that adequate compensatory relief would be available later during the ordinary course of litigation "weighs heavily against a claim of irreparable harm." *Id.* When considering these factors, the court must bear in mind whether the movant has substantiated the claim that irreparable injury is "likely" to occur.

With respect to the first factor, whether the injury is both certain and great, actual and not theoretical, plaintiffs argue that in the absence of injunctive relief, WMATA will sell the Bus Garage to Akridge. Pls.' Mot. 2. On January 19, 2006, WMATA's Board identified the Bus Garage as a priority for relocation, and in August 2007, IFB 08-1 was issued to sell the Bus Garage. Pls.' Mem. Ex. 83. On September 27, 2007, WMATA's staff proposed to the Board that they adopt a resolution awarding IFB 08-1 to Akridge, subject to WMATA acquiring "the replacement bus garage

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property at the D.C. Village" from the District of Columbia, and the Board approving "the Southeast Bus Garage replacement project and amendment of the Mass Transit Plan in accordance with the WMATA Compact." *Id.*

WMATA has been working to satisfy those conditions. Once the conditions are met, WMATA has told the Court that it intends to sell the Bus Garage to Akridge.[10] Plaintiffs have therefore demonstrated that losing their alleged real property interest in the Bus Garage is an actual, not theoretical injury, and is both certain and great. Further, plaintiffs have shown that absent a preliminary injunction, the harm is imminent.

As to the second factor, plaintiffs contend that losing their interest in the Bus Garage is not merely an economic loss, because real property is considered unique and irreplaceable. Pls.' Mot. 2. "When land is the subject matter of the agreement, the legal remedy is assumed to be inadequate, since each parcel of land is unique." *Tauber v. Quan*, 2007 D.C. App. Lexis 689, *18 (D.C. 2007). WMATA counters that the loss of commercial property is an insufficient basis to establish irreparable harm because the law does not consider commercial property to be unique. Def.'s Opp'n 50. WMATA relies on two cases in support

[10] Counsel for WMATA represented at the January 23, 2008 motions hearing that WMATA is anxious to sell the Bus Garage to Akridge, and intends to place the issue on the Board's agenda as soon as WMATA finalizes its arrangements with the District of Columbia to relocate the Bus Garage to the D.C. Village.

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of this proposition. In both of those cases, the district court found that the loss of commercial real estate was not irreparable when developers sought to enjoin HUD from foreclosing on low-income housing projects owned by those developers. *See 46th St. Rehab Dev. Co. v. United States*, No. 97-2267 (JGP), slip op. at 4 (D.D.C. Oct. 3, 1997); *JOGO Assocs. v. United States Dep't of Hous. & Urban Dev.*, No. 92-2451 (NHJ), slip op. at 3-7 (D.D.C. Nov. 25, 1992).

The Court is not persuaded by these decisions. For example, in *JOGO*, the court concluded that plaintiff's loss of the housing project would only constitute economic harm, despite being real property, because the property was not valued for its uniqueness, but rather for the economic returns it provided plaintiffs. Noting that "every parcel of real estate is unique," "certain properties are sufficiently similar that the risk of undercompensating the promisee in damages is slight." *JOGO Assocs.*, No. 92-2451 (NHJ), slip op. at 5. The *JOGO* court found that mass-produced housing developments were an obvious example of the type of real estate that was sufficiently similar to other properties and that the loss of those properties would not necessarily constitute irreparable harm. *Id.* Critical to the court's analysis was whether the buyers' "sole concern [was] not anguish at the thought of losing the impossible-to-duplicate estate," but rather was the economic loss that results from

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losing the property. *Id.*

To the contrary, the commercial property at issue in this case is not sufficiently similar to other properties, principally because of its prime location. The Bus Garage is located in the midst of properties already owned by Monument in the Half Street Area of the Ballpark District, adjacent to the main gate of the new baseball stadium, and centrally located within an area that the District of Columbia has sought to develop as a part of the Master Development Plan. Pls.' Rep. 14. Plaintiffs contend that losing the Bus Garage would frustrate Monument and the District of Columbia's coordinated development of the Ballpark District. *Id.* Because the Bus Garage is real property that is valued for its uniqueness, the Court concludes that the plaintiffs have established that the harm here cannot be remedied with monetary damages alone, and is thus irreparable. *Wis. Gas Co.*, 758 2d at 674. Therefore, the Court finds that the first prong of the preliminary injunction analysis weighs in plaintiffs' favor.

B. Likelihood of Success

Courts do not employ a "probability requirement" to determine whether plaintiffs have demonstrated a likelihood of success, but rather "it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative

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investigation." *Washington Metro. Area. Transit Comm'n*, 559 F.2d at 841 (citing *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir. 1953)). The Court finds that plaintiffs have demonstrated a likelihood of success on their bid protest claim.

1. Plaintiffs' Challenge to the Bid Process

The United States Court of Appeals for the District of Columbia Circuit has held that WMATA is treated as a federal agency for purposes of standing when a party seeks to challenge WMATA's procurement decisions in federal court. *Elcon Enters. v. WMATA*, 977 F.2d 1472, 1479-80 (D.C. Cir. 1992). It is well settled that "actions of a federal agency alleged to be arbitrary and capricious violations of the statutes and regulations governing the awards of federal contracts are subject to judicial review under § 706(2)(A) of the Administrative Procedure Act ("APA")." *See Gull Airborne Instruments, Inc. v. Weinberger*, 694 F.2d 838, 841, n.2 (D.C. Cir. 1982) (citing *M. Steinthal & Co. v. Seamans*, 455 F.2d 1289 (D.C. Cir. 1971); *Scanwell Lab., Inc. v. Shaffer*, 424 F.2d 859 (D.C. Cir. 1970)). Accordingly, WMATA's procurement decisions must be made in accordance with the APA and applicable federal law. *Elcon Enters.*, 977 F.2d at 1479-80.

To successfully challenge WMATA's bid process, plaintiffs must demonstrate that WMATA's decision to award the Bus Garage to Akridge had "no rational basis" or the process by which it was reached "involved a clear and prejudicial violation of applicable

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statutes or regulations." *Elcon Enters.*, 977 F.2d at 1479-80 (citing *Kentron Hawaii, Ltd. v. Warner*, 480 F.2d 1166, 1169 (D.C. Cir. 1973)). *See also Delta Data Sys. Corp. v. Webster*, 744 F.2d 197, 204 (D.C. Cir. 1984). A court may not set aside a procurement decision on the grounds that the procuring agency potentially or actually violated applicable law in some trivial way; the violation must be clear and prejudicial. *See Irvin Indus. Canada, Ltd. v. United States Air Force*, 924 F.2d 1068, 1072 (D.C. Cir. 1990); *Kentron*, 480 F.2d at 1169. This burden is a "heavy" one. *Irvin Indus. Canada, Ltd.*, 924 F.2d at 1072.

This Court's refusal to demand any more of an agency's procurement decision than substantial compliance with applicable law and baseline substantive rationality is warranted, for "[j]udges are ill-equipped to settle the delicate questions involved in procurement decisions," *Delta Data*, 744 F.2d at 203, and to require any more of such decisions would make courts "the forum for all manner of objections." *M. Steinthal & Co.*, 455 F.2d at 1299.

2. Prejudice

In order to succeed with a bid protest, plaintiffs must show that they were significantly prejudiced by the errors in the procurement process. *Bannum v. United States*, 404 F.3d 1346, 1353 (Fed. Cir. 2005). *See also Alfa Laval Separation, Inc. v. United States*, 175 F.3d 1365, 1367 (Fed. Cir. 1999); *Data Gen.*

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Corp. v. Johnson, 78 F.3d 1556, 1562 (Fed. Cir. 1996). Prejudice is a question of fact. *Bannum*, 404 F.3d at 1353. To establish "significant prejudice," plaintiffs must show that there was a "substantial chance" they would have received the contract award but for WMATA's violation of applicable law during the sealed bid process. *See id.; Alfa Laval Separation*, 175 F.3d at 1367. Plaintiffs satisfy their burden to demonstrate a substantial chance of receiving the award when they are next in line to be awarded the contract if the protest is sustained. *See* Def.'s Supp. Auth. 1-2 (citing *In re: Adrian Supply Co.*, B-243904, 91-2 CPD ¶ 140, 1991 WL 162535 (Comp. Gen. Aug. 7, 1991) ("The record shows that [plaintiff] would not be in line for award even if its allegations concerning Internec's bid were sustained. Rather, OHM International Corporation, the second low[est], responsive and responsible bidder, would be next in line for the award."); *In re: Applied Sys. Corp. - Recon.*, B-234159, 89-1 CPD ¶ 319, 1989 WL 240538 (Comp. Gen. Mar. 28, 1989) (same); *Motorola, Inc.*, B-232843, 88-2 CPD ¶ 484, 1988 WL 228158 (Comp. Gen. Nov. 16, 1988) (same)).

Three bidders responded to IFB 08-1: Akridge, MRB 7, and JBG. WMATA's Contracting Officer, Bottigheimer, reported that "analysis of the three bids reveals that acceptance of Akridge's bid would provide the best net return to the Authority as long as the leaseback period is from zero months to thirty-months. If

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the leaseback period is thirty-one months to thirty-six months, Monument's bid would provide the best net return. At no point would JBG's bid provide the best net return to the Authority." Def.'s Mem. Ex. E-11. Bottigheimer's memorandum clearly suggests that if Akridge had not been awarded the bid, MRB 7 would have been next in line for the award. Thus, plaintiffs have established that they are significantly prejudiced by the errors in WMATA's sealed bid process because there is a "substantial chance" they would have received the contract award but for WMATA's violations of applicable law during that process. *See Bannum*, 404 F.3d at 1353; *Alfa Laval Separation*, 175 F.3d at 1367.

3. Bid Responsiveness

Agencies must reject nonresponsive bids. *Prestex Inc. v. United States*, 320 F.2d 367, 372 (Fed. Cir. 1963) (footnote omitted) ("Rejection of nonresponsive bids is necessary if the purposes of formal advertising are to be attained, that is, to give everyone an equal right to compete for Government business, to secure fair prices, and to prevent fraud."). The rationale for enforcing the responsiveness requirement is "to avoid unfairness to other contractors who submitted a sealed bid on the understanding that they must comply with all of the specifications and conditions in the invitation for bids, and who could have made a better proposal if they imposed conditions upon

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or variances from the contractual terms the government had specified." *Toyo Menka Kaisha, Ltd. v. United States*, 597 F.2d 1371, 1377 (Fed. Cir. 1979).

Bid responsiveness determinations focus on whether a bidder has unequivocally offered to perform, without exception, "the exact thing called for in a solicitation so that acceptance of the bid will bind the contractor to perform in accordance with all of the IFB's material terms and conditions." *In re: Walashek Indus. & Marine*, B-281577, 99-1 CPD ¶ 30, 1999 U.S. Comp. Gen. LEXIS 13, at *3 (Comp. Gen. Jan. 29, 1999). The "responsiveness" requirement derives from the statutory provision requiring an award be made to the offeror "whose bid conforms to the solicitation." *Ryan Co. v. United States*, 43 Fed. Cl. 646, 651 (Fed. Cl. 1999) (citing 41 U.S.C. § 253b(c) (Supp. 1997)). Moreover, 48 C.F.R. § 14.301 (1998) provides that "[t]o be considered for [an] award, a bid must comply in all material respects with the invitation for bids. Such compliance enables bidders to stand on an equal footing and maintain the integrity of the sealed bidding system." *Ryan Co.*, 43 Fed. Cl. at 651. *See also* 48 C.F.R. § 14.404-2(a)(1998); *Bean Dredging Corp. v. United States*, 22 Cl. Ct. 519, 522 (Fed. Cl. 1991) ("Responsiveness addresses whether a bidder has promised to perform in the precise manner requested by the government.").

Where a government contract is awarded under competitive

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bidding, deviations from advertised specifications may be waived by the contracting officer, provided that the deviations do not go to the substance of the bid or work an injustice to other bidders. *Toyo Menka Kaisha, Ltd.*, 597 F.2d at 1377. A substantial deviation is defined as one which affects either the price, quantity, or quality of the article offered. *Id.* (citing *Albano Cleaners, Inc. v. United States*, 455 F.2d 556, 559 (Fed. Cir. 1972); *Mid-West Constr., Ltd. v. United States*, 387 F.2d 957, 961 (Fed. Cir. 1967); *Prestex Inc.*, 320 F.2d at 372). A sealed bid procurement requires the rejection of all offers taking exception to the solicitation requirements even where the exception may be attractive from a price or technical standpoint. *See In re: Carter Chevrolet Agency*, 1988 WL 228035, *1 (Comp. Gen. Feb. 3, 1988) (citing FAR § 14.404-2).

Here, WMATA issued a sealed IFB for the disposition of the Bus Garage stating that the *sole criterion* for the winning bid would be: "[t]he bid which represents the best net return to WMATA after leaseback monthly rent for WMATA's anticipated lease term is deducted from the Bid Amount." Pls.' Mem. Ex. 70 at 7. The bidders were invited to offer a purchase price for the Bus Garage and state how much they would charge WMATA monthly to lease back the Bus Garage. *Id.* Apart from identifying information, no additional information was requested in the IFB.

Akridge submitted a bid in response to IFB 08-1 offering to

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purchase the Bus Garage for $69.25 million and a fixed amount for leaseback rental. That bid also included an offer to "establish an arrangement pursuant to which WMATA would be able to use the Akridge Property as a temporary site" for relocating the Bus Garage. Pls.' Mem. Ex. 72. Akridge's offer to provide WMATA with a possible relocation site for the Bus Garage deviates from the exact requirement called for in the solicitation, i.e., a fixed purchase price and leaseback rental for the Bus Garage.

Although WMATA acknowledges that Akridge provided information beyond what was sought in the IFB, WMATA contends that Akridge's extraneous offer did not render the bid nonresponsive because the offer did not modify the material requirements of the IFB, such as price, quality, quantity or delivery terms. Def.'s Opp'n 42. According to the memorandum drafted by Nat Bottigheimer, WMATA's Contracting Officer, however, the best net return to WMATA depended on how long WMATA anticipated remaining in the Bus Garage, and to make that determination, WMATA had to consider the availability of alternatives and the cost of the alternatives. Def.'s Opp'n Ex. E 10. Akridge's departure goes to the core of the factors WMATA considered to determine which bid provided the best net return.[11] Akridge's offer could have affected WMATA's evaluation of which

[11] In fact, Akridge itself stressed that its offer to help relocate the Bus Garage to Akridge property would increase "the net benefit to WMATA of Akridge's proposal for the Southeast Bus Garage" by up to $5.3. million. *See* Pls.' Mem. Ex. 81.

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bid provided the highest net return.

No other bidders included an offer to help WMATA relocate its Bus Garage. If an opportunity to include such an offer had been presented to other bidders, they too could have made a competitive proposal on all material elements of the contract. *Toyo Menka Kaisha, Ltd.*, 597 F.2d at 1377; *Ryan Co.*, 43 Fed. Cl. at 651.

4. *Ex Parte* Communications

It is uncontested that WMATA chose to dispose of the Bus Garage through a sealed bid process, which is a typical choice an agency makes when the determination is based solely on price-related factors. *See In re: Carter Chevrolet Agency*, 1988 WL 228035 at *1(citing 41 U.S.C. § 2531; FAR § 6.401) ("Sealed bidding procedures are to be used, if time permits, [when the] award is to be made on the basis of price and price-related factors, discussions are not necessary, and there is a reasonable expectation of receiving more than one sealed bid."). A sealed bid procurement does not allow for discussions. *See In re: Carter Chevrolet Agency*, 1988 WL 228035 at *1 (citing FAR § 14.404-2).

In the procurement context, "discussions" are defined as exchanges between the Government and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. *Sun Ship v. Hidalgo*, 484 F. Supp. 1356, 1371-72 (D.D.C. 1980).

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Equity demands that if one offeror is notified of such "deficiencies" and is allowed to revise its proposal, all offerors must be afforded an equal opportunity to revise their proposals. *Id.* Thus, "in determining whether a communication . . . constitutes a 'discussion' . . . the controlling test is whether an offeror was given an opportunity to modify its proposal as a result of the communication." *Id.* *See also In re: MG Indus.*, B-283010.3, 2000 CPD ¶ 17, 2000 WL 151139, *6 (Comp. Gen. Jan. 24, 2000) (citing FAR § 15.306); *In re: Uniserv Inc*, B-218196, 85-1 CPD ¶ 699, 1985 WL 52991, *3 (Comp. Gen. June 19, 1985) ("We have defined 'discussions' as communications between an agency and an offeror involving information essential for determining the acceptability of a proposal. Providing an offeror an opportunity to revise its proposal also constitutes discussions.").

WMATA argues that neither Bottigheimer nor the WMATA Board considered Akridge's offer to help relocate the Bus Garage to Akridge property. Def.'s Opp'n 42 ("All that WMATA considered was Akridge's bid price and leaseback charge, the firm, liquidated monetary sums in the bid."). WMATA's argument is belied by the evidence produced to date. For example, WMATA's staff communicated with Akridge on at least three separate occasions regarding the offer to relocate the busses to Akridge property before the staff presented its recommendation to the

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Board to award the bid to Akridge. *See* Pls.' Mem. Ex. 80. First, on September 12, 2007, Matthew J. Klein, the president of Akridge, sent a letter to Bottigheimer and Carol O'Keeffe, WMATA's General Counsel, following up on an "integral part of the Akridge offer" to help WMATA relocate its Bus Garage and inviting either Bottigheimer or O'Keeffe to contact him. Later that day, Bottigheimer called Klein and left a voice mail message stating that WMATA was treating Akridge's proposal to help relocate the Bus Garage "as a serious offer." *Id.* Ex. 78. A week later, Klein wrote another letter to Bottigheimer, this time providing "further clarification of the potential benefit to WMATA for pursuing the Akridge affiliated site as a possible interim relocation site for the Southeast Bus Garage." *Id.* Ex. 81. The letter went on to state that "these savings could increase the net benefit to WMATA of Akridge's proposal for the Southeast Bus Garage site" by up to $5.3 million. *Id.* These communications undermine and seriously impugn WMATA's denial that WMATA's staff gave any consideration to Akridge's offer to help relocate the Bus Garage. Indeed these communications demonstrate that Akridge was afforded the unique opportunity to modify its bid by increasing its bid's value by up to $5.3 million. *See* Def.'s Opp'n 42.

At the January 23, 2008 Motions Hearing, the Court inquired of WMATA's counsel whether it was plausible that the *ex parte*

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communications between Akridge and Bottigheimer concerning Akridge's offer to help relocate the Bus Garage impacted WMATA staff's recommendation to the Board. WMATA's counsel responded, "[Plaintiffs] can't show any penetration of the process, any impact, any effect. And should [Bottigheimer] have done this? You know, of course not. What he should have done [was] just stay away and scatted it right back, but he didn't, but it didn't go anywhere, it didn't affect the memo." Excerpt of Tr. of Prelim. Inj. Hr'g at 5-7, Jan. 23, 2008. Notwithstanding counsel's attempts to minimize these *ex parte* communications, WMATA staff acknowledges treating Akridge's proposal as "a serious offer." *See* Pls.' Mem. Ex. 78. As a result, Akridge had the opportunity to increase the value of its bid, while the other bidders did not. These *ex parte* discussions viewed in the context of this sealed bid process indicate a clear and prejudicial violation of applicable procurement law. *See* FAR § 14.404-2.

Accordingly, plaintiffs have demonstrated a likelihood of success on the merits of their claim that they were substantially prejudiced when WMATA considered Akridge's nonresponsive bid and participated in improper *ex parte* discussions with Akridge. The Court finds the factor of likelihood of success on the merits weighs in plaintiffs' favor.[12]

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[12] Having concluded that plaintiffs have demonstrated a likelihood of success on their challenge to the bid process, the Court need not reach the alternative issue of likelihood of success on the breach of contract claim.

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C. Balance of Harms

This factor requires the court to balance the relative harm each party would face if an injunction were granted. *See Serono Labs., Inc. v. Shalala*, 158 F.3d 1313, 1317-18 (D.C. Cir. 1998). The Court finds that the balance weighs in plaintiffs' favor.

WMATA provides mass transportation for the District of Columbia metropolitan area. WMATA argues that the balance of harms weighs in its favor because it needs the proceeds from the sale of the Bus Garage to purchase a replacement garage facility in time for opening day of the baseball season in April 2008. *See* Def.'s Opp'n Ex. B. (May 24, 2007 Board Resolution). WMATA contends that delaying WMATA's ability to sell the Bus Garage will cause delays and disrupt bus transportation and transportation planning. WMATA also maintains it is harmed by the potential loss of a purchaser for the Bus Garage. Def.'s Opp'n 51.

Plaintiffs, on the other hand, argue that the balance of harms weighs in their favor because their claim involves the loss of unique and irreplaceable real property. Pls.' Rep. 13-14. *See* discussion *supra* Part III.A. Further, plaintiffs dispute WMATA's argument that a preliminary injunction would cause WMATA significant delay. In light of the significant amount of discovery already completed by the parties, this case shall proceed on an expedited basis towards a merits determination.

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Id. Also, with respect to WMATA's concern that it would be harmed by the loss of a potential purchaser, presumably, if plaintiffs prevail in this lawsuit, plaintiffs would be a potential purchaser for the Bus Garage.

Both parties have identified substantial and credible harms. It is not insignificant that an injunction would prevent WMATA from selling the Bus Garage, thereby delaying its ability to purchase a replacement facility. On the other hand, plaintiffs' loss of unique and irreplaceable real property is also significant.

On balance, the Court finds that the harm alleged by plaintiffs is irreparable, whereas the harm alleged by WMATA is not. WMATA will still have the opportunity to sell the Bus Garage and purchase a replacement facility once this lawsuit is resolved. In the Court's view, the balance of harms weighs in favor of an injunction.

D. Public Interest

Similarly, the Court concludes that, on balance, the public interest weighs in favor of an injunction. *See Serono Labs., Inc.*, 158 F.3d at 1317-18. Plaintiffs articulate three reasons why the public interest factor weighs in their favor.

First, they argue that the public interest supports protection of real property rights, which the Court recognizes is a valid public interest concern. *See* discussion *supra* Part

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III.A.

Next, plaintiffs argue that the residents of the District of Columbia have an interest in the Ballpark District being developed in accordance with the vision of their elected officials. After considering competitive proposals from various real estate developers, the AWC designated Monument as Master Developer of the Ballpark District, and together they decided on a coordinated approach to develop this area of the City. *See* Pls.' Mem. Ex. 50 (Letter from District of Columbia Councilmember Jim Graham to WMATA's General Manager requesting IFB 08-1 be withdrawn because "the successful development of this site is important for the District's vision of the Ballpark District"). Plaintiffs and the District of Columbia therefore share a common interest in successfully developing the Ballpark District in accordance with the Master Development Plan.

Finally, plaintiffs argue that the public has an interest in ensuring that WMATA follows its procurement procedures. The United States Court of Appeals for the District of Columbia Circuit has recognized that the public has an interest in preserving the fairness and integrity of the government's procurement systems. *See Scanwell Lab., Inc. v. Shaffer*, 424 F.2d 859, 864 (D.C. Cir. 1970) ("The public interest in preventing the granting of contracts through arbitrary or capricious action can properly be vindicated through a suit

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brought by one who suffers injury as a result of the illegal activity, but the suit itself is brought in the public interest by one acting essentially as a private attorney general."). *See also Cardinal Maint. Serv., Inc. v. United States*, 63 Fed. Cl. 98, 111 (Fed. Cl. 2004) (granting permanent injunction "will also promote the integrity of the procurement process by holding the government accountable for its actions"); *CW Gov't Travel, Inc. v. United States*, 61 Fed. Cl. 559, 576 (Fed. Cl. 2004) ("There is an overriding public interest in preserving the integrity of the federal procurement process by requiring government officials to follow procurement statutes and regulations."). Pls.' Mot. 3.

WMATA argues that the public interest factor weighs in its favor because it is a public body that provides transportation services to the Washington, D.C. metropolitan area. WMATA alleges that an injunction would harm WMATA, and thereby the public, by causing WMATA to incur excess costs as a result of a deferral of the sale of the Bus Garage until the conclusion of this litigation. Def.'s Opp'n 52-53. WMATA argues that the delay would impact WMATA's finances, and ultimately have a negative financial impact on its ridership and the constituent jurisdictions' taxpayers. The Court recognizes that a burden on the public fisc raises significant public interest concerns. However, as noted in a case relied on by WMATA, a "burden on the public fisc might be justified if the plaintiffs were likely to

FOIA CONFIDENTIAL TREATMENT REQUESTED

succeed" on the merits. *Am. Fed'n of Gov't Employees, AFL-CIO v. United States*, 104 F. Supp. 2d 58, 79 (D.D.C. 2000). In this case, especially where plaintiffs have demonstrated a likelihood of success on the merits with respect to their bid protest claim, the public interest weighs in plaintiffs' favor.

E. Unclean Hands

The unclean hands doctrine derives from the equitable maxim that "he who comes into equity must come with clean hands," and it "closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief." *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945). Equity does not require blamelessness with respect to other matters, but it does require that one seeking relief must have acted fairly and without fraud or deceit as to the controversy at issue. *Id.* at 814-815. WMATA argues that plaintiffs should be denied equitable relief based on the doctrine of "unclean hands." In other words, WMATA contends that Monument's own misconduct in this matter negates any right to injunctive relief. Def.'s Opp'n 53-54.

Courts have discretion to deny equitable relief where there is a direct link between plaintiffs' unethical behavior and the underlying obligation that formed the basis of the lawsuit. *See Steele v. Isikoff*, 130 F. Supp. 2d 23, 34 (D.D.C. 2000) (denying equitable relief based on the doctrine of unclean hands because

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plaintiff lied to obtain the underlying promise for which she sought relief); *Ross v. Fierro*, 659 A.2d 234, 240 (D.C. 1995) (denying the defense of unclean hands when the alleged wrongful actions were not the cause of the obligation from which defendant sought to be relieved); *Int'l Tours & Travel v. Khalil*, 491 A.2d. 1149, 1155 (D.C. 1985) ("Unless the amount owed the plaintiff is the direct result of the unethical behavior, . . ., the clean hands doctrine does not bar the plaintiff's recovery.").

WMATA argues that an August 24, 2007 letter sent from Jeffrey Neal, Monument's president, to WMATA constitutes unclean hands, for which the Court should deny equitable relief. Prior to the deadline for submitting bids for IFB 08-1, Neal sent a letter to WMATA stating that Monument would consider WMATA to be in breach of its agreement to sell the Bus Garage to Monument if WMATA awarded the bid to anyone other than Monument. *See* Def.'s Opp'n Ex. E 7. The letter also provided that if WMATA breached the parties' agreement, the construction on the Navy Yard Metro site and the development of the Ballpark District would be jeopardized, and WMATA's decision would likely result in litigation. *Id.*

WMATA characterizes this letter as "threats, attempted intimidation, coercion and near extortion." Def.'s Opp'n 54. Upon examining the letter, however, the Court finds that this letter was essentially a demand letter sent to preserve

FOIA CONFIDENTIAL TREATMENT REQUESTED

Monument's rights and interest in the Bus Garage by demonstrating its objection to the issuance of the IFB and warning WMATA that litigation could ensue if WMATA failed to honor what plaintiffs believed to be a preexisting legal obligation. Further, there is no link between plaintiffs' letter and the underlying challenge to the bid process on which the injunction is grounded. Because WMATA fails to demonstrate any link between plaintiffs' allegedly unethical behavior and the obligation owed to plaintiffs, this Court will not deny plaintiffs the equitable relief they seek. *See Steele*, 130 F. Supp. 2d at 34; *Ross*, 659 A.2d at 240; *Int'l Tours & Travel*, 491 A.2d at 1155.

F. Conclusion

A party seeking a preliminary injunction assumes the burden of demonstrating either a combination of probable success and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tips sharply in its favor. *Washington Metro. Area. Transit Comm'n*, 559 F.2d at 223 (quoting *Charlie's Girls, Inc. v. Revlon, Inc.*, 483 F.2d 953, 954 (2d Cir. 1973)). Having considered the four factors for emergency injunctive relief, this Court is persuaded that the plaintiffs have met that burden. Plaintiffs have demonstrated a substantial likelihood that they will succeed on their bid protest claim; that they will suffer irreparable harm absent an injunction; and that the balance of harms and the public interest weigh in their

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 009979

favor. Based on the foregoing, plaintiffs' motion for a preliminary injunction enjoining WMATA's sale of the Bus Garage is **GRANTED** until further order of the Court. An appropriate order accompanies this memorandum opinion.

Signed: **Emmet G. Sullivan**
United States District Judge
February 28, 2008

FOIA CONFIDENTIAL TREATMENT REQUESTED

M E M O R A N D U M

DATE: January 8, 2009

SUBJECT: TIIF Funds to cover gap created by affordable housing requirement

FROM: COUN – Josh Montague

TO: SAAM – Rosalyn Doggett

The use of TIIF funds to enable a developer to include affordable housing in a joint development project will require approval by the WMATA Board of Directors (the "BOD") and FTA. When considering whether the Transit Infrastructure Investment Fund ("TIIF") can be allocated for this purpose, the following will be considered.

WMATA TIIF Allocation Policy

By WMATA Board Resolution #2006-31, the BOD will consider the following while evaluating TIIF requests:

1. The "primary concern" is to assure the complete funding of the Infrastructure Renewal Program;
2. The "secondary concern" is to promote transit-oriented projects, such as:
    a. Projects that generate revenue and provide payback to the TIIF fund;
    b. Projects that increase rail system access and ridership;
    c. Projects which enable a joint development project to be implemented and enable attainment of the Joint Development Program's goals and objectives; or
    d. Projects which enhance design and integration of the project into the community and the transit system;

Clearly this TIIF request does not fit under the primary concern. It may get approved under the secondary concerns.

First, it could be argued that affordable housing is a secondary concern as a Joint Development Program goal, under provision 2(c). In the latest version of the WMATA Joint Development Policies and Guidelines, *affordable housing* is mentioned under the joint development *Goals* section. However, the actual wording of this section should eliminate the possibility that affordable housing is currently a joint development goal where it says the joint development program will, "support other transit agency goals as they may arise, including affordable housing.

Implementation of this goal will be subject to WMATA Board adoption of a policy governing the application of this goal." It does not appear that the BOD has adopted a policy governing affordable housing in joint development projects, so it cannot be effectively argued that this is a joint development program goal under provision 2(c).

It may also be argued that affordable housing enhances the design and integration of the project into the community and the transit system provision 2(d). This appears to be a very general provision and so may be the developer's best argument.

FTA Program Income Policy:

The TIIF is "program income" under the FTA joint development program. The program income is freely usable by the transit system for "eligible transit purposes." It is difficult to see what transit purposes the affordable housing might serve.

Conclusion:

Under the current WMATA Board Policy and the FTA Joint Development Guidelines, it is unlikely that a request for TIIF funds to help include affordable housing in a joint development project would be approved.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE APPLIES

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority
Transit Infrastructure Investment Fund (TIIF)
Fiscal 2009 - October 2008
Dollars in Thousands

	Funds Received	Jurisdictional Allocation	Approved Uses	Expenses	Unexpended Approved Uses
Maryland 37%		$22,200.0			
Use of Funds:					
New Carrollton Parking			497.6	496.0	1.6
College Park Parking			9,514.7	9,512.2	2.5
Largo Parking			2,432.7	2,432.7	0.0
Largo Day Care Center			3,000.0	3,000.0	0.0
Takoma-Langley			6,744.3	0.0	6,744.3
			22,189.3	15,440.9	6,748.4
Balance of Maryland Funds Available for Use:		**$10.7**			
Virginia 27%		$16,200.0			
Use of Funds:					
Shirlington			2,500.0	1,783.6	716.4
Ballston			1,374.3	750.0	624.3
Huntington			8,082.8	8,082.8	0.0
West Falls Church			2,000.0	2,000.0	0.0
Rosslyn Station Access Improve			798.1	455.1	343.0
			14,755.2	13,071.5	1,683.7
Balance of Virginia Funds Available for Use:		**$1,444.8**			
Grand Total:	**$104,442.2**	**$104,442.2**	**$106,184.6**	**$83,241.1**	**$22,943.4**

WMATA-INV 009983

FOIA CONFIDENTIAL TREATMENT REQUESTED

Washington Metropolitan Area Transit Authority
Transit Infrastructure Investment Fund (TIIF)
Fiscal 2009 - October 2008
Dollars in Thousands

	Funds Received	Jurisdictional Allocation	Approved Uses	Expenses	Unexpended Approved Uses
Total Received for TIIF	$104,442.2				
Restricted Funds:					
Huntington Parking			$12,900.0	$10,658.0	$2,242.0
White Flint Parking			4,421.7	4,396.9	24.8
FY05/06 Operating			4,000.0	4,000.0	0.0
FY07 Operating			2,000.0	2,000.0	0.0
FY08 Operating			2,000.0	2,000.0	0.0
FY09 Operating			2,000.0	666.7	1,333.3
FY10 Operating (continues thru FY12)					
FY07 Safe, Clean Reliable			5,850.0	5,850.0	0.0
FY08 Safe, Clean Reliable			7,000.0	7,000.0	0.0
FY09 Safe, Clean Reliable			7,000.0	2,333.3	4,666.7
FY10 Safe, Clean Reliable (end)					
TSSM from Twinbrook to Shady Grove			1,000.0	491.3	508.7
Gallery Place Remediation			18.4	18.4	0.0
			48,190.1	39,414.5	8,775.5
Unrestricted Funds Available for Use:		($3,747.9)			
Total allocated to the Jurisdictions		$60,000.0			
District of Columbia 36%		$21,600.0			
Use of Funds:					
Tivoli			2,500.0	2,500.0	0.0
Anacostia Demonstration			10,000.0	6,306.3	3,693.7
U Street/Adams Morgan Link			150.0	150.0	0.0
Navy Yard Design			500.0	386.9	113.1
Union Row /U Street			1,500.0	1,008.7	491.3
Yellow Line Extension			1,500.0	609.1	890.9
Navy Yard Improvements			4,900.0	4,353.3	546.7
			21,050.0	15,314.2	5,735.8
Balance of DC Funds Available for Use:		**$550.0**			

WMATA-INV 009984

FOIA CONFIDENTIAL TREATMENT REQUESTED

Subject		
2005-58	December 15, 2005	Resolution to Approve the Use of $500,000 from the TIIF (District of Columbia) or Other Unallocated District Funds for Navy Yard Improvements Design Work
2005-50	November 17, 2005	Release of TIIF Funds to the District of Columbia
2005-39	September 22, 2005	Approval of Resolution to Release Allocation of TIIF Funds to the State of Maryland for the Takoma Langley Transit Center
2005-22	June 16, 2005	Approval of Use of TIIF (Maryland) for Takoma-Langley Transit Center
2004-58	November 18, 2004	Resolution to Amend FY 05 SAP for Shirlington Bus Terminal and Approval of the Use of TIIF
2003-56	October 23, 2003	Approval to Use TIIF (Washington, D.C.) for Partial Payment for Construction of Certain Infrastructure Improvements
2003-19	March 20, 2003	Approval to Use $2,567,500 from TIIF (District of Columbia) for Partial Payment for construction of a parking facility at Columbia Heights Redevelopment Project
2003-17	March 20, 2003	Approval of Fairfax County Use of TIIF Funds for Construction of New West Falls Church Parking Structure & Providing Temporary Parking & Shuttle Service
2002-44	September 19, 2002	Amend Transit Infrastructure Investment Fund (TIIF) Policy
2000-50	August 11, 2000	Revised Policy on Transit Infrastructure Investment Fund (TIIF)
97-39	September 25, 1997	Create a Transit Infrastructure Investment Fund (TIIF)

WMATA-INV 009985

Tivoli

PRESENTED AND ADOPTED: October 23, 2003
SUBJECT: Approval to use $2,567,500 from the TIIF (Washington, D.C.) for partial payment for construction of certain infrastructure improvements.

#2003-56
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, The National Capital Revitalization Corporation (NCRC) and the District of Columbia Government have established the redevelopment of the Columbia Heights area as a high priority; and

WHEREAS, the District of Columbia and the NCRC have authorized a redevelopment project in the vicinity of the Columbia Heights Metrorail Station designated as the Tivoli Square Project; and

WHEREAS, WMATA has determined that construction of the Tivoli Square Project will increase ridership, both directly from construction of the Tivoli Square Project, as projected in the attachment to this resolution, and indirectly as a part of the overall redevelopment of the Columbia Heights area surrounding WMATA's Columbia Heights Metrorail Station; and

WHEREAS, the redevelopment project can be implemented and expedited through the provision of $2.5 million in TIIF funds to provide for the payment of certain construction cost categories, such as site preparation, pedestrian walkways, and Metrobus and Metrorail access signage, lighting and security; and

WHEREAS, this use of WMATA TIIF funds allocated for use within the District of Columbia has been reviewed and found to be an eligible transit purpose by the Federal Transit Administration (FTA); and

WHEREAS, there is an urgent need to provide WMATA approval of this TIIF use at the earliest possible time; and

WHEREAS, the approval of the use of $2,567,500 in TIIF funds will leave a balance of approximately $12,477,092 to be designated for other projects to benefit the District of Columbia in the future, based on current funds available; and

WHEREAS, Resolution 2000-50 of the WMATA Board, which adopted a revised policy for use of TIIF funds and allocated certain portions of the funds to the jurisdictions requires Board approval of projects to be funded with TIIF funds; and

Motioned by Mr. Graham moved, seconded by Mr. Trotter, unanimously approved.
Ayes: 6 - Mr. Graham, Mr. Smith, Mrs. Mack, Mr. Trotter, Mr. Zimmerman, and Mr. Kauffman

WHEREAS, Resolution 2002-44 modified Resolution 2000-50 to provide a further allocation of funds to the jurisdiction; and

WHEREAS, Resolution 2003-19 previously authorized distribution of the $2,567,500 directly to NCRC to assist in providing certain parking facilities, but, as a result of further review by FTA, and in light of FTA's amended approval dated October 6, 2003, WMATA's TIIF funds will now be distributed directly to the developer of the Tivoli Square Project and used for site preparation, pedestrian walkways, and Metrobus and Metrorail access signage, lighting and security; now therefore be it

RESOLVED, That $2,567,500 of the District's allocated share of WMATA TIIF funds shall be made available for the Tivoli Square Project from the District's first allocation of $10.8 million of TIIF funds; and be it further

RESOLVED, That $2,500,000 of the TIIF funds allocated to Washington, D.C. may be transferred to TIVOLI PARTNERS LLC, a District of Columbia limited liability company, or its related and controlled affiliates (the Developer), or, the Developer's contractors, in each case, only upon submission of approved draw requests showing that payment is being limited to those cost categories approved by the FTA, including site preparation, pedestrian walkways, and Metrobus and Metrorail access signage, lighting and security; and be it further

RESOLVED, That, as a condition to WMATA's financial assistance, Developer or its affiliates or contractors must certify and provide reasonably satisfactory evidence that all laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair of those construction cost components of the Tivoli Square Project to be financially assisted by WMATA shall be paid prevailing wages as required by Section 64 of the WMATA Compact; and be it further

RESOLVED, That the General Manager will assure through appropriate Authority oversight that the funds herein authorized will be used in accordance with this resolution and the applicable FTA guidelines; and it be it further

RESOLVED, That this Resolution supersedes and replaces Resolution #2003-19 adopted by the Board on March 20, 2003; and be it finally

RESOLVED, That the Board find that the timely performance of its functions require that this Resolution be effective immediately.

Approved for form and legal sufficiency.

Cheryl C. Burke, General Counsel

TIVOLI SQUARE PROJECT TRANSIT USE CALCULATIONS

- The Tivoli Square project will have
  - A 250-seat GALA Hispanic Theater
  - A 53,000 square foot full service Giant Food supermarket
  - 25,000 square feet of additional retail
  - 28,000 square feet of commercial space
  - 40 condominium dwellings (20 percent for moderate income persons)
  - 220 parking spaces

- The following additional daily Metrorail patronage is envisioned from Tivoli Square initially on week days when the theater is in operation:

• From the GALA theater 30% by Metrorail = round trip transit trips	150
• From Giant 2 trips per 1,000 s.f.	105
• From the retail portions of the project excluding Giant approximately 10.5 trips per 1,000 s.f. =	260
• From the other commercial approximately 5.3 trips per 1,000 s.f. =	150
• From the town houses approximately 1.8 trips per unit =	70
	735

PRESENTED AND ADOPTED: June 15, 2006

SUBJECT: APPROVAL OF TRANSIT INFRASTRUCTURE INVESTMENT FUND ALLOCATION POLICY

2006-31

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, On August 10, 2000, the Board of Directors adopted a revised policy on the Transit Infrastructure Investment Fund (TIIF); and

WHEREAS, Previous Board actions have allocated $60M to the jurisdictions, $12.9M to the Huntington Parking Garage, $8M to the White Flint Parking Garage, $16M to the Operating Budget through FY2012, $31M to the Operating "Safe Clean Reliable Funding" program through FY2010, $9.6M to SmarTrip®, $11.8M to a Maryland CNG Facility which was subsequently reallocated to the purchase of buses, and $3M to precision stopping all from the TIIF Fund; and

WHEREAS, Both previous allocations of TIIF funds to the jurisdictions have been for use on a subregional basis in accordance with the rail construction formula in existence at the time the funds were received by the Authority; and

WHEREAS, It is projected that an additional $61.8M may become available in the TIIF from FY2007 through FY2012; now, therefore be it

RESOLVED, That after funding the $152.3M in Board previously approved projects, including the Operating Budget allocations, 60% of the additional funds (or approximately $37.1M) shall be made available for use on a subregional basis (36% of the aforesaid 60% allocated to the District of Columbia, 37% allocated to the State of Maryland, and 27% to the Commonwealth of Virginia) and the remaining 40% (or approximately $24.7M) shall be made available for regional projects as determined by the Board; and be it further

RESOLVED, That each jurisdiction shall share in the allocated funds received on a proportional basis along with the regional projects such that each amount of funds received shall be allocated in part to subregional projects and part to regional projects in the proportions established by this Resolution; and be it further

RESOLVED, That, prior to applying funds to any other projects in Montgomery County, $6M of Maryland's share of the additional approximately $37.1M allocation shall be made available to Maryland and applied to the reimbursement of the Maryland Department of

Motioned by Mr. Graham, seconded by Mr. Zimmerman
Ayes: 6 - Mrs. Mack, Mr. Deegan, Mr. Zimmerman, Mr. Graham, Mr. Smith, Mr. Kauffman

Transportation for funds advanced for the Silver Spring Transit Center project; and be it further

RESOLVED, That the principles of the TIIF shall be as follows:

1. Equity capital for the TIIF will be provided from uncommitted proceeds as a result of the sale or long-term lease, as appropriate, of real estate transactions approved under the Joint Development Program, and that all funds to be deposited in the TIIF will be subject to Board approval;

2. Any balance of funds in the TIIF will be used, with Board approval, and in conformity with Compact requirements, any applicable FTA approvals and other financial documents existing at any given time;

3. Regional funds in the TIIF will be allocated to non-operating expenses as approved by the Board except that TIIF funds may be used to fund Operating Budget "Safe Clean Reliable Funding" projects and for the funding of Joint Development activities.

4. The TIIF program may be used to support Joint Development activities that are consistent with the goals and objectives of the non-recurring, capital investment projects which will provide long-term benefits to the Authority, or to advance approved projects or purchases in the IRP that will strengthen reliability of transit services and meet increased ridership demands;

5. In reviewing requests for funds allocated as described in this Resolution, the Board will consider the following priority expenditures:

   a. Primarily to assure the complete funding of the IRP and the anticipated need for additional buses and rail cars to match ridership growth;

   b. Secondarily to promote transit-oriented projects such as the following:

      - Projects that generate revenue and provide a payback to the TIIF Fund shall receive a higher priority than those which provide no payback to the TIIF;

      - Projects that increase rail system access and ridership;

      - Projects which enable a joint development project to be implemented and enable attainment of the Joint Development Program's goals and objectives; or

- Projects which enhance design and integration of the project into the community and transit system.

6. Any payback revenues generated from a TIIF-funded project shall be deposited back into the TIIF;

7. Specific uses of funds under this policy shall be recommended by the Real Estate Committee to the Board of Directors for its review and action;

8. TIIF funds will be deposited into individual jurisdictional accounts with the balance of each account reported to the Board of Directors quarterly through the Real Estate Committee;

9. No jurisdictional requests for funding projects from individual TIIF accounts will be honored by the Board until adequate funds are available in the TIIF to meet the request and the required proportionate amounts have been deposited in each individual jurisdictional account;

and be it further

RESOLVED, That Resolution No. 2000-50 shall be rescinded except as it relates to TIIF expenditures prior to the date of passage of this Resolution; and be it finally

RESOLVED, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,

Carol B. O'Keeffe
General Counsel

Intelligence
Scott Gerwich
-Medical issue

From: Rosalyn Doggett
To: Omar A. Karim
Date: 7/24/2008 1:29:13 PM
Subject: Re: Howard-Shaw/Florida Avenue Kick-Off Meeting

Omar, this agenda looks fine. We have expected that you will be providing the executed Term Sheet and Option Fee tomorrow rather than discussing them! So, I hope that we are in agreement on that item. Also, I have attached a draft Right of Entry Permit with information for the Florida Avenue site, as well as recent "boilerplate" modifications, incorporated — for your review prior to tomorrow's meeting. Of course, we could not execute this agreement prior to receiving the executed term sheet and the option fee.
Looking forward to seeing you tomorrow, Rosalyn

>>> "Omar A. Karim" <okarim@bannekerventures.com> 7/24/2008 12:34 PM >>>
Ms. Doggett,

Below please find a draft of what we hope to discuss tomorrow:

~~I. Providing Executed Term Sheet & Option Fee~~

II. Overview of Project Schedule Bd Approval Dec
Docs Complete Nov 1st
1st Draft Next week

III. Right of Entry Permit
a. Comments
b. Insurance requirements
Document Control - Starting Version

IV. Development Agreement and Lease
a. Draft Next Wk
b. Negotiations wk of Aug 11th
c. Major issues

V. Project Design
a. Development Plan
b. Engineering Issues, etc.
WMATA to supply bids / Docs
ADSCM / Design Criteria
Existing Foundations
As built
Depth of Easement
Depth of Tunnel
8th St Vent ~~Sheets~~ Shaft
To Tank

VI. Other Issues

We plan on having someone from Torti Gallas and LEAD Engineering (civil and structural firm), in addition to our counsel from DLA Piper, be present tomorrow. Will someone from your design/engineering department be present to answer general questions about design/engineering issues that may be raised? Also, will you have a draft of the JDA and lease to provide us or do you want to send it prior to the meeting? Finally, have you all had an opportunity to review our comments to the ROE permit?

Looking forward to seeing you tomorrow.

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: Joel R. Washington; Marc E. Biondi

From: <Nancy.Greene@dot.gov>
To: <cokeeffe@wmata.com>
Date: 1/25/2008 2:08:54 PM
Subject: RE: WMATA Joint Devel Guidelines

See Fed Register re: new JD guidance

Carol,

Very simplistically, FTA's position is as follows:

49 U.S.C. 5334(h)(4) provides that:
When real property, equipment, or supplies acquired with FTA assistance are no longer needed for public transportation purposes, Federal Transit Administration may authorize the sale, transfer, or lease of the assets
The net income (both local and federal) from asset sales, uses, or leases (including lease renewals) must be used to reduce the gross project cost of other FTA-funded capital projects
This authority is in addition to and consistent with other relevant applicable authorities.

Therefore, in order for WMATA to keep proceeds from leasing FTA-assisted property, WMATA must find that the property is still needed for a public transportation purpose. Eligible transit activities (capital projects) are defined in 5302(a)(1).

Your comments and questions are timely. We do need to better describe the link with 5302(a)(1)(G). More later. Have a nice weekend.
Nancy

Nancy A. Greene, Regional Counsel
Federal Transit Administration, Region 3
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215-656-7258 (PH) - 215-656-7260 (FAX)

-----Original Message-----
From: Carol B. O'Keeffe [mailto:cokeeffe@wmata.com]
Sent: Friday, January 25, 2008 11:35 AM
To: Glenn, Brian <FTA>; Gary Malasky
Cc: Greene, Nancy <FTA>; Joel R. Washington
Subject: Re: WMATA Joint Devel Guidelines

Brian, it is my understanding from speaking with Nancy Greene that all of the requirements in the new JD Guidance apply to jd programs with or without new federal dollars, except the required federal claues which differentiate between projects with or without federal dollars. Is that correct?

Carol B. O'Keeffe
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>>> Gary Malasky 1/25/2008 11:31 AM >>>
Brian--

As I believe you are aware, there has been some misunderstanding about how FTA requirements for new funds applies to the our Joint Development Policies and Guidelines. Carol O'Keeffe has been communicating with Nancy Greene in an effort to clarify this matter. So far as I know or have been able to learn, we do not have any projects that are based on new FTA funds. We have made changes to the draft Guidelines based on prior emails, and I would like to be sure we have picked up the relevant guidance. I have attached the current draft Section 14 which is the section on FTA requirements. Could you please let me know if it is OK as written, or if further changes are necessary.

In one of your recent emails, you asked what is SAAM? It is the department charged with joint development under the last reorganization. What remains of LAND is now included in SAAM. For your information, the current working draft of the Guidelines removes references to internal WMATA departments and substitues simply "staff."

Thanks, and do hestitate to call if you have questions or comments.

Gary

Gary Malasky
WMATA
600 Fifth Street NW
Washington, DC 20001
202-962-1504
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where plaintiffs would be unable to use such public transportation. Baker v. Bell, C.A.5 (La.) 1980, 630 F.2d 1046. United States ⇐ 82(3.1)

Mobility handicapped individuals and associations of disabled persons had standing to bring private cause of action on account of failure to make urban mass transit equipment purchased with federal financial aid fully accessible to all handicapped persons. United Handicapped Federation v. Andre, C.A.8 (Minn.) 1977, 558 F.2d 413. United States ⇐ 82(3.1)

Mobility handicapped persons had standing to bring action on behalf of themselves and others similarly situated to prevent execution of contracts for construction of public passenger buses until needs of mobility handicapped were given greater consideration. Bartels v. Biernat, E.D.Wis.1975, 405 F.Supp. 1012. Injunction ⇐ 114(2)

11. Class actions

Where only declaratory and injunctive relief was sought, class action could be brought by mobility handicapped persons to prevent execution of contract for construction of public passenger buses until needs of mobility handicapped were given greater consideration; class would include named plaintiffs and all persons in given county who suffered from mobility handicaps and who were presently unable to make effective use of public mass transportation serving such county. Bartels v. Biernat, E.D.Wis.1975, 405 F.Supp. 1012. Federal Civil Procedure ⇐ 181

12. Settlement agreements

Settlement agreement between city transit authority and group of handicapped individuals established a contractual obligation rather than a nonbinding statement of policy, where, after agreement was entered into, transit authority created separate paratransit system and established guidelines for its personnel in their dealings with the handicapped, as required by the agreement. Rodriguez v. VIA Metropolitan Transit System, C.A.5 (Tex.) 1986, 802 F.2d 126. Compromise And Settlement ⇐ 15(1)

13. Review

Where federal court determined that applicable federal statutes required regional transit authority to provide service for elderly and handicapped which was reasonable by comparison with service provided to general public, judicial scope of review was that which must apply to federal actions as provided in Administrative Procedure Act, sections 551 et seq. and 701 et seq. of Title 5, which was that courts should hold unlawful agency action, findings and conclusions found to be arbitrary, capricious, and an abuse of discretion, or otherwise not in accordance with law. Vanko v. Finley, N.D.Ohio 1977, 440 F.Supp. 656. Carriers ⇐ 18(1)

§ 5302. Definitions

(a) In general.—Except as otherwise specifically provided, in this chapter, the following definitions apply:

(1) Capital project.—The term "capital project" means a project for—

(A) acquiring, constructing, supervising, or inspecting equipment or a facility for use in public transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

(B) rehabilitating a bus;

(C) remanufacturing a bus;

(D) overhauling rail rolling stock;

(E) preventive maintenance;

(F) leasing equipment or a facility for use in public transportation, subject to regulations that the Secretary prescribes limiting the leasing arrangements to those that are more cost-effective than purchase or construction;

(G) a public transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to a public transportation facility, construction, renovation, and improvement of intercity bus and intercity rail stations and terminals, and the renovation and improvement of historic transportation facilities, because the improvement enhances the effectiveness of a public transportation project and is related physically or functionally to that public transportation project, or establishes new or enhanced coordination between public transportation and other transportation, and provides a fair share of revenue for public transportation that will be used for public transportation—

(i) including property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications), facilities that incorporate community services such as daycare or health care, and a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall, except that a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means; and

(ii) excluding construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to public transportation;

(H) the introduction of new technology, through innovative and improved products, into public transportation;

(I) the provision of nonfixed route paratransit transportation services in accordance with section 223 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12143), but only for grant recipients that are in compliance with applicable

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requirements of that Act, including both fixed route and demand responsive service, and only for amounts not to exceed 10 percent of such recipient's annual formula apportionment under sections 5307 and 5311;

(J) crime prevention and security—

(i) including—

(I) projects to refine and develop security and emergency response plans;

(II) projects aimed at detecting chemical and biological agents in public transportation;

(III) the conduct of emergency response drills with public transportation agencies and local first response agencies; and

(IV) security training for public transportation employees; but

(ii) excluding all expenses related to operations, other than such expenses incurred in conducting activities described in clauses (i)(III) and (i)(IV);

(K) establishing a debt service reserve, made up of deposits with a bondholder's trustee, to ensure the timely payment of principal and interest on bonds issued by a grant recipient to finance an eligible project under this chapter; or

(L) mobility management—

(i) consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a governmental entity, under this chapter (other than section 5309); but

(ii) excluding operating public transportation services.

(2) Chief executive officer of a state.—The term "chief executive officer of a State" includes the designee of the chief executive officer.

(3) Emergency regulation.—The term "emergency regulation" means a regulation—

(A) that is effective temporarily before the expiration of the otherwise specified periods of time for public notice and comment under section 5334(b); and

(B) prescribed by the Secretary as the result of a finding that a delay in the effective date of the regulation—

(i) would injure seriously an important public interest;

(ii) would frustrate substantially legislative policy and intent; or

(iii) would damage seriously a person or class without serving an important public interest.

(4) Fixed guideway.—The term "fixed guideway" means a public transportation facility—

(A) using and occupying a separate right-of-way or rail for the exclusive use of public transportation and other high occupancy vehicles; or

(B) using a fixed catenary system and a right-of-way usable by other forms of transportation.

(5) Individual with a disability.—The term "individual with a disability" means an individual who, because of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semiambulatory capability), cannot use effectively, without special facilities, planning, or design, public transportation service or a public transportation facility.

(6) Local governmental authority.—The term "local governmental authority" includes—

(A) a political subdivision of a State;

(B) an authority of at least 1 State or political subdivision of a State;

(C) an Indian tribe; and

(D) a public corporation, board, or commission established under the laws of a State.

(7) **Mass transportation.**—The term "mass transportation" means public transportation.

(8) Net project cost.—The term "net project cost" means the part of a project that reasonably cannot be financed from revenues.

(9) New bus model.—The term "new bus model" means a bus model (including a model using alternative fuel)—

(A) that has not been used in public transportation in the United States before the date of production of the model; or

(B) used in public transportation in the United States, but being produced with a major change in configuration or components.

(10) **Public transportation.**—The term "public transportation" means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but

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does not include schoolbus, charter, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in chapter 243 (or a successor to such entity).

(11) Regulation.—The term "regulation" means any part of a statement of general or particular applicability of the Secretary designed to carry out, interpret, or prescribe law or policy in carrying out this chapter.

(12) Secretary.—The term "Secretary" means the Secretary of Transportation.

(13) State.—The term "State" means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(14) Transit.—The term "transit" means public transportation.

(15) Transit enhancement.—The term "transit enhancement" means, with respect to any project or an area to be served by a project, projects that are designed to enhance public transportation service or use and that are physically or functionally related to transit facilities. Eligible projects are—

(A) historic preservation, rehabilitation, and operation of historic public transportation buildings, structures, and facilities (including historic bus and railroad facilities);

(B) bus shelters;

(C) landscaping and other scenic beautification, including tables, benches, trash receptacles, and street lights;

(D) public art;

(E) pedestrian access and walkways;

(F) bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on public transportation vehicles;

(G) transit connections to parks within the recipient's transit service area;

(H) signage; and

(I) enhanced access for persons with disabilities to public transportation.

(16) Urban area.—The term "urban area" means an area that includes a municipality or other built-up place that the Secretary, after considering local patterns and trends of urban growth, decides is appropriate for a local public transportation system to serve individuals in the locality.

(17) Urbanized area.—The term "urbanized area" means an area encompassing a population of not less than 50,000 people

that has been defined and designated in the most recent decennial census as an 'urbanized area' by the Secretary of Commerce.

(b) Authority to modify "individual with a disability".—The Secretary may by regulation modify the definition of the term "individual with a disability" in subsection (a)(5) as it applies to section 5307(d)(1)(D).

(Added Pub.L. 103–272, § 1(d), July 5, 1994, 108 Stat. 786, and amended Pub.L. 103–331, Title III, § 335A, Sept. 30, 1994, 108 Stat. 2495; Pub.L. 104–50, Title III, § 333(a), Nov. 15, 1995, 109 Stat. 457; Pub.L. 104–287, § 6(c), Oct. 11, 1996, 110 Stat. 3398; Pub.L. 105–102, § 3(a), Nov. 20, 1997, 111 Stat. 2214; Pub.L. 105–178, Title III, § 3003, June 9, 1998, 112 Stat. 338; Pub.L. 105–206, Title IX, § 9009(a), July 22, 1998, 112 Stat. 852; Pub.L. 109–59, Title III, §§ 3002(b)(4), 3004, Aug. 10, 2005, 119 Stat. 1545.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts.

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5302(a)(1)	49 App.:1608(c)(1).	July 9, 1964, Pub.L. 88–365, § 12(c)(1), 78 Stat. 306; Aug. 10, 1965, Pub.L. 89–117, § 1109, 79 Stat. 507; Sept. 8, 1966, Pub.L. 89–562, § 2(a)(1), 80 Stat. 715; May 25, 1967, Pub.L. 90–19, § 20, 81 Stat. 25; Aug. 1, 1968, Pub.L. 90–448, § 702, 82 Stat. 535; restated Nov. 6, 1978, Pub.L. 95–599, § 308(b), 92 Stat. 2746; Jan. 6, 1983, Pub.L. 97–424, § 309(a), 96 Stat. 2151; Apr. 2, 1987, Pub.L. 100–17, § 309(a), 101 Stat. 227.
	49 App.:1608(c)(7), (8).	July 9, 1964, Pub.L. 88–365, § 12(c)(3)–(9), 78 Stat. 306; Aug. 10, 1965, Pub.L. 89–117, § 1109, 79 Stat. 507; Sept. 8, 1966, Pub.L. 89–562, § 2(a)(1), 80 Stat. 715; May 25, 1967, Pub.L. 90–19, § 20, 81 Stat. 25; Aug. 1, 1968, Pub.L. 90–448, § 702, 82 Stat. 535; restated Nov. 6, 1978, Pub.L. 95–599, § 308(b), 92 Stat. 2746; Dec. 18, 1991, Pub.L. 102–240, § 3016, 105 Stat. 2108.
5302(a)(2)	49 App.:1608(c)(3).	
5302(a)(3)	49 App.:1608(c)(13).	July 9, 1965, Pub.L. 88–365, 78 Stat. 302, § 12(c)(12), (13); added Apr. 2, 1987, Pub.L. 100–17, § 318(b)(3), 101 Stat. 234.
5302(a)(4)	49 App.:1608(c)(2).	July 9, 1964, Pub.L. 88–365, § 12(c)(2), 78 Stat. 306; Aug. 10, 1965, Pub.L. 89–117, § 1109, 79 Stat. 507; Sept. 8, 1966, Pub.L. 89–562, § 2(a)(1), 80 Stat. 715; May 25, 1967, Pub.L. 90–19, § 20;

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continuation of collective bargaining rights when public transit authority applies for federal assistance means "without interruption." United Transp. Union, AFL-CIO v. Brock, C.A.D.C.1987, 815 F.2d 1562, 259 U.S.App.D.C. 361. Labor And Employment ⇐ 1297

Requirement of Urban Mass Transportation Act of 1964, § 13(c) that labor protective agreements with transit authority provide for "continuation of collective bargaining rights" means at a minimum, that where employees enjoyed collective bargaining rights prior to public acquisition of transit system, they are entitled to be represented in meaningful, "good faith" negotiations with their employer over wages, hours and other terms and conditions of employment. Amalgamated Transit Union Intern., AFL-CIO v. Donovan, C.A.D.C.1985, 767 F.2d 939, 247 U.S.App.D.C. 149. United States ⇐ 82(3.1)

9. —— Contract as containing protective arrangements

Urban Mass Transportation Act does not mandate that required labor protective arrangements be embodied in contract between grant recipient and its employees and thus labor protective agreement is not, in that respect, a creation of federal law giving rise to jurisdiction of federal courts under section 1331 of Title 28. Local Div. 732, Amalgamated Transit Union v. Metropolitan Atlanta Rapid Transit Authority, C.A.11 (Ga.) 1982, 667 F.2d 1327, rehearing denied 671 F.2d 1382. Federal Courts ⇐ 202

10. Hearings

Railroad employees who alleged that fair and equitable arrangements had not been made to protect them with respect to proposed federal grants-in-aid to state and state agencies for purposes of improving railroad commuter service were not entitled to hearing before Secretary of Labor on their objections to proposed protective provisions. Kendler v. Wirtz, C.A.3 (N.J.) 1968, 388 F.2d 381. Administrative Law And Procedure ⇐ 470; United States ⇐ 82(2)

11. Jurisdiction

Urban Mass Transportation Act provision requiring state or local government to make arrangements to preserve transit workers' existing collective bargaining rights before that government may receive federal financial assistance for acquisition of privately owned transit company did not permit union to sue in federal court for alleged violations of arrangement of that kind or for violations of collective bargaining agreement between union and local government transit authority. Jackson Transit Authority v. Local Div. 1285, Amalgamated Transit Union, AFL-CIO-CLC, U.S.Tenn.1982, 102 S.Ct. 2202, 457 U.S. 15, 72 L.Ed.2d 639. Federal Courts ⇐ 201.1

Claim that agreement under which governmental entity which receives financial assistance under Urban Mass Transit Act (UMTA) arranges for protection of employees involved in the public transit system has been violated does not state a cause of action on which relief can be granted in a federal court. City of Beloit v. Local 643 of American Federation of State, County and Municipal Employees, AFL-CIO, C.A.7 (Wis.) 2001, 248 F.3d 650. Federal Courts ⇐ 243

Urban Mass Transportation Act does not contain implicit grant of jurisdiction over actions for breach of labor protective agreements to federal courts, notwithstanding that legislative history shows that Congress intended that affected employees be protected by privately negotiable protective arrangements, in view of absence of intimation in statute, committee reports or congressional debates that Congress intended that federal courts resolve contractual disputes between municipal transit workers and their employers, and unforeseeability when Congress enacted this section of particular terms of required labor protective arrangements. Local Div. 732, Amalgamated Transit Union v. Metropolitan Atlanta Rapid Transit Authority, C.A.11 (Ga.) 1982, 667 F.2d 1327, rehearing denied 671 F.2d 1382. Federal Courts ⇐ 202

District court had jurisdiction over unions' action to enjoin disbursement of federal grant funds pursuant to Urban Mass Transportation Act to transit companies conditionally certified as eligible for grant funds even though companies advised unions and Department of Labor that they would no longer agree to submit impasses to binding interest arbitration. Amalgamated Transit Union, AFL-CIO v. Donovan, D.C.D.C.1982, 554 F.Supp. 589. Federal Courts ⇐ 201.1

Federal district court had jurisdiction of contract dispute between urban mass transit authority and union which represented some of the authority's employees where the collective bargaining agreement between the transportation authority and the union was entered into pursuant to the Urban Mass Transportation Act. Division 1287, Amalgamated Transit Union, AFL-CIO v. Kansas City Area Transp. Authority, W.D.Mo.1980, 485 F.Supp. 856. Federal Courts ⇐ 202

12. Private right of action

Section of Urban Mass Transportation Act of 1964 (UMTA) does not create federal cause of action on behalf of workers against state transit recipients. Burke v. Utah Transit Authority and Local 382, C.A.10 (Utah) 2006, 462 F.3d 1253. Action ⇐ 3

Even if action to enforce labor protective agreement arose under federal law and was thus subject to federal court jurisdiction under section 1331 of Title 28, union's complaint for enforcement of labor protective arrangement would fail to state claim upon which relief could be granted since Urban Mass Transportation Act section requiring labor protective arrangements as condition of federal assistance does not imply private right of action. Local Div. 732, Amalgamated Transit Union v. Metropolitan Atlanta Rapid Transit Authority, C.A.11 (Ga.) 1982, 667 F.2d 1327, rehearing denied 671 F.2d 1382. Labor And Employment ⇐ 1326

13. Persons entitled to maintain action

Union which was suing in its representative capacity to vindicate rights of employees to binding interest arbitration under provision of Urban Mass Transportation Act of 1964 protective arrangements had standing to do so, so that union could rely upon the actual or threatened injury to individual employees in establishing jurisdictional amount. Local Division No. 714, Amalgamated Transit Union, AFL-CIO v. Greater Portland Transit Dist. of Portland, Me., C.A.1 (Me.) 1978, 589 F.2d 1. Federal Courts ⇐ 346

14. Remedies

Municipal transit employees union, which based its attempt to compel municipal transit utility and city to enter into arbitration of terms of new collective bargaining agreement on Urban Mass Transportation Act's express requirement that, as a prerequisite to federal aid, city make fair and equitable arrangement to protect interests of employees affected by such assistance, enjoyed an implied judicial remedy, enforceable in federal court, for city's alleged failure to engage in interest arbitration pursuant to previous collective bargaining agreement provision requiring that the transit utility arbitrate labor disputes, including making or maintaining collective bargaining agreements. Local Division 519, Amalgamated Transit Union, AFL-CIO v. LaCrosse Municipal Transit Utility, W.D.Wis.1978, 445 F.Supp. 798, affirmed 585 F.2d 1340. Federal Courts ⇐ 204

15. Review

Decision of Secretary of Labor to certify transit authority's labor protective agreement pursuant to Urban Mass Transportation Act of 1964, s 13(c), regarding certification that transit authority has made a "fair and equitable" labor protective arrangement, was subject to judicial review. Amalgamated Transit Union Intern., AFL-CIO v. Donovan, C.A.D.C.1985, 767 F.2d 939, 247 U.S.App.D.C. 149. United States ⇐ 82(7)

Review of Secretary of Labor's conditional certification of transit companies for receipt of federal grant funds under Urban Mass Transportation Act had to be narrowly and carefully limited, and required inquiry concerning whether Secretary's conditional certification that agreements at issue met Chapter's requirements of "fair and equitable arrangements" was abuse of discretion. Amalgamated Transit Union, AFL-CIO v. Donovan, D.C.D.C.1982, 554 F.Supp. 589. United States ⇐ 82(7)

§ 5334. Administrative provisions

(a) General authority.—In carrying out this chapter, the Secretary of Transportation may—

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(1) prescribe terms for a project under sections 5307 and 5309–5311 of this title (except terms the Secretary of Labor prescribes under section 5333(b) of this title);

(2) sue and be sued;

(3) foreclose on property or bring a civil action to protect or enforce a right conferred on the Secretary of Transportation by law or agreement;

(4) buy property related to a loan under this chapter;

(5) agree to pay an annual amount in place of a State or local tax on real property acquired or owned under this chapter;

(6) sell, exchange, or lease property, a security, or an obligation;

(7) obtain loss insurance for property and assets the Secretary of Transportation holds;

(8) consent to a modification in an agreement under this chapter;

(9) include in an agreement or instrument under this chapter a covenant or term the Secretary of Transportation considers necessary to carry out this chapter;

(10) collect fees to cover the costs of training or conferences, including costs of promotional materials, sponsored by the Federal Transit Administration to promote public transportation and credit amounts collected to the appropriation concerned; and

(11) issue regulations as necessary to carry out the purposes of this chapter.

(b) **Prohibitions against regulating operations and charges.**—

(1) **In general.**—Except for purposes of national defense or in the event of a national or regional emergency, the Secretary may not regulate the operation, routes, or schedules of a public transportation system for which a grant is made under this chapter, nor may the Secretary regulate the rates, fares, tolls, rentals, or other charges prescribed by any provider of public transportation.

(2) **Limitation on statutory construction.**—Nothing in this subsection shall be construed to prevent the Secretary from requiring a recipient of funds under this chapter to comply with the terms and conditions of its Federal assistance agreement.

(c) **Procedures for prescribing regulations.**—(1) The Secretary of Transportation shall prepare an agenda listing all areas in which the Secretary intends to propose regulations governing activities under this chapter within the following 12 months. The Secretary shall publish the proposed agenda in the Federal Register as part of the Secretary's semiannual regulatory agenda that lists regulatory activities of the Federal Transit Administration. The Secretary shall submit the agenda to the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate on the day the agenda is published.

(2) Except for emergency regulations, the Secretary of Transportation shall give interested parties at least 60 days to participate in a regulatory proceeding under this chapter by submitting written information, views, or arguments, with or without an oral presentation, except when the Secretary for good cause finds that public notice and comment are unnecessary because of the routine nature or insignificant impact of the regulation or that an emergency regulation should be issued. The Secretary may extend the 60-day period if the Secretary decides the period is insufficient to allow diligent individuals to prepare comments or that other circumstances justify an extension.

(3) An emergency regulation ends 120 days after it is issued.

(4) The Secretary of Transportation shall comply with this section (except subsection (i)) and sections 5318(e), 5323(a)(2), 5325(a), 5325(b), and 5325(f) when proposing or carrying out a regulation governing an activity under this chapter, except for a routine matter or a matter with no significant impact.

(d) **Budget program and set of accounts.**—The Secretary of Transportation shall—

(1) submit each year a budget program as provided in section 9103 of title 31; and

(2) maintain a set of accounts for audit under chapter 35 of title 31.

(e) **Depository and availability of amounts.**—The Secretary of Transportation shall deposit amounts made available to the Secretary under this chapter in a checking account in the Treasury. Receipts, assets, and amounts obtained or held by the Secretary to carry out this chapter are available for administrative expenses to carry out this chapter.

(f) **Binding effect of financial transaction.**—A financial transaction of the Secretary of Transportation under this chapter and a related voucher are binding on all officers and employees of the United States Government.

(g) **Dealing with acquired property.**—Notwithstanding another law related to the Government acquiring, using, or disposing of real property, the Secretary of Transportation may deal with property

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acquired under subsection (a)(3) or (4) of this section in any way. However, this subsection does not—

(1) deprive a State or political subdivision of a State of jurisdiction of the property; or

(2) impair the civil rights, under the laws of a State or political subdivision of a State, of an inhabitant of the property.

(h) **Transfer of assets no longer needed.**—(1) If a recipient of assistance under this chapter decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. The Secretary may authorize a transfer for a public purpose other than public transportation only if the Secretary decides—

(A) the asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) there is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) the overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

(2) A decision under paragraph (1) of this section must be in writing and include the reason for the decision.

(3) This subsection is in addition to another law related to using and disposing of a facility or equipment under an assistance agreement.

(4) **Proceeds from the sale of transit assets.**—

(A) **In general.**—When real property, equipment, or supplies acquired with assistance under this chapter are no longer needed for public transportation purposes as determined under the applicable assistance agreement, the Secretary may authorize the sale, transfer, or lease of the assets under conditions determined by the Secretary and subject to the requirements of this subsection.

(B) **Use.**—The net income from asset sales, uses, or leases (including lease renewals) under this subsection shall be used by the recipient to reduce the gross project cost of other capital projects carried out under this chapter.

(C) **Relationship to other authority.**—The authority of the Secretary under this subsection is in addition to existing authorities controlling allocation or use of recipient income otherwise permissible in law or regulation in effect prior to the date of enactment of this paragraph.

(i) **Transfer of amounts and non-government share.**—(1) Amounts made available for a public transportation project under title 23 shall be transferred to and administered by the Secretary of Transportation under this chapter. Amounts made available for a highway project under this chapter shall be transferred to and administered by the Secretary under title 23.

(2) The provisions of title 23 related to the non-Government share apply to amounts under title 23 used for public transportation projects. The provisions of this chapter related to the non-Government share apply to amounts under this chapter used for highway projects.

(j) **Relationship to other laws.**—(1) Section 9107(a) of title 31 applies to the Secretary of Transportation under this chapter.

(2) Section 3709 of the Revised Statutes (41 U.S.C. 5) applies to a contract for more than $1,000 for services or supplies related to property acquired under this chapter.

(k) **Notification of pending discretionary grants.**—Not less than 3 full business days before announcement of award by the Secretary of any discretionary grant, letter of intent, or full funding grant agreement totaling $1,000,000 or more, the Secretary shall notify the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate and Committees on Transportation and Infrastructure and Appropriations of the House of Representatives.

(l) **Agency statements.**—

(1) **In general.**—The Administrator of the Federal Transit Administration shall follow applicable rulemaking procedures under section 553 of title 5 before the Federal Transit Administration issues a statement that imposes a binding obligation on recipients of Federal assistance under this chapter.

(2) **Binding obligation defined.**—In this subsection, the term "binding obligation" means a substantive policy statement, rule, or guidance document issued by the Federal Transit Administration that grants rights, imposes obligations, produces significant effects on private interests, or effects a significant change in existing policy.

(Added Pub.L. 103–272, § 1(d), July 5, 1994, 108 Stat. 836, and amended Pub.L. 104–287, § 5(9), Oct. 11, 1996, 110 Stat. 3389; Pub.L. 104–316, Title I, § 127(a), Oct. 19, 1996, 110 Stat. 3840; Pub.L. 105–178, Title III, §§ 3023(c), 3025(a), (b)(1), (c), June 9, 1998, 112 Stat. 364, 365; Pub.L. 109–59, Title III, §§ 3002(b)(4), 3032, Aug. 10, 2005, 119 Stat. 1545, 1626.)

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Florida Ave. 1/6/09

- Meet w/ Carol to discuss TiiF.
  Kermit & Tracie
- Issues
  - Restriction on use of TiiF funds? Guidelines?
  - Precedents
  - Not in initial offer (neither was A/H)
  - How will funds be used → mortgage?
- ~~A~~ Navy Yard Station improvements
- TiiF
  - Revenue which is "program income" may be used for any capital/operational purpose
    - Originally only for FTA grantee → How Rule has written
    - has become murky over time (Common Grant Rule)
  - Original TiiF Resolution (2006) – ~~XX~~
    - Revolving fund that could be loaned to investors
  - BOD must approve use
    - even though pre-allocated to each district/state
  - Tivoli → went Awry ("FUBAR")
  - JD Regulations
  - what is a "transit project"
    - view 14 project
    - FTA guidance letter

~~X~~ – A/H – Reg'mt in DC
- what is left in TiiF?

- use MO Co Covenants as guide for A/H
  - look at Navy Yard station

- is use of A/H a transit purpose?

- Eligible Transit Purposes
  - Look at offer - look at JD Guidance
  - Ex. Sidewalk improvements or lighting
  - ** - is A/H an Eligible Transit Purpose

- Program (JD) income vs. Disposable Surplus Property
  - DSP → ① other Capital or ② give back to FTA
  - PI → into TIIF (less Restrictive as to WMATA's use)
  - Circular 5010 → Grant mgmt

** - we will Submit it to FTA **
  - it is not clearly transit
  - it is not Related to transit
    - Ex. include/improve Sidewalks to our Station
  - have to go to BOD 1st
  - Project was borderline JD program (and not Surplus)

- FTA → will look at difference b/w price & FMV Appraisal
  - Should WMATA be using FTA Funds for A/H

1/7/09

Meet w/ Roz

- Tiif
  - Tivoli
  - PN Hoffman
  - Amt of $ in Tiif fund
  - Transit Related Purposes
- Res. 2006-31 - Approval of Tiif Allocation Policy
- Adams Morgan - U Street
  - Res. 2005-50
  - Study/marketing why Link Shuttle has low Ridership
  - $150,000 over 2 years

- PNH
  - Res. 2006-47
  - Making access improvements to U St./African-American Civil War Memorial / Cardozo Metro Rail Station Area
  - $1,500,000

Meet w/ Mabel & Mark Pohl

- Phil Scales → TiiF history
- Mark Pohl -
  - Navy Yard → A/H (but no TiiF)
  - Tiif → Rick Harkem Director of Budget 6th flo.
    - Columbia Heights - Built Facade
      - Part of Station
      - FTA Approved

From: Rosalyn Doggett
To: Joel R. Washington; Joshua W. Montague
Date: 1/5/2009 10:59:51 AM
Subject: Florida Avenue

Omar called. He said that the DMPED office wants to arrange a meeting to "close the gap." He will contact me on Wednesday about that and also our thoughts.

He would like to get $1 million of TIIF funds as Monty Hoffman did. → what project? Was it JD

I asked him if he had discussed any city contribution to help close the gap like tax abatement, and the effective answer was "no."

I asked him if he had changed any of his assumptions since his assumptions and results, even without affordable housing, were far more negative than what it appeared he had proposed to us before. He claimed that the increased rent negotiated just before the Board presentation made it so. In short he has not changed any of his assumptions either.

I said that I would go over his numbers (I need to) and be prepared to discuss more concretely with him on Wednesday.

Rosalyn P. Doggett
Washington Metropolitan Area Transit Authority
600 Fifth St, NW
Washington, DC 20001
Phone: 202 962 2208
Fax: 202 962 2396
rdoggett@wmata.com

CC: eric.smart@bolansmart.com

- Not in initial offer → other Developers Did not have this advantage in their Bids
- used before? Bad precedent
- Is this used as a mortgage?
- FTA - TEA-21

FTA Joint Development Notes:

- The FTA 1997 joint development policy statement announced to all transit grantees that real property acquired with Federal grant funds could be used to support a transit-oriented joint development.
    - If the joint development project produced income for the transit system, this was considered to be "program income" as defined in the Common Grant Rule, and freely usable by the transit system for ***eligible transit purposes***.
    - The only restriction placed on such transactions was that the transit system must retain effective continuing control of the joint development for transit purposes. I.e., the property being used for joint development could be sold for this purpose to the developer, but the transit grantee must retain some assurance that the joint development will remain accessible to the transit system during the life of the project.
    - Where the grantee retains effective continuing control over the joint development for mass transportation purposes (such as an easement, or a contractual arrangement), all proceeds of sale, lease or other incumbrance of the property will be treated as program income for use by the transit system to meet capital and operating needs, for as long as the joint development lasts.

- **Risks** - From the transit system's perspective the risks are significant. They include local political risk, risk of failure, project delays, and unmet expectations.
    - There is political risk in the relationship between the transit system and the community that it serves. Some communities may oppose any kind of "Transit Oriented Development." Some transit systems seek to generate revenues by proposing tax-increment financing. This has often been an unpopular method. The transit board may not feel that it is appropriate for the transit system to be involved in local land use issues. Or, there may be a strong local planning organization that will view transit joint development as an intrusion on its own areas of responsibility.
    - The joint development project may fail financially, even though it produces some or many of the desired social or economic benefits along the way. This may take the development out of the hands of the transit system, through a foreclosure sale, or it may force the transit system to buy out the development. This would require entirely local funds, and likely would be viewed by the local community as a failure for many years afterward.
    - Project delays, particularly from environmental reviews and labor negotiations, or disagreements with other local jurisdictions, may reduce projected returns to the developer.
    - The transit system must avoid the temptation to "oversell" a joint development as it seeks to build local consensus. If the project fails to meet expectations, it threatens future joint development opportunities, which may have even greater potential benefits.

- Transportation
- Urban Design
- Testimony
- In Your Community
  - DC
  - Maryland
  - Montgomery County
  - Prince George's
  - Virginia
  - Alexandria
  - Arlington
  - Loudoun
  - Fairfax
  - Prince William

January 06, 2009

DC Council Lauded for Action on Affordable Housing Law

CAMPAIGN FOR MANDATORY INCLUSIONARY ZONING

For Immediate Release

October 21, 2008

Contact: **Cheryl Cort** 202-244-4408 ext. 112 or 202-251-7516

D.C. COUNCIL LAUDED FOR ACTION ON AFFORDABLE HOUSING LAW

Council steps in to ensure Inclusionary Zoning will be implemented, a law long delayed by the Fenty Administration

WASHINGTON, D.C. – On October 21, the D.C. Council voted unanimously to ensure that the long delayed Inclusionary Zoning affordable housing law is implemented. Championed by Chairman Vincent Gray and Councilmember Jim Graham, the bill fully reflects the position of the Campaign for Mandatory Inclusionary Zoning, which has repeatedly requested implementation by the Mayor since original legislation was approved in December 2006.

"Affordable housing remains a high priority for the residents of the District of Columbia," said Chairman Gray. "Inclusionary Zoning is one of the many important tools this Council has supported to achieve it."

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 010007

Coalition for Smarter Growth

Better Communities, Less Traffic for the Washington, D.C. Region

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 010008

Added Councilmember Graham, "We really need to move forward with these requirements."

"We applaud the leadership of Chairman Gray and the D.C. Council, affirming the need to implement this critically important program immediately," said Cheryl Cort, Policy Director for the Coalition for Smarter Growth and spokesperson for the Campaign for Mandatory Inclusionary Zoning. "Residents across the District do not have the luxury of waiting while opportunities to create more affordable housing are lost."

Members of the Campaign for Mandatory Inclusionary Zoning believe the year and a half wait for IZ is long enough -- "the city needs to do something for people who have been here a long time and are getting pushed out," said Pocahontas Outlaw, Board Member, D.C. ACORN.

Known as "IZ," Inclusionary Zoning has long been sought as a tool to help address the significant need for affordable housing in the District of Columbia. Having garnered overwhelming support from the D.C. Zoning Commission, the D.C. Council unanimously endorsed IZ in December 2006, and directed the Mayor to produce implementing regulations to administer the program.

However, the Mayor's administration still has not finalized regulations for the law. In January 2008, the Council set a deadline for the Mayor to publish the implementing regulations, which he did. However, after six months, the regulations remain only in draft. Today, the Council set the deadline for completing the final regulations so the law can go into effect.

Inclusionary Zoning is a national best practice that requires all new developments of 10 units or more to set aside 8-10 percent of the housing units as affordable to low and moderate-income residents. This approach allows private housing developers to help address a locality's increasing affordable housing demand at virtually no additional cost to the city. IZ is incorporated into the District's 2006 Comprehensive Plan.

###

The Campaign for Mandatory Inclusionary Zoning is a diverse coalition of local labor unions, affordable housing advocates, social service providers, civic associations, and faith-based organizations. For more information, please visit www.smartergrowth.net/iz

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FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 010010

Continued From Page 5

Helping Communities

bill would require residential developers of more than 20 units to set aside at least 10 percent of the units for low- and moderate-income families. The bill promises developers cost-saving incentives such as expedited permitting, building code modifications, provision of land at nominal fees, and tax credits and density bonuses. Developers are provided the option of building the affordable units on-site or at another site, or to pay into a city affordable housing trust fund.

Philadelphia's affordable housing ordinance requires the City Council to adopt another ordinance to implement the zoning code changes. Opponents of Philadelphia's legislation emphasize that the bill will eliminate future large-scale housing construction in the city because the incentives offered in the bill do not offset the costs of high-rise construction.

Baltimore

In June 2007, the Baltimore City Council adopted an inclusionary housing ordinance that requires residential developers to include affordable units in housing projects of 30 or more units. The Baltimore ordinance provides developers of inclusionary projects with major public subsidies, including discounted land, PILOTs (payments in lieu of taxes), TIFs (tax increment financing), city grants, loans or infrastructure above a certain percentage of project costs. Baltimore's Housing Commissioner is reviewing public comments received on its draft interim inclusionary housing regulations implementing the ordinance.

Washington, D.C.

Likewise, in March 2007, Washington, D.C., passed an inclusionary zoning statute, which requires an affordable housing set-aside for developments of at least 10 units in specified areas. Developers are to receive an increase in density for the project. The Deputy Mayor for Planning and Economic Development is currently working on the implementing regulations.

Conclusion

Until now, with the exception of New Jersey, affordable housing legislation has been directed toward residential developers. Development fees such as those imposed by N.J.'s Assembly Bill 500, however, may be a harbinger of things to come. In light of the continuing demand for affordable housing across the nation, and the deteriorating housing market and widespread instability in credit markets, governmental agencies may look to non-residential developers as a funding source of future affordable housing. In such cases, non-residential developers are well-advised to consult with experienced counsel on strategic ways to participate actively and effectively in the regulatory and legislative process.

Please note: The city ordinances discussed herein were in varying stages of the legislative or regulatory process when this article was submitted. Please contact counsel for possible updates. ■

TRACY A. SIEBOLD is an Associate in Ballard Spahr's Real Estate department in Voorhees, NJ, and a member of the firm's Housing, Real Estate Development and Zoning and Land Use Groups. Her primary focus is on land use and *Mount Laurel* doctrine compliance and litigation. Her clients include major commercial and residential developers, trade organizations and landowners throughout New Jersey in connection with real estate litigation, zoning and land use litigation, and affordable housing compliance and litigation.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 010011

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*72 FR 5788, **

FEDERAL REGISTER

Vol. 72, No. 025

Notices

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Transit Administration

[Docket No: FTA-2006-23511]

Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law

72 FR 5788

DATE: Wednesday, February 7, 2007

ACTION: Final Agency Guidance.

SUMMARY: This final Agency guidance describes the eligibility of "joint development" improvements under 49 U.S.C. 5301 *et seq.* (Federal transit law) by interpreting the definition and operation of the term "capital project" as defined at 49 U.S.C. 5302(a)(1)(G), and as amended by Section 3003(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This final Agency guidance is the culmination of three notices issued by the Federal Transit Administration (FTA or Agency), the first of which appeared in the **Federal Register** on January 31, 2006. FTA intends to publish the text of this final Agency guidance as a stand-alone FTA Circular **[*5789]** titled The Eligibility of Joint Development Improvements under Federal Transit Law.

EFFECTIVE DATE: *Effective Date:* The effective date of this final Agency guidance is February 7, 2007.

Availability of the Final Agency Guidance and Comments: Copies of this final Agency guidance and comments and material received from the public, as well as any documents indicated in the preamble as being available in the docket, are part of docket number FTA-2006-23511. For access to the DOT docket, please go to *http://dms.dot.gov* at any time or to the Docket Management System facility, U.S. Department of Transportation, Room PL-401 on the plaza level

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 010012

of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jayme L. Blakesley, Attorney-Advisor, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590-0001, (202) 366-0304, *jayme.blakesley@dot.gov*; or Robert J. Tuccillo, Associate Administrator, Office of Budget & Policy, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590-0001, (202) 366-4050, *Robert.tuccillo@dot.gov*. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This document is organized in the following sections:

I. Background

II. Final Agency Guidance on the Eligibility of Joint Development Improvements under Federal Transit Law

III. Response to Comments Received

Appendix A: Joint Development Checklist

Appendix B: Certificate of Compliance

I. Background

This final Agency guidance describes the eligibility of "joint development" improvements under 49 U.S.C. 5301 *et seq.* (Federal transit law). The Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA-LU) enacted certain amendments to the definition of the term "capital project" as used in 49 U.S.C. 5302(a)(1)(G) relating to "joint development" activities by recipients of Federal funds under Federal transit law. This amendment permits the Federal Transit Administration (FTA or Agency) to issue public transportation grants "for the construction, renovation, and improvement of intercity bus and intercity rail stations and terminals," including the construction, renovation, and improvement of commercial revenue-producing intercity bus stations or terminals. In doing so, it modifies the underlying policy of joint development improvements, and therefore enhances the ability of FTA grantees to work with the private sector and others for purposes of joint development. To ensure maximum benefit to the people who ride public transportation, to FTA grantees that choose to sponsor joint development improvements (each, a project sponsor), and to their joint development partners, this final Agency guidance (i) Seeks to afford FTA grantees maximum flexibility within the law to work with the private sector and others for purposes of joint development, (ii) generally defers to the decisions of the project sponsor, negotiating and contracting at arm's length with third parties, to utilize federal transit funds and program income for joint development purposes, and (iii) aims to promote transit-oriented development, subject to the broad parameters set forth herein.

This final Agency guidance is the culmination of three notices issued by FTA, the first two of which appeared in the **Federal Register** on January 31, 2006, at 71 FR 5107, and March 26, 2006, at 71 FR 15513. These notices were superseded by a Notice of Proposed Agency Guidance and Request for Comments on the Eligibility of Joint Development Improvements under Federal Transit Law published by FTA on September 12, 2006, in the **Federal Register** at 71 FR 53745.

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 010013

[redacted]

FTA hereby adopts the following guidance in accordance with the procedures for notice and an opportunity for the public to comment set forth at 49 U.S.C. 5334(l) and in FTA's Notice of Final Policy Statement for Implementation of Notice and Comment Procedures for Documents Imposing "Binding Obligations," as published in the **Federal Register** on June 5, 2006.

II. Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law

This final Agency guidance describes the eligibility of "joint development" improvements under 49 U.S.C. 5301 *et seq.* (Federal transit law). The Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA-LU) enacted certain amendments to the definition of the term "capital project" as used in 49 U.S.C. 5302(a)(1)(G) relating to "joint development" activities by recipients of Federal transit funds. This amendment permits the Federal Transit Administration (FTA or Agency) to issue public transportation grants "for the construction, renovation, and improvement of intercity bus and intercity rail stations and terminals," including the construction, renovation, and improvement of commercial revenue-producing intercity bus stations or terminals. In doing so, it modifies the underlying policy of joint development improvements, and therefore enhances the ability of FTA grantees to work with the private sector and others for purposes of joint development. To ensure maximum benefit to the people who ride public transportation, to FTA grantees that choose to sponsor joint development improvements (project sponsor), and to their joint development partners, this final Agency guidance (i) Seeks to afford FTA grantees maximum flexibility within the law to work with the private sector and others for purposes of joint development, (ii) generally defers to the decisions of the project sponsor, negotiating and contracting at arm's length with third parties, to utilize federal transit funds and program income for joint development purposes, and (iii) aims to promote transit-oriented development, subject to the broad parameters set forth herein.

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Appendix A--Joint Development Checklist

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I. Eligibility Criteria

a. Definition of "Capital Project"

Federal transit law defines a "capital project" for joint development as follows:

A public transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to a public transportation facility, construction, renovation, and improvement of intercity bus and intercity rail stations and terminals, and the renovation and improvement of historic transportation facilities, because the improvement enhances the effectiveness of a public transportation project and is physically or functionally related to that public transportation project or will establish new or enhanced coordination between public transportation and other transportation facilities and provides a fair share of revenue for public transportation that will be used for public transportation. This definition establishes the following criteria for determining whether a joint development improvement is eligible for funding pursuant to a program established under Federal transit law: The public transportation improvement must enhance economic development or incorporate private investment (or) enhance the effectiveness of a public transportation project and relate physically or functionally to that public transportation project or will establish new or enhanced coordination between public transportation and other transportation facilities and provide a fair share of revenue for public transportation that will be used for public transportation. In addition, a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means. 49 U.S.C. 5302(a)(1)(G)(i).

Joint development improvements shall be eligible for FTA funding if they satisfy the criteria set forth above, and do not fall within the exclusion detailed at 49 U.S.C. 5302(a)(1)(G)(ii), which excludes the construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to public transportation.

b. "Enhances Economic Development or Incorporates Private Investment"

As noted above, it is a threshold requirement for Federal funding of a public transportation improvement as joint development that such improvement either (i) Enhance economic development or (ii) incorporate private investment. n1

n1 In accordance with the statute's use of the disjunctive "or," rather than the conjunctive "and," FTA shall determine that a transportation improvement satisfies the threshold requirement

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 010016

for funding as joint development if the transportation improvement either (i) Enhances economic development or (ii) incorporates private investment (the disjunctive), and shall not require that the transportation improvement satisfy each of (i) and (ii) (the conjunctive).

i. "Enhances Economic Development"

This criterion requires that a joint development improvement enhance economic development. A grantee may satisfy this criterion by demonstrating that the joint development improvement will add value to privately- or publicly funded economic development activity occurring in close proximity to a public transportation facility.

ii. "Incorporates Private Investment"

Any joint development improvement that incorporates private investment shall satisfy this criterion. Private investment need not be monetary; it may take the form of cash, real property, or other benefit to be generated initially or over the life of the joint development improvements. FTA shall not set a monetary threshold for private investment. Rather, the amount and form of private investment shall be negotiated by the parties to the joint development improvement.

c. "Enhances the Effectiveness of a Public Transportation Project"

Any reasonable forecast of joint development impacts that enhance the effectiveness of a public transportation project shall satisfy this criterion. [redacted] lessened or deferred [redacted]

d. "Related Physically or Functionally"

The disjunctive requirement of physical "or" functional relationship provides that a joint development improvement may be built separately from, but in functional relationship to, a public transportation project. Therefore, a joint development improvement satisfies this element if it is related physically or functionally to a public transportation project.

i. "Physically Related"

A joint development improvement is "physically related" to a public transportation project if it provides a direct physical connection to public transportation services or facilities. Illustrative, but not exhaustive, examples of physical relationships include (i) Projects built within or adjacent to public transportation facilities and (ii) projects using air rights over public transportation facilities.

ii. "Functionally Related"

A joint development improvement is "functionally related" to a public transportation project if by activity and use, with or without a direct physical connection, it (i) Enhances the use of, connectivity with or access to public transportation; or (ii) provides a transportation-related service (such as, but not limited to, remote baggage handling or shared ticketing) or community services (such as daycare or health care) to the public. Considerations include a reduction in travel time between the joint development project and the public transportation facility, reasonable access between the joint development project and the public transportation facility, and increased trip generation rates **[*5791]** resulting from the relationship between the joint development project and the public transportation facility.

While the functional relationship test of activity and use permits the use of FTA funds for joint development improvements located outside the structural envelope of a public transportation

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 010017

project, and may extend across an intervening street, major thoroughfare or unrelated property, functional relationships should not extend beyond the distance most people can be expected to safely and conveniently walk to use the transit service (in certain cases, for example, within a radius of 1,500 feet around the center of the public transportation project).

e. "Establishes New or Enhanced Coordination Between Public Transportation and Other Transportation" n2

n2 Subsection (e), "New or Enhanced Coordination," explains the second method for complying with a disjunctive requirement. As explained in section (I)(d) of this document, a joint development improvement may satisfy this requirement by (i) Relating physically or functionally to a public transportation project *or* (ii) establishing new or enhanced coordination between public transportation and other transportation.

Any reasonable forecast of joint development impacts that establish new or enhanced coordination between public transportation and other transportation shall satisfy this criterion. FTA shall accept any reasonably supported judgment of new or enhanced coordination from the project sponsor.

i. "New or Enhanced Coordination"

To establish new or enhanced coordination, a joint development improvement must create or enhance the physical or functional connections between public transportation and other transportation. n3

n3 This requirement is similar to, but not the same as, the requirement of physical or functional relationship described at subsection (d)(i) and (ii). The two are distinct, disjunctive requirements, but they share common criteria. A project could satisfy both requirements, but need only satisfy one to qualify for funding as a joint development improvement. Visualized as such, the disjunctive requirement would appear as a Venn diagram--separate requirements with overlapping criteria.

Examples of physical connections that establish new or enhanced coordination include, but are not limited to, proximate or shared ticket counters, termini, park-and-ride lots, taxicab bays, passenger drop-off points, waiting areas, bicycle paths and sidewalks connecting public transportation to other transportation facilities. Projects that shorten the distance between public transportation termini and other transportation shall be presumed to enhance coordination.

Examples of functional connections that establish new or enhanced coordination include, but are not limited to, shared or coordinated signage, schedules, and ticketing.

ii. "Public Transportation"

Section 5307(a)(7) of Title 49 defines "public transportation" as transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in chapter 243 n4 (or a successor to such entity)."

n4 National Railroad Passenger Corporation ("Amtrak").

iii. "Other Transportation"

FTA interprets the term "other transportation," as used in 49 U.S.C. 5307(a)(1)(G), to mean all forms of transportation that are not public transportation, including, but not limited to, airplane, school bus, charter bus, sightseeing vehicle, intercity bus and rail, automobile, taxicab, bicycle

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 010018

and pedestrian transportation.

f. Provide a Fair Share of Revenue for Public Transportation That Will Be Used for Public Transportation

The third criterion for determining whether a joint development improvement is eligible for funding pursuant to a program established under Federal transit law is that the improvement "provides a fair share of revenue for public transportation that will be used for public transportation." n5 49 U.S.C. 5302(a)(1)(G). FTA will not define the term "fair share of revenue," nor will it set a monetary threshold. [redacted] This enhances the ability of a public transportation provider to negotiate for financial benefits in exchange for the benefits it will convey through the joint development improvement.

n5 This criterion should not be confused with the requirement of 49 U.S.C. 5302(a)(1)(G)(i) that "a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means."

n6 For example, "fair share of revenue" need not be a direct payment of revenue by an intercity bus provider to a transit agency but may take the form of an increase in revenues received by a transit agency, whether in its capacity as landlord or otherwise, as a result of enhanced passenger traffic created by the service of a jointly developed facility by an intercity bus provider, provided that the transit agency and intercity bus provider together designate and report to FTA the source of such "fair share of revenue." FTA grantees shall expend the "fair share of revenue" in accordance with the common grant rule of 49 CFR 18.1-18.52.

g. "Reasonable Share of the Costs of the Facility"

While not a criterion to determine eligibility, as noted above, it is nonetheless required that any "person making an agreement to occupy space in a facility under [49 U.S.C. 5302(a)(1)(G)] shall pay a reasonable share of the costs of the facility through rental payments and other means." [redacted]

II. Eligible Activities

Subject to the eligibility criteria detailed at section I above, joint development improvements expressly include the following:

. Commercial and residential development;

. pedestrian and bicycle access to a public transportation facility;

. construction, renovation, and improvement of intercity bus and intercity rail stations and terminals; and

. renovation and improvement of historic transportation facilities.

49 U.S.C. 5302(a)(1)(G). These and other joint development improvements will be eligible for FTA funding if they satisfy the criteria set forth above, and do not fall within the exclusion detailed at

FOIA CONFIDENTIAL TREATMENT REQUESTED WMATA-INV 010019

49 U.S.C. 5302(a)(1)(G)(ii), which excludes the construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to public transportation. n7

n7 Many aspects of commercial and residential development will be excluded by 49 U.S.C. 5302(a)(1)(G)(ii), which makes ineligible for FTA financial assistance the "construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to public transportation." It is important to note, however, that commercial and residential development is not excluded wholesale. For example, space in an FTA-funded facility may be made available for commercial revenue-producing activities and for connections to revenue producing activities. Similarly, non-commercial, non-revenue-producing aspects of commercial and residential developments may be eligible for FTA financial assistance, subject to the criteria detailed at section (I). **[*5792]**

Costs related to a joint development improvement are only eligible for Federal transit funding pursuant to a budget contained in an approved grant. FTA cannot approve funding for costs associated with a joint development improvement that are not contained in an approved grant budget. FTA Regional Administrators approve joint development proposals as part of the grant approval process.

Eligible costs for joint development improvements include, but are not limited to, the following:

a. Real Estate Acquisition, including the acquisition of real property and structures thereon; n8

n8 Note that certain costs in connection with real estate acquisition (such as costs associated with eminent domain and relocation assistance) shall be eligible, as provided by the respective statutes and regulations.

a. Demolition of Existing Structures;

b. Site Preparation;

c. Building Foundations, including substructure improvements for buildings constructed over transit facilities;

d. Utilities, including utility relocation and construction;

e. Walkways, including bicycle lanes and pedestrian connections and access links between public transportation services and related development;

f. Open Space, including site amenities and related streetscape improvements such as street furniture and landscaping;

g. Safety and Security Equipment and Facilities, including lighting, surveillance and related intelligent transportation applications;

h. Construction, renovation, and improvement of intercity bus and intercity rail stations and terminals;

i. Facilities that Incorporate Community Services, such as daycare or health care;

j. Capital Project, and Equipment, for an Intermodal Transfer Facility or Transportation Mall, including acquisition of facilities and equipment, roadbeds, tracks and bus ramps, pedestrian concourses, loading shelters, parking facilities, park-and-ride services, improvements of existing bus or rail transit terminals, stations, major transfer points, and shelters as well as other facilities

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directly related to the linking of public transportation facilities with other modes of transportation;

k. Furniture, Fixtures and Equipment (FFE), Transportation-related FFE are eligible costs in all cases. However, due to the exclusion of commercial revenue-producing facilities (other than an intercity bus station or terminal) and public facilities not related to public transportation at 49 U.S.C. 5302(a)(1)(G)(ii), FFE related to commercial revenue-producing facilities (other than an intercity bus station or terminal) or public facilities not related to public transportation are considered ineligible. FFE related to an intercity bus station or terminal are eligible costs;

l. Parking, including parking improvements with a public transportation justification and use or an intercity bus or intercity rail justification and use in connection with joint development; and

m. Project Development Activities, including design, engineering, construction cost estimating, environmental analysis, real estate packaging and financial projections (operating income and expenses, debt service and cash flow analysis), and negotiations to secure financing and tenants;

n. Professional Services, including reasonable and necessary costs incurred to hire professionals to prepare or perform items a through n above, or to assist the grantee in reviewing the same.

III. Ineligible Activities

a. Construction of a Commercial Revenue-Producing Facility or Part of a Public Facility Not Related to Public Transportation

Eligible costs do not include construction of commercial revenue producing facilities (other than an intercity bus station or terminal) or part of a public facility not related to public transportation.

IV. Federal Requirements

FTA's Master Agreement contains the standard terms and conditions governing the administration of a project supported with Federal assistance awarded by FTA through a grant agreement or cooperative agreement with the recipient, or supported by FTA through a Transportation Infrastructure (TIFIA) Loan, loan guarantee, or line of credit with the recipient. Not every provision of the Master Agreement will apply to every project for which FTA provides Federal assistance through a grant agreement or cooperative agreement. The type of project, the Federal laws and regulations authorizing Federal assistance for the project, and the legal status of the recipient as a State or local government, private non profit entity, or private for profit entity will determine which Federal laws, regulations, and directives apply. Federal laws, regulations, and directives that do not apply will not be enforced. The recipient shall comply with all applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing. Any violation of a Federal law, regulation, or directive applicable to the recipient or its project may result in penalties to the violating party. Applicable crosscutting requirements likely to apply to joint development improvements include, but are not limited to, the following:

a. Ground Lease or Transfer of Federally Assisted Real Estate

If the joint development improvement involves a ground lease or transfer of federally-funded real estate and there is no Federal assistance for new improvements, then the following requirements apply to the lessee or transferee and must be incorporated into the lease or the conveyance instrument:

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i. language found at 49 CFR 26.7 binding the lessee or transferee not to discriminate based on race, color, national origin, or sex;

ii. language found at 49 CFR 27.7; 27.9(b) and 37 binding the lessee or transferee not to discriminate based on disability and binding the same to compliance with the Americans with Disabilities Act with regard to any improvements constructed; and

iii. language contained in FTA's Master Agreement, updated annually in October, particularly relating to conflicts of interest and debarment and suspension.

b. Federally Assisted Construction of Joint Development Improvements

If the construction of improvements is also federally assisted, then the following requirements will apply and must be incorporated into the lease or the conveyance or encumbrance instrument:

iv. Buy America--language making it clear that the steel, iron, and manufactured goods used in the joint development project are produced in the United States, as described in 49 U.S.C. 5323(j) and 49 CFR 661;

v. Planning and Environmental Analysis--language making it clear that the grantee must comply with, and the joint development project is subject to the requirements of:

1. The FHWA/FTA metropolitan and statewide planning regulations at 23 CFR 450;

2. The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*; **[*5793]**

3. Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 FR 7629, Feb. 16, 1994;

4. FTA statutory requirements on environmental matters at 49 U.S.C. 5324(b); Council on Environmental Quality regulations on compliance with the NEPA, 40 CFR 1500 *et seq.*;

5. FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR 771;

6. Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, involving historic and archaeological preservation; Advisory Council on Historic Preservation regulations on compliance with Sec. 106, "Protection of Historic and Cultural Properties," 36 CFR 800; and

7. Restrictions on the use of certain publicly owned lands and historic resources, unless the FTA makes the specific findings required by 49 U.S.C. 303.

vi. Cargo Preference--language making it clear that items imported from abroad and used in the joint development improvements were shipped predominantly on U.S.-flag ships and that the project complies with 46 CFR 381, to the extent these regulations apply to the joint development;

vii. Seismic Safety--language certifying that a structure conforms to seismic safety standards, as contained in 49 CFR 41;

viii. Energy Assessments--Language making it clear that the transferee(s) or joint developer agrees to perform a mandatory, energy assessment as prescribed by 23 CFR 771 and 42 U.S.C. 8373(b)(1) for any buildings constructed, reconstructed or modified with FTA assistance. The assessment shall be incorporated into the Environmental Impact Statement or Environmental Assessment, if the project has one; otherwise the assessment shall be provided with the

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application for FTA assistance;

ix. Lobbying--49 CFR 20;

x. Labor Protection--Language making it clear that the transferee or joint developer will adhere to labor protection requirements applying to Federal projects, such as Davis-Bacon--49 U.S.C. § 5333(a) and 40 U.S.C. 3141 *et seq.*, and 29 CFR 5; Copeland "Anti-Kickback" Act as amended, 18 U.S.C. 874 and 29 CFR 3; and Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 *et seq.,* and 29 CFR 5 and at 40 U.S.C. 3704; as well as 49 U.S.C. 5333(b) concerning protection of transit employees;

xi. Civil Rights Requirements--49 U.S.C. 5332 and DOT implementing regulations at 49 CFR 21 (effecting Title VI of the Civil Rights Act of 1964), 49 CFR 26 (participation by Disadvantaged Business Enterprises in DOT financial assistance programs) and 49 CFR 27 and 37 (respectively, nondiscrimination on the basis of disability in programs or activities receiving Federal financial assistance and transportation services for individuals with disabilities);

xii. Program Fraud--grantees agree to comply with Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and 49 CFR 31. Penalties may apply for noncompliance;

xiii. Language making it clear that the level of Federal participation in the joint development improvement provides no U.S. Government obligation to third parties in the project; and

xiv. Uniform Relocation--If the federally-funded site to be improved is occupied by other than the grantee and the occupant is displaced, the transferee(s) or joint developer must comply with 42 U.S.C. 4601 *et seq.* and the regulations at 49 CFR 24.

c. National Environmental Policy Act (NEPA)

In any instance in which FTA determines that NEPA applies to the joint development improvement, the level of environmental analysis will depend upon the complexity of the project and its likely impacts. In some instances, minimal review will be necessary, in which case FTA may issue a Categorical Exclusion. Generally, however, joint development activities that portend significant environmental impacts will necessitate the preparation of an Environmental Assessment or an Environmental Impact Statement. FTA is available to provide guidance on the environmental review process. See generally the FTA Environmental Impact and Related Procedures at 23 CFR 771.

V. Real Property

Real property acquired by a grantee or subgrantee pursuant to 49 U.S.C. 5302(a)(1)(G) shall be governed by 49 U.S.C. 5334(h), as amended, and subject to the obligations and conditions set forth in 49 CFR 18.31 as amended, which require the grantee or subgrantee to request disposition instructions from FTA whenever real property is no longer needed for the originally authorized purpose. n9

n9 FTA shall rely on the parties to joint development transactions, including, notably, transit agencies, to determine the appropriate use and disposition of real property used in joint development improvements, so long as such disposition and use complies with applicable statutes and duly promulgated regulations of FTA. For example, FTA shall no longer apply, and shall not require its grantees to apply, its administratively-derived test of "highest and best transit use" (or any other tests) for determining the value of real property used in FTA-funded joint development improvements, including the disposition of real property connected to a joint development improvement. In the past, FTA relied on 49 CFR 18.25(g) as its authority for requiring (and determining in its discretion) the "highest and best transit use" of such property.

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No such requirement is expressly authorized or required by 49 CFR 18.25(g), however.

VI. Applicability of Third Party Contracting Requirements

FTA's third party contracting requirements, which appear in FTA Circular 4220.1E, have limited applicability to joint development projects. As described on page 12 of Circular 4220.1E, the third-party contracting requirements must apply to the federally funded construction aspects of joint development. With regard to revenue contracts as defined in the circular, FTA will work with grantees on a case-by-case basis to craft approaches that satisfy the statutory and regulatory requirements while preserving the benefits of this innovative contracting strategy to the maximum possible extent.

If a contract between a grantee and a third party involving a joint development project is not a construction contract or a revenue contract as defined by Circular 4220.1E, then such contract is not covered by FTA's third party contracting requirements. Paragraph 7.n. of Circular 4220.1E defines "revenue contracts" as "those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity or to create business opportunities utilizing an FTA funded asset."

Revenue contracts in joint development projects that do not meet this primary purpose test are not covered by the third party contracting requirements. For example, third party contracts to manage, operate, and/or maintain intercity bus or intercity rail terminals that are part of FTA-funded joint development projects or tenancy agreements with third party intercity bus or intercity rail operators are not covered revenue contracts. The primary purpose of such contracts is to carry out the congressional intent to give grantees the flexibility to integrate intercity rail and intercity bus terminals and their related services into FTA-funded joint development projects.

Even in situations not covered by the third party contracting requirements, FTA generally favors full and open **[*5794]** competition. However, where the third party contracting requirements are not involved, FTA leaves it to the full discretion of the grantees to determine the appropriate extent and nature of competition, if any, for such contracts. For example, in cases involving management of intercity bus or rail terminals or tenancy agreements in those terminals, FTA recognizes that given the unique nature of the national intercity rail and bus systems, a competitive procurement process for such contracts may not be appropriate.

VII. Satisfactory Continuing Control

For purposes of this guidance and the Certificate of Compliance, "satisfactory continuing control" shall not mean complete operating or managerial control of a joint development facility. In determining whether "satisfactory continuing control" with respect to a joint development capital project is maintained, the project sponsor and FTA shall consider, as a primary factor, whether the project sponsor has the right and power to direct that such project shall be used for activities eligible for funding under Federal transit law.

VIII. Eligibility Procedures

Before becoming eligible for FTA funding, a joint development improvement must be approved by the FTA Regional Administrator, or his designee, responsible for the project sponsor's locality. Only FTA grantees may sponsor a joint development improvement. The project sponsor may submit a joint development proposal at any time. FTA approval shall be contingent upon the project sponsor certifying that the joint development improvement conforms to the criteria set forth above and that the project conforms to the requirements of the common grant rule found at 49 CFR 18.31.

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There are two methods for seeking approval for a joint development project: (i) If the joint development improvement conforms to the specifics of the Certificate of Compliance, then the project sponsor may expedite FTA approval by executing the Certificate of Compliance and submitting it to FTA along with a completed Joint Development Checklist and a Joint Development Agreement; or (ii) if the joint development improvement will deviate from the specifics of the Certificate of Compliance, then the project sponsor must substitute an "alternative certification," which certification shall include an explanation of compliance with 49 U.S.C. 5302(a)(1)(G) and 49 CFR 18. In all cases, the project sponsor must submit a completed Joint Development Checklist, a proposed Joint Development Agreement, and either (i) An executed Certificate of Compliance or (ii) an alternative certification. By submitting a completed Joint Development Checklist, the project sponsor shall certify that the proposed joint development improvement conforms to the criteria of 49 U.S.C. 5302(a)(1)(G) as outlined above. By signing the Certificate of Compliance, the project sponsor shall certify, among other things, that the proposed joint development improvement conforms to the requirements of 49 CFR 18.31. An alternative certification must explain compliance with 49 U.S.C. 5302(a)(1)(G) and 49 CFR 18 together with supporting documentation, in each case in form and substance satisfactory to FTA in its reasonable discretion. The FTA Regional Administrator, or his designee, shall approve all proposals that meet the criteria described herein. Like all projects funded by FTA, joint development improvements are subject to the applicable crosscutting requirements.

The Joint Development Checklist and Certificate of Compliance are attached hereto as Appendix A and B respectively.

Appendix A--Joint Development Checklist **[*5795]**

See Joint Development Checklist in Original Document. **[*5796]**

Appendix B--CERTIFICATE OF COMPLIANCE:

Certificate of Compliance

Effective as of the date hereof, the undersigned hereby certifies and covenants to the Federal Transit Administration ("FTA") as follows:

1. *Title.* Subject to the obligations and conditions set forth in 49 CFR 18.31, as amended, title to real property acquired under a grant or subgrant for FTA Project Number---, [insert project title here] (the "Project"), shall vest in the undersigned or subgrantee thereof (collectively or individually, as the case may be, the "Grantee").

2. *Use.* Except as otherwise provided by Federal statutes, real property shall only be used for the originally authorized purposes (which may include Joint Development purposes that generate program income, both during and after the award period and used to support public transportation activities) as long as needed for such purposes, and that the Grantee shall not dispose of or encumber its title or other interests.

3. *Disposition.* When real property acquired with funds provided by FTA for the Project is no longer needed for the purpose originally authorized by FTA, the Grantee shall request disposition instructions from FTA and shall agree that, unless otherwise authorized by FTA, such disposition shall be made in accordance with applicable law, including without limitation 49 U.S.C. 5334(h) and 49 CFR 18.31.

4. *Federal Interest.* The Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance ("Project Property") until, and to the extent that, the Federal Government relinquishes its Federal interest in such Project Property.

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5. *Incidental Use.* Any incidental use of Project Property, as determined by FTA, shall not exceed that permitted under applicable Federal laws, regulations, and directives, including the requirements of FTA's Master Agreement.

6. *Encumbrance of Project Property.* The Grantee covenants to FTA as follows:

a. *Written Transactions.* The Grantee agrees that it will not execute any transfer of title to the Project Property or enter into an instrument legally binding on the Grantee that would encumber Federal Interest in the Project Property.

b. *Oral Transactions.* The Grantee agrees that it will not obligate itself in any manner to any third party with respect to Project Property.

7. *Notice to Joint Development Partner.* The undersigned has delivered to the Joint Development Partner a duly executed copy of this certificate, dated as of the date hereof, receipt of which has been acknowledged by the Joint Development Partner in writing to the undersigned on or before the date of execution of the Joint Development Agreement.

8. *Other Actions.* The Grantee (a) Agrees that it will not take any action that encumbers the Federal Interest in the Project Property and (b) hereby affirms that each of its representations and warranties set forth in the Master Agreement is true and correct in all material respects as of the date hereof. The Grantee agrees that nothing herein shall supersede, amend, modify or otherwise affect the provisions, terms or conditions set forth in the Master Agreement.

9. *Definitions.*

a. "FTA" shall have the meaning provided in the preamble of this certificate.

b. "Grantee" shall have the meaning provided in section (1) of this certificate.

c. "Joint Development" shall mean a capital project as defined by 49 U.S.C. 5302(a)(1)(G) that is eligible for funding pursuant to the terms and conditions set forth in [insert new Joint Development circular number].

d. "Joint Development Partner" shall mean the entity with which the Project Sponsor has partnered, through a Joint Development Agreement, to construct a joint development improvement pursuant to 49 U.S.C. 5302(a)(1)(G).

e. "Master Agreement" shall mean that certain Master Agreement by and between FTA and the Grantee, as authorized by 49 U.S.C. 53, Title 23, United States Code (Highways), the National Capital Transportation Act of 1969, as amended, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the Transportation Equity Act for the 21st Century, as amended, or other Federal laws that FTA administers, as the same may be lawfully revised, superseded or supplemented from time to time.

f. "Project" shall have the meaning provided in section (1) of this certificate.

g. "Project Property" shall have the meaning provided in section (4) of this certificate.

10. *No Estoppel.* The undersigned agrees that acceptance of this Certificate of Compliance by FTA shall not estop the Federal government from initiating or conducting, and shall not be used as a defense to any investigation, audit or inquiry by the Federal government following approval by FTA of the project.

III. Response to Comments Received

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On September 12, 2006, FTA published in the **Federal Register** a Notice of Proposed Agency Guidance and Request for Comments on the Eligibility of Joint Development Improvements under Federal Transit Law (notice of proposed guidance) (71 FR 53745). In its notice of proposed guidance, FTA interpreted the definition and operation of the term "capital project" as defined at 49 U.S.C. § 5302(a)(1)(G), and as amended by Section 3003(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The text of FTA's notice of proposed guidance included sections on (I) Eligibility criteria, including (a) The definition of a "capital project," and the criteria for determining whether a joint development improvement (b) "enhances economic development or incorporates private investment," (c) "enhances the effectiveness of a public transportation project," (d) is "related physically or functionally," (e) "establishes new or enhanced coordination between public transportation and other transportation," (f) "provides a fair share of revenue for public transportation that will be used for public transportation," and (g) contributes a "reasonable share of the costs of the facility"; (II) eligible activities; (III) ineligible activities; (IV) Federal requirements; (V) eligibility procedures; (VI) real property; (VII) the applicability of third party contracting requirements; (VIII) certificate of compliance; and (IX) satisfactory continuing control.

Fourteen parties submitted comments in response to FTA's September 12, 2006, notice of proposed guidance. FTA hereby responds to these comments by topic and in the following order: (a) Notice of Proposed Guidance Generally; (b) Definition of Capital Project; (c) Eligibility Criteria; (d) Eligible/Ineligible Activities; (e) Eligibility Procedures; (f) Real Property; (g) Third Party Contracting; (h) Certificate of Compliance; (i) Satisfactory Continuing Control; and (j) Miscellaneous.

(a) Notice of Proposed Guidance Generally

The intended purpose of FTA's notice of proposed guidance was to ensure maximum benefit to the people who ride public transportation, to FTA grantees that choose to sponsor joint development improvements (the project sponsor), and to their joint development partners by (i) Affording FTA grantees maximum flexibility within the law to work with the private sector and others for purposes of joint development, (ii) generally deferring to the decisions of the project sponsor, negotiating and contracting at arm's length with third parties, to utilize Federal Transit funds and program income for joint development purposes, and (iii) promoting transit-oriented development, subject to the broad parameters set forth therein.

FTA received fourteen general comments. Nine commenters praised FTA's notice of proposed guidance. Two commenters asked FTA to clarify the scope and purpose of its proposed guidance, particularly whether FTA intends its final guidance to supplement or replace its prior guidance. One commenter encouraged FTA to place emphasis on joint development in its New Starts rating process. Another commenter suggested that FTA view local grantees as partners and not as adversaries. One commenter stated that the proposed guidance is inconsistent with regulation inasmuch as it compares fixed facilities with rolling stock.

FTA Response: FTA is pleased by the number of commenters that support and praise its Proposed Guidance. FTA appended its past guidance on the eligibility of joint development to its Circulars 5010.1, 9300.1 and 9030.1, guidance for new Major Capital Investments, Grants Management, and Formula Capital Grants, respectively. FTA intends to publish this Final Guidance as a stand-alone circular titled "The Eligibility of Joint Development Improvements under Federal Transit Law." This Final Guidance shall replace FTA's existing guidance on joint development, currently located at FTA Circulars 5010.1, 9300.1 and 9030.1. FTA is uncertain why the commenter viewed its proposed guidance as adversarial to FTA grantees, particularly since FTA's stated purpose is to afford grantees maximum **[*5797]** flexibility within the law to work with the private sector and others for purposes of joint development. Similarly, FTA is unsure how its guidance is inconsistent, as the commenter did not identify the inconsistent comparisons between fixed

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facilities and rolling stock. Rather, the commenter stated that "FTA has nearly eliminated the ability to generate revenue from rolling stock." FTA is unclear how it has eliminated the grantee's ability to generate revenue from rolling stock. Moreover, the comment is beyond the scope of this guidance, which speaks to joint development improvements, not rolling stock.

(b) Definition of Capital Project

SAFETEA-LU enacted certain amendments to the definition of the term "capital project" as used in 49 U.S.C. 5302(a)(1)(G) relating to "joint development" activities by recipients of Federal funds under 49 U.S.C. 5301 *et seq.* (Federal transit law). In its notice of proposed guidance, FTA interpreted the definition and operation of these terms. Nine parties submitted comments on this topic. Seven commenters believe that FTA correctly interpreted the definition and operation of the terms "capital project" and "joint development" relating to 49 U.S.C. 5302(a)(1)(G). One commenter suggested that FTA use the statutory definition of joint development rather than attempting to create a new definition for this guidance. This same commenter asked FTA to define the term "historic transportation properties." Another commenter asked FTA for clear definitions of "joint development," "joint development activity," "joint development project," and "joint development improvement." This same commenter inquired whether joint development is limited to development that includes a functionally required element of the transit facility, or encompasses development on federally assisted land, transferred by lease or sale, within walking distance of a transit stop that may only provide increased ridership for the transit agency.

FTA Response: To the commenter that suggested FTA use the statutory definition of the term "joint development," FTA responds by stating that it interprets the term "joint development" to mean any public transportation project, improvement or enhancement eligible for Federal transit funding pursuant to 49 U.S.C. 5302(a)(1)(G), a subsection of the statutory definition of "capital project." FTA's use of the term joint development in this guidance document refers to the type of capital project defined at 49 U.S.C. 5302(a)(1)(G). FTA will not define the term "historic transportation properties" in this final Agency guidance. For information on historic properties, FTA refers the commenter to the National Historic Preservation Act located at 16 U.S.C. 470 *et seq.* Finally, joint development improvements are not limited to development that includes a functionally required element of the transit project. Any joint development improvement must, however, satisfy the statutory criteria at 49 U.S.C. 5302(a)(1)(G) to be eligible for funding pursuant to a program established under Federal transit law. This Circular seeks to afford FTA grantees maximum flexibility within the law to work with the private sector and others for purposes of joint development, and FTA generally will defer to the decisions of the project sponsor, negotiating and contracting at arm's length with third parties, to utilize Federal transit funds and program income for joint development purposes.

(c) Eligibility Criteria

Section 5302(a)(1)(G) of Title 49 establishes the following criteria for determining whether a joint development improvement is eligible for funding pursuant to a program established under Federal transit law: The public transportation improvement must (i) Enhance economic development or incorporate private investment; (ii)(a) Enhance the effectiveness of a public transportation project and relate physically or functionally to that public transportation project, or (b) establish new or enhanced coordination between public transportation and other transportation; and (iii) provide a fair share of revenue for public transportation that will be used for public transportation. In addition, a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means. FTA interpreted these criteria in its notice of proposed guidance, and will respond to comments criterion-by-criterion, in the order outlined above.

(i) Enhances Economic Development or Incorporates Private Investment

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In its notice of proposed guidance, FTA described the threshold requirement for Federal funding of a joint development improvement--that such improvement either enhance economic development or incorporate private investment. In accordance with the statute's use of the disjunctive "or," rather than the conjunctive "and," the notice of proposed guidance states that FTA shall determine that a transportation improvement satisfies the threshold requirement for funding as joint development if the transportation improvement either (i) Enhances economic development or (ii) incorporates private investment (the disjunctive), and shall not require that the transportation improvement satisfy each of (i) and (ii) (the conjunctive). FTA received three comments on this requirement, with one party offering two comments. All three comments favor FTA's description of the threshold requirement for Federal funding of a joint development improvement--that such improvement either enhance economic development or incorporate private investment. Two commenters agreed with FTA's reading of the eligibility requirements as disjunctive. The other commenter applauded FTA for not setting any monetary thresholds or providing limiting definitions of private investments.

(ii)(a) Enhances the Effectiveness of a Public Transportation Project and Relates Physically or Functionally to That Public Transportation Project

FTA received two comments on this criterion generally. Both commenters suggested that FTA specifically note in the Guidelines that if an intercity bus terminal or other facility meets the new or enhanced coordination test it does not have to meet the physically or functionally related test.

FTA received four comments on the criterion that a joint development improvement enhance the effectiveness of a public transportation project. One party agreed with FTA's determination that any reasonable forecast of joint development impacts that enhance the effectiveness of a public transportation project shall satisfy this criterion. Another party disagreed, commenting that FTA's use of the term "reasonable" as the standard for evaluating this criterion may lead to an inconsistent evaluation of projects. A third party recommended that FTA make clear in section I of its guidance that a project sponsor's reliance on the past results of similarly situated projects is sufficient to form the basis of a reasonable forecast of joint development impacts that enhance the effectiveness of a public transportation project shall satisfy this criterion. Another commenter asked FTA to provide an additional explanation under section I(c) that would guide FTA staff to eliminate the presumed requirement for one-to-one replacement of park and ride spaces.

FTA received ten comments on the criterion that a joint development improvement relate physically or functionally to a public transportation project. One commenter agreed that the functional relationship can be shown by activity or use, and agreed with how FTA defined these terms, but recommended that FTA specifically note in the guidance that if an intercity bus terminal or other facility meets the new or enhanced coordination test, it does not have to meet the physically or functionally related test. One commenter asked whether an intercity facility located miles away from a local transit center would satisfy this criterion; and recommended that in order for any intercity bus facility to receive Federal assistance, it should satisfy both requirements [physically and functionally related] in addition to being subject to a local grantee. This same commenter recommended that these facilities should not be separated by a major or busy street. Another commenter stated that a joint development improvement can be functionally related even if it is across a major thoroughfare or unrelated property from public transportation as long as it is within walking distance of the public transportation facility. One commenter suggested that there needs to be a strong functional relationship when there is no physical connection to a transit facility; that project sponsors should be required to commit to ensuring the functional connection by providing a clear connection for users; and that funding may be contingent upon a shuttle service connecting the joint development to a transit facility. In its notice of proposed guidance, FTA used 1500 feet around the center of a public transportation project as an example of the distance that most people can be expected to safely

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and conveniently walk to use the transit service. Four commenters expressed concern that **[*5798]** 1500 feet is too short a distance, and worry that it may become the de facto limitation, despite being clearly labeled as an example. One of these commenters agreed that functional relationships should not extend beyond the distance most people can be expected to safely and conveniently walk to use the transit service.

FTA Response: FTA directs the commenters to section I(a) of this final agency guidance, which indicates that if a joint development improvement satisfies the criterion of enhancing the effectiveness of a public transportation project and relates physically or functionally to that public transportation project, it need not establish new or enhanced coordination between public transportation and other transportation. The disjunctive nature of this criterion is also apparent in the box labeled "Public Transportation Benefit" on the Joint Development Checklist.

FTA responds to the commenter that questioned FTA's use of the term "reasonable" by reminding the commenter that through this guidance FTA seeks to afford FTA grantees maximum flexibility within the law to work with the private sector and others for purposes of joint development, and generally defers to the decisions of the project sponsor, negotiating and contracting at arm's length with third parties. Successful joint development improvements necessitate this flexibility.

FTA cannot state with certainty that a project sponsor's reliance on the past results of similarly situated projects is sufficient to form the basis of a reasonable forecast of joint development impacts that enhance the effectiveness of a public transportation project shall satisfy this criterion. Although past results may not be sufficient in all cases, FTA encourages project sponsors to utilize such results when forecasting joint development impacts that enhance the effectiveness of a public transportation. Any reasonable forecast shall satisfy this criterion.

In response to the comments on the requirement that a joint development improvement be physically or functionally related to a public transportation project, FTA reemphasizes the following points, each of which is addressed in section I(d) of this final agency guidance: A joint development improvement is "physically related" to a public transportation project only if it provides a direct physical connection to public transportation services or facilities. A joint development improvement is "functionally related" to a public transportation project if by activity and use, with or without a direct physical connection, it (i) Enhances the use of, connectivity with or access to public transportation; or (ii) provides a transportation-related service or community service to the public. While the functional relationship test of activity and use permits the use of FTA funds for joint development improvements located outside the structural envelope of a public transportation project, and may extend across an intervening street, major thoroughfare or unrelated property, functional relationships should not extend beyond the distance most people can be expected to safely and conveniently walk to use the transit service (in certain cases, for example, within a radius of 1,500 feet around the center of the public transportation project). In all cases, an intercity facility located miles away from a public transportation project will not have a direct physical connection to that project because several miles is beyond the distance most people can be expected to safely and conveniently walk to use the public transportation project. FTA notes, however, that the distance most people can be expected to safely and conveniently walk to use the public transportation project may extend across an intervening street, major thoroughfare or unrelated property. FTA also notes that it intends its statement regarding the radius of 1,500 feet around the center of a public transportation project to be an example of a distance that is, in certain cases, within the distance most people can be expected to safely and conveniently walk to use transit service. It is an example, not the rule.

Regarding one-to-one replacement of park and ride spaces, FTA believes the commenter was referring to language in FTA Circular C 5010.1C that describes a joint development transfer where a transit operator transfers land from a park-and-ride lot to a developer; the developer plans to construct residential units and retail space on this land; but because the development will

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generate more transit trips and more non-fare revenue than the displaced parking spaces provided, the transit operator is not required to replace the parking spaces on a one-to-one basis. Although this example is not contained in this final Agency guidance, the commenter is correct--FTA does not require a grantee to replace parking spaces on a one-to-one basis if those spaces are used for joint development purposes and using them for such purposes will not reduce the number of public transportation trips to and from that station.

(b) Establishes New or Enhanced Coordination Between Public Transportation and Other Transportation

FTA received three comments on the criterion that a joint development improvement establish new or enhanced coordination between public transportation and other transportation. One commenter agreed that a public transportation improvement need only satisfy one of the criteria [(i) Enhance the effectiveness of a public transportation project and relate physically or functionally, or (ii) establish new or enhanced coordination between public transportation and other transportation]. Another commenter suggested that FTA specifically note in its guidance that if an intercity bus terminal or other facility meets the "new or enhanced coordination" test it does not have to meet the "physically or functionally related" test. One commenter identified an error in the paragraph beginning with Examples of physical connections* * *" where the phrase "connection public transportation to *non* -transportation facilities" should have read "connecting public transportation to *other* transportation facilities."

FTA Response: FTA directs the commenter to section I(d) and footnote 2 at section I(e), which explain that a joint development improvement may satisfy this requirement by (i) Relating physically or functionally to a public transportation project *or* (ii) establishing new or enhanced coordination between public transportation and other transportation.

FTA has corrected the error noted by the commenter and changed "non-transportation facilities" to "other transportation facilities."

(iii) Fair Share of Revenue for Public Transportation That Will Be Used for Public Transportation

In its notice of proposed guidance, FTA described the third criterion for determining whether a joint development improvement is eligible for funding pursuant to a program established under Federal transit law--that the improvement provide a fair share of revenue for public transportation that will be used for public transportation. Thirteen parties commented on this criterion. Four parties agree with FTA's position that what is a fair share of revenue, and what form it should take, shall be negotiated between the parties involved in the joint development improvement. One party stated that this position is "entirely consistent with good business practices and good stewardship." Another party suggested that the fair share return should not rely solely upon an estimate of ridership increases, and recommended that FTA require that the fair share of revenue take the form of a cash income revenue stream to the grantee from its joint development partner or the project. Another commenter recommended that FTA explicitly state that the revenue stream that flows to a transit agency from a joint development project is not "program income" for purposes of 49 CFR 18. Six parties objected to the requirement that the project sponsor obtain a written opinion of counsel or other advisor (or FTA's agreement) that the share of revenue to public transportation is fair. These commenters noted that such decisions are more appropriate when coming from a transit agency official, questioned the effectiveness of an opinion of counsel, suggested that the certification be provided by a financial or real estate professional, and believe that this requirement adds nothing to the analysis. One commenter asked FTA to clarify the term "other advisor."

FTA Response: As stated in this guidance document, FTA will not define the term "fair share of revenue," nor will it set a monetary threshold. What is a fair share of revenue, and what form it should take shall be negotiated between the parties involved in the joint development

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improvement. FTA will not require that a fair share of revenue rely on ridership estimates, nor will it state that the fair share of revenue is not program income. Income generated through joint development activities is considered program income, as defined at 49 CFR 18.25, and described in Section 19 of FTA's Master Agreement, which states that an appropriate use of project property "may include joint development purposes that generate program income, both during and after the award period and used to support public transportation activities." FTA Master Agreement MA(13), 10-01-2006.

Due to comments overwhelmingly opposed to language in the proposed guidance, FTA **[*5799]** has eliminated from this final guidance the requirement that the project sponsor obtain a written opinion of counsel or other advisor (or FTA's agreement) that the share of revenue to public transportation is fair. Instead, and consistent with the policy principles embodied in this guidance, FTA shall defer to the decision of the project sponsor, negotiating and contracting at arm's length with third parties, to determine what is a fair share of revenue. The only requirements are: (i) That the recipient's Board of Directors (or similar governing body) determines, following reasonable investigation, that the terms and conditions of the joint development improvement (including, without limitation, the share of revenues for public transportation which shall be provided thereunder) are commercially reasonable and fair to the recipient; and (ii) that such revenue shall be used for public transportation.

FTA has eliminated the term "other advisor" from this guidance document.

(iv) Pays a Reasonable Share of the Costs of the Facility

While not a criterion to determine eligibility of a joint development improvement, Federal transit law requires that any person making an agreement to occupy space in a facility under 49 U.S.C. 5302(a)(1)(G) shall pay a reasonable share of the costs of the facility through rental payments and other means. FTA received three comments on this requirement, with one party commenting twice. The first commenter recommended that an intercity carrier should directly compensate a local grantee for the intercity provider's incremental costs because the local taxpayers would be unfairly subsidizing a private company at the cost of regular bus service, and that ticket sales generated from intercity bus passengers should not factor into an intercity provider's reimbursement or rent. The second commenter expressed concern that this requirement may be confused with the eligibility criterion that a joint development improvement provide a fair share of revenue for public transportation that will be used for public transportation.

FTA Response: The Agency shall rely on the statutory language, which requires that any "person making an agreement to occupy space in a facility under [49 U.S.C. 5302(a)(1)(G)] shall pay a reasonable share of the costs of the facility through rental payments and other means."

Recognizing the concern raised by the second commenter--that an inattentive reader may confuse the phrases "reasonable share of the costs of the facility" and "a fair share of revenue for public transportation"--FTA included the following statement in its notice of proposed guidance: "This criterion should not be confused with the requirement of 49 U.S.C. § 5302(a)(1)(G)(i) that 'a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means.' "

(d) Eligible/Ineligible Activities

In its notice of proposed guidance, FTA describes activities that are eligible and ineligible uses of Federal transit funds for joint development purposes. FTA received six comments on eligible and ineligible activities. Two commenters asked FTA to clarify footnote 7, which notes that space in an FTA-funded facility may be made available for certain commercial revenue-producing activities and for connections to revenue producing activities despite statutory language making ineligible

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for FTA financial assistance the construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or part of a public facility not related to public transportation. These commenters were concerned that by eliminating some descriptive portions of earlier drafts FTA may have inadvertently constricted local flexibility by reducing the description of ineligible activities to the construction of commercial revenue producing facilities. Two commenters noted a typographical error in the list of eligible costs--the phrase "construction, renovation and improvement of bus and intercity rail stations and terminals" should read "construction, renovation and improvement of *intercity* bus and intercity rail stations and terminals." Five parties submitted comments on the eligibility of furniture, fixtures and equipment (FFE). Two parties commented that FFE related to an intercity bus station or terminal should not be an eligible cost. Two parties expressed the opposite conclusion. These commenters recommended that FTA add a statement that "the furniture, fixtures and equipment of intercity bus stations and terminals are eligible costs." Another party recommended that only items jointly used by the grantee and intercity passengers should be eligible for FTA funding, and that FFE used solely by the intercity operator should not be eligible. Yet another commenter suggested that FTA continue its existing practice of excluding FFE for tenant activities from its capital project cost and funding calculations, regardless of whether the tenant is a daycare center, interstate transportation provider, or purely commercial tenant, and recommended that tenant activities should be required to provide all finishes necessary to take advantage of their tenancy.

FTA Response: Footnote 7 is not intended to constrict local flexibility. Rather, FTA's intention is that this guidance generally, and footnote 7 in particular, afford grantees maximum flexibility within the law to work with the private sector and others for purposes of joint development. For this reason, footnote 7 notes that FTA does not interpret the statutory language at 49 U.S.C. 5302(a)(1)(G)(ii) as excluding the use of FTA funds for joint development purposes related to commercial and residential development. For example, space in an FTA-funded facility may be made available for commercial revenue-producing activities and for connections to revenue producing activities. Similarly, non-commercial, non-revenue-producing aspects of commercial and residential developments may be eligible for FTA financial assistance, subject to the criteria detailed at section I. Moreover, section II of this final guidance states that, subject to the eligibility criteria of 49 U.S.C. 5302(a)(1)(G), joint development improvements expressly include commercial and residential development.

In response to the many comments on the eligibility of furniture, fixtures and equipment (FFE), FTA refers the commenters to the statutory language at 49 U.S.C. 5302(a)(1)(G)(ii), which excepts an intercity bus station or terminal from the exclusion of commercial revenue-producing facilities and public facilities not related to public transportation. This statutory exception requires FTA to treat intercity bus stations or terminals like public transportation-related FFE, which are eligible costs in all cases.

FTA has corrected the typographical error from section II(i) of the notice of proposed agency guidance to correspond with the statutory language at 49 CFR 5302(a)(1)(G). The language in question now reads as follows: "construction, renovation and improvement of *intercity* bus and intercity rail stations and terminals."

(e) Eligibility Procedures

Before becoming eligible for FTA funding, a joint development improvement must be approved by the FTA Regional Administrator, or his designee, responsible for the project sponsor's locality. In its notice of proposed guidance, FTA outlined two methods for seeking approval for a joint development project and introduced two forms to be used in the approval process--the Joint Development Checklist and Certificate of Compliance. FTA received sixteen comments on its proposed eligibility procedures, with some parties submitting multiple comments. Four commenters asked FTA to clarify its use of the term "expedited review." Two commenters favor the Joint Development Checklist. One of these commenters stated that the proposed checklist will

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streamline the joint development approval process because it is less proscriptive than the previous iteration and allows grantees maximum flexibility to satisfy the joint development requirements. The other commenter believes that the Joint Development Checklist brings clarity to the approval process. This same commenter, however, stated that risk and uncertainty are created by requiring a partnership to commit the resources necessary to plan and design a project to the level of detail required and recommended breaking the project approval process into three stages. One party commented that the eligibility procedures outlined in FTA's proposed guidance do not provide certainty or eliminate time delays. Another commenter recommended that FTA develop a single point of focus for all that is needed to review and approve any joint development project.

FTA Response: FTA modified its eligibility procedures based, in part, on the comments summarized above. Language clarifying the methods by which FTA shall approve a joint development project can be found at section VIII of this final guidance. In summary, there are two methods for seeking approval for a joint development project: (i) If the joint development improvement conforms to the specifics of the Certificate of Compliance, then the project sponsor may expedite FTA approval by executing the Certificate of Compliance and submitting it to FTA along with a completed Joint Development Checklist and a Joint Development **[*5800]** Agreement; or (ii) if the joint development improvement will deviate from the specifics of the Certificate of Compliance, then the project sponsor must substitute an "alternative certification," which certification shall include an explanation of compliance with 49 U.S.C. 5302(a)(1)(G) and 49 CFR 18. In all cases, the project sponsor must submit a completed Joint Development Checklist, a proposed Joint Development Agreement, and either (i) An executed Certificate of Compliance or (ii) an alternative certification.

(f) Real Property

Real property acquired by a grantee or subgrantee pursuant to 49 U.S.C. 5302(a)(1)(G) shall be governed by 49 U.S.C. 5334(h), as amended, and subject to the obligations and conditions set forth in 49 CFR 18.31, as amended, which require the grantee or subgrantee to request disposition instructions from FTA whenever real property is no longer needed for the originally authorized purpose. FTA received eleven comments on its discussion of real property. Three commenters asked FTA to clarify its discussion of 49 CFR 18.31 as it applies to property used for joint development purposes. Two commenters agree with FTA's decision to no longer apply its administratively-derived test of "highest and best transit use" (or any other tests) for determining the value of real property used in FTA-funded joint development improvements, including the disposition of real property connected to a joint development improvement. Five commenters expressed concern that language in FTA's proposed guidance would discourage fee simple transfers of real property acquired with federal assistance within a joint development project, and suggest that FTA add to its guidance language from the FTA Master Agreement with regard to the transfer of real property as an alternative to leasing.

Response: FTA responds to the commenters that expressed concern about 49 CFR 18.31 by explaining that part 18.31 contains property management standards applicable to all real property acquired using Federal transit funds. Real property used for joint development purposes is not exempt from the requirements of 49 CFR 18.31. This guidance document references FTA's master Agreement at section IV, Federal Requirements. Section 19 of FTA's Master Agreement sets forth FTA's requirements on the use of real property, equipment, and supplies.

(g) Third Party Contracting

In its notice of proposed guidance, FTA explains the applicability of third party contracting requirements to joint development improvements made eligible by 49 U.S.C. 5302(a)(1)(G). All three comments support FTA's explanation of these requirements.

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(h) Certificate of Compliance

FTA received eight comments on its proposed Certificate of Compliance, with some parties submitting multiple comments. Two parties favor the Certificate of Compliance inasmuch as it expedites FTA's review. Another party discourages the additional requirements added when the agency self-certifies. Four parties asked that FTA modify the Certificate of Compliance to allow for the transfers envisioned in other sections of the guidance. One commenter noted that the definition of "grantee" refers to section (2) of the certificate rather than section (1).

FTA Response: FTA encourages the commenters that asked FTA to modify the Certificate of Compliance to note that a project sponsor may substitute an "alternative certificate," which may provide for transfers other than fee simple, if the joint development improvement will deviate from the specifics of the Certificate of Compliance. A project sponsor may expedite FTA approval if the joint development improvement conforms to the Certificate of Compliance.

FTA has corrected paragraph (9)(b) of the Certificate of Compliance. It now states that "grantee" shall have the meaning provided in section (*1*) of this certificate.

(i) Satisfactory Continuing Control

In its notice of proposed guidance, FTA noted the applicability of the term "satisfactory continuing control" to this guidance and the Certificate of Compliance. FTA received ten comments on this topic. Four commenters favor the applicability of the term "satisfactory continuing control" outlined by FTA in its notice of proposed guidance. Six commenters asked FTA to clarify its guidance with respect to the disposition of property, including means by which a grantee may maintain satisfactory continuing control through deed restrictions or other enforceable means.

FTA Response: Please see section (f) above for a discussion on the disposition of real property.

(j) Miscellaneous

One commenter noted that footnote 5 incorrectly cited 49 U.S.C. § 5302(a)(1)(G)(*ii*) and suggested that the correct citation is 49 U.S.C. 5302(a)(1)(G)(*i*). This same commenter suggested that FTA substitute "section (I)" for "section (II)" in the first paragraph of section II and at the end of footnote 7.

FTA Response: FTA has corrected both errors in this final Agency guidance.

FTA hereby publishes the text of its final guidance on the eligibility of joint development improvements under Federal transit law.

Issued on the 1st day of February, 2007.

James S. Simpson,

Administrator.

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